February 14, 2012

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 - HOME Investment Partnerships Program: Improving Performance and Accountability; and Updating Property Standards

To Whom It May Concern:

Enterprise Community Partners appreciates the opportunity to submit comments on the proposed Rule for the Home Investment Partnership (HOME) Program. We commend the Department of Housing and Urban Development (HUD) for its comprehensive review of, and recommended improvements to, the program.

At Enterprise, we create opportunities for low- and moderate-income people through fit, affordable housing and diverse, thriving communities. For 30 years, Enterprise has raised and invested more than $11 billion to help finance more than 300,000 affordable homes across the country. Many of these homes were created with funds made available through the HOME program.

Many of the proposed modifications in the Rule are reasonable and welcomed improvements to the program. Below, we provide specific comments below for those proposed changes that we feel could negatively impact rather than improve the success of the HOME program and the developments in which program funds are invested. We also provide comments on those proposals that create important improvements.

§ 92.2 Definitions

Community Housing Development Organization
Allow time for CHDOs to develop internal capacity. HUD proposes no longer allowing CHDOs to demonstrate capacity to carry out HOME activities through reliance on experienced board members or other volunteers, or by engaging an experienced consultant who can train key staff and build the capacity of the CHDO. If implemented without any other changes, the proposal could discourage collaboration and joint venture partnerships, increase CHDO operating costs amid dwindling resources, hamper the formation of emerging CHDOs, and unnecessarily drive up total costs on projects that historically are developed with little/no profit. We strongly encourage HUD to consider a graduated approach to implementing this change, giving CHDOs a reasonable period
of time to show progress towards developing internal capacity before no longer being eligible for HOME funds.

We applaud HUD’s clarification that the use of a 5% set aside for CHDO operating support is in addition to the 15% CHDO set-aside funds. However, in order to assist CHDOs to develop the internal capacity necessary to meet the proposed new definition of CHDO, we encourage HUD to require that PJs allocate the 5% (rather than allowing “up to” 5% allocation) in order to increase operating capacity of CHDOs.

Project Completion

Provide clarification of timing specifics related to the new definition of “project completion.”

Given the newly proposed definition of “project completion” and the penalties associated with not meeting it, we request that HUD provide clear guidance on when the clock starts ticking on the 4 year commitment to completion requirement, when PJs may enter projects into IDIS, etc. We suggest changing the definition of “project completion” to define when a project is ready for occupancy (for instance, when the Certificate of Occupancy or architect’s certification of completion is issued).

§ 92.254 Qualification as affordable housing: Homeownership

Eliminate or substantially change the requirement that rehabilitated or newly constructed HOME homeownership units that are not sold within 6 months must be converted to rental. The new HOME rule proposes that “…housing not acquired by an eligible homebuyer within 6 months of the date of project completion…must be rented to an eligible tenant in accordance with § 92.252.” We recognize that this language is included in the FY2012 appropriations bill, but urge that HUD not adopt this policy permanently. This requirement could have negative impacts on participating jurisdictions (PJs), tenants, and neighborhoods. Requiring that all unsold homes be converted to rental is tantamount to requiring that PJs become scattered-site single-family managers. Though we support this concept and are working with the FHFA and FHA to develop a national real estate owned (REO) to rental pilot, we also know that scattered-site management is extremely difficult and should only be done if an entity is fully prepared to do so. PJs developing homeownership units may not be prepared for such a responsibility, and failure could mean unsafe conditions for tenants (due to delayed maintenance) and destabilization of neighborhoods (due to failure to maintain the exterior of the property). In addition, this new requirement could make it more difficult for developers to secure financing, a task that is already very hard in this tight credit environment.

However, we agree with HUD’s desire to ensure that homes do not sit vacant for years at a time. Therefore, we recommend that the Final Rule:

- Increase to one year the length of time before any trigger goes into effect. As of December 2011, nationally, there was a 7 month supply of existing homes and a 6 month supply of
new homes. In this tight credit environment, it is also more difficult to qualify eligible homebuyers, and it may require several months to secure mortgage financing. For reasons beyond their control, it would be difficult and sometimes impossible for PJs to meet a 6 month time limit for sale of homeownership units.

- **Recognize that some PJs and CHDOs lack scattered-site rental management capacity.** As presented, this requirement is an unfunded mandate for PJs and CHDOs to engage in scattered-site single-family rental management. HUD should recognize that not all PJs and CHDOs will possess this capacity and may require assistance.

- **Permit the PJs the flexibility to market properties again after they have converted to rental.** Instead of locking into rental for up to 20 years a unit initially intended for homeownership, we recommend that the PJ be permitted 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. We request that HUD 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.

- **Provide a limited exemption for condominium buildings.** The GSE financing requirements for condominium buildings include several restrictions on owner-occupancy. For example, Freddie Mac requires that at least 70% of the units in a new project are occupied or under contract to purchasers to be occupied as primary residences or second homes. If a building has a large portion of unsold units and the HOME rule requires that the units be rented, financing for the already sold units or even the whole project could be jeopardized. Enterprise recommends that HUD permit limited exemptions to the rental requirement for condominium buildings that can exhibit such a financing obstacle.

**Maintain the requirement that participating jurisdictions establish written policies for underwriting standards, antipredatory lending measures, and refinancing standards.** Low-income and minority homeowners and neighborhoods, the very populations HOME funds are intended to benefit, have fared worst in this foreclosure crisis. We applaud HUD’s requirement that PJs using HOME funds for homebuyer assistance establish written policies for: underwriting standards for homeownership assistance; antipredatory lending measures; and measures that ensure terms of loans that refinance debt to which HOME loans are subordinated are reasonable.

However, we also suggest that HUD guidance not be so strict that PJs feel they must institute policies that effectively lock out homebuyers who do not have perfect credit and/or are not awash

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2 Freddie Mac Condominium Unit Mortgages. Available at: [http://www.freddiemac.com/learn/pdfs/uw/condo.pdf](http://www.freddiemac.com/learn/pdfs/uw/condo.pdf)
with cash to meet a burdensome downpayment requirement. In *Balancing Risk and Access*,\(^3\) the Center for Responsible Lending and the University of North Carolina at Chapel Hill, sought to evaluate the tradeoffs between benefits and costs of additional underwriting restrictions on top of the current working definition of Qualified Mortgages; and the impact on access of stricter Qualified Residential Mortgages underwriting restrictions on low-income borrowers and borrowers of color. Their findings show that onerous downpayment requirements would exclude a high percentage of potential borrowers fully capable of meeting their mortgage obligation.

Additionally, we urge HUD to ensure that an assessment of market conditions does not preclude selection of neighborhoods with high foreclosure and vacancy rates for HOME projects. Selection of tipping point neighborhoods – where Neighborhood Stabilization Program (NSP) funds might already be invested – should be encouraged to promote revitalization.

*Maintain the requirement that all HOME-assisted homebuyers receive counseling.* In the wake of the foreclosure crisis, it is essential 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. Ultimately, this will lead to fewer foreclosures and more stable neighborhoods, as families choose the housing that is right for them and their situation.

§ 92.210 Troubled HOME-assisted rental housing projects

**Broaden the definition of troubled projects and define the role of the PJ in the identification and workout phases.** We commend HUD for adding the new § 92.210 that establishes provisions that would be applicable to the efforts of PJs to preserve HOME-assisted housing projects that have become financially unviable and, as a result, are at risk of failure or foreclosure. To further enhance this provision, we suggest that HUD expand the definition of “troubled” properties beyond financial trouble to also include properties that are physically troubled or have high vacancy rates as a result of being functionally obsolete. In addition, we recommend that HUD permit PJs to have a substantial role in determining which properties are troubled and how to best do the workout.

§ 92.251 Property Standards

**Encourage Use of a Green Capital Needs Assessment (GCNA).** HUD should encourage the use of a Green Capital Needs Assessment (GCNA). The GCNA fuses a conventional 20-year Capital Needs Assessment with a comprehensive energy, water and health audit and detailed financial

analysis of retrofit options. This tool assesses how to improve energy and water efficiency, while reducing operating costs.

Additionally, design and construction documents (plans, details, specifications, and scopes of work) created by PJs should be aligned with the forthcoming Green Standards. In particular, the rehab standards should emphasize the following measures:

- Building Envelope Improvements (e.g., air sealing, duct sealing, continuity of insulation)
- Building Mechanical Systems (including HVAC equipment, local ventilation in kitchens and bathrooms)
- Water Efficient Fixtures (either through replacement or retrofit)

**Provide greater flexibility for PJs to meet the requirement that major systems must have a remaining useful life of 15 years.** We agree that HOME projects should include quality systems and we look forward to the forthcoming standards for energy and water efficiency. However, we are concerned that such a blanket requirement would not be appropriate for all systems. For example, water tanks typically come with a 7-8 year warranty, and would not meet the 15 year requirement. In addition, we believe that it is a sustainable practice to expend the useful life of existing major systems and capitalize reserves for their replacement, particularly if the system has between 10-15 years remaining. Therefore, we recommend that HUD permit PJs flexibility to meet this requirement by allowing capitalization of reserves to address existing systems with less than 15 years useful life, and specifically exempt systems where the industry standard does not provide for a 15-year useful life.

§ 92.252 Qualification as affordable housing; Rental housing.

**Institute a one-year lease-up with a six month extension for initial occupancy of a HOME-assisted rental unit following project completion.** HUD specifically solicited comments on the time frames to be established that PJs be required to ensure that initial occupancy of a HOME-assisted rental unit occurs following project completion (§ 92.252). We suggest a one-year lease-up period with the option for a 6-month extension supported by a plan to market the unit and to secure occupancy within the 18-month timeframe.

**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.
§ 92.206 Eligible project costs.

Include a new provision that would permit PJs to refinance properties with HOME funds without rehabilitation. We recommend that HUD include a new provision into the final HOME rule that would be a strong tool for preservation. Current rule permits HOME funds to be used for refinancing when rehabilitation is required and the proposed rule further restricts this by adding that rehabilitation costs must be greater than the amount of debt that is refinanced. We do not support the change to §92.206(b)(1) because we feel that this is too restrictive and there are many properties that could be preserved with HOME funds, but do not require substantial rehabilitation. Therefore, we suggest that HUD permit refinancing with HOME funds in additional cases, for instance when necessary to preserve existing affordable housing, or to repay an acquisition or predevelopment loan in a new construction project.

The Proposed Rule creates multiple new requirements for PJs to create written policies and procedures. HUD should provide adequate technical assistance and guidance to PJs so that they know how to satisfy the new standards and stay in compliance. Technical assistance on developing marketing strategies, and effectively engaging realtors, appraisers, and local lending institutions should be supported.

Additionally, we are pleased to note that HUD will soon publish a Proposed Rule related to energy and water efficiency standards in the HOME program. At a minimum, HUD should update and strengthen its guidelines under the “Energy Conservation and Housing Rehabilitation under the HOME Program.” to address broader sustainability issues, including healthy living environments, green building materials, and water conservation measures. In addition, participating jurisdictions (PJs) should be encouraged to adopt comprehensive green building standards, such as the Enterprise Green Communities Criteria or an equivalent green building rating system.

Thank you for your commitment to this very important program and we hope that our feedback will be valuable as you write the final rule. Thank you in advance for your consideration and please do not hesitate to contact Diane Yentel, Director, Public Policy and Government Affairs (dyentel@enterprisecommunity.org; 202.649.3920) with any questions.

Sincerely,

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