LISC
LOCAL INITIATIVES SUPPORT CORPORATION

March 9, 2024

Jessie Handforth Kome
Director
Office of Block Grant Assistance
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

RE: Community Development Block Grant Program Proposed Rule (Docket No. FR-6148-P-01)

Dear Ms. Kome:

The Local Initiatives Support Corporation (LISC) is pleased to offer comments in response to the U.S Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) proposed rule.

LISC is a national nonprofit housing and community development organization and certified community development financial institution (CDFI) dedicated to working with residents and partners to forge resilient and inclusive communities of opportunity across America – great places to live, work, visit, do business and raise families. LISC mobilizes corporate, government and philanthropic support to provide local community development organizations, nonprofits, and small businesses with loans, grants, and equity investments, as well as technical and management assistance. Our organization has a nationwide footprint with offices in 38 cities throughout the country, and a rural network encompassing over 140 partners serving 49 different states. In 2023, LISC and its affiliates raised and deployed over $2.8 billion in grants, loans and equity capital into distressed urban and rural communities.

General Comments

Before we address specific questions posed in the Notice, we have some general comments about the CDBG program. The CDBG is one of the most important programs for the community development sector, and we and our community-based partners utilize it to support affordable housing, community development, small businesses, workforce programming, and direct services for low-income households throughout the country. We appreciate that HUD has utilized its experience administering CDBG, CDBG-Disaster Recovery (CDBG-DR), CDBG CARES Act (CDBG-CV), and the Section 108 Loan guarantee program to propose new regulatory standards which largely streamline the program. LISC values our partnership with HUD and the ability to use CDBG resources flexibly to support our work and impact nationally.

The proposed rule is primarily focused on reforming CDBG regulations that hinder it's use for economic development purposes. CDBG can be utilized for a wide array of activities and as a block grant, we believe all uses should be treated as similar as possible, so states and localities decide how best to use their funding based on the needs of low- and moderate-income (LMI) people rather than compliance requirements.

We believe HUD should utilize this proposed rulemaking opportunity to broadly address outdated or ineffective CDBG regulations and offer the following comments.

Housing

CDBG funding can be utilized to support affordable housing, including both single family and multifamily housing. The statute places restrictions on utilizing it for new construction. If funding is utilized to improve owner-occupied housing, it must be occupied by a household making up to 80 percent of area median income (AMI). For multifamily housing, at least 51 percent of the units must be for households up to 80 percent of AMI. Around 25 percent of CDBG allocations are utilized for affordable housing, with the majority for single family purposes such as rehabilitation and down payment assistance and only a little over 2 percent for multifamily housing.

We thank HUD for releasing CPD Notice-2023-10, Use of Community Development Block Grant Funds in Support of Housing, since it consolidated information on how CDBG can be utilized for numerous housing activities.

1. **Davis-Bacon Requirements.** Davis-Bacon wage requirements for construction projects differ between CDBG and the HOME Investment Partnership (HOME) program.

   Recommendation: We recommend HUD align CDBG practices with those found in the HOME program. For instance, CDBG funded construction work over $2,000 with 8 or more units requires Davis-Bacon wage rates although HOME construction requirements are triggered at 12 or more units. We recommend that HUD require Davis Bacon wage rates for CDBG funded construction projects with 12 or more units to be consistent between the programs. It's important that HUD align requirements as much as possible to reduce compliance costs and ease the flow of resources into critically needed affordable housing.

2. **Down Payment Assistance.** CDBG can support affordable homeownership opportunities to low-income households through down payment assistance (DPA), closing costs, interest rate and principal buy downs, and mortgage insurance assistance. When downpayment assistance is provided as a CDBG Public Service, the recipient may pay the full amount of the DPA required by the lender unlike when it's provided under Section 105(a)(24), which limits assistance to 50 percent of the required amount.

   Recommendation: LISC recommends that HUD request authority from Congress to allow full DPA assistance under Section 105(a)(24). This is necessary since housing costs have increased rapidly and 50 percent is often insufficient to assist a low-income family with affordable homeownership opportunities. In addition, CDBG funded Public Services are subject to a 15 percent cap, so only allowing DPA under it puts downward pressure on supporting other critical community services and may disincentivize this use for award recipients.

3. **Unified Residential Property Definition**. The CDBG regulations define privately-owned, residential properties with two-to-four units as Multi-Unit Residential. The Federal Housing Administration (FHA) defines these same properties as Single Family Residential. This discrepancy makes data collection and record keeping onerous, especially when a property is assisted using both financing sources.

   Additionally, on the CDBG side, Integrated Disbursement and Information System (IDIS) requires that when reporting on buildings with two or more permanent, residential units (multi-units), the reporting entity must report the income of rental units to track that the requirement that 51% of the beneficiaries are LMI is being met. This can be a challenge, because it's difficult to get tenants in a 2-to-4 unit property to provide personal income and financial information when they are not program beneficiaries.

Recommendation: We recommend that CDBG align with the FHA standard, so Single Family Residential is defined as 1-to-4 units. In addition, we recommend the 51% rule should not apply below 5 units and that reporting is only required for CDBG beneficiaries.

Economic Development

We appreciate the proposed rule's focus on improving the use of CDBG for economic development activities by streamlining requirements that disincentivize recipients from providing such support. Our experience has shown us that there are requirements in the CDBG program which create undue challenges for using it for a wide variety of economic development initiatives, including support for small business and microenterprise activities. These requirements often work against the need to provide community-based solutions to the inclusive economic development challenges communities face.

CDBG resources support skills training, economic development, business corridor and storefront improvements, small businesses, and microenterprises. They play a significant role in lowering entry to workforce development through foundational skill building and technical assistance, access to capital programs, grants, and revolving loan funds necessary to support entrepreneurship. In many communities, especially those with low-income and BIPOC populations, CDBG resources are often one of the limited available options for aspiring or existing entrepreneurs.

1. **Remove the DUNS Number Requirement for Microenterprise Grants and Loans.** Microenterprises are an integral part of our business communities, with nearly 90 percent of the nation's businesses qualifying as such, and even more so within LMI communities. Current HUD regulations require a DUNS number for any entity receiving direct financial assistance, such as a grant or loan, prior to disbursement of funds. The intent of DUNS numbers is primarily to track those doing direct contracting with the federal government and as such, does not match the spirit of assisting main street microenterprises. The process to obtain a DUNS is often lengthy and many businesses require technical assistance to navigate the application process. We are encouraged by HUD's decision to remove the DUNS number requirements in other programs in favor of a Unique Entity Identifier and urge this update be made to all CDBG programs.

   Recommendation: We recommend that HUD waive the DUNS number requirement if a CDBG financial assistance is being utilized to support low to moderate-income owned microenterprises (LMCMC). Removing the DUNS restriction for LMCMCs will expedite the disbursement of funds and is possible based on current IDIS system requirements.

2. **Allowance of Self-Certification for Microenterprises**. Microenterprises are small by nature and have limited capacity to navigate federal funding requirements.

   Recommendation: We recommend HUD provides guidance clarifying that self-certification of microenterprise status is acceptable for eligibility determinations. Such guidance should also state that self-certifications are subject to audit and fund recapture requirements to mitigate against potential abuse.

3. **Utilizing Good Faith Forms**. Empowering jurisdictions with the ability to provide access to timely capital should be a top priority. This can be accomplished by allowing eligible small businesses and microenterprises to utilize good faith forms that certify their intent to use the funds to support ongoing and regular business operations in accordance with program rules.

Recommendation: We recommend HUD provide guidance clarifying that good faith forms signed by the business owner that attest to the intended usage of the grant or loan funds is sufficient documentation to establish use of funds.

4. **Pooling Use of Microenterprise Activities.** CPD regulations already provide flexible use of CDBG to fund assistance to microenterprises and to people developing microenterprises. This includes not only direct financial assistance through grants and loans to those enterprises, but also childcare, transportation, counseling, and technical assistance. Assistance can be delivered through traditional nonprofit or for-profit subrecipients, including community development corporations, CDFIs, banks and others.

   Recommendation: Given the very low compliance burden attached to these activities, any small business lending program should exercise robust use of microenterprise assistance to help small businesses, including sole proprietors and gig economy workers, businesses staffed primarily by contractors, and similar entities. HUD would not need to take any official action to permit this activity, rather the Department need only promote the use among its awardees, which have little familiarity with it. HUD should exercise its alternative requirement authority to treat microenterprise assistance activities as pools rather than individual activities for the purpose of demonstrating national objective compliance. Under such an alternative requirement, a pool of awards to microenterprises would meet the low-mod limited clientele national objective if 51 percent or more of the enterprises qualify as low-mod income. Such an alternative requirement would significantly improve the ability of lenders to construct viable portfolios and deploy it quickly.

5. **CDFIs as Community-Based Development Organizations (CBDOs).** Under the terms of 24 CFR 570.204(c)(3), HUD has existing regulatory authority to permit recipients to designate as CBDOs organizations that do not otherwise meet the qualifying characteristics, but instead demonstrate sufficient similarity in purpose, function, and scope to those entities qualifying. HUD should provide guidance which states that CDFIs certified by the U.S. Department of the Treasury qualify as CBDOs for the purpose of the CDBG program since they are similar entities. HUD should encourage grantees to deploy funds through CDFIs with existing capacity to manage lending programs. This would provide a source of flexible long-term revenue for these critical community development partners, as loan repayments would not be restricted by program income guidelines.

   Recommendation: We recommend that HUD provide blanket approval of certified CDFIs as CBDOs. HUD should also waive existing public benefit requirements for lending activities carried out under 570.204 – as opposed to 570.203 – since it would likely improve lending efficiency and effectiveness in this market, which is the public benefit. Also, HUD should waive 570.209(a) underwriting guidelines for CDFIs without reducing fidelity in oversight and risk management.

Specific Comments

LISC offers the following specific recommendations based on questions based in the Notice.

Low- and Moderate-Income Criteria – Creating or Retaining Jobs.

The most widely used national objective for economic development activities is the creation or retention of permanent jobs where at least 51 percent of those jobs, computed on a full-time equivalent basis, involve the employment of LMI persons. HUD proposes to change how jobs are created or retained since it can be difficult to document that from LMI people due to data collection challenges. The proposed rule would allow a presumption of LMI status based on if the business is located in an economically distressed community and define that using more recent American Community Survey data.

Recommendation: LISC supports allowing an economically distressed location to suffice for demonstrating the creation or retention of LMI jobs since most members of that community would presumably occupy positions at those businesses. Businesses assisted with such assistance should attest to adhering to the overall job creation and retention of LMI persons. In addition, establishing a place-based poverty threshold of 20 percent is a rigorous standard and is utilized when defining persistently poor communities and for other federal economic development programs, including the New Markets Tax Credit program.

This proposed change addresses a critical challenge in economic development efforts: the difficulty of documenting LMI status due to data collection constraints. By shifting the focus towards a presumption of LMI status based on the geographic location of a business in economically distressed communities and leveraging more recent American Community Survey data to define such areas, HUD is taking a pragmatic and efficient step forward. This approach not only streamlines the process for qualifying economic development activities but also ensures that the benefits of such initiatives are more accurately targeted toward communities that are most in need.

LISC agrees that the proposed approach would reduce the burden on businesses and jurisdictions seeking to use CDBG funds in underserved communities. Allowing for a presumption of LMI status would reduce administrative burdens and protracted processes that typically hinder economic development, small business, and microenterprise support under CDBG that often deters localities, particularly those with limited capacity, from leveraging these resources to foster inclusive economic growth.

There is a notably low rate of CDBG funds utilization for economic development within underserved communities. Our experience at LISC and our partners indicate that confusing legislative and regulatory guidance is a major contributing factor. Specifically, the job creation and retention requirements are misaligned with the current job market and the realities of job creation/retention in rural and low-income communities. By adopting a more enabling framework as proposed, LISC believes HUD can help ensure that CDBG, a unique resource for economic growth, can be leveraged more effectively by localities and states.

HUD could encourage improved economic development in underserved communities by increasing the role and availability of specialized technical support to municipalities and organizations in underserved areas to help them effectively access and utilize federal funds, including assistance in grant writing, project planning, and compliance. HUD should also thoroughly analyze all guides and FAQ economic development resources currently available on HUD Exchange, as many items have not been updated for a significant time.

CDBG recipients can foster investment in historically marginalized communities by adopting comprehensive strategies that combine targeted financial incentives, such as tax breaks, grant matching, and low-interest loans for businesses investing in affordable housing, green energy, and local entrepreneurship. Encouraging public-private partnerships can leverage private investment for critical community projects, including infrastructure and public services, ensuring tangible benefits for residents. By implementing flexible zoning laws and expedited permitting for projects committed to community benefits, local governments can help facilitate the development of commercial and mixed-use spaces in underserved areas. Investing in workforce development is an underutilized strategy and utilizing CDBG funds to support training programs and apprenticeships that prepare community residents for high-demand jobs can boost local employment and attract further investment. Moreover, empowering community engagement by funding local planning and development organizations ensures that investment *projects are community-led, meet the specific needs and aspirations of the residents, and foster long-term commitment to the area's revitalization.*

<u>Prevention or Elimination of Slums of Blight</u>
HUD also proposes to revise the criteria for activities that address slums and blight on an area basis. Some of the criteria for activities to address slums or blight on an area basis are subjective and difficult for HUD to verify and monitor. The proposed revisions to §§ 570.208(b)(1)(ii) and 570.483(c)(1)(ii) would allow the recipient to determine the type of objectively verifiable data that demonstrates that the area is experiencing physical or economic distress, such as abandoned properties and properties with known or suspected environmental contamination. The proposed rule also would update recordkeeping requirements for this revision at § 570.506(b)(8)(ii). For activities that address slums or blight on a spot basis, the proposed revisions at §§ 570.208(b)(2) and 570.483(c)(2) would remove the requirement that rehabilitation activities be limited to eliminating conditions detrimental to public health and safety. HUD has interpreted ''detrimental to public health and safety'' to mean that the condition must pose a threat to the general public. This requirement presents a major hurdle for recipients seeking to address slums and blight in their communities because it limits rehabilitation activities that recipients can carry out.

Recommendation: LISC supports HUD's proposal to revise the criteria for addressing slums and blight, both on an area and spot basis, as it represents a significant improvement in how community revitalization projects can be approached and implemented. By allowing recipients to use verifiable data to demonstrate physical or economic distress, such as the presence of abandoned properties or environmental contamination, HUD acknowledges the complexity and variety of challenges that distressed communities face.

Furthermore, updating recordkeeping requirements to align with these changes will improve the efficiency and accountability of projects addressing slums and blight. By removing the restrictive requirement that rehabilitation activities must eliminate conditions solely detrimental to public health and safety, HUD opens the door for a broader range of revitalization efforts. This change recognizes that economic and social revitalization plays a crucial role in improving public health and safety by addressing underlying issues of blight and disinvestment.

The proposed revisions will likely encourage recipients to engage more actively in underserved and blighted communities by providing greater flexibility and a clearer pathway to address complex challenges. This approach supports economic development in areas most in need and aligns with HUD's goal of ensuring that funds are used effectively to benefit the general public.

HUD could also consider introducing incentives for projects demonstrating significant community engagement and impact. Establishing clear, measurable outcomes for revitalization efforts could also help balance flexibility with accountability, ensuring that funds contribute to meaningful and sustainable improvements in targeted communities.

<u>Documentation of National Objectives Criteria Compliance—Creation or Retention of Jobs § 570.506</u>

Section 570.506 (for entitlement CDBG and Section 108 recipients) requires each recipient to establish and maintain records sufficient to enable HUD to determine whether the recipient has met applicable requirements, including whether activities meet the criteria for national objectives at § 570.208. Recipients may meet those criteria by carrying out activities (e.g., economic development activities) that benefit LMI persons based on the creation or retention of jobs. The recipient must maintain information on the size and annual income of the person's family, except for activities presumed to benefit LMI persons based upon the census tract where the person resides or in which a business is located. Currently, this information is gathered primarily by the assisted business from employees and their family members. HUD does not prescribe methods for documenting LMI status, so they will vary by grantee (as to the information it requires the business to collect) and by business (ranging from self-certification to

externally provided information). The proposed rule would make two changes to the documentation requirements at § 570.506 to reduce the burden on businesses in documenting jobs held by or made available to LMI persons.

LISC supports HUD's proposed changes to Section 570.506 and believes these changes would reduce the administrative burden on businesses participating in economic development projects funded by CDBG, making these initiatives more appealing and accessible. By allowing recipients to collect family size and annual income data or use wage information as a proxy for LMI status, HUD is making strides toward reducing the administrative burden on businesses. Reducing the complexity and workload associated with verifying LMI benefits, HUD is removing a critical disincentive, encouraging more businesses to participate in economic development activities vital for community growth and revitalization.

The benefits of simplified documentation and the broader objectives of encouraging economic development through CDBG funds must be accessible to all communities, regardless of their size or resource level. LISC encourages HUD to consider opportunities to support lower-capacity jurisdictions and rural areas, particularly those lacking the administrative infrastructure or resources needed to manage these additional data collection responsibilities efficiently.

LISC agrees that focusing on the income provided by the job rather than the employee's total household income will more accurately target the intended beneficiaries—individuals and families in LMI brackets. This method is more in line with the realities of the labor market and the diverse financial situations of American households. It ensures that jobs created or retained through CDBG funding directly support those in need, irrespective of their household composition.

LISC also recognizes the potential concern that substituting wage information for comprehensive family income data might incentivize employers to suppress wages to qualify for assistance. However, we believe that the overarching benefits of streamlining the documentation process and enhancing the attractiveness of CDBG funds for economic development projects outweigh this risk. It's important to consider the context within which these CDBG-funded economic development activities occur. The primary goal is to stimulate economic growth and job creation in communities historically marginalized or overlooked by investment. By simplifying the documentation requirements, HUD removes significant barriers to businesses' participation in these activities, thereby increasing the likelihood of impactful investments in these communities. Through careful implementation, oversight, and additional support for lower-capacity areas, HUD can mitigate these concerns while significantly benefiting communities in need.

<u>Public Benefit Standards § 570.209</u>

The public benefit standards set forth the types of public benefit that will be recognized and the minimum level of each that must be obtained for the amount of CDBG funds utilized. HUD proposes numerous updates to the proposed benefits standards.

LISC agrees with HUD's proposed changes to Section 570.209 and believes these updates are a significant step forward in enhancing the effectiveness of CDBG funds. We also appreciate HUD's proposal to eliminate the aggregate public benefit standards. This change acknowledges the challenges and limitations that the current aggregate standards impose on recipients, particularly those with low-volume economic development programs. By removing this requirement, HUD enables more strategic and impactful use of CDBG funds for high-impact projects that can drive substantial community development and economic revitalization.

The proposed adjustments to the financial thresholds for individual activities — raising them to $100,000 per full-time equivalent (FTE) job and $2,000 per LMI person served — are critical updates that reflect the reality of inflation and the current cost of doing business. These changes will make CDBG funds a more viable and competitive source of financing for economic development projects, ultimately creating and retaining more meaningful job opportunities and enhanced services for LMI populations.

Including an alternative standard for demonstrating public benefit is an innovative approach that acknowledges the diverse and unique challenges different communities face. This flexibility allows recipients to pursue innovative projects that may not meet traditional jobs or services criteria but offer significant public benefits, such as contributing to climate resilience, supporting critical infrastructure, or aligning with the goals of other federal programs. LISC supports this move towards a more holistic and inclusive definition of public benefit that accommodates a broader range of impactful community development initiatives.

LISC endorses the proposal to calculate the cost of economic development activities financed through Section 108 using a net present value basis. This method will more accurately reflect the true costs of loan-based activities and encourage the use of loans as a viable form of economic development assistance. Recognizing loan repayments in calculating public benefit is a practical and equitable adjustment that can facilitate more strategic and effective use of CDBG funds.

<u>Mixed Use Properties</u>

HUD proposes to revise § 570.200(b)(1) to clarify that recipients can assist eligible activities if they are part of mixed-use properties that also contain ineligible uses, so long as the recipient expends CDBG funds only on the eligible use. The Department states the existing regulation lacks clarity on when this is permissible and the intent is to better facilitate support of mixed-use properties.

Recommendations: LISC supports allowing CDBG assistance to be expended for eligible costs in a mixed-used property, even if the development has components which aren't eligible for CDBG funding. This is consistent with restrictions on other federal affordable housing and community development programs.

<u>Low and Moderate Income—Housing Activities</u>

To demonstrate compliance with the LMI housing national objective, a CDBG-assisted residential structure must be occupied by predominantly LMI households. Unlike the other LMI national objectives, meeting the LMI housing national objective is based on households rather than individuals or families. A household is all the persons that occupy a housing unit, whether related or unrelated. Meeting the LMI housing national objectives criteria is also based on the number of housing units. Each single-unit structure must be occupied by an LMI household. In a two-unit structure, one unit must be so occupied. Where there are three or more units in a structure, a minimum of 51 percent of the households must be occupied by LMI households. CDBG assisted activities that may meet this national objective include homeownership assistance, housing rehabilitation (single and multifamily), and acquisition of real property where a recipient or subrecipient will construct housing units using another funding source.

Some exceptions permit eligible activities to meet the LMI housing national objective where less than 51 percent of multifamily units are occupied by LMI households. Such activities include assistance for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project where not less than 20 percent of the units will be occupied by LMI households at affordable rents. In addition, the proportion of the total cost of developing the project to be paid with CDBG funds must be no more than the proportion of units in the project that will be occupied by LMI households. The proposed rule would add as additional exceptions substantial rehabilitation and conversion of a nonresidential structure to a multifamily, non-elderly rental housing project. This change would align treatment of substantial rehabilitation with new construction for purposes of meeting the national objectives criteria for housing activities.

Recommendations: LISC supports adding substantial rehabilitation and conversion of a nonresidential structure to a multifamily under the exception rules. Very little CDBG assistance is utilized for multifamily purposes and allowing grantees greater flexibility and predictability will allow for them to *better meet needs, especially in the current market with high commercial vacancy rates and low housing supply.*

We thank HUD for the opportunity to offer suggestions. Please contact Mark Kudlowitz (mkudlowitz@lisc.org), LISC Senior Director of Policy, if you need additional clarification or follow up on any of the recommendations provided in this letter.

Sincerely,

Matt Josephs
Senior Vice President for Policy