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

**Re: HOME Investment Partnerships Program: Improving Performance and Accountability, and Updating Program Standards, Docket No. FR-5563-P-01**

These comments are submitted by the Center on Budget and Policy Priorities. The Center is a non-partisan policy organization that conducts research and analysis on a range of government policies and programs affecting low- and moderate-income families and individuals.

These comments focus on one aspect of the HOME program regulations: the prohibition of discrimination against families with Section 8 vouchers. We strongly recommend that HUD add more specific criteria defining what practices constitute discrimination and therefore violate the statutory prohibition.

The voucher program serves as an important complement to HOME. Vouchers make housing affordable to the poorest households, but they are effective only if units are available for voucher holders to rent. HOME-funded properties can provide mixed-income housing opportunities and make rental housing available in low-poverty suburbs or gentrifying urban areas where it is difficult for voucher holders to find units. But usually vouchers (or other rental assistance) are required to make rents in HOME properties affordable to the poor. Congress recognized the importance of making HOME units available to families with vouchers, in part by prohibiting owners of HOME properties from refusing to lease to a voucher holder “because of the status of the prospective tenant” as a voucher holder (42 U.S.C. 12745(a)(1)(D)). Congress, however, left it to HUD to define what exactly constitutes discrimination. This definition is critical, because certain admissions policies may have the effect of preventing a voucher holder from renting a unit, without explicitly stating that the owner refuses to rent to voucher holders.

For example, an owner may require all tenants to meet a minimum income threshold based on the amount typically needed to pay the unsubsidized rent, even though this makes no sense for voucher holders who will only pay the tenant’s share of the rent. Owners may also refuse to hold units while the housing agency conducts housing quality inspections, or set standards different from those used by the housing agency for the number of bedrooms families of different sizes require. There have been some court decisions in these areas regarding the Low-Income Housing Tax Credit (LIHTC), which has a similar voucher non-discrimination requirement, but it nonetheless remains unclear in most states whether either the HOME or LIHTC non-discrimination requirements currently ban these practices.

The HOME regulations in effect today do little to clarify this point. Those regulations merely restate the statutory requirement (24 C.F.R. 92.252(d)). (HUD's rules also apply the prohibition to HOME-funded tenant-based rental assistance.) HUD's proposed revisions would relocate the requirement — to 24 C.F.R.92.253(d)(4) — and specify that the owner's written tenant selection policies and criteria may not exclude families because they have vouchers or HOME tenant-based rental assistance. Helpfully, it would also delete language stating that the HOME affirmative marketing requirements do not apply to families with tenant-based assistance (24 C.F.R. 92.351(a)(1)). But the proposed rule provides no further definition of what constitutes discrimination, or indication of whether policies and criteria that have the *effect* of excluding families with vouchers or HOME TBRA are prohibited.

HUD should add language to the regulations making clear that the anti-discrimination requirement does not only cover direct refusal to rent to families with vouchers or HOME tenant-based rental assistance. The regulations should specify that owners also are prohibited from implementing management policies or practices that have the effect of denying voucher holders occupancy, including policies and practices that are incompatible with voucher program policies or fail to take into account the contribution of the voucher to a family's ability to pay for housing. In addition to its other benefits, this clarification would also further fair housing goals, given the large share of voucher households that are members of protected racial or ethnic groups (75 percent) or headed by a person with a disability (29 percent).<sup>1</sup>

HUD could also go further in supplemental guidance and list examples of some specific prohibited policies, although it should be clear that the prohibition is not limited to the identified policies. We have attached a sample list of policies that could be included in such a list.

Thank you for considering these comments.

Sincerely,

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Senior Policy Analyst  
Center on Budget and Policy Priorities

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<sup>1</sup> See Barbara Sard and Thyria Alvarez-Sanchez, "Large Majority of Housing Voucher Recipients Work, Are Elderly or Have Disabilities," Center on Budget and Policy Priorities, December 2, 2011, <http://www.cbpp.org/files/12-2-11hous.pdf>.

**ATTACHMENT A: SAMPLE LIST OF POLICIES THAT HAVE THE EFFECT OF  
DISCRIMINATING AGAINST VOUCHER HOLDERS**

1. Failure to cooperate with voucher program housing quality inspection requirements.
2. Requiring that a family holding a voucher meet a minimum income threshold above the level required to rent the unit under paragraph 8(o)(3) of the U.S. Housing Act.
3. Requiring that a family holding a voucher rent a unit larger than the unit size for which the family is eligible to receive housing assistance under the standard of the public housing agency with jurisdiction over the project.
4. Refusal to coordinate waiting lists, by allowing a family on a voucher waiting list that is offered a unit in the project (or the opportunity to apply to rent a unit) the option to defer the offer and instead rent (or apply to rent) the next suitable unit that becomes available after the family notifies the owner that the family has been offered a voucher.
5. Failure to provide information on how voucher holders can apply to lease units in the project to all public housing agencies administering voucher programs in the metropolitan area or rural county in which the project is located in advance of the time applications to lease units in the project are first accepted.
6. Evaluating the family's creditworthiness without an individualized assessment, distinguishing time periods prior to and during receipt of voucher assistance, and providing an opportunity for the family to rebut credit information and data supplied by tenant screening agencies or credit reporting agencies.
7. Requiring a family holding a voucher to pay a fee to apply for admission to the development above a minimal level determined by the Secretary.