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Regulations Division
Office of the General Counsel
Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-0500

Docket No. FR-5563-P-01
RIN 2501-AC94
Office of the Assistant Secretary for Community Planning and Development, HUD
HOME Investment Partnerships Program: Improving Performance and Accountability; and Updating Property Standards

To Whom It May Concern:

The proposed update to the HOME rule is a welcome strengthening of a proven affordable housing program. By providing critical funds to state and local governments devoted solely to affordable housing, HOME empowers those communities to leverage other financial resources, create jobs, and tailor solutions to local needs. The more than 1 million affordable homes created prove the program's effectiveness.

Overall, the proposed rule provides needed clarifications, adaptations to changing circumstance, and stronger oversight to the program. In a few instances, changes would make the rule more effective and avoid unintended negative consequences. In summary, we offer specific comments on several aspects of the rule—more detail on each follows this summary.

1. Align the rental conversion requirement to market realities extending it to 12 months and allowing sale of properties when markets recover. Empower PJs to comply with guidance on setting project-specific milestones.
2. Recognize costs of long-term monitoring and stewardship of affordable properties by allowing reasonable fees on homeownership and rental HOME units.
3. Maintain the requirement that all HOME-assisted homebuyers receive counseling.
4. Retain the new lease-purchase provisions allowing flexibility to use them with tenant-based rental assistance.
5. Maintain the requirement for written policies on underwriting standards, anti-predatory lending measures, and refinancing standards without unduly restricting credit.

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The National Housing Conference (NHC) represents a diverse membership of housing stakeholders including tenant advocates, mortgage bankers, non-profit and for-profit home builders, property managers, policy practitioners, realtors, equity investors, and more, all of whom share a commitment to a balanced national housing policy. Since 1931, NHC has been dedicated to ensuring safe, decent and affordable housing for all Americans—that commitment bringing together our broad-based membership has earned us a reputation as the **United Voice for Housing** engaging in nonpartisan advocacy on housing issues.

1. **Align the rental conversion requirement to market realities and empower grantees to comply.** The proposed rule includes a requirement that HOME-funded homeownership units that have not been sold within 6 months must be rented to an eligible tenant. We understand the desire to encourage realistic adjustment by developers of HOME units that have been slow to sell due to real estate market conditions. However, making an abrupt, near-permanent conversion has serious risks and long-term implications:

    a. *Unplanned portfolios***.** Participating jurisdictions (PJs) or sub-grantees that developed homeownership units intended to sell them to eligible buyers, not manage them for years as rental properties. Renting a portfolio of single-family homes is a complex business with many risks and often low margins. Those who enter the business intentionally do so by carefully selecting properties in a contained geographic footprint and with systems in place to manage tenant selection, unit upkeep, and site control.[1] Forcing HOME for-sale portfolios suddenly into rental will introduce new risks and costs that many PJs or sub-grantees may be unprepared to manage.

    b. *Unfunded mandate***.** Managing regulated, low-income rental housing is a high-overhead business, one that is generally inefficient at small scale as the cost of complying with regulations is spread over fewer units. HUD Section 8 or older FHA-insured multifamily properties often have a higher management fee percentage in recognition of these costs. Requiring HOME for-sale developments to become rental properties adds a significant mandate without any provision to pay for the added burden, particularly if the properties are in economically depressed areas with low rents.

    c. *One-way door***.** As proposed, the rule appears to require a full 20 years of regulated rental operation from HOME for-sale units converted to rental. Rather than using rental conversion as a temporary adjustment that makes good use of properties while for-sale

[1] Emily Salomon, Center for Housing Policy, "Converting Short Sales into Scattered-Site Rentals in Phoenix: A Case Study of American Residential Properties, Inc.", January 2012, http://www.nhc.org/media/files/Phoenix_Case_Study.pdf

housing markets recover, the rule would send them through a one-way door—once a property misses the sale deadline, rental is the only option, regardless of when housing markets bounce back.

d. *Timing failure*. A six-month deadline may simply be inappropriately timed, for instance, in markets where the home sales season only lasts during the warm months. Properties could miss the deadline simply because construction or other delays made them miss a portion of the sales season. Delays in financing approval for buyers in this tight credit environment only exacerbate the problem.

Recommendations:

a. **Extend the rental conversion deadline to 12 months**. This would maintain the discipline of a fixed deadline while allowing enough time for a full sales cycle, price reductions, repositioning, and other steps that may be needed to complete the for-sale process successfully. It also would provide time for PJs to use their own monitoring and enforcement tools to encourage corrective action at for-sale projects. We recognize that the FY 2012 appropriations law included this provision, thereby making it a statutory requirement for FY 2012. The HOME rule, however, may well out-last the statutory requirement, so it should create as much flexibility as possible during FY 2012 and plan for more effective implementation in future years.

b. **Help projects meet the deadline**. HUD should provide guidance to PJs to help them set realistic milestones for projects or sub-grantees to meet. Deadlines may be necessary, but they are not sufficient to create discipline. Guidance should empower PJs by indentifying ways to measure progress, strategies for repositioning properties that are not selling as predicted, and options for broadening the pool of eligible buyers.

c. **Allow sale when markets recover.** The rule should not require a 20-year use restriction on units converted rental. Instead, it should allow PJs to reassess the appropriate tenure type at the end of each lease term. If it is once again appropriate to market the property for sale, the PJ should be permitted to do so, as long as they do not violate any lease provisions. HUD should provide guidance to PJs on how to structure a lease to adequately inform a tenant about the possibility for the property to be sold again and to provide a tenant with the option to buy if appropriate. In addition, HUD should provide guidance to PJs on how they can assist, financially and with services, a tenant to move from the home if necessary.

2. **Recognize costs of long-term monitoring and stewardship of affordable properties by allowing reasonable fees.** The proposed rule would allow PJs to charge a reasonable fee to owners of HOME-funded affordable rental properties to cover the costs of monitoring long-term affordability. So long as this fee is reasonable in relation to the work required and does not

jeopardize the affordability of the property to the residents, we support it. The same logic applies to homeownership properties, which also require long-term monitoring to preserve affordability and assure careful stewardship of the properties.

Recommendation: Allow a parallel fee to be charged to HOME-funded homeownership units, either capitalized up front at time of sale or as an annual charge. The fee would offset the costs of monitoring the long-term affordability of HOME-funded homeownership units, finding and qualifying new homebuyers upon resale, and overseeing any repairs needed to ensure the units remain in good condition. Fees should not render the units unaffordable.

3. **Maintain the requirement that all HOME-assisted homebuyers receive counseling.** In the wake of the foreclosure crisis, it is critically important that potential buyers are well-informed and prepared for the responsibility of homeownership. Pre-purchase counseling can help reduce the likelihood of default and foreclosure by helping individuals determine if they are ready for homeownership, and by connecting them with safer and more affordable mortgage products. According to the Center for Housing Policy, most research studies have found that pre-purchase counseling leads to positive results, reducing delinquency anywhere from 19 to 50 percent.[2] Ultimately, this will lead to fewer foreclosures and more stable neighborhoods, as families choose the housing that is right for them and their situation.

4. **Retain the new lease-purchase provisions.** The foreclosure crisis and the mortgage credit crunch that followed have demonstrated the need to explore other housing tenure options beyond simply rental and homeownership. Therefore, we support the new flexibility to use HOME tenant-based rental assistance funds for lease-purchase.

5. **Maintain the requirement for written policies on underwriting standards, anti-predatory lending measures, and refinancing standards without unduly restricting credit.** Low-income and minority homeowners and neighborhoods, the very populations HOME funds are intended to benefit, have fared worst in this foreclosure crisis. According to the Center for Responsible Lending, nearly 25 percent of loans in low-income neighborhoods and 20 percent of loans in high-minority neighborhoods have been foreclosed upon or are seriously delinquent. Many of these foreclosures were the result of predatory lending. Among borrowers with a FICO score over 660, African Americans and Latinos received a high interest rate mortgage loan more than three times as often as white borrowers between 2004 and 2008.[3] Therefore, we support the proposed requirement that participating jurisdictions using HOME funds for homebuyer assistance establish written policies for: underwriting standards for homeownership assistance;

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[2] Center for Housing Policy. "The Role of Housing Counseling in Reducing Mortgage Delinquency and Foreclosure." Available at: http://www.nhc.org/media/files/Role_of_Housing_Counseling_in_Preventing_Foreclosure.pdf

[3] Center for Responsible Lending. "Lost Ground 2011: Disparities in Mortgage Lending and Foreclosure." Available at: http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-2011.pdf

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antipredatory lending measures; and measures that ensure terms of loans that refinance debt to which HOME loans are subordinated are reasonable. However, those policies should avoid unnecessarily restrictive standards that exclude responsible borrowers of low wealth or with FICO scores damaged during the recession and foreclosure crisis. A recent study by the Center for Responsible Lending and the University of North Carolina at Chapel Hill shows that onerous downpayment requirements would exclude a high percentage of potential borrowers fully capable of meeting their mortgage obligation.[4]

Recommendation: HUD guidance on written policies should encourage PJs to use full evaluation of borrower credit, prohibit predatory mortgage products, and allow flexibility in meeting underwriting requirements rather than using simplistic minimum downpayment standards or FICO scores.

Thank you for the opportunity to comment on this proposed rule. The National Housing Conference applauds HUD for working to improve the HOME Investment Partnerships program, which is an essential part of fulfilling our national commitment to safe, decent, and affordable housing for all in America.

Sincerely,

Ethan Handelman
Vice President for Policy and Advocacy

[4] "Balancing Risk and Access: Underwriting Standards for Qualified Residential Mortgages," Roberto G. Quercia, UNC Center for Community Capital, Lei Ding, Wayne State University, and Carolina Reid, Center for Responsible Lending , January 12, 2012. Available at: http://www.responsiblelending.org/mortgage-lending/research-analysis/balancing-risk-and-access.html

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