HOME Program Improvement Suggestions

Using HOME with the Low Income Housing Tax Credit

In many areas of the country, it is nearly impossible to fund a multifamily project without using both HOME and Low income Housing Tax Credit funds. In 2000, HFAs combined HOME funds with Housing Credits over three times more often than they did with any other housing program. However, incompatible program rules sometimes cause problems for PJs seeking to use both programs for the same project. Standardizing these differences, so that HOME adopts Housing Credit regulations, would create greater efficiency and simplify the subsidy layering process. An expert in Housing Credits should carefully review any changes in HOME, as so many projects combine these programs. *

Recommendation: Alter the HOME program's rent limits to correspond with rent levels in the Housing Credit program. Rent rules under the Housing Credit program are 30 percent of the gross income of a family earning either 60 percent or 50 percent of the Area Median Income (AMI), depending on the applicable income limit.

Discussion: Standardizing HOME rents with Housing Credit rents is beneficial for two reasons. First, as noted above, standardization simplifies the rent structure in joint HOME and Housing Credit projects. Second, the current HOME rent structure is problematic, even in cases where HOME and Housing Credits are not combined, because the HOME rents rely on the Section 8 Fair Market Rents (FMR). In certain counties, the FMR (a component of the High HOME rent) is lower than even the low HOME rent. In these cases, inability to service debt, due to low rents, can threaten a project's financial viability. In report language in the Senate Appropriations Committee passed FY 2002 VA-HUD appropriations bill, the Committee itself recognized that there are "market distortions in how section 8 rents are calculated" (Page 28, Report 107-43, to accompany S. 1216). These distortions have a negative effect on the HOME

* NCSHA recommends that Congress and HUD amend the HOME program so that it better corresponds with the Low Income Housing Tax Credit. However, HOME is sometimes combined with funds from other programs such as Section 8, CDBG, and RHS. Housing Credit rules may differ from regulations in these programs. As it would not be feasible or desirable to change all program regulations to be compatible with Housing Credits, the HOME program could be amended so that when HOME is combined with a program other than the Housing Credit, the other program's rules preempt HOME rules, so long as HUD defines the program as an affordable housing initiative. This would significantly ease the burden of multiple subsidy layering.

program, which could be abated if HOME used Housing Credit program rent levels.

Recommendation: Alter the HOME program's income limits for rental assistance to correspond with income limits in the Housing Credit program.

Discussion: If HOME is to adopt Housing Credit rent limits, it should also adopt Housing Credit income limits, as the rents in the Housing Credit program are based on the applicable income limit. Presently, HOME regulations require that 90 percent of the total households assisted through the rental or TBRA program have incomes that do not exceed 60 percent of the AMI, and in projects with five or more HOME-assisted units, 20 percent of the units must be rented to households whose incomes are no greater than 50 percent of the AMI. Income limits in the Housing Credit program are similar, however they allow for more flexibility. Owners can decide between renting at least 20 percent of the units at 50 percent of the AMI or at least 40 percent of the units at 60 percent AMI. Standardizing HOME and Housing Credit income limits would also simplify subsidy layering.

Recommendation: HUD should accept the IRS published 30 percent income limit.

Discussion: HUD requires PJs to annually report on tenants whose incomes fall below 30 percent of the AMI. In order to do so, HUD publishes 30 percent income limits. However, HUD's methodology for computing these income limits differs from the methodology used by the IRS in its published 30 percent income limits (HUD rounds to the nearest $50.00, but the IRS does not), forcing projects to track tenant income data according to two separate standards. Compliance monitoring would be simplified if HUD would accept the IRS's published income limits.

Recommendation: Alter the HOME program's monitoring schedule so that it is consistent with the Housing Credit program. Under the Housing Credit program, 20 percent of assisted units in a project must be monitored every three years.

Discussion: Under HOME, the monitoring schedule depends on the total number of units in a project (not the number of HOME-assisted units in the project). Units are monitored either once every three years, once every other year, or annually. Not all HOME-assisted units are monitored in larger buildings; however, the rule of thumb is to monitor between 15 and 20 percent of assisted units. Housing Credit projects are monitored once every three years. At least 20 percent of the assisted units are monitored during these visits. If HOME and Housing Credit monitoring schedules were the same, the cost of compliance monitoring and burden on monitoring staff would be significantly reduced.

Recommendation: Alter the HOME program's rules concerning tenants who become over income during occupancy, so that these rules correspond with over income tenant requirements in the Housing Credit.

Discussion: Tenants may become over income if their income increases as a result of a raise or job change or if there is a decrease in their area's median income. Under the HOME program, over-income tenants must pay either 30 percent of their adjusted income for rent, or the rent rate of "comparable units in the neighborhood." However, comprehensive studies of comparable units are not readily available to property owners. This is a difficult and cumbersome task to complete for owners that only need to determine "comparable units in the neighborhood" once in a while (only when a tenant's income has increased). This requirement could be easily simplified if the HOME rules corresponded with rules for over-income tenants occupying Housing Credit units. Under the Housing Credit, if a tenant's income rises above 140 percent of the median income limit (in the case of deep skewed projects the income limit is 170 percent), the next available unit of equal or smaller size that becomes vacant must be rented to a low income tenant.

Recommendation: Simplify "fixed" and "floating" unit regulations by using the Housing Credit's "next available unit" policy.

Discussion: The HOME fixed and floating rules are overly complex and can be confusing to apartment owners and managers. The Housing Credit program's requirement that the "next available unit" must be reserved for a low income family, if the income of a household living in an affordable unit rises above income restrictions, is less complicated.

Recommendation: In cases where a tenant receives Section 8, allow for the full Section 8 rent (FMR) to be collected.

Discussion: If a tenant lives in a Housing Credit property and has a section 8 voucher of greater value than the Housing Credit rent, the full value of the voucher is collected for rent. Under the HOME program, the high HOME rent is the lesser of the FMR and 30 percent of the adjusted income of a family whose annual income equals 65 percent of the Area Median Income (AMI). Therefore, unlike the Housing Credit, if a HOME tenant possesses a voucher of a value that exceeds the 30 percent of 65 percent AMI rule, the full value of that voucher is not collected for rent. Debt servicing is very difficult for many HOME properties because, in certain areas, even the high HOME rents are extremely low. Collecting the full value of the voucher would help to preserve the financial stability of HOME projects.

Recommendation: Permit PJs to charge compliance monitoring fees to property owners to cover the cost of monitoring throughout the affordability period.

Discussion: Compliance monitoring becomes more and more costly every year because PJs' portfolios are constantly expanding and PJs have limited resources with which to fund monitoring. One solution to this problem is to allow PJs to charge compliance monitoring fees to property owners to pay for monitoring throughout the affordability period. States are permitted to charge these fees for Housing Credit properties; therefore, the same rule should apply to the HOME program.

Making HOME a Better Rental Production Program

More Resources and Flexibility

Recommendation: Increase HOME funding and allow PJs to use general HOME funds, in addition to administrative funds, to fund compliance monitoring activities. However, like administrative activities, any funding for compliance monitoring should not require match.

Discussion: Compliance monitoring becomes more and more costly every year because PJs' portfolios are constantly expanding. Monitoring activities are funded with the 10 percent of HOME dollars designated for administrative costs, which must be expended within five years of receipt. PJs must monitor projects throughout the affordability period, which can last up to 20 years. Due to limited administrative funds, PJs must choose between funding projects with shorter affordability periods, or using administrative dollars to pay for compliance monitoring of past years' projects. Furthermore, a variety of activities, other than compliance monitoring, are paid for with administrative funds. As time goes by, and PJs spend more administrative dollars on compliance monitoring, there are fewer funds left for activities such as administering the Tenant Based Rental Assistance (TBRA) program, fair housing activities, and preparation of the Consolidated Plan. PJs would be better able to fund projects with longer affordability periods and meet compliance monitoring obligations, if HOME funds were increased overall and compliance monitoring costs could be budgeted separately from administrative costs. If PJs are not able to fund compliance monitoring in this manner, they should alternatively be permitted to cover the cost by charging compliance monitoring fees to property owners. (See previous recommendation on page four).

Recommendation: Allow PJs to charge loan servicing fees.

Discussion: PJs currently cover the cost of loan servicing with HOME administrative funds. As previously noted, a variety of activities are funded with the limited HOME funds reserved for administration. If PJs could charge developers loan servicing fees, they would not have to use HOME funds for this purpose. Loan servicing fees are universal in the private sector.

Recommendation: Increase HOME funding and permit PJs to use HOME funds for rental project operating expenses.

Discussion: Operating expenses are not HOME eligible, despite costly general property upkeep and low rents in HOME properties. If these properties are to succeed over the long-term, PJs need the ability to fund daily operating costs and additional funds with which to do so. Operational subsidies need to be long-term to match affordability requirements.

Recommendation: Permit PJs to use HOME for refinancing, regardless of whether or not refinancing is done in conjunction with rehabilitation.

Discussion: Certain Housing Credit, USDA 515, and other subsidized rental properties that are in jeopardy could be preserved if HOME could be used for refinancing. This would increase program flexibility.

Recommendation: Allow long-term reserves as an eligible project cost.

Discussion: The HOME regulations [92.214(a)(1)] prohibit the use of HOME dollars to fund project reserve accounts. Currently, this cost is the only cost for which a developer must secure private debt, adding complexity to the deal, since the private lender will seek to be in the first lien position on the loan. By allowing the funding of long-term reserves, a developer can secure all of the financing required for the project through the HOME program, thereby simplifying the steps required to finance the affordable units.

Recommendation: Allow PJs to use HOME for project-based rental assistance.

Discussion: Project expenses for developments targeting very low and extremely low income families are extremely costly. Debt servicing for these projects can be nearly impossible given the low rent-rates paid by tenants. Using HOME for project-based rental assistance would help PJs better meet the needs of very low income families. Traditional project-based rental assistance is less common now than it once was, but there is still a great need for project-based assistance. PJs should have the flexibility to use HOME for this purpose, if they believe it is necessary.

Recommendation: Allow PJs to use HOME for predevelopment loans.

Discussion: Currently, only CHDOs are permitted to use HOME funds for predevelopment loans. PJs should also have the flexibility to use HOME funds in this manner, if they decide that this is the best use of funds in their jurisdiction. Predevelopment loans allow for better planning and more successful projects in the long run. PJs, not the federal government, should have the opportunity to make decisions about the need for predevelopment loans.

Reducing Red Tape

Recommendation: Allow PJs the option of substituting the HUD "REAC" inspection for the HOME Housing Quality Standards (HQS) inspection.

Discussion: Allowing PJs to choose between using REAC and HQS would increase HOME program flexibility. This would ease the compliance monitoring burden because the more uniform inspection formats become, the easier it is for staff inspectors to complete their work in a consistent manner.

Recommendation: Allow for electronic copies of HOME records to be kept, rather than requiring retention of original documents.

Discussion: This is an easy way to simplify HOME record keeping and is consistent with technological advances.

Recommendation: Assess affirmative marketing actions taken by HOME recipients every two or three years, rather than annually.

Discussion: Annual assessments are time and resource consuming for compliance maintenance staff. PJs can accurately assess affirmative marketing actions without doing so yearly.

Recommendation: Do not require property owners of fully occupied HOME funded developments to continue marketing units if the development has not achieved the occupancy goals set out in its Affirmative Marketing Plan. Instead, HUD should require property owners to meet the affirmative marketing goals when their developments acquire vacancies.

Discussion: Fair Housing regulations regarding the Affirmative Marketing Plan require that once a development reaches 100 percent occupancy, the development must continue to market the units if the development has not achieved the occupancy goals set out in the Plan. Continuing to market units achieves little benefit and results in unnecessary and unproductive expenses for the property owner. Property owners should meet the goals as the development acquires vacancies.

Recommendation: Amend the Site and Neighborhood standards for new construction, cited in the HOME regulations [24 CFR 92.202.] Rather than prohibit new construction in areas of minority concentration, require PJs to consider the racial makeup of the area.

Discussion: Full compliance with these standards for new construction, would require a level of expertise in demographics and housing market analysis that is beyond HFA staff capacity. An accurate analysis of the racial composition of every area a PJ considers for new construction would be costly and difficult to accomplish. A PJ cannot rely on census data, as this quickly loses relevance. Encouraging neighborhood diversity is a laudable goal, however this regulation should be eased, so that PJs can realistically meet these requirements.

Recommendation: Allow the PJ to accept income certifications from other governmental entities/programs during the first year of residence in a HOME project.

Discussion: According to the HOME regulations [24 CFR 92.203(a)(1)], the PJ must initially determine annual income of tenants in HOME-assisted housing. In subsequent years, a written statement from the administrator of another income based government program will suffice as income recertification. If a household has a Section 8 voucher, the Medicaid Choice waiver, or similar income-based benefits at the time that take residence in a HOME-assisted unit, the family has already undergone an income eligibility determination by another government entity. It is redundant to document income eligibility of a family for the HOME program if another program has already done so.

HOME Rents

Recommendation: Allow the PJ the discretion to choose between using the statewide median income or the county median income to determine tenant eligibility.

Discussion: Under HOME, rents and tenant eligibility are determined by the countywide median income. It is difficult to keep projects in very poor counties financially solvent because of the extremely low median income level in these areas. The very low rents that must be charged under the HOME regulations make it harder to service the debt for rental projects in these counties and causes developers to avoid the areas. Furthermore, in these poor counties, families with incomes that are relatively high for the area are still poor in comparison to people living in more affluent counties, yet they are not eligible for housing help. Using a countywide median income is burdensome to poor counties because they must use the same programs as affluent counties to serve a lower-income population.

Lease Termination

Recommendation: In cases where there is a health or safety concern, a 48- or 72-hour notice to vacate regulation should be substituted for the mandatory 30-day notice to terminate a lease.

Discussion: The statutory 30-day notice to terminate a lease presents problems for owners facing tenants who are a threat to the health or safety of other tenants, such as drug users in a transitional living program for recovering substance abusers. Landlord-tenant law allows 48- or 72-hour notice to vacate.

Laundry and Community Facilities

Recommendation: Allow HOME to fund laundry and community facilities that are separate from multifamily rental housing.

Discussion: It should be immaterial that the building is separate from facilities, as long as the facilities are for use by the project residents. It may not be feasible, as in the case of a rehabilitation project, or desirable, as in the case of an elderly project, to have attached laundry or community facilities.

Making HOME a Better Program Overall

Using HOME for Homebuyer/owner Activities

Recommendation: Allow PJs to use HOME dollars to fund housing counseling for low-income families who do not intend to use HOME funds for the purchase of a home.

Discussion: Housing counseling is only HOME eligible if the home that will be purchased is financed with HOME dollars. If preparing persons and families for homeownership is a worthwhile endeavor, the government should be willing to support it with HOME dollars, regardless of whether the housing that is ultimately purchased is assisted with HOME funds. Housing counseling may not immediately prepare a family for purchasing a home. It may require time to assemble a down payment, clear up credit blemishes, and/or find a suitable and affordable home. PJs and their counseling agencies should not have to wait to be paid for counseling services until the counseled household is able to buy a home and the home is purchased with HOME assistance.

Recommendation: Give PJs the discretion to extend the time frame for lease-purchase programs.

Discussion: In rural America, a major barrier to homeownership for potential homebuyers is poor credit. Extending the time frame of lease-purchase program would give buyers time to improve their credit.

Recommendation: Approve 50-year leases on Tribal lands as an equivalent form of homeownership rather than the current requirement, 99-year lease, as defined in the HOME rules.

Discussion: The HOME program's definition of "Homeownership" (Section 92.2 Definitions of 24 CFR Part 92) requires a fee simple title or a 99-year leasehold interest in a one-to-four-unit dwelling or in a condominium unit, or equivalent form of ownership approved by HUD. However, the Bureau of Indian Affairs (BIA) restricts the term of leases on Tribal land to 50 years. Therefore, HOME funds cannot be used for homeowner activities, such as rehabilitation, on tribal land. There is a dire housing need on Tribal land that HOME could address if HUD approved 50-year leases as an equivalent form of homeownership. Moreover, HOME funding levels for PJs are determined by a formula, which takes into account state population, including Native Americans living on Tribal land. HOME funding for homeownership should not leave out Native Americans because of an inconsistency between HUD and BIA.

Recommendation: Do not prohibit land sales contracts in the HOME definition of homeownership.

Discussion: In order for a homeowner property to receive HOME funds for rehabilitation or acquisition, it must meet the HOME definition of homeownership. Homes on land subject to land sales contracts are not a legitimate form of homeownership, as defined by the regulations. While land sales contracts may not be ideal for homeownership, they are fairly widespread in some states. This prohibition has limited participation in owner-occupied rehabilitation programs and some lease-purchase programs. Households with land sales contracts are should be able to receive funds needed for rehabilitation.

Recommendation: Allow PJs to use HOME funds for emergency repairs and handicapped accessibility improvements without requiring the property to be brought up to Housing Quality Standards (HQS).

Discussion: PJs should have discretion to use HOME for rehabilitation/handicapped accessibility in emergency situations without adhering to other HQS requirements, unless the safety of the household is threatened by an HQS violation. Currently, all projects that receive HOME must be brought up to HQS. However, there are times when emergency repairs or handicapped accessibility improvements are necessary and must be done immediately, even if they do not bring a property up to HQS.

Match

Recommendations: The total value of affordable housing bond funds should count towards match.

Discussion: Under the HOME program, PJs must match every four federal dollars with one dollar from state, local, or private funds. Presently, 50 percent of bond value for multi-family housing and 25 percent of bond value for single-family housing count as match. Meeting match can be especially difficult for small, rural areas. Expanding eligible sources of match, especially affordable housing bond match, would help PJs that have a difficult time meeting their match requirement.

Recommendation: Allow PJs to count HOME-eligible properties that are enforced by other government entities as match, without requiring the PJ to impose a repetitive deed on the property.

Discussion: If a property meets HOME-eligibility requirements and the PJ has a copy of the property's deed restrictions on file, HOME should not require an additional deed. Imposing another deed covering the same requirements is repetitive and a waste of staff time and resources.

Recommendation: Allow state PJs to transfer excess bond match within a jurisdiction to the local PJ to further the local PJ's effort to meet their match requirement.

Discussion: If a state PJ has excess match, it should have the discretion to transfer the match to a local PJ. It should not matter if the state PJ is the source of match or if the match source is a local PJ, so long as all PJs meet match requirement and the match is eligible under HOME regulations.

Recommendation: Require PJs to submit a report documenting performance in contributing match once in a 12-month period, rather than based on the federal fiscal year.

Discussion: The HOME regulations require PJs to report to HUD on the PJs performance in contributing match towards its match liability based on the federal fiscal year. A PJ receives its allocation of funds, and reports on the use of those funds, based on a Plan year established during the consolidated planning process. Some states base their Plan year on their state fiscal year, not the federal fiscal year. If HUD allows PJs to report on the use of funds based on the PJs Plan year, it should also allow PJs to report on match based on the Plan year.

CHDOs/Nonprofits

Recommendation: Replace HOME's CHDO set-aside, with a set-aside for any non-profit (501(c)) that meets the Housing Credit program's nonprofit qualifications, and is designed specifically for, and capable of, providing quality affordable housing.

Discussion: PJs are mandated by statute to use 15 percent of their HOME formula grant to fund affordable housing that is owned, developed, or sponsored by Community Housing Development Organizations (CHDO), special non-profits dedicated to affordable housing. Lengthy CHDO qualifying criteria exists that limits which nonprofits can receive CHDO certification. Board composition requirements are particularly extensive and exclude good potential board members and organizations.

<u>Recommendation:</u> Expand nonprofit (CHDO) eligible activities to include homeowner rehabilitation and housing counseling.

<u>Discussion:</u> In the interest of making HOME a more flexible and usable program, prohibitions such as this should be eliminated. Homeowner rehabilitation and housing counseling are HOME eligible under other circumstances, therefore HUD should allow nonprofits to perform these activities. Some nonprofits are located in very rural areas in which homeownership rates are very high, but the housing stock is in poor condition. Nonprofits are a logical vehicle for rehabilitation in these areas.

<u>Recommendation:</u> Allow PJs to extend the time period in which they can fund nonprofit (CHDO) capacity building.

<u>Discussion:</u> Under HOME, new PJs that cannot identify a sufficient number of capable CHDOs can use HOME funds for CHDO capacity building for up to 24 months. Realistically, new organizations need more time and resources to develop the experience and expertise necessary to develop housing.

<u>Recommendation:</u> Allow PJs to decide how much HOME funding they should award to nonprofits for predevelopment loans.

<u>Discussion:</u> Currently, the total of HOME funds used for CHDO project pre-development assistance may not exceed 10 percent of the total amount of HOME funds reserved for CHDOs. This amounts to a maximum of 1.5 percent of a PJ's HOME allocation. Predevelopment loans result in more upfront decision-making on projects and therefore better projects in the long run. While many PJs may not choose to fund nonprofit predevelopment loans, others would like to do so at a higher level than is currently allowed.

<u>Recommendation:</u> Allow PJs to decide how much HOME funding they should award to nonprofits for operating expenses.

<u>Discussion:</u> One of the greatest difficulties for CHDOs is finding funding for operating costs. Operating assistance is necessary for nonprofits to build, sponsor, or develop affordable housing. PJs should have the discretion to provide more than five percent (the current limit) of HOME funds for nonprofit operating assistance, if they feel this is the best use of the funds.

Environmental Review

<u>Recommendation:</u> Allow PJs to substitute environmental reviews that are substantially equivalent to HOME standards, such as the environmental review required for FHA mortgage insurance, for the HOME environmental review.

<u>Discussion:</u> Environmental review requirements need greater flexibility overall. The environmental review process can impact the construction or rehabilitation timetable by several months and intimidate some communities. PJs that conduct environmental reviews, which satisfy the most important aspects of the HOME environmental review, should not have the further burden of conducting a HOME environmental review. This will aid PJs who use HOME funds with other government programs.

<u>Recommendation:</u> Increase the acceptable DNL level and allow PJs to determine the distance from railroads at which a noise assessment must be conducted.

<u>Discussion:</u> Under HOME, any project that is within 3000 feet of a railroad is required to complete a noise assessment. This rule further complicates and slows down the environmental review process in areas of the country where most communities are located near railroads. In markets where there is a high demand for land, affordable housing providers are unable to compete with private developers who do not need to wait for the environmental review with noise assessment to be completed. Sellers are more likely to accept a private developer's offer because it is not contingent on an environmental review.

<u>Recommendation:</u> Exclude unidentified scattered site homeowner rehab projects from the environmental review's "more than four" rule.

<u>Discussion:</u> In rural areas the majority of homeowner rehabilitation projects are located in scattered sites, which are countywide, and sometimes located across multiple counties. Single-family rehabilitation programs allow families to apply for assistance throughout the year and not just at the time of the initial program application. Therefore, it is difficult, if not impossible, to predict the location of each home at the beginning of the program year, or do an environmental review of these extremely large areas. Environmental reviews are triggered if more than four units are assisted by HOME within 2000 feet of each other. If four houses receive HOME assistance, and a fifth house within the 2000-foot area later applies, the PJ must complete an environmental assessment, which stops all work for 90 days.

Recommendation: Do not require PJs to issue scoping letters and advertisements in local newspapers for scattered site single-family rehabilitation projects.

Discussion: The HOME environmental review requires PJs to scooping letters and advertisements in local newspapers to allow for a public comment period on new projects. In the case of scattered site single-family rehabilitation, the requirement has generated no comments from the public, yet it delays provision of assistance to families in need.

Recapture and Resale Requirements

Recommendation: If a PJ can document that it has sought repayment with due diligence from the state or subrecipient and the recipient does not have the financial ability to repay the HOME investment, HUD should waive repayment by the PJ.

Discussion: Any HOME funds used in a project that does not meet HOME requirements throughout the applicable affordability period must be repaid to HUD by the PJ. If the state or subrecipient does not have the financial means to repay the HOME investment, the PJ is still required to repay these funds. This cuts down on the PJ's ability to fund other affordable housing initiatives. If a subrecipient goes bankrupt, even if the unit has been affordable for a lengthy period of time, than the PJ must repay the HOME monies in full. If a homeowner sells his/her property to someone who is not low-income, either through ignorance of the requirement, or simply because they are will to take a chance no one will notice to enforce it, the PJ is liable to repay the HOME funds, even though the resale restriction is a matter of public record. PJs should not be held accountable in these situations.

<u>Recommendation:</u> Homeowners who wish to sell their homes to another low income household within the HOME affordability period should not be bound by the "fair return on investment" rule.

<u>Discussion:</u> According to 92.254(a)(5)(i) of the HOME regulations, "The resale requirement must also ensure that the price at resale provides the original HOME-assisted owner a fair return on investment … and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers." This has proven to be extremely difficult because these two objectives may be mutually exclusive. In order to get a fair return on investment a homeowner may need to charge more than most other low-income home buyers can afford to spend. Therefore, this requirement often limits buyers to a narrow range of low-income households (nearly 80 percent of the median). More low-income homebuyers would benefit if this resale requirement were amended. Moreover, a homeowner wishing to sell his/her home should have the right to agree to a price and should not be confined by this regulation.

Lead-Based Paint

<u>Recommendation:</u> Streamline lead-based paint requirements by considering the following:

- Use FHA lead-based paint requirements as a possible model for changes to HOME lead-based paint rules.
- Establish a threshold of $15,000 per unit contribution of HOME funds before lead based paint regulations become effective.
- Do not require lead-based paint testing for buildings in a project if the individual buildings do not have HOME-units, even if other buildings in the project do.
- Do not require a clearance test if work is done before HOME funds are committed to the project, and while the home is still under the ownership of the seller.

<u>Discussion:</u> Complying with the new lead based paint requirements is especially cumbersome for both rental and homeowner activities. In the case of homeowner activities, the cost of testing (visual assessment, clearance testing etc) must be born by the seller with no guarantee of sale. This discourages sellers with older homes from participating and may result in states/PJs forbidding older homes from being purchased with HOME funds.

<u>Recommendation:</u> Exclude the cost of lead-based paint abatement procedures when calculating total cost of rehabilitation.

Discussion: According to the HOME Rule, the total cost of rehabilitation of a home cannot exceed the appraised value of the home. In some areas, the cost of lead-based paint abatement coupled with other needed rehabilitation often exceeds appraisal value of homes. In addition to lead-based paint, these homes may have dangerous electrical systems, heating systems, etc. Therefore, fewer homes are now eligible for rehabilitation under HOME.

Program Income

Recommendation: Eliminate the current program income spending requirements and instead require program income, like other HOME funds, to be committed within two years and spent within five of being allocated.

Discussion: The regulation that all program income must be expended before drawing down more funds is overly burdensome. This requirement is a disincentive to recycle funds. It is easier to grant money than it is to loan it because PJs do not receive program income from grants. Therefore, the program income rule adversely affects the financing decisions of HFAs. Moreover, making the necessary IDIS adjustments in cases when a PJ established a project expecting to use 100 percent federal monies, but has to incorporate program income instead, is an administrative burden.

Using HOME for infrastructure

Recommendation: Extend the timeframe by which units must be completed and sold when HOME funds are used only for infrastructure in a neighborhood development.

Discussion: HUD has notified HFAs that once construction has begun on a project and HOME funds have been drawn down, the unit must be completed and sold within one year. This timeframe is too restrictive when HOME funds are used for infrastructure, such as site development, curbs, gutters and utilities, but not other construction needs. Infrastructure development must be completed prior to construction of the actual housing; therefore it is sometimes difficult to develop and complete all construction, as well as sell the property within the one-year timeframe.

Consolidated Plan

Recommendation: Streamline requirements for the consolidated plan, Section 105, to include only necessary information such as an analysis of housing needs, a statement of how the resources will be used to address the needs, and a projected level of activity.

Discussion: Some PJs already have planning protocols in place that suit their needs better than the consolidated plan. Even without the strict requirements of the consolidated plan, PJs do a great deal of planning and reporting on use of funds. HUD's requirements are repetitive of other state planning processes.

One-for-One Replacement

Recommendation: Expand the boundaries of current jurisdictions to accommodate the one-for-one replacement rule.

Discussion: Section 104(d) of the Community Housing Development Act, better known as the Barney Frank Amendment, had good intentions to focus on the loss of low-income housing in the community through demolition or conversion. However, because of this amendment, many housing actions prove infeasible because the community cannot guarantee the replacement of affordable housing. This amendment requires that another affordable unit replace each applicable unit that is lost. More specifically, each bedroom lost must be replaced and a grantee must certify that the units will be designed to remain affordable for ten years within their jurisdiction. However, some jurisdictions are too small to accommodate the replacement housing because they lack developable land and resources. If jurisdictions could be enlarged for the purpose of this regulation, communities would have more development resources to provide replacement housing.

HUD only suggestions

(Georgia) Eliminate conflicting terminology across HUD programs and rules. For example, IDIS provided a different definition of "project" that does not match the term used in the HOME regulations. Instead, what was a "project" is now called an "activity". Also the Consolidated Plan regulations eliminated the term "very low income" for those households at 0-50 percent AMI in favor of "low income". This terminology is inconsistent with the regulations for the Section 8 program. The HOME Program Completion Report instructions define an elderly household as a "1 or 2 person household with a person at least 62 years of age. However, the definition of an "elderly family" at 24 CFR 5.403 (a) includes households with more than two persons.

(Georgia) Eliminate conflicting standards between the HOME program and the fair housing regulations. The 1996 fair housing regulations permit elderly housing to restrict access to only those occupants with a minimum age of 62. Thus the complex may reject occupancy by households in which one member of the household is below the age of 62. The Atlanta HUD office has advised that any development with federal funds may not restrict access only to those above the age of 62.

<u>Recommendation:</u> *Allow HOME funds to prorate offsite improvements.*

<u>Discussion:</u> *Often a jurisdiction will require offsite improvements as a condition of project approval. Alternative funding sources must be sought or the project may not go forward. While HOME should not pay for excessive offsite improvements, prorating these improvements by the number of HOME units in a project would be helpful.*