Homeownership
Alliance

July 6, 2021

Acting Director Shalanda Young
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

RE: Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government, *Area 4, How might agencies identify opportunities to adjust current practices in grants and other financial assistance programs to expand access for underserved communities and to achieve equity- oriented results?*

Dear Acting Director Young:

The Homeownership Alliance (a project of the National Community Stabilization Trust) is pleased to respond to the Office of Management and Budget's Request for Information on how federal agencies can advance equity and support for underserved communities.

The Homeownership Alliance is a coalition of nonprofit developers and lenders that advocates for more resources and better policies to increase affordable homeownership opportunities for American families. The Homeownership Alliance's members comprise some of the leading nonprofit, mission-focused homeownership practitioners from across the country.[1] These organizations prepare families to become successful homeowners and finance, renovate, and develop affordable homes that are assets for communities and the families that live in them.

The Homeownership Alliance members believe strongly that increasing access to homeownership will lessen the US racial wealth gap and thus ameliorate economic inequality. The Alliance's policy agenda to create new resources for affordable homeownership includes both legislative proposals and suggestions for regulatory improvements in existing programs. Many affordable housing programs allow the funds to be used for either rental housing or homeownership and as rental housing needs have worsened, funds are diverted away from homeownership.

In addition, there are federal regulations that inadvertently discourage the use of federal funds for homeownership. The HOME program at the Department of Housing and Urban Development is a good example of this dynamic. Attached are papers from the Homeownership Alliance that establish the importance of homeownership to narrowing the racial wealth gap, and that describe how the HOME program regulations could be

[1] The Homeownership Alliance has 22 Founding Members. They are: Atlanta Neighborhood Development Partnership (GA); cdcb (TX); Center for Community Self-Help (NC); Champlain Housing Trust (VT); CHN Housing Partners (OH); Cinnaire (MI); Community Housing Capital (GA); Fahe (KY); Homewise (NM); Hogar Hispano (DC); Housing Development Fund (CT); Indianapolis Neighborhood Housing Partnership (IN); MaineStream Finance (ME); Michigan Habitat for Humanity (MI);Neighborhood Housing Services of Chicago (IL); NeighborWorks Columbus (GA); NeighborWorks Southern Colorado (CO); NeighborWorks Western Vermont (VT); New Jersey Community Capital (NJ); Renaissance Community Loan Fund (MS); The Housing Partnership, Inc. (KY); and The Resurrection Project (IL).

improved increase the use of the funds for homeownership while still maintaining important program safeguards.

For additional information, please contact me at ksiglin@stabilizationtrust.org or by phone at 202 695-5984.

Sincerely,

Kristin Siglin
Vice President of Policy and Partnerships
National Community Stabilization Trust

The Case for a Homeownership Strategy

It is time for a renewed effort to boost the U.S. homeownership rates among people who have been shut out from our primary path to build assets. There is no investment alternative that is as beneficial as homeownership for wealth building for middle class Americans. Homeowners benefit from both equity that builds up as they pay down a mortgage and any appreciation in the value of the home. Thus, homeowners can enjoy a more secure retirement even if they don't have a pension. Homeownership also offers families stable housing costs because mortgage payments on fixed rate loans don't increase, unlike rents. In addition, in half of the largest US cities, it is cheaper to buy a home than to rent.[2]

Homeownership also offers a range of nonfinancial benefits. As the Joint Center for Housing Studies points out, "Americans have long found the idea owning one's home deeply appealing, associating homeownership with increased privacy, independence from landlords and rent increases, control over one's living space, greater wealth, better outcomes for children, and opportunities such as higher-quality schools and safer communities that, for a multitude of reasons, often accompany living in areas dominated by single-family owner occupied housing."[3]

Unfortunately, the benefits of homeownership are not evenly distributed throughout our society. America's growing racial wealth gap and homeownership gap are well documented and interrelated. According to the Urban Institute, while 72.1% of white households own their own home, while only 42% of Black households and 48.1% of Hispanic households are homeowners.[4] This disparity in homeownership rates is then reflected in statistics on household wealth. According to Federal Reserve's Survey of Consumer Finances (Sept. 2020) the median wealth of white households is $188,200 compared to only $24,100 for Black households and $36,200 for Hispanic households.[4]

This matters because as noted in *Closing the Gaps*, "Wealth and income are both critical to building financial security. Wealth (e.g. savings and real estate or business holdings) cushions families against emergencies, provides the means for moving up the economic ladder, potentially grows over time, and can be transferred from generation to generation. Income allows a family to pay monthly bills and to build more wealth. But income is often volatile, and vanish with job loss, or can be curtailed suddenly. During economic crises, households with less wealth are worse off than households with more wealth because they have less savings and fewer liquid assets with which to adapt and recover."[5]

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[2] *The Case for Homeownership*, Alanna McCargo, Urban Institute, October 2018

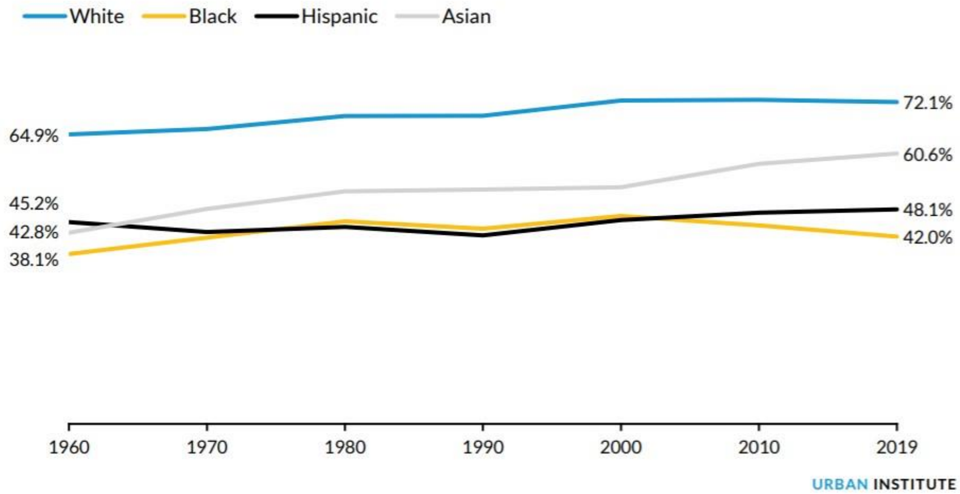
[3] *Homeownership Built to Last*, Joint Center for Housing Studies, 2014

[4] *Closing the Gaps*, Alanna McCargo and Jung Hyun Choi, Urban Institute, 2020 [4]
McCargo and Choi, page 2

[5] McCargo and Choi, p. 2

FIGURE 3

Homeownership Rate, by Race or Ethnicity



Sources: Decennial Census and the American Community Survey.

Research by Brandeis University's Institute for Assets & Social Policy and the Thurgood Marshall Institute of the NAACP Legal Defense and Educational Fund shows that the homeownership gap is the most significant driver of the racial wealth gap, more significant than unequal incomes and access to higher education. "Among the main drivers were homeownership and the long lasting effects of residential segregation with lower returns from home equity going to Black families than White families…..As homeownership is the principal source of wealth for most American families, the racial wealth gap is less a product of differences in income than of unequal access to homes in good neighborhoods, which in turn produces racialized differences in homeownership, property values and the accumulation of home equity." [6]

Thus, racial disparities in wealth in the U.S. are the outcome of generations of differential treatment, and solutions will have to address all of the different barriers that account for the wide gaps in homeownership rates. Vigorous enforcement of the civil rights laws ensuring fair access the housing market and credit is a necessary first step but our strategy needs to go further. Our homeownership strategy needs to vary depending on the local real estate market conditions. In some geographies, lack of supply of affordable homes in for sale prevents families from becoming homeowners. McCargo and Choi note "Recent home price appreciation has added another barrier to Black homeownership. Since 2009 housing demand has outstripped housing supply as the cost of building has increased. Home prices today far exceed the prices at the end of 2006 before the housing market collapsed. There is also a mismatch between the type of housing being built and the type of housing demand."[7]

In other markets, there are different affordable homeownership policy challenges that need to be addressed. There are geographies where the cost to acquire and repair a property exceeds its fair market value, creating a "valuation gap." Places with this

[6] *The Black-White Racial Wealth Gap,* Institute on Assets and Social Policy and Thurgood Marshall Institute, 2020, p.3

[7] McCargo and Choi, p.10

problem include older cities with significant population loss, but also rural areas and areas with aging housing stock. Many of these neighborhoods are majority Black. Even when home prices are affordable, potential homeowners have difficulty finding a lender willing to make a mortgage that is larger than the appraised value of the home.

This creates a cycle of blight and disinvestment in neighborhoods and entire communities, as the poor condition of the housing stock along with dim prospects for home appreciation make mortgages difficult to obtain. This matters because the U.S. housing stock consists of mostly single-family homes, and 40% of this housing stock is at least 50 years old, so repair needs are accumulating[8]. Aging, blighted homes are prime candidates to become vacant and abandoned. The conditions described above matter because local housing markets can make or break a community.

Even in markets where homes are affordable and in good repair, there are other barriers to expanding homeownership. For example, another challenge is limited access to mortgage credit for low and moderate income families and families of color, a problem that is ironically the most severe for the least expensive homes because lenders do not make as much money on small mortgages. Lack of savings for down payments is another challenge. Competition with wealthy investors is another problem in some markets for aspiring homeowners. As single-family rental homes become a more popular asset class, investors both large and small compete with potential homeowners, both by purchasing homes through means not accessible to the typical family (buying note pools or using auction websites) and by coming to the table with cash in hand.

All of these challenges can be addressed by policy changes and the work of mission-driven housing developers and lenders who build affordable homes and work with families to access mortgages on fair terms. This is critical because homeownership is a key building block for stable, vital neighborhoods as well for the health, education and prosperity of individual families. Communities with low rates of homeownership are vulnerable to gentrification-driven displacement in good times or a downward spiral of decline in bad times. If America is going to make progress in lessening economic inequality, it must close its homeownership gap.

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[8] *Improving America's Housing Stock 2019*, Joint Center for Housing Studies

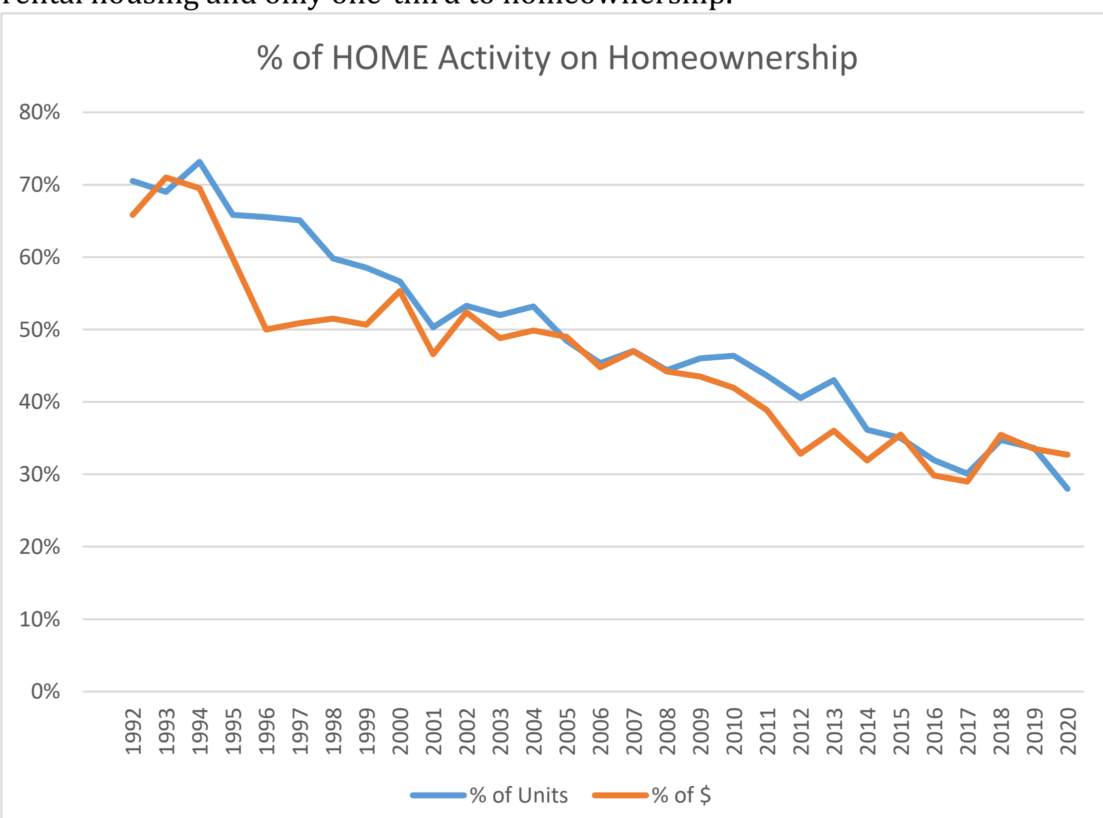
HOME Program Recommendations

Introduction

The HOME program was created by federal legislation in 1990 in order to provide federal funding to support affordable housing. Since 1992, HOME has deployed approximately $36 billion to state and local governments which they, in turn, allocated to local affordable housing programs. HOME funds can be used for a range of housing programs including both rental and homeownership housing.

Eligible rental housing programs include the acquisition, rehabilitation, and/or construction of rental housing as well as "Tenant-Based Rental Assistance," which provides a voucher to a tenant that can be used to help pay the rent to a private landlord. Eligible homeownership programs include the acquisition, rehabilitation, and/or construction of ownership housing, including providing down payment assistance to help a homebuyer acquire a home and home rehabilitation assistance to help low-income homeowners make needed renovations.

In the 1990's about two-thirds of HOME funding supported homeownership. Over the years that proportion has reversed itself with about two-thirds of HOME funding going to rental housing and only one-third to homeownership.



Closing America's Homeownership Gap Is Essential to Closing Its Wealth Gap

America's racial wealth gap is as tenacious as it is disturbing. The median wealth of a Black family is nearly eight times less than that of a White family. The median wealth of a Hispanic family is over five times less. The white-Black homeownership rate is greater today than it was when America passed the Fair Housing Act in 1968. There is a growing understanding that the racial gap in homeownership is a key driver of the wealth gap and that by addressing the homeownership gap, America can begin to close the wealth gap. And in closing the homeownership gap, we not only have to help more people of color purchase homes, but purchase homes earlier in their lives and in neighborhoods of their choice.

The HOME program could play an important role in closing the racial homeownership gap. The Homeownership Alliance respectfully requests that HUD work with us to explore ways to more effectively deploy the resources of HOME in order to address the homeownership gap and help bridge the wealth gap.

Create an Office of Homeownership Effectiveness within CPD

Because of the importance of closing America's homeownership gap, we propose that HUD create an Office of Homeownership Effectiveness (OHE) as part of its Office of Community Planning and Development. OHE would have several responsibilities:

- Examine and recommend changes to existing HUD regulations that may be creating impediments and unnecessary difficulties for local governments, non-profit housing organizations, financial institutions, and others that are currently, or would be interested in, operating homeownership programs.
- Solicit feedback from local governments, non-profit housing organizations, financial institutions, and others to better understand their issues with HUD homeownership regulations and the interpretation of those regulations.
- Provide a safe place for input on the functioning and conduct of HUD CPD field offices and representatives. There is no obvious place for HUD recipients and sub-recipients to go to when they are having trouble with the regulatory interpretations of their field office.
- Be a resource to local field offices in interpreting HUD regulations and in helping them to understand their appropriate role.
- Oversee the development of best practice guidance for the design and operations of homeownership programs supported by CPD such as CDBG and HOME.
- Assess the feasibility and desirability of creating a set-aside of HOME funds that would be used exclusively for homeownership.

The Office of Homeownership Effectiveness could greatly help improve homeownership programs supported by CPD such as CDBG and HOME. It would provide homeownership expertise that is essential to creating and operating effective homeownership programs. Homeownership program behave very differently than rental housing programs. What makes for a good rental program can substantially differ from what makes a good homeownership program. Because HUD programs can typically be used for either, the two program often get conflated resulting in requirements that simply don't make much sense for homeownership. Having specialized expertise in homeownership would help avoid this problem.

Creating a centralized point of contact at HUD headquarters for CPD recipients and sub-recipients would also give HUD a good window into program execution and thus would help it better see patterns to emerging issues, would improve the accountability of and provide guidance to its field offices, and would put HUD in a better position to make program improvements.

What Can Be Done to Increase the Use of HOME Funds for Homebuyer Assistance?

While the data is clear that there is a declining use of HOME funds for homeownership activities, anecdotal information also indicates that state and local governments have become more reticent in using HOME to support homebuyer assistance. One reason for this reticence is that state and local governments fear running afoul of HUD regulations which they often find vague and confusing. Another reason is that homebuyer assistance programs can be more operationally intensive than subsidizing the construction of a single LIHTC apartment building. Changes to the HOME regulations that would provide clearer guidance and simplify the use of HOME funds for homeownership would help Participating Jurisdictions (PJs) increase their support of programs and projects that help close America's homeownership gap.

The core set of HOME regulations applicable to homeownership programs are in Section 92.254, Qualification as affordable housing: Homeownership. Some of the problematic regulations are described below along with recommendations for how the regulation could be improved.

Section 92.254(f) Homebuyer program policies

This section causes a lot of confusion, both for PJs and for HUD field offices. It states:

The participating jurisdiction must have and follow written policies for:

(1) Underwriting standards for homeownership assistance that evaluate housing debt and overall debt of the family, the appropriateness of the amount of assistance, monthly expenses of the family, assets available to acquire the housing, and financial resources to sustain homeownership;
(2) Responsible lending, and
(3) Refinancing loans to which HOME loans are subordinated to ensure that the

Section (1), which refers to underwriting standards, causes a lot of confusion with PJs and HUD field offices. Does this require the PJ to establish maximum housing expense and total debt ratios? If so, how should the income be calculated to determine the ratios? Section 92.254(a)(3) of the HOME regulations requires the PJ to "include the income of all persons living in the housing" in determining the income eligibility of the family for HOME assistance. But the income of all persons living in the housing is often not used to in qualify a borrower for a mortgage. While a working child's income must be included in the total household income for determining HUD eligibility, it would be highly unusual for a mortgage lender to include it in the income used to qualify for a mortgage. Nor would it be prudent for a family to count on using that income to help make their home payment when it knows the child soon will be moving out on her own. This is also true for other types of income such as child support that is running out, the social security income of an elderly patient that is being cared for, etc. The other problem with establishing hard and fast ratios for housing expense and total debt is that automatic underwriting systems abandoned the use of hard and fast maximum ratios a long time ago.

While housing and debt ratios are an important consideration, borrowers with strong credit ratings, high down payments, cash reserves after closing, and other compensating factors may qualify with higher ratios while borrowers that are less strong may only qualify for a mortgage with lower ratios. Setting maximum housing expense and debt ratios creates an underwriting overlay on the underwriting standards of first mortgage and can prevent a buyer from buying the home they want in the neighborhood they want. Even though a mortgage lender is willing to make the buyer a good mortgage loan, one that meets the high underwriting standards of automatic underwriting systems (and meets the standards of the CFPB's Qualified Mortgage definition), the buyer cannot qualify for the down payment assistance she needs in order to purchase the home.

How should "monthly expenses of the family, assets available to acquire the housing, and financial resources to sustain homeownership" be evaluated? Does the PJ need to verify a family's monthly expenses for the last year? What about "assets available to acquire the housing?" Does this include assets other than liquid savings? Does it include retirement accounts that permit borrowing from the accounts? Is there maximum amount of assets you can have or a minimum amount, or both?

Recommendation

Because of this vague and confusing language, local governments are often worried about conflicts with their HUD field office should there be a difference in their interpretation of the language. HUD could provide guidance on this issue that would reduce the risk for local governments while ensuring that homebuyers and HOME resources benefited from good mortgages, solidly underwritten. The Consumer Financial Protection Bureau and the FHA, VA, and USDA have already defined what is a safe, sustainable mortgage is. A "Qualified Mortgage" is one that that takes into account the borrower's ability to repay the loan as well caps what the lender can charge in interest and fees and restricts predatory loan features.

HUD could greatly simplify the use of HOME funds for homebuyer assistance, as well as increase the number of state and local governments offering homebuyer assistance programs, by creating an underwriting safe harbor that says the HOME underwriting standards have been met if the first mortgage used to purchase a home was a Qualified Mortgage. All mortgages secured by Fannie Mae, Freddie Mac, VA, USDA and FHA meet a QM standard, which would make compliance with the HOME underwriting rule simple, safe, and easy. If another first mortgage loan product is used, then the PJ would have make sure the first mortgage met the specific attributes of a QM as laid out by the CFPB. Using the Qualified Mortgage standard as a way to meeting the HOME underwriting requirement should also satisfy Section (2) of this regulation, "Responsible lending," since the purpose of the QM standard is to define what is considered a good mortgage.

"The Appropriateness of the Amount of Assistance" Issue

One issue the Qualified Mortgage safe harbor solution would not necessarily address is "the appropriateness of the amount of assistance" standard embedded in the underwriting section cited above. This is typically interpreted to mean the PJ needs to determine an appropriate amount of subsidy for each individual buyer. Many PJs and HUD field offices have interpreted this to mean there should be a minimum housing expense ratio in order to ensure a homebuyer is not being over-subsidized. As with the maximum ratios, what income do you use to calculate this ratio, the entire household income or only the income that can be used to qualify for a mortgage? How would you determine an appropriate minimum ratio?

A review of different HOME funded homebuyer assistance programs across the country reveals a dizzying array of approaches attempting to address the "appropriateness" issue. One PJ and its HUD field office agreed that the best way to handle the issue was to provide all buyers with enough subsidy so that they would all pay exactly 30% of their income on housing expense. In other words, two households with the exact same income could receive very different amounts of assistance depending on the costs of homes they purchased. The buyer of the more expensive home would get more assistance, not because they have more need (both households have the same income) but just because they purchased a more expensive home. In fact, a buyer with less income and more kids to feed could get less assistance than a single person with a higher income, just because the latter buyer purchased a more expensive home.

Other programs have designed complex combinations of minimum and maximum housing expense ratios and debt-in-income ratios that allowing for more assistance if the buyer's existing consumer debt makes his debt-to-income ratio exceed the maximum debt-to-income ratio. In other words the buyer with a lot of consumer debt is eligible for more assistance than the buyer with little or no consumer debt.

Requiring a PJ to determine an "appropriate" amount of assistance for each individual buyer also makes in very difficult to market and administer down payment assistance programs targeted to low-income households. While a program may advertise "up to $10,000 in down payment assistance," the exact amount cannot be determined until the price of the home is determined and a mortgage loan approved. The result is that the homebuyer can feel like they were the victim of a "bait and switch." And realtors and lenders are confused about how much assistance is available to work with and end up avoiding using the program rather than risk their relationship with a buyer who is also confused.

In short, the multiple variables that affect the portion of a homebuyer's income that could go to their mortgage payment (their income, the price of the home, their down payment, their existing debt, etc.) make is difficult to determine what an "appropriate" amount of assistance should be as well as can make certain programs unnecessarily difficult to market and administer.

Recommendation

The intent of the "appropriateness" standard was to ensure that precious affordable housing resources are appropriately deployed and that these resources are not wasted by over-subsidizing homebuyers. There is a much simpler way that would ensure the good stewardship of HOME funds without creating the confusion, unfairness, and the misuse of HOME funds cause by the current system. Rather than require that PJs determine the appropriateness of assistance for each individual buyer, it would much simpler and less confusing to establish a maximum amount of assistance that would automatically be considered “appropriate” for each local housing market. Any assistance below the cap for the local market would meet the “appropriateness” standard, essentially creating a safe harbor. A simple way to do this would be for HUD to determine that the safe harbor for the “appropriateness of assistance” would be based on no more than a specified percentage of the median value of homes in a given market. For example, if HUD set a maximum percentage of homebuyer assistance at 15% in a market where the median home value is $200,000, the maximum amount of assistance to meet the safe harbor test would be $30,000. Any amount at or below that amount would be considered “appropriate.” Local government could determine a lower amount of assistance for its market, but as long as its homebuyer assistance was below the maximum established by HUD, it would be in compliance with the appropriateness standard.

Of course, there are important homebuyer assistance programs that would merit HOME assistance above the safe harbor amount. For example, programs that acquire and renovate vacant homes for resale to new homeowners may not be feasible without a higher amount of HOME assistance. In these cases a PJ could still establish its own standard for determining “appropriateness” at a higher level of assistance, including using the minimum housing expense ratio if that was its preference.

HUD already has established a means to determine the median price of for-sale housing for specific areas. Section 92.254(a)(2) states that “housing that is for acquisition by a family…must be modest housing” and goes on to define “modest housing” as housing that “has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area.” The regulations explains how the HUD determines the value for “95% percent of the median purchase price for the area” as well as how a PJ can determine the 95% value “in lieu of the limits provide by HUD.” This same methodology could be used to determine the home value for the area that would determine the maximum assistance that would be allowed for the area. (See Home Price Limits section below for a recommendation regarding this regulation.)

Home Inspection Requirement

Section 92.254(e)((2) states that in programs that provide “homeownership assistance through lenders” that the PJ “must inspect the housing for compliance with the property standards in 92.251.

The property standards that apply to homebuyer assistance under Section 92.251(c) (3) state:

> Existing housing that is acquired for homeownership (e.g., downpayment assistance) must be decent, safe, sanitary, and in good repair. The participating jurisdiction must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements and the housing does not contain the specific deficiencies proscribed by HUD based on the applicable inspectable items and inspected areas in HUD-prescribed physical inspection procedures (Uniform Physical Condition Standards) issued pursuant to 24 CFR 5.705. The participating jurisdiction must inspect the

housing and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HOME assistance. If the housing does not meet these standards, the housing must be rehabilitated to meet the standards of this paragraph (c)(3) or it cannot be acquired with HOME funds.

The requirement of this section on unclear, confusing, and potentially makes in nearly impossible to use HOME funds for down payment assistance on an existing home. What is the meaning of "At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements?" State and local housing codes are changed and updated regularly. A home built three years ago to the code at the time, may not meet the new requirements established more recently. If the new code requirements now mandate a higher R value for the insulation in the roof, does a three year old roof needed to be torn off and upgraded to a roof that meets the new insulation standard? A requirement that requires an existing home meet all the code requirements of the most recently adopted local code would essentially make it impossible to use HOME funds for down payment assistance for existing homes.

Newly constructed or substantially renovated would meet the current local building code, which would also mean the home would meet the Uniform Physical Condition Standards, which are not as stringent as local building codes. Does there need to be a separate UPCS inspection even though the home was already inspected by the local code enforcement agency and issued a certificate of occupancy or certificate of completion?

<u>Recommendation</u>

The home inspection requirement should be changed so that it is met if either of two inspection options have been satisfied:

Option 1. A state or local code enforcement agency has issued the home a certificate of occupancy or a certificate of completion. No additional inspection by the PJ would be required. In order to align with 92.254 (a)(3) which requires that a HOME assisted home be sold to a low-income homebuyer within nine months of construction being completed, the certificate of occupancy or certificate of completion should also be valid for nine months.

OR

Option 2. The PJ or its agent has completed a home inspection that certifies that the home is compliant with the Uniform Physical Condition Standards. The inspection must be completed no earlier than 90 days before HOME funds have been committed.

Reasonable Fees Charged by the First Mortgage Lender

Section 92.254(e)((2) states that the PJ "must determine that the fees and other amount charged to the family by the lender for the first mortgage financing are reasonable." "Reasonable" is not a defined term and there can be a wide range of disagreement to what reasonable fees might be. PJs are afraid of their exposure should their HUD field office disagree with what the PJs thinks is reasonable. This issue would also be solved by HUD by creating a safe harbor that says the HOME the reasonable fees standard has been met if the first mortgage used to purchase a home was a Qualified Mortgage, a standard that caps what the lender can charge in interest and fees.

Home Price Limits

The HOME statute contains a provision discussed in Section 92.254(a)(2) of the regulations that "the housing must be modest housing" and goes on to define "modest housing" as housing that "has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area." This is a provision of the HOME statute should be reconsidered in light of the body of evidence about the negative impacts of living in neighborhoods of concentrated poverty.[9] The HOME price limits mean that funds are prohibited from being used on over 50% of the homes available in a given area. Given the fact the most important factor in determining the value of a home is its location, the price limit requirement effectively disallows the use of HOME for homeownership in better off areas and pushes buyers into lower-income, more disinvested neighborhoods. This outcome is contrary to the goal of helping lower-income households obtain housing in what HUD calls "high opportunity neighborhoods." In effect, the HOME price limits are a form of modern-day redlining, resulting in an inequitable disparate impact. They should be eliminated.

While it is true that available down payment assistance will not enable a lower-income household to buy any home on the market (some home prices are too high for the subsidy to close the gap), the price limit does eliminate many home choices the household can afford. For example, of the homebuyers Homewise assisted last year in Albuquerque under a down payment program that did not have a home price limit, 24% of them purchased homes that would not have been allowed if the home price limits were in place. All of the buyers were below 80% of the Area Median Income.

Recommendation

The home price limits should be eliminated and be replaced by a HOME subsidy limit as described above in the section on "appropriateness of the amount of assistance." With a limit on the amount of assistance a homebuyer can access in a given housing market combined with the existing HOME income limits will ensure the prudent use of HOME funds while not arbitrarily limiting a homebuyer's choice of home and neighborhood.

Selling Homes to Eligible Buyers that Had Been Leased

Section 92.254(a)(3) requires that homeownership housing that has been developed using HOME funds for which "there is no ratified sales contract with an eligible homebuyer for the housing within 9 months of the date of completion of construction or rehabilitation, the housing must be rented to an eligible tenant." The regulation does not specifically address how a home that has been leased under this provision can subsequently be sold to an eligible homebuyer leading some PJ's to conclude you can't sell the home as originally intended or it can only be sold according to the Lease-Purchase provisions in Section 92.254(a)(7).

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[9] https://opportunityinsights.org/

Recommendation

Section 92.254(a)(3) should be amended to specifically allow a home leased under its requirements to be sold to an eligible buyer within nine months of a tenant voluntarily moving out of the rented home or after being legally evicted for cause.

Lease-Purchase of Homes Developed under the Low-Income Housing Tax Credit Program

Section 92.254(a)(7), Lease-Purchase states that "HOME funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed." Thousands of single-family homes were developed throughout the country utilizing the low-income housing tax credit (LIHTC) with the assumption that the tenant residing in the home at the end of LIHTC's fifteen-year compliance period would have the ability to purchase the home. This program provides an important, long term pathway for people to stabilize their housing, improve their financial well-being, and become homeowners. It truly is a program that helps to break the cycle of poverty and generate wealth for the residents. The project is originally qualified under HOME as a rental project, and most PJs now interpret the HOME rules to require a re-underwrite of the renter at the time of their purchase of the unit they have lived in, sometimes for 10 years plus, under the HUD homeownership rules.

During the rental period, the HOME rules defer to the LIHTC qualification standards for whether a renter is eligible to rent a HOME assisted unit. The LIHTC qualification standards require an initial qualification of the tenant at the time that they originally lease the unit, but if the tenant household increases its income over the LIHTC and/or HOME maximum, the tenant is still qualified to live in the unit and is not displaced. However, since the adoption of the 2013 rules, participating jurisdictions, over time, have come to believe that at the end of the LIHTC fifteen-year compliance period when the tenant becomes eligible to purchase their single-family home, they must income re-qualify the tenant under the homeownership rules at the time of the sales transaction. If the tenant exceeds 80% AMI at that time of re-qualifying, they are disqualified from purchasing the HOME-assisted unit.

This outcome is inequitable and contradictory to the purpose of a lease purchase program for low-income residents. Two tenants who have lived next door to each other in HOME assisted units could have very different outcomes. An example under the current interpretation of the rules follows: Tenant A could initially qualify to lease the home at 45% AMI, never increase his or her income, and be eligible to buy the home at the end of the fifteen-year LIHTC compliance period. Tenant B could also initially qualify to lease the home at 45% AMI, later experience an increase of income to 85% AMI, and no longer by low income by HUD standards; therefore, not being eligible to buy the home at the end of the fifteen-year LIHTC compliance period because they would no longer be deemed low-income by HUD standards. The later result is a lost opportunity to utilize the power of stable, affordable housing to help a family break the cycle of poverty, realize the American dream of homeownership, and build generational wealth. Additionally, it may disincentivize tenants from bettering their economic status over time if doing so penalizes them from participating in a homeownership opportunity.

Recommendation:

In Section 92.254(a)(7) lease purchase, modify the language to read as follows (new language is underlined):

Lease-purchase. HOME funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed. The housing must be purchased by a homebuyer within 36 months of signing the lease purchase agreement or, if a current tenant, within 36 months of signing a purchase agreement. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed or, for HOME assisted units financed through the low-income housing tax credit, the homebuyer only must initially have qualified as a low-income family at the time of the original lease signing. If HOME funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HOME affordability requirements for rental housing in §92.252 shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.

Appendix

Uniform Physical Condition Standards) issued pursuant to 24 CFR 5.705.

§ 5.701 - Applicability.

(a) This subpart applies to housing assisted under the HUD programs listed in 24 CFR 200.853(a).
(b) This subpart applies to housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the programs listed in 24 CFR 200.853(b).
(c) This subpart also applies to Public Housing (housing receiving assistance under the U.S. Housing Act of 1937, other than under section 8 of the Act).
(d) For purposes of this subpart, the term "HUD housing" means the types of housing listed in paragraphs (a), (b), and (c) of this section.

§ 5.703 - Physical condition standards for HUD housing that is decent, safe, sanitary and in good repair (DSS/GR).

HUD housing must be decent, safe, sanitary and in good repair. Owners of housing described in § 5.701(a), mortgagors of housing described in § 5.701(b), and PHAs and other entities approved by HUD owning housing described in § 5.701(c), must maintain such housing in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary and in good repair. These standards address the major areas of the HUD housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

(a) *Site.* The site components, such as fencing and retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.
(b) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.
(c) *Building systems.* Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.
(d) *Dwelling units.* (1) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid (if applicable), ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(2) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water (note for example that single room occupancy units need not contain water facilities).
(3) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.
(4) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(e) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair. These standards for common areas apply, to a varying extent, to all HUD housing, but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units, in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.
(f) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).
(g) *Compliance with State and local codes.* The physical condition standards in this section do not supersede or preempt State and local codes for building and maintenance with which HUD housing must comply. HUD housing must continue to adhere to these codes.

§ 5.705 - Uniform physical inspection requirements.

Any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must inspect such HUD housing annually in accordance with HUD-prescribed physical inspection procedures. The inspection must be conducted annually unless the program regulations governing the housing provide otherwise or unless HUD has provided otherwise by notice.

[65 FR 77240, Dec. 8, 2000]