



December 28, 2010

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

Docket No. FR-5246-P-02/RIN 2506-AC30

Re: Comments on Housing Trust Fund Proposed Rule

To whom it may concern:

The National Council of State Housing Agencies (NCSHA) is pleased to comment on the Housing Trust Fund Proposed Rule on behalf of our state Housing Finance Agency (HFA) members, many of which will administer the Trust Fund in their respective states. HFAs are excited about the promise the Trust Fund holds for helping them deliver affordable housing to some of our country's most needy families and are continuing to work with the Congress, the Administration, and other housing stakeholders to ensure that the Trust Fund is soon capitalized so this promise can be fulfilled.

NCSHA is a national nonprofit, nonpartisan Washington, DC-based association that represents the interests of state HFAs before the Administration and the Congress. In addition to our policy and advocacy work, NCSHA provides HFAs education and training and facilitates best practice exchange among them.

HFAs are state-chartered housing agencies that operate in every state, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. Though they vary widely in their characteristics, including their relationship to state government, HFAs have in common their public-purpose mission to provide affordable housing to the people of their states who need it. HFAs administer a wide range of affordable housing and community development programs, including HOME, tax-exempt Housing Bonds, the Low Income Housing Tax Credit (Housing Credit), Section 8, down payment assistance, and state trust funds.

State HFAs have long recognized the pressing need for rental housing affordable to extremely low-income (ELI) and very low-income (VLI) families. HFAs and their partners have responded to this need by creatively combining the Housing Credit, HOME, and other affordable housing resources. Housing Trust funding will be a critical addition to these all-too-scarce resources. However, even with access to Trust funding, state HFAs will continue to be challenged to bridge the gap between the cost of developing, operating, and maintaining housing dedicated to ELI and VLI families and the rent and other payments available to support these properties.

NCSHA urges HUD to respect and maintain the flexibility the Housing Trust Fund authorizing legislation provides administrating grantees and to withdraw requirements of the Proposed Rule that exceed the requirements of that legislation. Congress, with extensive input from HUD and from stakeholder groups such as NCSHA, carefully designed the Trust Fund to balance its deep income targeting requirements with the resources and latitude it understood would be necessary to meet them.

We are concerned that the Proposed Rule contains numerous provisions where HUD is imposing requirements that exceed those in the statute and upset this balance. Specific examples of such regulation, along with other concerns shared by HFAs, are provided below.

Serving ELI Families

Congress created the Trust Fund with the Administration's support to increase and preserve rental housing supply and homeownership opportunities for ELI and VLI families. The statute requires that no less than 75 percent of Trust funds used for rental housing be committed to housing for ELI families and 100 percent of Trust funds used for homeownership be committed to ELI and VLI families (without any statutory usage requirement for homeownership for ELI families). Yet, under its Proposed Rule, HUD is requiring that 100 percent of rental and homeownership funds be committed to ELI housing in the Trust's first year of operation and is reserving to itself the determination of ELI funding amounts in future years. In doing so, HUD is not only overstepping the statute, it is also ignoring the challenges grantees will face in funding the development and ongoing operation of ELI housing and is risking that less ELI housing will actually be produced, especially given the severe constraints on the other capital and operating resources with which Trust funds must be combined to achieve the Trust's goals. NCSHA urges HUD to allow the maximum targeting flexibility allowed under the statute.

In addition, varying the income targeting requirement from year to year as the Proposed Rule provides is not only inconsistent with congressional intent but also will increase unpredictability and complexity in the program, making it difficult for grantees to plan. The minimum statutory targeting requirement should be maintained each year.

NCSHA supports HUD's proposal to set the Housing Trust rent payment maximum at 30 percent of 30 percent of the area median income (AMI) or at 30 percent of the federal poverty-line income, whichever is greater. Setting rents as a percentage of AMI provides developments predictable income—a necessity for obtaining and structuring financing. The predictability of rental income will also assist with Trust-assisted units' inclusion in mixed-income developments.

Operating Assistance

NCSHA objects to the Proposed Rule's requirement that no more than 20 percent of a grantee's annual Trust funding be used for operating assistance. The statute provides no such limit. Grantees should have the flexibility Congress intended to utilize Trust resources as they judge best to support the

complex financing structures necessary to develop housing affordable to ELI and VLI families that will remain viable over the long term.

In addition, HUD is proposing to restrict the amount of Trust funds a grantee may use for operating assistance for each Trust Fund-assisted development to the amount necessary to make up the difference between the Trust Fund-assisted unit rents and the total rent necessary to pay the Trust Fund-assisted units' share of the development's total operating costs for two years. Operating reserves will be limited to the amount necessary to provide operating cost assistance for Trust Fund-assisted units for not more than five years.

The statute does not include any limits on the duration of operating cost assistance or reserves. The proposed rule's limits will be significant barriers for grantees in attracting financing and ensuring long-term viability.

NCSHA urges the elimination of the Proposed Rule's requirement that grantees may only use Trust funds for operating assistance in developments that receive Trust funds for capital costs. The statute contains no such limitation and it is immaterial whether Trust funding is used to support properties' operating and/or capital costs, if the Trust Fund's income targeting goals are met.

Allowing the decoupling of operating assistance and capital funds would provide grantees with greater flexibility; enable them to serve more ELI and VLI families; and encourage grantees, developers, and other program stakeholders to leverage capital funding provided through other affordable housing programs.

Project-Based Section 8 Vouchers

NCSHA is encouraged by Congress' efforts to provide project-based Section 8 vouchers to support Trust-assisted units. These efforts acknowledge the importance of funding rental or operating assistance to develop affordable housing that reaches ELI and VLI families.

The Proposed Rule states that Section 8 project-based vouchers will be administered in accordance with the rules applicable to that program, but NCSHA strongly encourages HUD to waive any rules that complicate the use of the vouchers with Trust-assisted units. For example, NCSHA encourages HUD to waive the requirement restricting to 25 percent the number of units in a development that can have project-based Section 8 vouchers for Trust-assisted developments and requests that HUD simplify the voucher-based environmental review process when project-based Section 8 vouchers are used in a Trust-assisted development.

Affordability Period

HFAs are committed to maximizing how long housing that they help finance remains affordable and consistently exceed federal program minimum affordability limits. Nevertheless, HFAs believe the 30-year minimum placed on Trust-assisted units is not reasonable given the lack of operating and rental assistance resources available for use in conjunction with Trust funds and the limitations on using Trust

funds for such assistance. The desire for extended affordability must be balanced against the practical limitations of securing financing for Trust-assisted developments.

The Proposed Rule requires an affordability period double that required for homeownership under the HOME program and 10 years more than required for rental under the HOME program—even though the Trust program has deeper income targeting requirements. In the absence of statutory requirements, we encourage HUD to look to the HOME program’s rules as an alternative and suggest that HUD allow grantees to apply to Trust-assisted units the same affordability requirements that apply by virtue of other federal programs used in conjunction with Trust funds, such as HOME or the Housing Credit.

Complicating the challenges created by such a long affordability period, the Proposed Rule prohibits grantees from putting additional Trust funds into a Trust-assisted unit at any point during the affordability period. We urge HUD to eliminate this prohibition, which is not in the statute, to recognize the potential need for such assistance—since the ability to structure operating assistance or access additional resources during the affordability period is limited and uncertain, and the development cannot raise rents to cover recapitalization or maintenance requirements.

Repayment

The statute requires that funds not used in accordance with the law be repaid. NCSHA strongly supports appropriate rules and enforcement to make sure federal funds are used in accordance with congressional intent. However, the Proposed Rule goes beyond the statutory requirement by requiring that all Trust funds invested in housing not meeting the affordability requirement at any point during the affordability period be repaid, regardless of how long the development was in compliance.

HUD should include a proration in its repayment requirement, such that grantees are not responsible for repaying the full amount of Trust funds provided to developments that complied with the Trust Fund requirements for a period of time.

Proration would better align the Housing Trust program with the Housing Credit program. If a Housing Credit property falls out of compliance within the first 15 years of the affordability period, Housing Credits may be recaptured on a prorated basis.

NCSHA urges HUD to require that grantees use their best efforts to recapture funds, but to not require a guarantee of performance regardless of issues beyond the grantee’s control that may occur during the affordability period. NCSHA has the same concern about the HOME program repayment provision.

Additionally, NCSHA supports including language in the Proposed Rule mirroring that of the McKinney-Vento Reauthorization Act, Public Law 111-22, which revokes the repayment requirement for affordability period violations if previously received federal project-based rental assistance is no longer made available in federal appropriations.

Resale and Recapture

The HOME program provides grantees both a resale and a recapture option. The Proposed Rule includes only a resale option similar to HOME's. For Trust-funded homeownership activities, the Proposed Rule should not be more restrictive than the HOME Rule. Thus, Trust grantees should be given a recapture option like the one the HOME program provides.

The HOME rule also allows participating jurisdictions to reduce the HOME investment amounts to be recaptured on a pro rata basis. NCSHA encourages HUD to allow proration for Trust investments.

Energy-Efficiency

While NCSHA supports efforts to make affordable housing energy efficient, we do not support HUD placing an arbitrary mandate on all Trust-assisted housing. HFAs have developed a variety of policies in this area and should not be subjected to a one-size-fits-all approach.

Energy-efficiency characteristics that are acceptable both financially and geographically will differ by state and by development. Grantees need the flexibility to do what is best for their state's circumstances and each development.

Since there is no statutory requirement in this area, the Proposed Rule should also not require grantees to use a particular brand of product, such as EnergyStar or WaterSense, to meet energy-efficiency guidelines or that home energy raters be certified through the Residential Energy Services Network.

Cross-Cutting Federal Regulations

In the Trust Fund's authorizing legislation, Congress anticipated that the Trust Fund would be funded by sources other than direct federal funding. NCSHA encourages HUD to recognize in its final rule that a dedicated funding source has not been identified and that, depending on the funding source, it may not be necessary to subject Trust dollars to the same cross-cutting federal requirements that currently apply to the HOME program and other federal funding sources.

NCSHA also encourages HUD to waive as many cross-cutting federal requirements as possible. Some referenced or included in the Proposed Rule may not be mandated in the statute. With limited funding available to serve the populations targeted by the Trust Fund, NCSHA urges HUD to make the program as easy to administer as possible.

Subgrantees

NCSHA appreciates HUD allowing grantees the flexibility to subgrant Trust funds. However, we encourage HUD to not limit grantees' options for subgranting solely to state and units of local government agencies that have submitted a Consolidated Plan. Many Trust grantees have built strong working relationships with housing non-profits and small jurisdictions that do not appear to be eligible subgrantees under the Proposed Rule's definition. We encourage HUD to expand the subgrantee definition.

Additional Comments

Laundry and community facilities should be allowed both in the same building as Trust Fund-assisted housing and as a detached building serving persons living in housing assisted by the Trust Fund. This allows more flexibility in construction while still providing the same needed services provided by laundry and community facilities.

The administrative burden of the Trust Fund planning process should not exceed that of the HOME program, and the rule governing the process should reflect the possibility that Trust funds may not be provided in the same timeframe as funds provided by other federal programs requiring certain similar planning procedures. If Trust funds become available at the end of a Consolidated Plan development process, for example, states should be allowed to complete action on their Consolidated Plans instead of being forced to restart the process to take the Trust Fund into account.

Under the definition of modest housing for homeownership, NCSHA urges HUD to allow certain grantees to use areas broader than the county the unit is located in for calculating 95 percent of median purchase price to allow for a higher median. Especially in rural areas, the median home price can be so low that the program is limited to an unrealistically low sales price limit. This is an issue that HOME grantees are already struggling with and should be avoided under the Trust Fund.

Thank you for your consideration of our comments. Please do not hesitate to contact me if we can provide additional information.

Sincerely,



Barbara J. Thompson
Executive Director

cc: Marcia Sigal, HUD