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July 29, 2024

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 4176
Washington, DC 20410-5000

Via regulations.gov

Re: FR–6144–P–01
HOME Investment Partnerships Program: Program Updates and Streamlining

The National Low Income Housing Coalition (NLIHC) is dedicated solely to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice. Our members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on policy and funding improvements for extremely low-income people who receive and those who need federal housing assistance.

NLIHC's comments are limited to the provisions pertaining to tenant rights and protections and to Community Development Housing Organizations (CHDOs). NLIHC is very pleased with the greatly expanded provisions regarding tenant rights and protections. We also welcome the changes intended to facilitate the formation and continued operation of CHDOs, nonprofit organizations with a degree of accountability to low-income people and their neighborhoods. We welcome all of the proposed changes and also offer several clarifying recommendations.

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COMMENTS PERTAINING TO PROPOSED TENANT PROTECTIONS

NLIHC is very supportive of the many and meaningful proposed additions to §92.253 Tenant Protections and Selection of the HOME regulations. We do, however, offer recommended improvements for seven provisions.

§92.253(b) – HOME Tenancy Addendum

§92.253(b)(1) – Physical Condition of Units and the Project

§92.253 (b)(1)(ii)

The owner shall not charge a tenant for normal wear and tear or damage to a unit or common areas of a project unless due to negligence, recklessness, or intentional acts by the tenant.

> **NLIHC recommends the final rule provide text enabling a tenant to bring to the PJ, a challenge to any charges the tenant thinks is unwarranted. Subregulatory guidance regarding any such proceedings would be helpful.**

§92.253(b)(2) – Use and Occupancy of the Unit and Project

§92.253(b)(2)(v): Right to Organize

The proposed rule would add that HOME tenants have the right to organize, create tenant associations, convene meetings, distribute literature, and post information. The preamble notes that HUD's Multifamily Housing programs have these explicit protections, which are codified at 24CFR part 245 and echoed in the Rental Assistance Demonstration (RAD) Notice pertaining to public housing converted to Project-Based Vouchers (PBVs).

> **NLIHC welcomes this provision. NLIHC urges HUD explicitly state that the rights in §92.253(b)(2)(v) are further elaborated in subregulatory guidance, which NLIHC urges HUD to mirror the details of part 245.**

§92.253(b)(3)(i): Notice of Proposed Adverse Action

Before an owner proposes to carry out an adverse action (such as charging damages that require repair) the owner must provide a tenant with a written notice explaining the reason for the proposed adverse action.

> **NLIHC recommends that the final rule specify such a notice provide two-weeks advance notice. NLIHC also recommends the final rule provide text enabling a tenant to bring to the PJ, a challenge to any adverse action the tenant thinks is unwarranted. Subregulatory guidance regarding any such proceedings would be helpful.**

§92.253(c) – Security Deposits

The proposed rule would establish new security deposit requirements, requiring security deposits to be no greater than two months' rent and be refundable. If an owner charges any amount against a tenant's security deposit, the owner must provide a list of all items charged and their cost. An owner must promptly refund the security deposit, minus any amounts used to reimburse the owner for items charged.

> **NLIHC recommends the final rule provide text enabling a tenant to bring to the PJ, a challenge to any damage claims made by an owner and/or amounts charged against a tenant's security deposit refund. The text should clearly state that a tenant could use this challenge process if an owner does not refund all or a portion of a security deposit this challenge process if an owner does not refund all or a portion of a security deposit within two weeks. Subregulatory guidance regarding any such proceedings would be helpful.**

§92.253(d) – Termination of Tenancy

§92.253(d)(1) – Rental Housing Assisted with HOME Funds

§92.253(d)(1)(i)(B): The proposed rule would state that "other good cause" for termination or refusal to renew a lease may include when a tenant creates a documented "nuisance" under applicable state or local law or when a tenant unreasonably refuses to provide the owner access to the unit to allow the owner to repair the unit.

> **NLIHC recommends the final rule not use the term "nuisance" because localities and states have so-called "Crime Free Nuisance Ordinances" (CFNOs) or other laws that target residents responsible for alleged "nuisance" activity – including calls to emergency services or noise disturbances related to domestic violence – with fines, evictions, or other penalties. These policies force survivors of violence to make impossible decisions between calling for needed help and potentially losing their homes, and are counter to HUD's other efforts to protect tenants from unjustified evictions. HUD should instead establish a "good cause" for eviction requires an actual, substantial, and imminent threat to the health, safety, and right to peaceful enjoyment of the premises by others. NLIHC repeats this comment as it applies to the proposed TBRA provisions at §92.253(d)(2)(i)(C).**

§92.253(d)(1)(i)(D): For an owner to establish good cause for violation of federal, state, or local law, there must be a record of conviction for a crime that has a direct bearing on the tenant's continued occupancy of the unit, such as a violation of law that affects the safety of others living at the property.

> **NLIHC notes that the preamble adds that the crime for which there has been a conviction is a crime "during the tenancy period" and that good cause cannot be based on a violation "that occurred prior to tenancy." However, the proposed text does not explicitly state either of these. Therefore, NLHC urges the final rule to**

explicitly state that the record of conviction be of a crime that took place during a person's tenancy and not prior to tenancy. Additionally, HUD should specify that in order for "good cause" to be established, the conviction must have direct bearing on the tenant's continued occupancy and have posed an actual, substantial, and imminent threat to the health, safety, and peaceful enjoyment of the premises by others. NLIHC repeats this comment as it applies to the proposed TBRA provisions at §92.253(d)(2)(i)(B).

§92.253(f) – Environmental, Health, and Safety Hazards

The proposed rule requires an owner who has actual knowledge of an environmental, health, or safety hazard affecting their project, units within their project, or tenants living within their project, the owner must inform the PJ and provide the PJ with a summary of the nature, date, and scope of such hazards.

NLIHC urges the final rule to also inform tenants, also providing them with a summary of the nature, date, and scope of the hazard, as well as any actions the owner is or will take within its power to address the hazard.

COMMENTS PERTAINING TO PROPOSED CHDO PROVISIONS

NLIHC welcomes the proposed changes affecting the ability of nonprofit organizations to gain CHDO designation, access the 15% CHDO set-aside, and better ensure that a CHDO is accountable to the neighborhood or area where a HOME CHDO-assisted project is located.

CHDO Definition: Paragraph (5) Government Entity

The current regulation allows an organization created by a government entity to qualify as a CHDO as long as the government entity does not appoint more than one-third of a CHDO's board members and as long as no more than one-third of a CHDO's board members are "public officials or employees of [a] government entity."

The preamble to the proposed rule explains that the provision limiting to one-third, the number of public officials or employees of a government entity from being on a CHDO board has had the effect of preventing ***any*** public official or employee from being on a government entity-created CHDO board, thereby excluding a variety of "public" employees such as public school teachers, public university professors, sanitation workers, street department workers, or any other public employees who are not employees of a HOME participating jurisdiction (PJ) designating the CHDO.

NLIHC supports the proposed amendment changing the one-third "public official" board member limit to "officials or employees of the PJ or government entity that created the CHDO."

We also support the clarification that "no governmental entity" (not just the one creating the CHDO) may appoint more than one-third of a CHDO's board members.

NLIHC also supports the additional language clarifying that not only may the board members appointed by a government entity not appoint the remaining two-thirds of a CHDO's board members, the board members who are officials or employees of the PJ that created the CHDO may not appoint any of the remaining two-thirds board members.

CHDO Definition: Paragraph (8)(i)
CHDO Maintains Accountability to Low-Income Community Residents

To be considered a CHDO, the current rule requires a nonprofit organization to maintain accountability to low-income community residents by having at least one-third of its board members be: residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations.

The proposed rule removes "Elected representatives of low-income neighborhood organizations" and replaces it with:

- "Designees" of low-income neighborhood organizations; or
- "'Authorized' representatives of nonprofit organizations in the community that address the housing or supportive services needs of residents of low-income neighborhoods, including homeless providers, Fair Housing Initiatives Program providers, Legal Aid, disability rights organizations, and victim service providers."

NLIHC supports the proposed change.

However, NLIHC is not clear about the distinction between those "designated" and those "authorized." Is someone who is a "designee" of a low-income neighborhood organization only someone from that organization, or could it be someone outside of the low-income organization that it thinks would make a meaningful contribution to the CHDO, for example a Legal Aid attorney? If the latter, then what is the distinction between "designee" and someone "authorized," who could also be a Legal Aid attorney as the proposed text indicates? With the "authorized" option, who or what body authorizes? Does the potential CHDO have any role in approving or disapproving people "authorized" or "designated"? Presumably, a potential or existing CHDO already has a functioning board but might need to augment or replenish its membership to meet the CHDO requirement of "maintaining accountability to low-income community residents."

NLIHC recommends the final rule clarify these two options, and not wholly rely on subregulatory guidance.

CHDO Definition: Paragraph (9)(i)
Organization Has a Demonstrated Capacity

The HOME statute requires a CHDO to have a demonstrated capacity for carrying out HOME activities. According to the preamble, the proposed rule seeks to broaden the range of housing activity beyond the HOME program to include an organization's experience carrying out housing projects assisted with any federal housing funds, such as the Low Income Housing Tax Credit (LIHTC) or local and state affordable housing funds.

> **NLIHC supports this proposed change.**

Also, the current rule does not allow a nonprofit organization that is either a "developer" or "sponsor" to meet the demonstrated capacity test based on volunteers or on people whose services are donated by another organization.

The proposed rule would enable an organization to meet the "demonstrated capacity" test using volunteers working directly with it on a HOME-assisted project if the volunteer has housing development experience and if the volunteer is a board member or officer of the organization and if the volunteer is not paid by the organization or if their services are not donated.

> **NLIHC tentatively supports this proposed change. However,** NLIHC thinks a volunteer who is detailed to a CHDO by a for-profit developer on a pro-bono basis (that is, someone who is a salaried staff member of the for-profit developer) should be considered when determining whether an organization meets "demonstrated capacity" requirement if the volunteer is a CHDO board member or officer with housing development experience and if the term of the pro-bono donation is, at a minimum, for the entire duration of a HOME-assisted project's development process through lease-up and occupancy. **Therefore, NLIHC recommends that the final rule delete the "services donated" limitation.**
>
> **Someone who is on an organization's board and/or is an officer of the organization, is by definition, a volunteer who is donating their time and expertise. NLIHC suggests the final rule clarify the distinction.**

24 CFR part 92.300
CHDO Must Either Own, Develop, or Sponsor Housing

§92.300(a)(3) – Rental Housing "Developed" By a CHDO

The preamble states that the proposed rule at §300(a)(3) pertaining rental housing "developed" by a CHDO is intended to make it easier for many community-based nonprofits to access the 15% CHDO set-aside as "developers." The current rule requires an organization to be in "sole" charge of all aspects of the development process.

The proposed rule would delete the word "sole" and allow a CHDO to "share developer responsibilities with another entity," but the CHDO must still be in charge of all aspects of the development process, including selecting the site, obtaining permit approvals, and all project financing, as well as other responsibilities previously included in the current regulation.

NLIHC supports this proposed change

The proposed rule also deletes the requirement that rental housing undertaken by a "developer" CHDO continue to be owned by the CHDO throughout the HOME affordability period. The preamble explains that the current rule's requirement has created difficulties when a CHDO's status has changed (for example if a CHDO experiences bankruptcy, decreased capacity, etc.) and another CHDO is needed to acquire the project in order to preserve affordability. The proposed change will enable CHDO project preservation transfers to another CHDO to sustain the HOME affordability requirements.

NLIHC supports this proposed change.

However, even though the preamble states that the intent is to enable ownership transfers necessary to sustain CHDO projects, simply deleting the requirement that a CHDO continue to own a project does not promote CHDO project transfers nor provide guidance regarding how to make a needed transfer or how to preserve affordability if another CHDO cannot take on the project.

Therefore, NLIHC recommends HUD explicitly state that ownership transfers are permitted when necessary to sustain a CHDO project and maintain compliance with HOME affordability requirements and that HUD will also issue subregulatory guidance to facilitate such transfers.

§92.300(a)(4) – Rental Housing "Sponsored" By a CHDO

Rental housing is "sponsored" by a CHDO if it is "owned" [as defined at §92.300(a)(2)] or "developed" by a CHDO's subsidiary or a limited partnership or a limited liability company of which the CHDO or its subsidiary is the managing general partner. As with housing "developed" by a CHDO, the proposed rule deletes the word "sole," enabling a CHDO or its subsidiary to be the "managing general partner" or "managing member," rather than the more restrictive "sole general partner" or "sole managing member."

NLIHC supports this proposed change.

§92.300(a)(4)(i) adds new text that allows for a "sponsored" CHDO's limited partnership or limited liability company to be removed "for cause" as the managing general partner or managing member – provided that the CHDO must be replaced by another CHDO. Again, the intent is to enable transfers necessary to sustain CHDO projects.

> **NLIHC supports this proposed change and recommends HUD add text indicating HUD will issue subregulatory guidance to facilitate such transfers.**

24 CFR part 92.208(c)
CHDO Operating Expenses and Capacity Building Costs

The HOME statute and current regulations allow a PJ to provide up to 5% of its annual HOME fund allocation to CHDOs for operating expenses, an amount separate from the minimum 15% CHDO set-aside and which does not count against a PJ's 10% cap on using its HOME allocation for program administration activities.

The proposed rule would correct a drafting error in the current rule that posed an unintended barrier to using CHDO operating expense for capacity building. That error had the effect of limiting the use of this funding to organizations that already meet the definition of a CHDO. Therefore, the proposed rule adds a new paragraph (c) stating that an organization that meets the CHDO definition – except for the demonstrated capacity provision – may receive HOME capacity building funds so that it can develop a demonstrated capacity to carry out HOME activities.

> **NLIHC supports this proposed change.**

The preamble reminds that at §92.300(e) a PJ may only provide operating expense/capacity building funds under §92.208 to a CHDO if the PJ expects to commit CHDO set-aside funds for a project within 24 months.

> **NLIHC recommends the final rule add this limitation at §92.208 to eliminate the need for readers to juggle between §92.208 and §92.300(e) and to prevent readers from overlooking the §92.300(e) requirement.**
>
> **NLIHC also recommends increasing from 24 months to 36 months, the time allowed for a PJ to expect to commit CHDO set-aside funds to a CHDO project for a CHDO receiving capacity building funds.** Developing affordable housing for low-income people is complex and difficult for seasoned developers; CHDOs receiving §92.208 capacity building funds should be afforded more time.
>
> **NLIHC also recommends a CHDO be allowed to retain capacity building funds under §92.208 beyond 24 (or 36) months, provided the CHDO demonstrates that it is making a good-faith effort toward carrying out a CHDO set-aside project.** CHDOs receiving §92.208 capacity building funds and demonstrating reasonable, good-faith efforts warrant an additional grace period that could enable them to solidify their capacity building while also ultimately delivering affordable housing for low-income people. Subregulatory guidance could provide potential examples of "good faith efforts."

NLIHC greatly appreciates the proposed changes to the HOME regulations affecting tenants' rights and protections as well as those intended to better enable nonprofits to develop capacity and secure CHDO status as well as improve the ability of existing CHDOs to maintain their status and take advantage of the CHDO set-aside.

If you have any questions about our comments, please contact Ed Gramlich, Senior Advisor, ed@nlihc.org, 202.662.1530 x 314.

Sincerely,

Diane Yentel
President and CEO