VIA ELECTRONIC MAIL

February 14, 2012

Regulations Division, Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW., Room 10276
Washington, DC 20410–0500

Re: Docket No. FR–5563–P–01
HOME Investment Partnerships Program:
Improving Performance and Accountability; and Updating Property Standards

To Whom It May Concern:

The National Association of Housing and Redevelopment Officials (NAHRO) is pleased to submit comments in response to the Department of Housing and Urban Development’s (HUD’s) proposed rule amending the regulations governing the HOME Investment Partnerships (HOME) Program. NAHRO represents more than 3,100 agencies and over 20,000 individual members and associates. A significant number of our members are involved in administering HOME funding and HOME-funded projects, either as Participating Jurisdictions (PJs) or subrecipients. NAHRO and its members therefore have a vested interest in the outcome of HUD’s proposal.

It is well known within our industry that this proposed rule has been nearly a decade in the making and is long overdue. Unfortunately, the proposed rule is clearly a hybrid of sensible, long-gestating refinements and hastily assembled, administratively burdensome requirements intended to address more recent – and, in most cases, misguided and uninformed – media-driven criticism of PJ and subrecipient performance, as well as HUD’s oversight of the program. While NAHRO certainly shares the Department’s commitment to ensuring that HOME dollars are expended in a responsible fashion, we also share an understanding that the overwhelming majority of PJs are already advancing the program’s mission effectively and with integrity.

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NAHRO must therefore strongly object to those elements of the proposed rule that would make it more difficult for already high-performing PJs and subrecipients – including Community Housing Development Organizations (CHDOs) – to expand the inventory of rental housing and increase homeownership opportunities for low-income families, particularly in an era of diminished federal funding.

**Community Housing Development Organizations**

The proposed rule includes new language that would, if ultimately approved by the Department, fundamentally – and, in our view, detrimentally – alter the relationship between certain governmental entities and CHDOs. Although the proposed rule would, as written, continue to allow organizations created by governmental entities to qualify as CHDOs, the proposed rule explicitly bars Public Housing Authorities (PHAs) and Redevelopment Authorities (RAs) from acting as CHDOs and includes the following new proscription related to the relationship between CHDOs and governmental entities, including PHAs and RAs:

“The officers or employees of a governmental entity may not be officers or employees of a community housing development organization, and the community housing development organization may not use office space of a governmental entity.”

Regarding a CHDO’s ability to successfully demonstrate capacity, the proposed rule also includes the following new requirements:

“Has a demonstrated capacity for carrying out housing projects assisted with HOME funds. An organization satisfies this requirement by having paid employees with housing development experience. A nonprofit organization does not meet the test of demonstrated capacity based on any person who is a volunteer or whose services are donated by another organization.”

Similarly, under the proposed rule nonprofit organizations would no longer be permitted to meet the capacity requirement for CHDOs through the use of consultants or through a plan for staff to be trained by consultants.

While we understand the Department’s desire to ensure that governmental entities do not exercise undue influence over CHDOs, PHAs (and RAs) and CHDOs have mutually compatible missions. We would suggest that a blanket prohibition that prevents CHDOs from creating business relationships with PHAs and RAs is not an appropriate use of regulatory control. So long as a CHDO’s board is structured appropriately, why should not an organization, regardless of its origins, make a rational decision to enter into partnerships that make available the services of skilled professionals capable of advancing the CHDO’s mission, particularly if that CHDO is already performing at a high level as a result of such a relationship? And what legitimate public policy purpose is served by making it more administratively burdensome – and expensive – for an already high-performing nonprofit developer to continue to qualify as a CHDO?
If the proposed rule’s prohibitions against demonstrating capacity through the use of consultants, volunteers, or services donated by other organizations are included in the final rule, many successful nonprofit agencies with long associations with the HOME program will immediately lose their CHDO designations. And given the current state of HOME funding as well as the nation’s ongoing economic challenges, it is likely that many of these organizations will be unable to add the paid employees needed to demonstrate capacity and regain CHDO status. Considering that HUD has espoused a commitment to improving CHDO performance nationally, this is exactly the wrong approach.

These elements of the proposed rule could potentially impact rural areas in a disproportionate manner. Many nonprofit affordable housing providers (including CHDOs) serving rural areas and small states rely on consultants or volunteers in lieu of dedicated employees. Others opt to contract with PHAs and RAs for professional services. The proposed rule, if adopted as written, would effectively shutter a significant number of CHDOs serving small states and rural areas, leaving many communities underserved at a time when the nation’s affordable housing shortage remains acute.

In broader terms, NAHRO believes the changes made by the proposed rule in this area represent an overreach and would completely undermine the Department’s stated commitment to ensuring that CHDOs “function effectively.” As a non-controlled 501(c)(3) organization, it should be within any CHDO’s rights to contract services with whomever it wishes (or accept the services of qualified volunteers) in order to further the mission of the organization, so long as such services are provided by qualified individuals with housing development experience. If, through the use of qualified consultants and volunteers, or through a contractual staffing arrangement with a PHA or RA, a CHDO fulfills its obligations under the program and successfully develops affordable housing, what public interest is served by adding new regulatory burdens that will inevitably bar already successful organizations from competing for and administering CHDO set-aside funding? And, assuming HUD’s ill-advised proposal is adopted, what assurances can the Department provide that other organizations will be able to fill the gap, given the fact that many fledgling would-be CHDOs have no revenue to pay staff until after they complete their first projects? NAHRO strongly recommends that the final rule ensure that CHDOs maintain the ability to benefit from the expertise of consultants and volunteers – and to maintain beneficial contractual staffing arrangements with PHAs and RAs, so long as such arrangements do not create undue influence.

**PHAs with 501(c)(3) designations:** The proposed rule includes a blanket prohibition barring PHAs from acting as CHDOs. NAHRO would contend that this prohibition is overly broad in that it fails to provide an exemption for those nonprofit organizations with existing 501(c)(3) designations that are considered by HUD to be PHAs not because they are organized as such under state law, but instead by way of their administration of Annual Contributions Contacts under the federal Public Housing and/or Section 8 Housing Choice Voucher programs. Many of these nonprofits are already acting as CHDOs and have accordingly structured and maintained tri-partite boards. Nevertheless, it would appear that the proposed rule would immediately strip these nonprofit organizations of their existing CHDO status if the Department considers such PHAs to be governmental entities for the purpose of enforcing the new regulatory requirement. NAHRO recommends that the final rule include an appropriate exemption.
Project Completion

The proposed rule revises the definition of project completion to require all construction work and title transfer (if applicable) to be completed and the final draw of HOME funds to be disbursed. For homeownership projects, beneficiary data must be entered into IDIS. For rental projects, project completion would mean that units are ready for occupancy, but tenant data input in IDIS is not required for completion of rental projects. For tenant-based rental assistance projects, project completion means that all HOME funds associated with the TBRA contract have been disbursed. In its summary of the proposed rule, HUD notes that failure to meet the definition of project completion would trigger new requirements requiring the repayment of HOME funds related to vacant rental units and/or the conversion of unsold homebuyer units to rental units.

Regarding the conversion of unsold homebuyer units, the proposed rule states, “If the housing is not acquired by an eligible homebuyer within 6 months of the date of project completion, the housing must be rented to an eligible tenant in accordance with § 92.252.” NAHRO strongly recommends that the Department not make permanent this requirement, which originated in the FY 2012 appropriations act – and is effective for only one year. While we appreciate the Department’s interest in ensuring that HOME-assisted homebuyer units do not sit vacant, we believe the proposed policy is misguided. The possibility that projects intended to produce homebuyer units might convert to rental could complicate the underwriting process and would likely discourage the participation of lenders, particularly if a unit converted to rental must then remain an affordable rental unit for 20 years.

In any case, a one-size-fits-all six-month deadline is simply too short and fails to take into account regional and local real estate market variations. The proposed policy also ignores the need for communities to engage in responsible development planning efforts that are responsive to local housing demand and seek to strike the appropriate balance between new rental and ownership opportunities. Furthermore, these mandatory conversions would force PJs, subrecipients, and CHDOs into the role of landlords even if they do not have the capacity, resources, or expertise to perform that role responsibly.

HOME Funds and Public Housing

While the proposed rule clarifies that HOME funds cannot be used for Section 9 public housing and that HOME units cannot receive Operating or Capital Fund assistance, the proposed rule does clarify that HOME funds can be used 1) to develop a HOPE VI unit that will serve as public housing if no Capital Funds are used to develop the unit, and 2) in a project that also contains public housing units, provided that HOME funds are not used in the public housing and the HOME units are separately designated.

NAHRO appreciates the Department’s decision to provide greater clarity around this issue through the proposed rule. We would suggest that the final rule further clarify that existing
Choice Neighborhoods Initiative funds may be used in combination with HOME funds in the same manner as HOPE VI funds, and that this policy apply to any future funding subject to section 24 of the United States Housing Act of 1937.

NAHRO thanks you for your consideration of our comments.

Sincerely,

Jeff Falcusan
Director of Policy and Program Development