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PROGRAM BULLETIN

Date: October 12, 2018

To: HOME Program Community Land Trust Partners

From: Carol Ventura, Deputy Director and Eric Alexander, Assistant Director of Development

Subject: HOME Program Community Land Trust Partners/Right of First Refusal Language in Ground Leases

Bulletin #: 2018-05

This notice is to inform HOME Investment Partnerships Program (“HOME Program”) Community Land Trust (“CLT”) partners of recent information provided by the U.S. Department of Housing and Urban Development (“HUD”) regarding authorization for CLTs to include “right of first refusal” provisions in their ground leases. This authorization is effective **immediately** and source documentation is included below for your reference.

As a consequence of HUD’s 2015 monitoring of the RIHousing HOME Program, HUD advised RIHousing that CLT ground lease provisions which incorporated right of first refusal language were noncompliant. Accordingly, RIHousing advised its CLT partners that HOME Program rules did not allow CLTs to exercise their right of first refusal by purchasing existing HOME Program-restricted units at resale and subsequently reselling the units to income-qualifying households. At HUD’s direction, RIHousing advised CLTs that exercising their right of first refusal would be in direct violation of the HOME Program requirement found at 24 CFR 92.254(5)(i) which requires HOME Program homeownership units to be “made available for subsequent purchase *only* to a buyer whose family qualifies as a low-income family and will use the property as the family’s principal residence” *{emphasis added}*.

However, on August 27, 2018, HUD changed its position and informed RIHousing staff that language allowing CLTs to utilize their right of first refusal had been incorporated into the Consolidated Appropriations Act, 2016 (2015; 114 Congress HR 2029). The language follows (pertinent language **bolded**):

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“HOME Investment Partnerships Program

For the HOME Investment Partnerships program, as authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, \$950,000,000, to remain available until September 30, 2019: Provided, That notwithstanding the amount made available under this heading, the threshold reduction requirements in sections 216(10) and 217(b)(4) of such Act shall not apply to allocations of such amount: Provided further, That the requirements under provisos 2 through 6 under this heading for fiscal year 2012 and such requirements applicable pursuant to the “Full-Year Continuing Appropriations Act, 2013,” shall not apply to any project to which funds were committed on or after August 23, 2013, but such projects shall instead be governed by the Final Rule titled “Home Investment Partnerships Program; Improving Performance and Accountability; Updating Property Standards” which became effective on such date: NOTE: 42 USC 12745 **Provided further, that with respect to funds made available under this heading pursuant to such Act and funds provided in prior and subsequent appropriations acts that were or are used by community land trusts for the development of affordable homeownership housing pursuant to section 215(b) of such Act, such community land trusts, notwithstanding section 215(b)(3)(A) of such Act, may hold and exercise purchase options, rights of first refusal or other preemptive rights to purchase the housing to preserve affordability, including but not limited to the right to purchase the housing in lieu of foreclosure:** Provided further, That the Department shall notify grantees of their formula allocation within 60 days of enactment of this Act.”

CLTs are therefore authorized immediately to exercise, or continue to exercise, their right of first refusal with HOME Program-restricted units. RIHousing staff will continue to work with its CLT partners to ensure that their ground leases are in compliance with the HOME Program in other respects. If you have any questions about this Program Bulletin, please contact Eric Alexander, Assistant Director, by telephone at (401) 457-1236 or by email at ealexander@rihousing.com.