



National Association of Housing and Redevelopment Officials

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July 29, 2024

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

Re: HOME Investment Partnerships Program: Program Updates and Streamlining [Docket No. FR-6144-P-01]

To Whom It May Concern:

On behalf of the National Association of Housing and Redevelopment Officials (NAHRO), I would like to offer the following comments in response to the proposed rule titled "HOME Investment Partnerships Program: Program Updates and Streamlining" published in the *Federal Register* on May 29, 2024.

The National Association of Housing and Redevelopment Officials, which was established in 1933, is a membership organization of approximately 26,000 housing and community development providers and professionals throughout the United States. The association's members create and manage affordable housing for low- and middle-income families and support vibrant communities that enhance the quality of life for all. Our members administer more than 3 million homes for more than 8 million people.

This comment letter provides feedback on proposed regulatory changes to the HOME Investment Partnerships Program (HOME) and addresses several inquiries made by HUD in the HOME proposed rule.

1. Comments

Increasing the Notice of Termination of Tenancy to 60 days for Nonpayment of Rent Adds Challenges to Owners and Current/Prospective Tenants

The Department's proposal to require owners to provide 60 days' notice instead of 30 days before the termination of tenancy for nonpayment of rent overlooks factors that not only impact the owner but may also impact current and prospective tenants. Although housing providers

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will try to avoid eviction whenever possible, increasing the timeline for nonpayment of rent to 60 days increases the financial burden on owners who need rent to sustain property operations. In many cases, owners provide tenants with ample opportunity and additional time to pay rent before an eviction notice is provided. Enforcement of a longer notice period may incentivize owners to file for evictions sooner due to the slow pace of the court process and the costs it will incur. The eviction process in general can be very lengthy, so increasing this timeline only slows down the process and availability of units for prospective low-income tenants. This unintended consequence may harm tenants instead of helping them since they would be less likely to be provided additional chances or time to reconcile. NAHRO recommends removing this provision and maintaining the existing requirements.

Refusal to Renew or Terminate Tenancy for Good Cause is Vague, Confusing, and Does Not Fully Account for Safety

The proposed rule states several reasons why an owner of HOME assisted rental housing may or may not terminate or refuse to renew a lease. As it pertains to a tenant with a criminal background, the text states that, “for an owner to establish good cause for a violation of applicable Federal, state, or local law, there must be a record of conviction for a crime during the tenancy period that has a direct bearing on the tenant's continued tenancy in the HOME rental housing project, such as a violation of law that affects the safety of persons or property.” This is concerning because a criminal conviction requires a “beyond a reasonable doubt” evidentiary standard, which is an excessively high standard to terminate a tenancy or refuse to renew a lease. The rule should require a more reasonable “preponderance of the evidence” standard.

Similarly, the rule also states, “that an owner shall not use a record of arrest, parole or probation, or current indictment to establish a violation of applicable Federal, state, or local law.” This is concerning as this language only gives power to owners in cases where a tenant has a record of conviction. As noted previously, convictions require excessively high evidentiary standards not appropriate for the civil context. The text of the rule should be amended to allow for other evidence to be used besides just a conviction in cases where the owner believes the tenant or prospective tenant is a threat to the safety of residents, staff, or property.

Additionally, while the rule states that “[a]n owner may establish good cause for a violation of an applicable Federal, State, or local law through a record of conviction of a crime that bears directly on the tenant’s continued tenancy . . .” it does not clarify what a potential look back period should be for a “crime that bears directly on the tenant’s continued tenancy.”

Finally, the proposed rule also does not lay out specific types of criminal activity that would qualify as affecting the safety of persons or property, nor does it consider the potential risks to tenant and staff safety in cases where an arrest or current indictment is due to violent actions of the tenant. Owners and participating jurisdictions (PJs) should have some flexibility in these

situations, specifically if a tenant threatens the safety of other tenants, staff, and property even if they haven't been convicted of a crime. While the proposed rule mentions allowing evictions for safety concerns of persons or property, it does not provide protections that allow owners and PJs to evict individuals that may pose a substantial safety threat prior to a conviction. There must be more guidelines set in place that clearly specify specific types of criminal activity that would be cause for eviction and other actions outside of a conviction that may be relevant.

Aligning HOME Rent Limits with Changes Made to the Section 8 Programs Is Beneficial

The alignment of HOME rent limit requirements with changes made to the Section 8 programs by the Housing and Economic Recovery Act of 2008 (HERA) would be greatly beneficial in that it would permit project owners to receive Housing Choice Voucher (HCV) rent even if the rent exceeds HOME rent limits. This is a rule that is already in place for project-based vouchers (PBVs) and project-based rental assistance (PBRA) units. Including HCV rent would allow owners to increase rent potential as already allowed in other programs.

Reducing the Frequency of Income Determinations and Recertifications for Small Rental Projects Will Be Less Burdensome on Owners and PJs

Allowing PJs to permit owners of small rental properties to make income determinations or recertifications for existing tenants every three years as opposed to every year during the period of affordability will decrease the amount of income determinations and recertifications that need to be made, decreasing the burden on PJs and owners.

Align HOME Regulations with Other HUD Programs to be Able to Use Coordinated Entry for Permanent Supportive Housing

Although coordinated entry is not mentioned in the proposed rule, it is an extremely important system/process to fill vacancies in permanent supportive housing, which are designated for homeless and chronically homeless individuals and families. As stated throughout the proposed rule, HUD has emphasized expressed interest in preventing homelessness. However, programs like HOME and the Project-Based Voucher (PBV) program have conflicting regulations that prohibit coordinated entry for the use of permanent supportive housing.

NAHRO suggests aligning certain regulations with other programs like the PBV and Continuum of Care program in order to promote and develop permanent supportive housing. It is unclear whether there may be a statutory issue preventing this alignment. If this is the case, NAHRO suggests that HUD include statutory language in the next fiscal year provisions to incorporate this alignment.

Prohibition of Surety Bonds and Security Deposit Insurance

NAHRO is concerned about the proposed rule's prohibition of surety bonds or security deposit insurance in lieu of a security deposit. NAHRO members note that use of a surety bond or security deposit insurance can be a more affordable option for low-income renters who may not be able to pay up to the allowable two-months' rent in advance as a security deposit. Although a refundable security deposit is a preferable option, the cost associated with it may be cost-prohibitive for potential renters of HOME-assisted rental housing. Surety bonds and security deposit insurance can provide an alternative to renters in those situations.

2. Questions

Specific solicitation of comment #1: *The Department specifically solicits public comment about any additional changes it should consider, within statutory constraints, that will improve CHDO availability and capacity in rural areas.*

HUD's proposal to make Community Housing Development Organization (CHDO) designation easier to attain is appreciated. Specifically for rural areas, NAHRO supports broadening board representation to help CHDOs to fill their boards, especially in communities with a smaller population size. NAHRO supports the recommendation from the Housing Assistance Council (HAC) for HUD to consider setting a minimum amount of operating support for CHDOs undertaking CHDO-eligible activities particularly for pre-development and construction phases of a project. This would be beneficial for CHDOs in rural communities to make sure there is already an established amount of funding. This is particularly important for areas where the locality may not be willing to provide additional support. NAHRO also supports HAC's proposal that would provide targeted technical assistance to CHDOs in rural areas hoping to access HOME CHDO set-aside funds. Limited staff and or experience with the application process may make it challenging for CHDOs in rural areas to compete for funding. Targeted technical assistance to help rural CHDOs better understand how to build a successful application would help them access funding

Specific solicitation of comment #2: *The Department specifically requests public comment from participating jurisdictions, developers, and other affected members of the public about the green building standards that the Department should establish in the Federal Register. In addition, the Department seeks public comment about stakeholder experiences regarding the percentage increase in the cost of constructing or rehabilitating affordable housing to a green building standard and whether a 5 percent increase in the maximum per unit subsidy limit is sufficient. Finally, the Department requests public comment on whether permitting participating jurisdictions to exceed the maximum per unit subsidy limit by an amount in excess of the additional costs of green building measures (i.e., to provide additional HOME funds to cover a larger portion of other HOME-eligible development costs), would create a sufficient incentive to developers and owners to meet green building standards in projects that would otherwise not be designed to meet those standards.*

Providing additional funding to HOME projects as a means to incentivize developers and owners to meet green building standards is more likely to garner interest than allowing PJs to exceed the maximum per-unit subsidy by 5%. High costs for building materials and labor related to meeting green building standards require significant investment. Although the percentage increase would be appreciated, it still may not provide enough funding.

If HUD is looking to provide an incentive-based approach to increase green building, NAHRO recommends that HUD tie the percentage increase to the total development or have a minimum increase of 20%.

Specific solicitation of comment #4: *The Department specifically seeks public comment on the proposal to require that a participating jurisdiction inspect at least 20% of the HOME-assisted units during its ongoing on-site inspections of rental housing.*

NAHRO supports this proposal, which would require a participating jurisdiction to inspect at least 20% of the HOME-assisted units during its ongoing on-site inspections of rental housing. According to members, this isn't a process they believe would be burdensome on PJs and owners as many already do this.

Specific solicitation of comment #6: *Rather than permitting all HOME-assisted projects to use the local PHA's utility allowance, should HUD limit the use of the PHA utility allowance to only HOME-assisted projects which also receive PBV or HUD-VASH PBV assistance?*

NAHRO supports keeping the proposed § 92.252(b) as it is currently written because it affords participating jurisdictions the flexibility to choose the appropriate utility schedule. Participating jurisdictions are well positioned to know which utility schedule would work best for them and by providing this flexibility, HUD is more likely to avoid problems like it encountered with the regulation (i.e., conflicting regulatory requirements) as it is currently written that stem from overly prescriptive requirements.

Specific solicitation of comment #8: *The Department specifically requests public comment from participating jurisdictions, developers, and other affected members of the public about the appropriateness of the length of the HUD-required periods of affordability for HOME-assisted rental housing.*

Most HOME funds are used with other funding streams and typically those funding streams have longer affordability periods than the HOME program. As such, NAHRO does not see a need to extend the length of the HUD-required periods of affordability for HOME-assisted rental housing.

Typically, projects with HOME funding as the sole financing stream are more likely to be smaller-scale developments. In these cases, extending the period of affordability may impact the decision to develop a small-unit property.

Further, construction or rehabilitation of existing HOME-assisted rental housing units should not impact the affordability period. Meaning that if there is a need to rehabilitate an existing HOME-assisted unit, the existing affordability should not be paused or restarted. This helps incentivize owners of HOME-assisted units to make needed repairs without facing any unintended impacts of having to extend the period of affordability past existing regulations.

Specific solicitation of comment #10: *Currently, a rental assistance contract can be between a participating jurisdiction and either an owner or a tenant. The Department is also aware of many participating jurisdictions that have tri-party rental assistance contracts where the owner, the tenant, and the participating jurisdiction all sign the rental assistance contract. The Department is seeking feedback on whether a rental assistance contract should always be executed by an owner so that the participating jurisdiction can require that the HOME-assisted tenant's lease contain the HOME tenancy addendum and that the owner follow all applicable TBRA requirements.*

NAHRO recommends that the contract should always be executed by the owner. This is to ensure that the HOME-assisted tenant's lease contains the HOME tenancy addendum, and that the owner follows all applicable TBRA requirements. NAHRO members noted that this is common practice to ensure that owners meet all regulatory requirements associated with the HOME program.

Specific solicitation of comment #11: *The Department requests public comment on whether the existing 9-month deadline for the sale of homebuyer units acquired, rehabilitated, or constructed with HOME funds is reasonable and whether extending the deadline to 12 months would increase the use of HOME funds for homeownership programs.*

NAHRO recommends extending the deadline for the sale of homebuyer units acquired to *at least* 12 months. Markets can often experience volatility. By extending the deadline, HUD would help to increase the use of HOME funds for homeownership programs and give PJs more time to find an appropriate purchaser.

3. Conclusion

HUD's efforts to improve aspects of the HOME program through this proposed rule are noticed and appreciated.

The proposed rule would make significant changes to the HOME program that in some ways are beneficial to PJs, owners and their residents, but in other ways lack clarity and may have unintended consequences.

These comments make clear that HUD must provide further clarification as it relates to evictions and refusal of tenancy, specifically as it would relate to affecting the safety of persons or property. Owners must have the ability to protect residents, staff, and property from prospective or current residents that pose a risk. To maintain their properties and ensure safe and decent housing, owners must be able to ensure that the people in their units are paying rent. In addition, extending the timeline of termination for nonpayment of rent only increases the amount of money owed to the owner and the time other prospective tenants are waiting for an available unit.

Although most changes in the proposed rule are appreciated, a considerable amount of education, training, and technical assistance to PJs will be required as they implement the new regulation. NAHRO encourages HUD to dedicate appropriate funding and resources to ensure a successful and seamless transition.

I appreciate the opportunity to comment on this topic. Thank you for your consideration of the above comments.

Sincerely,

A handwritten signature in cursive script that reads "Steven Molinari".

Steven Molinari
Policy Analyst