Challenges and Policy Options for Creating and Preserving Affordable Housing near Transit and in Other Location-Efficient Areas

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December 2010

CENTER FOR HOUSING POLICY

NATIONAL HOUSING CONFERENCE

WHATWORKS COLLABORATIVE

Building Knowledge & Sharing Solutions for Housing & Urban Policy

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Acknowledgements

The *What Works Collaborative* is a foundation-supported research partnership that conducts timely research and analysis to help inform the implementation of an evidence-based housing and urban policy agenda. The collaborative consists of researchers from the Brookings Institution's Metropolitan Policy Program, Harvard University's Joint Center for Housing Studies, New York University's Furman Center for Real Estate and Urban Policy, and the Urban Institute's Center for Metropolitan Housing and Communities, as well as other experts from practice, policy, and academia. Support for the collaborative comes from the Annie E. Casey Foundation, Ford Foundation, John D. and Catherine T. MacArthur Foundation, Kresge Foundation, Rockefeller Foundation, and Surdna Foundation.

Executive Summary

This report examines specific, actionable non-statutory changes that the U.S. Department of Housing and Urban Development—and partner agencies—could adopt to better facilitate and encourage the development and preservation of affordable and workforce housing in location-efficient areas. These are areas near transit, employment centers, or other essential services that allow families to reduce the number and extent of necessary car trips. Transit as defined in this report encompasses reliable bus, bus rapid transit, street car, light and heavy rail commuter service and subway. Transit-oriented development (TOD) refers to new residential, commercial, and mixed-use development and the preservation, renovation, or rehabilitation of real estate within walking distance of these modes of transportation.

We gathered the challenges and policy options included in this report in the summer of 2010 from practitioners and thought leaders from around the country, including many individuals that develop, facilitate, or promote transit-oriented development and other forms of location-efficient development. A variety of venues, including two in-person forums, personal interviews, an online survey, and an online forum page were used to gather the information. The report was prepared for the *What Works Collaborative.*

This report addresses four topical areas, all related to providing affordable and workforce housing in the context of development oriented around transit, employment centers, and other location-efficient areas:

1. Developing Sustainable and Inclusive Communities
2. Ensuring Long-Term Affordability
3. Serving Very Low Income Residents
4. Preserving and Fostering Affordable Housing Opportunities in the Broader Neighborhood

Outlined here are the challenges and policy options for each of the topical areas suggested by practitioners and thought leaders interviewed for this report. More specific policy options follow in the full report.

a. Developing Sustainable and Inclusive Communities
The growing popularity of transit-oriented development is good news for a variety of reasons. However, as recent research confirms, housing and land prices often rise sharply in neighborhoods close to transit stations,[1] which can make it difficult for low-income and working families to find affordable housing near transit.

While the new Interagency Partnership for Sustainable Communities has set out as a goal for federal policy the promotion of affordable housing near transit, our research identified a number of cases in which federal programs are not well coordinated to support the development of affordable and workforce housing near transit stations and may even inadvertently create incentives for the location of affordable and workforce housing in areas that are not location-efficient, such as outlying suburbs with limited or inconvenient public transit options. In addition, at the state, regional and local levels, many

[1] A recent study from the Dukakis Center at Northeastern University that addresses this issue is "Maintaining Diversity in America's Transit Rich Neighborhoods: Tools for Equitable Neighborhood Change," http://www.northeastern.edu/dukakiscenter/documents/TRN_Equity_final.pdf.

governmental agencies lack the knowledge and capacity to adequately plan for affordable and workforce housing in location-efficient areas.

Federal agencies have an important role to play in addressing these challenges. Some changes which could potentially facilitate sustainable and inclusive communities near transit include

- *Adjusting underwriting, mortgage insurance, and mortgage limit requirements to better support the development of affordable and workforce housing at transit locations.*
- *Offering additional incentives to support location-efficient affordable and workforce housing through the Federal Transit Administration's (FTA's) New Starts/Small Starts programs.*
- *Helping local governments and nonprofits with land acquisition through changes to the CDBG program.*
- *Providing research, best practices, guidance and leadership to support effective federal policy and build capacity at the state, regional, and local levels.*

b. Ensuring Long-Term Affordability around Transit

Major investments of public funds will be needed to ensure that a portion of housing units near transit are affordable to low-and moderate income families. To protect this substantial public investment and ensure that such families have continued access to sustainable communities, these public investments ideally should be accompanied by legal requirements that ensure the housing remains affordable over the long-term.

Many of the major programs that fund affordable housing do not require or effectively encourage long-term affordability. For instance, the HOME program—the largest federal program dedicated to affordable housing—requires a minimum affordability period of only 15 years for major investments in affordable homeownership and a minimum affordability period of only 20 years for new construction of rental housing. In addition, regulations for other major tools that support homeownership for lower income families, like FHA insurance, are not always compatible with programs that seek to provide long-term affordability (i.e., community land trust programs).

There are a number of steps that HUD could take to help strengthen incentives for long-term affordability in these programs and provide other incentives to promote and sustain long-term affordability near transit, including

- *Changing the HOME program rule to extend the affordability periods for major HOME investments.*
- *Modifying FHA regulations to be more supportive of long-term affordable homeownership.*
- *Requiring or creating incentives for long-term affordability in competitive programs related to new public transit investments or TOD.*

c. Serving Very Low Income Residents around Transit

Creating or preserving housing for very low income families (generally, 50 percent or less of area median income) in high-density, location-efficient areas is often not financially feasible without dedicated federal rental assistance subsidies. Yet this is precisely the income group most likely to need the transit and other vital services that such areas provide. If communities do not adopt policies to preserve and expand housing affordable to this population close to transit at the outset of major transit investments, it will only become more difficult to do so in the future as rents and home prices in these areas increase.

In the United States, there are over 200,000 federally subsidized rental units close to transit. However, there is the potential for the subsidies on more than two-thirds of these units to expire, which would greatly compromise affordability near transit across the country. To add to this, public housing authorities lack incentives to attach project-based subsidies to units near transit and job centers, even though they have the ability to do so.

HUD could take a number of steps to preserve affordability for very low income populations and facilitate the subsidizing of properties in location-efficient areas. Some of these steps include:

- *Preserving subsidy, and improving the physical condition and financial viability of projects close to transit*.
- *Incorporating incentives and requirements into HUD programs to encourage the development of deeply affordable units and the provision of deep subsidies near transit centers*.[2]

d. Preserving and Fostering Affordable Housing Opportunities in the Broader Neighborhood
Major infrastructure investments, like new transit investment, can spur revitalization and create amenities that benefit residents of all income levels. At the same time, however, it can drive up housing prices, leading to displacement of low- and moderate-income families. Major housing investments (such as HOPE VI) can, in some cases, also have this type of impact. To ensure that major housing and transportation investments do not lead to an overall loss of affordability in the broader neighborhoods in which communities make those investments, it is important to consider and address the potential for such spillover effects in designing and implementing these investments.

Options for addressing these issues include

- *Requiring a thorough assessment of potential spillover effects prior to project initiation and a plan for addressing those effects to ensure ongoing affordability*.
- *Providing guidance on promising strategies for managing spillover effects*.

[2] HUD is presently studying the potential to move to a system of smaller-area FMRs. In carrying out this evaluation, it would be useful to examine the extent to which this change ensures that FMRs are adequate to facilitate the use of housing vouchers near transit stations (particularly new transit stations, where prices may be changing rapidly) and in other location-efficient areas.

Contents

I. Introduction

The purpose of this report is to examine specific, actionable changes that the U.S. Department of Housing and Urban Development could make to better facilitate and encourage the development or preservation of affordable and workforce housing in location-efficient areas. These are areas near transit, employment centers, or other essential services that allow families to reduce the number and extent of necessary car trips. Where possible, these changes are limited to regulatory and administrative changes that do not require legislative approval. Due the complexity of this type of development and the importance of coordinating policy across silos and levels of government, the report also includes a number of recommendations for other federal agencies as well as state, regional and local agencies.

Transit as defined in this report encompasses reliable bus, bus rapid transit, street car, or light and heavy rail commuter service and subway. Transit-oriented development (TOD) refers to new residential, commercial, and mixed-use development and the preservation, renovation, and rehabilitation of existing real estate within walking distance of these modes of transportation. It is a general assumption of this report that transit-oriented development refers to development at or around transit stops that is more concentrated (i.e., at a higher density) than in the surrounding areas. “Higher density” is a relative term and obviously means something different in New York City than it does in Boise, Idaho. Clustered small single family homes on small lots and townhomes could be significantly higher density than the “surrounding areas” in many parts of the country. In this report however, TOD does not refer to low-density development that happens to have transit located near-by.

II. Research Methodology and Report Structure

The information and policy options included in this report have been gathered from practitioners and thought leaders from around the country, including many individuals that develop, facilitate, or advocate for transit-oriented development and other forms of location-efficient development. The information was gathered over a three-month period in the summer of 2010 through a variety of venues. Two meetings were assembled, one in San Francisco, and one in Washington, D.C., to gather the thoughts, ideas and recommendations of transit-oriented developers, public officials, and thought leaders. Dozens of personal interviews were conducted and an online survey was made available to a broad segment of land use professionals who couldn’t attend a meeting or participate in a personal interview. In addition, an online forum page was created in order to access a broad range of current knowledge and thinking on the topic of providing affordable and workforce housing in transit-oriented development and in job centers.

The report addresses four topical areas, all related to providing affordable and workforce housing in the context of development oriented around transit, employment centers and other location-efficient areas:

1. Developing Sustainable and Inclusive Communities
2. Ensuring Long-Term Affordability
3. Serving Very Low Income Residents
4. Preserving and Fostering Affordable Housing Opportunities in the Broader Neighborhood

The report is structured to first describe the existing challenges in each topical area and then outline specific policy options that could be considered to help overcome these challenges.

III. Background and Overview

Over the past decade, a consensus has developed among land use professionals that the areas surrounding major public investments in transit infrastructure should be more intensely developed. This consensus flows from the numerous benefits and efficiencies created by TOD, including reductions in energy use, greenhouse gas emissions, and traffic congestion that flow from lower car usage and other efficiencies created by compact development. TOD also creates a built-in ridership for public transit and generates property tax revenues for the community.

Demographic changes (such as a growing number of older adults and younger adults without children) have also supported public interest and demand for the more convenient lifestyle provided by TOD. And many communities are simply out of developable land and have no way to accommodate new demand without compact development near transit or in other location-efficient areas. Many also view TOD as a technique for "placemaking," creating vibrant town centers and giving their community a new identity and new amenities.

While positive in many ways, the general success of TOD has created some unfortunate, unintended negative consequences. Some of the communities surrounding major investments in transit have seen property and land values rise rapidly,[3] which is helpful for communities trying to recapture their investment in transit. The rising property and land values experienced in some communities, however, can make it difficult for middle- and low-income families—the very households that need access to transit the most—to afford to live within the new and existing communities around transit stations.

Local communities have difficulty creating and preserving housing affordability in these areas for myriad reasons. While all land development involves a calculation of risk and return, the past success of TOD has made investment in land surrounding new transit investments a less risky proposition in strong markets. Private developers begin purchasing land and properties around proposed transit stops well before a shovel hits the ground. Such speculation drives up land and property prices making it difficult for local governments and affordable housing developers to acquire important parcels or to preserve existing affordable housing.

Even if land can be acquired by local governments and affordable housing developers, developing TOD is costly and complex—in part due to the need for such infrastructure investments as structured parking, roads, sidewalks, water, etc.—making affordable and workforce housing production difficult in these areas. In fact, the cost and complexity makes it difficult to build even market-rate middle-income housing in these locations, leading to a tendency for the production of high-end luxury housing. And while transit investments have a very long lifespan, affordable housing has much shorter affordability restrictions, sometimes as low as 10–15 years. So even if development can be completed, there is still the risk that any affordability will be lost in a relatively short time period when compared with the life of the transit investment. Housing policy interventions are needed to ensure that areas surrounding transit are and remain affordable to a diverse group of households.

[3] A recent study from the Dukakis Center at Northeastern University that addresses this issue is "Maintaining Diversity in America's Transit Rich Neighborhoods: Tools for Equitable Neighborhood Change," http://www.northeastern.edu/dukakiscenter/documents/TRN_Equity_final.pdf

Access to public transit is integral to successful outcomes for many working families. Many cannot afford the costs of car ownership, insurance and maintenance and rely on access to public transportation to get to work, grocery stores, daycare, etc. Others find that transit allows them to reduce the number of cars they need to own or reduce the extent of car usage. Development near transit or employment centers allows families to reduce their combined cost of place (i.e., the costs of housing, utilities and transportation), helping them better afford essential health care, education, and food expenses.

As noted in the discussion of policy options below, additional research would be useful to analyze which types of neighborhoods are most likely to experience significant housing price increases due to public transit and other public investment. Such research would help local, state and federal policy makers to identify which neighborhoods are most at risk of rapid price increases, and thus most in need of proactive steps to preserve and expand affordability. Additional research would also be useful to assess the impacts of different approaches to housing affordability. TOD is already complex to develop, and some fear that additional affordability requirements could increase costs further, preventing needed TOD from taking place. There are a number of strategies for addressing these concerns—such as providing developers that include affordable housing in their developments with offsetting benefits, such as increased density. While this issue has been studied at the state- and metro-area level, specific examination of how it plays out in the context of TOD would be useful.

> **NOTE:** In any discussion of supporting affordable housing in TOD, it is important to remember that at its core TOD is all about location efficiency, which can be created in areas without major transit investments as well. This is especially important in discussions about providing affordable housing in areas, such as rural communities, smaller cities and towns, and suburban areas without major transit investment but with significant affordable housing needs. The American Institute of Architects (AIA) has outlined a series of factors in rural areas that would create location efficiency. These factors could be used in both rural areas and smaller cities as a guide to support location efficiency in "town centers" which may lack major transit systems. They include giving preference to locations within a half mile of five community services, such as retail establishments, health care providers, schools, etc.[4]

IV. Challenges and Policy Options

a. Developing Sustainable and Inclusive Communities

Challenges	Policy Options
1. Some federal programs do not support the development of location-efficient affordable and workforce housing near transit and job centers.	1. In the FHA mortgage underwriting process, treat TOD differently from development near transit and power lines without transit access. 2. Create micro-level high-cost areas within cities with higher FHA mortgage limits to facilitate the development of affordable housing near transit and in other location-efficient areas. 3. Allow non-profit affordable housing providers, affordable housing land banks, and state and local agencies to use CDBG funds for land banking in

[4] American Institute of Architects (2010). "Promoting Livable Communities: Examining the Internal Revenue Code and Reforming its Influence on the Built Environment," http://www.aia.org/aiaucmp/groups/aia/documents/pdf/aiab083048.pdf

	areas that are slated for transit investments.
2. Few financial incentives exist to encourage affordable and workforce housing in transit-accessible locations near job centers; indeed, by favoring lower-barrier, lower-cost development, some federal programs inadvertently create incentives for affordable and workforce housing to be located far from transit and job centers.	1. Through the FTA New Starts/ Small Starts program, the FTA could support sustainable and inclusive communities by creating incentives for affordable and workforce housing near planned transit stops. 2. In allocating the limited amount of 221(d)(4) subsidy, give priority to transit-oriented development (or other location-efficient development) that includes an affordable component. 3. Consider classifying affordable housing near transit as "innovative development" under the Community Reinvestment Act (CRA), thereby allowing it to qualify for extra CRA credit. 4. Conduct a research study and analysis to examine opportunities for federal lending or credit enhancement to support the expanded use of tax increment financing for TOD with an affordable housing component. 5. Encourage states to give preference to projects close to transit in their Qualified Allocation Plans and, when needed to facilitate these projects' development, extend the 30-percent basis boost under the LIHTC program to developments proximate to transit stations.
3. Many communities lack the capacity to sufficiently plan for affordable and workforce housing around transit and federal guidance is limited.	1. Encourage the effective coordination of Consolidated Plans, Long Range Transportation Plans, and Transportation Improvement Plans. 2. Share the best practices gathered through the DOT TIGER grant and HUD Community Challenge grant process. 3. Compile data on costs, absorption, and performance of affordable and workforce housing near transit to demonstrate value and induce investors to consider these projects. 4. Provide guidance and leadership to communities through the dissemination of best practices and technical assistance.
4. A number of current funding practices unnecessarily hamstring affordable housing developers, making it difficult for them to compete effectively with market-rate developers for land near transit.	1. Encourage a portfolio-wide review when determining underwriting standards to allow high-capacity affordable housing developers to borrow against operating reserves from high-performing properties for predevelopment and short-term acquisition loans, thereby encouraging sustainable development in areas around transit and job centers. 2. Reconsider funding approaches under HOME to allow affordable housing developers to build equity and capacity. 3. Clarify that investments in mixed-income, mixed-use housing are charitable contributions under IRS rules.

Challenge 1: Some federal programs do not support the development of location-efficient affordable and workforce housing near transit and job centers.

Many HUD programs focus on the bottom line of creating or preserving affordable housing without significant attention given to the location-efficiency of the housing. And likewise many DOT programs focus on delivering transit without adequately considering the impact of transit investments on the surrounding land use, such as changes in housing affordability. Consequently, these programs weren't necessarily designed to work together or to specifically support sustainable and inclusive communities.

The following policy options address this first challenge by modifying existing federal policies to better support location-efficient development:

Policy Option: In the FHA mortgage insurance process, treat TOD differently from development near transit and power lines without transit access.

HUD provides guidance for underwriting for FHA 1-4 family insured mortgages. Part of that guidance addresses "Hazards and Nuisances" including "Railroad Tracks and Other High Noise Sources" and "Overhead High Voltage Transmission Towers and Lines,"[5] to discourage development in hazardous areas. There is a significant distinction between properties located near rail and power lines without transit access and those with transit access. In the first situation, rail and power lines may be viewed as a hazard and nuisance, but in the latter the presence of both may be necessary components of TOD and viewed as an asset. In addition, underwriting in areas planned for major transit investments should account for the transformative nature of the new transit. These areas often change from being industrial in nature to being residential and mixed-use communities and underwriting could reflect this. Practitioners suggest these underwriting changes could significantly facilitate the use of FHA insurance for TOD developments.

Policy Option: Create micro-level high-cost areas within cities with higher FHA mortgage limits to facilitate the development of workforce housing near transit and in other location-efficient areas.

The FHA mortgage limits generally don't account for small high-cost sub-areas within cities that are not otherwise designated as "high cost areas." Examples would be smaller cities, such as Austin, Texas, where there are close-in location-efficient neighborhoods with higher housing costs, yet the overall MSA is not designated as a "high cost area". The areas near public transit stations, job centers, and other location-efficient areas may have costs that are above the FHA mortgage limits FHA develops for the broader city or region. By preventing FHA and HOME funds from being used to purchase or rehabilitate homes in these location-efficient high-cost sub-areas, this policy may discourage federal support for location-efficient workforce housing.

The FHA mortgage limits have applicability to both FHA insurance and the HOME program. HOME funds can be used for the acquisition and/or rehabilitation of existing structures for sale to income-eligible homebuyers as long as the units' appraised value does not exceed 95 percent of the mortgage limits under the FHA 203(b) mortgage insurance program. In cities that are not designated by the FHA as "high cost areas"—where loan limits can be significantly increased—there are sometimes pockets where housing is expensive and unaffordable. These high-cost sub-areas are sometimes located in close proximity to transit stations and other amenities. Due to the mortgage limits, however, HOME funds end up distributed to the outlying areas and higher poverty, lower-valued inner-city areas where the 95 percent of area median price requirement can be met more easily. The policy also prevents FHA insurance from being used to help moderate-income families purchase homes in these location-efficient sub-areas. These policies may contribute to a lack of workforce housing in closer-in areas served by transit.

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[5] U.S. Department of Housing and Urban Development (http://www.hud.gov/offices/hsg/sfh/ref/sfhp1-18.cfm)

Policy Option: Allow non-profit affordable housing providers, affordable housing land banks, and state and local agencies to use CDBG funds for land banking in areas that are slated for transit investments. Building new transit infrastructure is a lengthy process. Residential developers in these areas have similarly long development horizons, requiring them to carry the land for a long period of time. This is especially true in mixed-income developments with market-rate units that rely on the transit amenity to justify higher rents on those units which often help make such developments financially feasible. Affordable and workforce housing developers have few funding sources available that allow them to hold land long enough to capture the benefits of transit. If developers wait until the transit line has opened to acquire land, land prices may be prohibitively high, precluding many affordable and workforce projects from getting built, or limiting the number of units that can be provided.

The time horizon for HUD funding sources may need to be revisited in order to appropriately fund TOD. Land banking with CDBG funds is technically not permitted; recipients of CDBG funds can hold their land for only two years given "the very high risk that the delay between acquiring property and meeting a national objective can be excessively long."[6] An exception was made for Neighborhood Stabilization Program (NSP) funds which were allocated through the CDBG program. Land banking was permitted for ten years with NSP funds due to the long-term redevelopment horizon of some neighborhoods that were particularly hard hit by the foreclosure crisis.

Transit-oriented development has a similar long-term development horizon due to the length of time required to construct major transit investments. Practitioners contacted for this report said that two years is almost never a sufficient amount of time to hold land for community redevelopment and revitalization purposes, especially in neighborhoods close to transit in which the targeted date for initiating development of such land may not be for several years. Five years—and ideally even longer– would be needed to hold land for redevelopment strategies in areas undergoing major transit investment. This longer timeline would allow nonprofit affordable housing developers, affordable housing land banks, and state and local agencies to compete with the private sector on land acquisition. And it would allow land to be reserved for affordable and workforce housing in areas that are likely to gentrify, and areas that allow working families to also lower their transportation costs.

One note of caution: some of the practitioners with whom we spoke underscored the difficulties involved in predicting which areas are likely to experience increases in land prices sufficient to justify substantial development. This suggests that communities should proceed cautiously in developing and implementing land bank approaches so as to keep risks to a manageable level. HUD could help by providing training and guidance on the risks and rewards of land banking and the circumstances under which it is most likely to be successful.

Challenge 2: Few financial incentives exist to encourage affordable and workforce housing in transit-accessible locations near job centers; indeed, by favoring lower-barrier, lower-cost development, some federal programs inadvertently create incentives for affordable and workforce housing to be located far from transit and job centers.

The following policy options may help address this challenge by aligning incentives to encourage the development of affordable and workforce housing near transit and in other location-efficient areas:

[6] http://www.hud.gov/offices/cpd/about/conplan/foreclosure/doc/landbanksfactsheet.doc.

Policy Option: Through the FTA New Starts/ Small Starts program, the FTA could support sustainable and inclusive communities by creating incentives for affordable and workforce housing near planned transit stops.

Of all the opportunities to create incentives for developing and preserving affordable housing near transit, the New Starts / Small Starts program may be one of the most important. This program awards major federal grants for new transit lines and new stations along existing lines through a competitive process. At present, however, no consideration is given to the affordable housing policies of applicants. At no cost to the federal government, FTA could modify the competition to create strong incentives for applicants to preserve and expand affordable housing near planned transit stations.

One approach is for FTA to give partial credit toward the local match for qualifying investments in affordable housing within one-half mile of planned station stops (both New Starts and Small Starts). This could be structured in a way that would have no impact on the amount of federal contribution to projects but, via the financial justification score, would elevate proposals that co-invest in affordable housing. Jurisdictions could receive 50 cents on the dollar for affordable housing with long-term affordability covenants (See the following section on importance of long-term affordability) and 33 cents on the dollar for all other affordable housing investments.

In addition, FTA could develop new ratings factors for the New Starts program (only) that award greater points to jurisdictions that agree to make greater investments in affordable housing within one-half mile of planned transit stops. These could include giving credit to areas that commit to ensuring that a share of new development is affordable to moderate-income families through such mechanisms as inclusionary zoning, density bonuses, developer agreements, etc. To address the housing needs of families with lower incomes, further credit could be given for the preservation of existing low-income housing or for the development of new low-income housing or by locating proposed stations near existing subsidized housing development.

A specific proposal for modifying the New Starts program in this manner was submitted to FTA in August 2010 by Enterprise Community Partners, Habitat for Humanity International, and the National Housing Conference. It is available online here: http://www.nhc.org/media/files/Final_Enterprise_-_Habitat_-_NHC_New_Starts_ANPRM_Comments.pdf

Policy Option: In allocating the limited amount of 221(d)(4) subsidy, give priority to transit-oriented development (or other location-efficient development) that includes an affordable component.

The FHA 221(d)(4) program provides mortgage insurance for multifamily housing to facilitate the new construction or substantial rehabilitation of multifamily rental or cooperative housing for moderate-income families, elderly, and the handicapped. Single Room Occupancy (SRO) projects may also be insured under this section. The program allows for long-term mortgages (up to 40 years) that can be financed with Government National Mortgage Association (GNMA) Mortgage Backed Securities. Given the limited amount of subsidy available, the program can be selective in determining how and where it invests. Giving priority to location-efficient areas can create incentives for the development or preservation of affordable and workforce housing projects in transit-accessible areas that provide numerous public benefits. Priority could be given to projects that include a mix of incomes, creating incentives for mixed-income communities as well.

Policy Option: Consider classifying affordable housing near transit as "innovative development" under the Community Reinvestment Act (CRA), thereby allowing it to qualify for extra CRA credit.

The CRA was created in 1977 to discourage "redlining," or denying financing in certain areas, which were usually racially determined. The Act encourages the financing of borrowers in the entire community served by the lending institution, including low- and-moderate income neighborhoods. Credit is given for investment in low- and moderate-income census tracts and for lending to low- and moderate-income borrowers. Extra credit is given for investments in "innovative" real estate development. Qualifying affordable housing serving low- and moderate-income residents in transit accessible locations as "innovative" development—because of its positive public benefits in providing location efficient housing with good access to transportation and the challenges involved in providing it—would create incentives for entities covered by the CRA to invest in affordable housing proximate to transit.

Policy Option: Conduct a research study and analysis to examine opportunities for federal lending or credit enhancement to support the expanded use of tax increment financing for TOD with an affordable housing component.

A number of communities have used tax increment financing districts to fund the streetscape improvements, structured parking, and physical infrastructure (i.e., sidewalks, water/sewer, etc.) needed to facilitate transit-oriented development. Based on initial experience, this appears to be a promising tool to support TOD. However, practitioners report that its use is curtailed by the challenges associated with funding the initial public investments that generate tax increment that can then be used to support a bond. (Typically, the TIF bond is only floated once there is an existing stream of tax increment to support it.) This suggests that there may be an opportunity for the federal government to provide financing or credit enhancement for local financing that would help "prime the pump" for expanded use of this tool at the local level, with the funds repaid (or the credit enhancement retired) once the TIF bond is floated.

This type of lending/credit enhancement would have two major benefits: First, it would expand the number of jurisdictions that could take advantage of this tool to stimulate TOD. Second, it would provide the federal government with critical leverage to incent or require that a share of the funds be used to support affordable housing (or alternatively, that the TOD project meet affordable housing thresholds).[7] For example, the federal government could require that jurisdictions agree to use to 20 percent of the funds initially extended (and 20 percent of the proceeds of any TIF bond used to retire the federal loan or credit enhancement) for long-term affordable housing. California similarly requires that 20 percent of TIF financing be used for affordable housing.

An analysis is needed to examine the extent of need for federal support for such early-stage investments in TOD infrastructure, options for providing it, and the leverage that might be gained to create incentives for affordable housing.

Policy Option: Encourage states to give preference to projects close to transit in their Qualified Allocation Plans and, when needed to facilitate these projects' development, extend the 30-percent basis boost under the LIHTC program to developments proximate to transit stations

[7] The Senate Banking Committee recently included a similar provision in its mark-up of the Livable Communities Act. The so-called TOD credit facility does not require a share of the funds to be spent on affordable housing, but rather requires that the TOD project meet affordable housing standards. The study should assess the pros and cons of this approach as well.

For 2010, some 32 states and Washington, DC award points to LIHTC projects for proximity to transit.[8] However, the amount of weight assigned to this preference, and the way in which the preference is structured, vary significantly from state to state. While variation by state is not in and of itself a problem, many states might welcome an analysis of the issue to help inform future QAP development. An analysis of the different approaches taken by states, along with recommendations for how to structure and weight the preference, could help ensure the preference is well defined and implemented where needed.

Depending on the outcome of this analysis, it might further be appropriate to amend IRS guidelines to require (or issue a HUD guidance recommending) that location-efficiency be considered by states in allocating LIHTCs. "Project location" is already listed as a required selection criterion under IRS guidelines[9]; the guidance could require or recommend that this criterion more specifically include proximity to transit.

The analysis should also examine the extent to which applicability of the 30 percent basis boost authorized under the Housing and Economic Recovery Act of 2008 (HERA) might help facilitate the development of projects near transit and in other location-efficient areas. Transit-oriented development often carries additional costs, including structured parking, roads, sidewalks, water, wastewater, and green space. LIHTC projects located within areas designated by HUD as a qualified census tract (QCT) or difficult development area (DDA)—generally areas that have high poverty and high development costs relative to income levels—can receive a 30-percent boost in their eligible basis. This enables them to obtain more equity to cover affordable rental units. HERA added another option for receiving the basis boost.[10] Under this option, "Any building which is designated by the state housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project shall be treated for purposes of this subparagraph as located in a difficult development area" and therefore will receive the 30-percent basis boost.[11]

One state—Missouri—allows projects near transit to receive a 30-percent basis boost under HERA. Other states apply the HERA basis-boost on a case-by-case basis. An analysis of the circumstances under which the basis boost might be needed to facilitate location-efficient development could help more states understand the issue and apply the basis boost appropriately to facilitate location-efficient development. Since the HERA basis boost may not be continued, HUD also may wish to analyze whether it would be appropriate to formally change the definition of DDAs to include qualified low-income housing near existing or planned transit centers.

By working with the IRS to promote both of these measures across more states, HUD could help encourage communities to promote and facilitate location-efficient development.

Challenge 3: Many communities lack the capacity to sufficiently plan for affordable and workforce housing around transit and federal guidance is limited.

[8] "Preserving Affordable Housing Near Transit." (2010) Enterprise, the National Housing Trust and Reconnecting America, http://www.practitionerresources.org/cache/documents/674/67410.pdf.
[9] Internal Revenue Code, Section 42 (m)(1)(C)(i).
[10] H.R. 3221: Housing and Economic Recovery Act of 2008 (http://www.govtrack.us/congress/bill.xpd?bill=h110-3221).
[11] Internal Revenue Code, Section 42 (d)(5)(B).

While transit investments can transform communities surrounding the transit stops, local communities may lack the capacity to adequately plan for the impacts of transit. Gentrification sometimes follows the introduction of transit to a community, making it difficult for working families to live near vital transit links. The federal government could play an important role in assuring that areas surrounding transit stops become, or remain, sustainable and inclusive communities.

Policy Option: Encourage the effective coordination of Consolidated Plans, Long Range Transportation Plans, and Transportation Improvement Plans.

To encourage housing agencies to consider locating their affordable housing investments under HOME and CDBG near transit and in other location-efficient areas, HUD could modify its Consolidated Plan rules to require that Consolidated Plans be coordinated with the transportation plans required of Metropolitan Planning Organizations (MPOs) and Rural Transportation Planning Agencies (RTOs).

Among other things, such coordination should involve consideration by the housing and economic development agencies responsible for submitting the Consolidated Plans of:

- The impacts of planned transportation investments on housing affordability;
- How their plans advance regional housing affordability goals;
- How their plans will help to reduce the combined costs of housing and transportation for low- and moderate-income families, in light of the accessibility and affordability of transportation options near planned housing investments;
- How they plan to ensure that low- and moderate-income families have access to permanently affordable rental housing and homeownership within close proximity to public transit stops, job centers and other essential destinations; and
- How their plans for both housing and economic development investments align with regional and neighborhood transportation investments.

In addition to changes to the consolidated planning process itself, it would be helpful for HUD to issue guidance and provide training and technical assistance on how to effectively integrate local housing plans with regional transportation, economic development and environmental plans.

Policy Option: Share the best practices gathered through the DOT TIGER grant and HUD Community Challenge grant process.

A lot of thought appears to have gone into the preparation of applications for the DOT TIGER 2 grants and HUD Community Challenge grants and many are interested in the outcomes of these grants. HUD and DOT should consider ways to capture and share information on the more promising planning practices from the successful grantees and encourage successful grantees to mentor the applicants that were not successful and provide guidance to other similarly situated communities. A process of information sharing, through a variety of venues, such as forums, websites, etc., highlighting particularly proposals focused on sustainable and inclusive communities would provide TOD best practices and help build capacity in communities seeking to facilitate successful TOD.

Policy Option: Compile data on costs, absorption, and performance of affordable and workforce housing near transit to demonstrate value and induce investors to consider these projects.

The relative newness of many TOD projects and the lack of local comparables for appraisals and underwriting may make it difficult to finance affordable and workforce housing within TOD. By compiling data on costs, absorption and performance of affordable and workforce housing near transit, HUD could assist financial professionals with better understanding this product and its financial feasibility and sustainability.

Policy Option: Provide guidance and leadership to communities through the dissemination of best practices and technical assistance.
To help states and local communities better understand how to develop sustainable and inclusive communities, HUD could work with the U.S. Department of Energy, the Department of Transportation, the Environmental Protection Agency, and the Department of Agriculture to disseminate best practices related to sustainable design, green architecture, alternative energy sources for affordable housing, and sustainable community planning principles. This assistance could include, for example,

- Assessing and disseminating information on best practices in zoning laws from around the country, with an emphasis on models that support mixed-use, mixed-income compact TOD.
- Developing guidance to encourage transit agencies to acquire land around planned transit stations and sponsor joint development that includes housing affordable to families with a mix of incomes.
- Developing model statutes for Tax-Increment-Financing for TOD with an affordable housing set-aside.
- Creating model QAP provisions that include location efficiency and incorporate the reduction of both housing and transportation costs as rating criteria.
- Providing access to a technical assistance team of agency staff and outside experts to assist with integrated sustainability planning.

Challenge 4: A number of current funding practices unnecessarily hamstring affordable housing developers, making it difficult for them to compete effectively with market-rate developers for land near transit.

While a thorough analysis of all of the challenges facing developers of affordable housing today is beyond the scope of this paper, our research uncovered a number of practices that make it difficult for affordable housing developers to compete effectively with market-rate developers for attractive land parcels or projects. Since developers wishing to build affordable or workforce housing in location-efficient areas will need access to land, and since that land will often be in demand for market-rate housing or other uses, we have noted these issues below as in need of resolution:

Policy Option: Encourage a portfolio-wide review when determining underwriting standards to allow high-capacity affordable housing developers to borrow against operating reserves from high-performing properties for predevelopment and short-term acquisition loans, thereby encouraging sustainable development in areas around transit and job centers.
While operating reserves serve as a safety net against unexpected cash flow shortages, there are large-scale, high-capacity affordable housing developers with strong performance records and balance sheets that could safely use operating reserves from their high-performing properties for predevelopment and short term acquisition purposes for other properties. This would allow affordable housing developers access to funds earlier in the process when land costs may be lower, allowing them to lock in land or preservation opportunities for affordable and workforce housing options in areas served by transit.

Policy Option: Reconsider funding approaches under HOME to allow affordable housing developers to build equity and capacity.

Our present approach to funding affordable housing focuses overwhelmingly on projects, rather than sponsors. In the HOME program, for example, funds are provided for specific projects—such as gap funding for a specific LIHTC property—rather than to help capitalize an affordable housing developer. Furthermore, we structure the funding in such a manner as to prevent the likelihood that the sponsors will benefit from cash flow and build equity to help pursue the next project. The gap funding under HOME and CDBG, for instance, is generally provided as a subordinated loan, rather than as a grant. While there are a number of legal reasons for this (particularly, the required calculation of basis under LIHTC), the result is such that any cash flow often goes to repay the loan, rather than build stronger and more effective project developers that are capitalized well enough to compete effectively in the marketplace to build more affordable housing. The debt may also be accelerated under certain circumstances—such as transfer or refinancing of the property—undermining rental housing preservation goals.

There are a number of options for addressing this problem that merit further discussion, analysis, and evaluation. For example, HUD could authorize HOME grantees to make equity investments in nonprofit entities that commit themselves to using the equity to pursue affordable housing. Another approach would be to encourage HOME grantees that provide a subordinated loan as a "gap filler" for a LIHTC project to assign the note to a newly created nonprofit controlled by the board of the nonprofit receiving the loan. As argued by David Smith in a recent concept paper,[12] this would help align control with risk and help the nonprofit build equity if it successfully operates the property with a positive cash flow. That equity would help the developer to pursue future affordable housing projects as well as to withstand market shocks that might otherwise place its continued survival in jeopardy. Focusing on building the capacity of the development entity rather than the project would be a significant shift in the way we fund affordable housing, but it is not unprecedented. This approach could be likened to the approach taken by the CDFI fund in making equity investments in Community Development Financial Institutions.

Policy Option: Clarify that investments in mixed-income, mixed-use housing are charitable contributions under IRS rules.

One of the more attractive models for including affordable and workforce housing within transit-oriented development is a mixed-income, mixed-use model. Under this approach, the affordable housing may represent 15 to 25 percent of the residential units of a development that might also include retail. Particularly in high-cost areas, some of these developments may also provide housing targeted on families with incomes that are above the HUD definition of affordable housing but below the level needed for market-rate housing—for example, homeownership units geared to 110 percent of area median income in San Francisco.

While there are a number of philanthropic institutions that would like to contribute or invest in such developments to help encourage them to be built, it is not clear at present whether such contributions would qualify under IRS rules as a charitable contribution. Absent clearer guidance from the IRS, some foundations assume that at least 51 percent of the units in a project must be affordable to families at or below 80 percent of the median income for the property to qualify for charitable contributions. This

[12] David A. Smith (2010). "More than Just Real Estate: Investing in Housing Enterprises and the Whole Delivery System," prepared as a framing paper for the NeighborWorks® America Symposium: A New Era in Affordable Housing: Investing for Impact in Sustainable Communities, Philadelphia, PA, August 18, 2010.

rules out many mixed-income and mixed-use projects. It also rules out certain investments in workforce housing in markets in which working families with incomes between 80 and 120 percent of income (for example) cannot afford market-rate housing (often homeownership).

Guidance from the IRS clarifying that investments in such projects would in fact qualify as charitable contributions would help remove the uncertainty and facilitate the flow of philanthropic funding to these projects.

b. Ensuring Long-Term Affordability around Transit

Due to the substantial costs involved in developing high-density housing near transit and in other sustainable contexts, major investments of public funds will be needed to ensure that a portion of these housing units are affordable to low- and moderate income families. To protect this substantial public investment and ensure that low- and moderate-income families have continued access to sustainable communities, it is essential that these public investments be accompanied by covenants that ensure the housing remains affordable over the long-term.

A 15-year affordability period may seem like a long time, but it will ultimately fail to ensure long-term affordability in years 16 and beyond. A 30-year covenant similarly falls short. Transit investments are not made with a 15 or 30 year time horizon; they are essentially permanent investments. With demand for transit-oriented development expected to increase, it will likely be prohibitively expensive to replace affordable units 15 or 30 years later—even if one could gain site control. It is therefore essential that major federal investments in equitable transit-oriented development (and other forms of sustainable communities) be accompanied by covenants that provide for affordability over the longest-possible time frame.

On the rental side, long-term affordability is guaranteed through covenants that require that the property (or the land on which the property is located) be used to provide rental housing at specified affordable levels. On the homeownership side, a number of approaches have arisen for assuring long-term affordability, including community land trusts, deed restrictions, and limited equity cooperatives. Collectively, these homeownership options are sometimes known as “shared equity homeownership.” When well designed, shared equity homeownership programs effectively balance the goals of long-term affordability and individual asset accumulation, sharing the equity that emerges from home price appreciation between these two important goals.

The following are the main challenges to ensuring long-term affordability around transit and in other location-efficient areas, along with policy options for addressing those challenges.

Challenges	Policy Options
1. Many public resources for affordable homeownership do not require or effectively encourage long-term affordability. This is especially problematic with TOD because prices around such areas often escalate, making continued affordability past the affordability restriction period unlikely.	***1.*** *Change the HOME program rule to extend the affordability periods for major HOME investments.* ***2.*** *Clarify the definition of “fair return” and the acceptable shared equity formulas that jurisdictions can use to maintain the long-term affordability of HOME-supported units.* ***3.*** *Require or incent long-term affordability in all competitive programs related to new public transit investments or TOD.*
2. Many long-term affordable homeownership programs that can be used to secure long-term affordability near transit have problems securing FHA-insured	***1.*** *Clarify “fair return” guarantee and modify the requirement to make it more compatible for housing programs providing long-term affordability.* ***2.*** *Allow and encourage enforcement of long-term affordability requirements for approved programs.*

first mortgage financing for homeowners.	***3.*** *Streamline certification process.*

Challenge 1: Many public resources for affordable homeownership do not require or effectively encourage long-term affordability. This is especially problematic with TOD because prices around such areas often escalate, making continued affordability past the affordability restriction period unlikely.

The HOME Investment Partnerships Program (HOME) is the largest HUD block grant program devoted to housing. For this reason, it is a significant source of funding for state and local housing programs. Many programs supported with HOME funds follow the minimum HOME program guidelines for affordability covenants, which range from 5 to 15 years (for homeownership) or 20 years (for new rental development) depending on the amount of funding involved . Even when jurisdictions invest substantial amounts of subsidy (upwards of $40,000) in homes in expensive markets to make them affordable, they are still only required to keep those homes affordable for a minimum of 15 or 20 years.

Even when local housing programs are not funded with HOME funds, they often follow the HOME affordability guidelines or otherwise adopt affordability periods that do not sufficiently ensure long-term affordability. For example, many local inclusionary zoning and down payment assistance programs only require rental or homeownership units be affordable for 15 years, or even less.

There are several states that do require relatively longer periods of affordability. California, for instance, requires that any housing developed with state assistance remain affordable for a minimum of 45 years for homeownership units or 55 years for rental units.[13] Montgomery County, Maryland places 30-year restrictions on homeownership units that are part of its inclusionary housing program. By itself, a 30-year period may not last long enough to ensure housing stays affordable over the long-term, but the Montgomery County restrictions renew upon resale of the property, in most cases preserving the affordability of the units well beyond 30 years.

Policy Option: Change the HOME program rule to extend the affordability periods for major HOME investments.
Several recommendations related to the HOME program surfaced during our review as a way to encourage long-term affordability:

1. Extend the length of required affordability for major HOME investments. Somewhat distinct considerations apply to homeownership and rental housing.

   A. Homeownership. Under the current HOME program rule, the duration of required affordability varies based on the amount of funds invested. The table below shows the current minimum affordability periods applicable to owner-occupied units (which in many communities appear to have been adopted without any lengthening) along with one option for extending the periods to promote longer-term affordable homeownership:[14]

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[13] Rioux, Gerald and Jacobus, Rick (2005). *CLT Financing in California Working Paper #2: California Redevelopment Law*. Institute for Community Economics, http://www.iceclt.org/resources_files/CLT%20Financing%20Guide%202%20Redevelopment.pdf.
[14] 24 CFR § 92.254.

Homeownership Assistance HOME Amount (per-unit)	Required Minimum Affordability Period	
	Current	***Proposed***
Under $5,000	5 years	5 years
$5,000 to $15,000		15 years
$15,000 to $40,000	10 years	30 years
Over $40,000	15 years	45 years AND renewable upon sale or inheritance

By lengthening the affordability periods required for the current tiers, HUD could help ensure that scarce federal funding is used efficiently to provide affordability for longer time periods. By requiring that the affordability period for homeownership projects with the largest per-unit investments renew every time a property is transferred, HUD could ensure that most such investments are kept affordable permanently. To address practitioner concerns with the applicability of these requirements in lower-cost markets and distressed communities,[15] HUD could allow exemptions for certain market/neighborhood types or instead allow communities to revert back to the current HOME rule by showing good cause in their Consolidated Plan.

B. Rental Housing. At present, the longest minimum duration of affordability for HOME-funded rental properties is 20 years—not nearly long enough to ensure the continued availability of affordable rental housing near transit and other location-efficient areas. One frequently cited explanation is that after 15-20 years, many properties need to be recapitalized, so they may not be able to keep the properties affordable without a new injection of capital. Also, as many have observed, most HOME rental properties are also funded by the Low-Income Housing Tax Credit (LIHTC), which typically carries an affordability period of 30 years.

The following represents one potential approach for balancing these issues:

i. For per-unit subsidies of less than $30,000, lengthen the affordability periods but keep them to 20 years or less. For example:

Rental Housing Activity (per-unit)	Required Minimum Affordability Period	
	Current	***Proposed***
Rehabilitation or acquisition of existing housing:		
Under $5,000	5 years	5 years

[15] Some practitioners have argued that in highly distressed neighborhoods, for community development reasons, it is important to attract middle-income families by developing unrestricted for-sale housing for families with incomes at 80 percent of the area median income. Because the cost of construction exceeds the prices at which such homes may be sold, they may not get built without a subsidy. Moreover, because the unrestricted market prices of comparable homes are already at affordable levels, it may be difficult or impossible to find someone willing to agree to long-term use restrictions. Similarly, in lower cost housing markets with historically modest appreciation, long-term resale restrictions could potentially compromise the marketability of affordable homes. For these and other reasons, it may be appropriate to provide an exemption for certain neighborhood or market types or allow participating jurisdictions to demonstrate good cause for reverting back to the current HOME restrictions.

$5,000 to $15,000		10 years
$15,000 to $30,000	10 years	20 years

ii. For projects with per-unit costs greater than $30,000 that also use LIHTC, defer to the affordability periods in the respective state Qualified Allocation Plan.

iii. For non-LIHTC projects, adopt longer affordability periods than 20 years, but apply these longer periods only to the land on which the property sits. For example:

<table>
<tr><th>Rental Housing Activity (per-unit)</th><th>Required Minimum Affordability Period</th></tr>
<tr><td>Rehabilitation or acquisition of existing housing:</td><td></td></tr>
<tr><td>$30,000 to $40,000</td><td>30 years</td></tr>
<tr><td>$40,000 and up</td><td rowspan="2">45 years</td></tr>
<tr><td>All new construction or acquisition of new construction+</td></tr>
</table>

Under this approach, the housing units themselves would be subject to a 20-year affordability period, but the land would be subject to an affordability period of either 30 or 45 years. After a 20-year period, the land would remain encumbered, and ideally the provider would either be able to self-finance improvements[16] or be able to secure financing to extend the affordability. In case they could not secure financing, the provider would have the option of selling the land subject to the affordability covenant. The purchaser could then raise the funds needed to modernize the building and maintain its affordability.

We recognize that these rule changes would apply to all developments funded by HOME, rather than just to developments near transit and job centers, but believe this to be appropriate. To require a longer duration of affordability for developments near transit and job centers could act as a disincentive for communities to site affordable housing in these locations, which would be contrary to the public policy goal of promoting such development.

2. Issue a CPD Notice or other program guidance explaining the benefits of long-term affordability, emphasizing that HOME program rules for length of affordability are only minimums, and encouraging jurisdictions to exceed them in appropriate locations. Specifically, the Notice could encourage jurisdictions to maintain the affordability of HOME-supported units for the longest possible period—even permanently—near transit and other location-efficient areas where property values are expected to rise over time, even for relatively smaller per-unit investments. The Notice could also educate jurisdictions about some of the best practices for maintaining affordability over time. For example, it could discuss strategies for ensuring that rental properties with long-term affordability covenants have sufficient reserve deposits to keep up with repair and modernization needs, as well as how community land trusts and other shared equity homeownership mechanisms can help balance the goals of long-term affordability and

[16] Ongoing research by the Center for Housing Policy and the Compass Group confirms that many affordable rental properties can afford to self-refinance capital needs over a 50-year lifecycle but many cannot. Because the sample is not nationally representative, it is impossible to say what proportion of the overall universe falls into each category.

individual asset-accumulation for homeownership units.

3. Conduct an analysis of how HUD might incent or otherwise encourage long-term affordability in appropriate areas even when it is not strictly required by law or regulation. For example, HUD might consider allowing jurisdictions to use a small amount of HOME program funds (or allow jurisdictions to charge residents) to cover the costs of stewardship related to monitoring long-term affordability if they invest in long-term affordability since it costs jurisdictions more to monitor these longer affordability periods. Through a focus group of HOME Participating Jurisdictions, HUD could identify other barriers to long-term affordability which could be addressed through new regulations or incentives.

Policy Option: Clarify the definition of "fair return" and the acceptable shared equity formulas that jurisdictions can use to maintain the long-term affordability of HOME-supported units.
Under the HOME program, HUD requires that homeowners receive a "fair return on their investment". Because HUD does not provide guidance on how this should be interpreted, jurisdictions may be concerned that a shared equity approach would run afoul of this provision. To remove this potential barrier to the adoption of shared equity homeownership, HUD could issue guidance clarifying that all mainstream shared equity homeownership formulas satisfy this requirement. (See the FHA discussion below for one approach to accomplishing this.)

Policy Option: Require or incent long-term affordability in all competitive programs related to new public transit investments or TOD.
In a recently submitted comment letter to the Federal Transit Administration, Enterprise Community Partners, Habitat for Humanity International and the National Housing Conference recommended that new criteria be added to the New Starts program to provide concrete incentives for communities to adopt policies that ensure specified shares of newly developed housing near public transit stops are affordable to moderate-income families. The comment gives communities credit only for units with rent or resale restrictions designed to ensure they remain affordable for the longest time period permissible under state law.

To stimulate long-term affordable housing, HUD and its federal partners may wish to consider adopting similar incentives through other funding streams that might be developed to stimulate TOD, such as the proposal referenced above to provide direct loans or credit enhancement to facilitate the early stage investments that support tax increment financing, which could support the infrastructure needed for TOD.

Challenge 2: Many long-term affordable homeownership programs that can be used to secure long-term affordability near transit have problems securing FHA-insured first mortgage financing for homeowners.

Given the more restrictive lending standards currently being utilized by Fannie Mae and Freddie Mac, and the reduced investor demand for municipal bonds, FHA-insured loans have supplanted Fannie and Freddie loans and state bond-funded loan products as the main source of affordable first mortgage financing for many lower income buyers of single-family homes and condominiums.

FHA-insured loans are especially important for buyers using long-term affordable homeownership programs that incorporate shared equity mechanisms, such as community land trusts. Although homeowners in these programs tend to present even less risk than those in conventional affordable homeownership programs —as evidenced by the significantly lower rate of mortgage delinquencies and foreclosures among community land trust homeowners[17]—the less conventional aspects of these programs tend to create unnecessary problems with the underwriting process and the FHA approval of the respective lender.

As mentioned above, long-term affordable homeownership programs can be an effective way to secure long-term affordability near transit. FHA-insured first mortgages are vital to helping lower income households purchase affordable homes through these programs. For this reason, greater compatibility between FHA mortgage regulations and these programs can help expand opportunities for long-term affordable homeownership near transit centers and in other location-efficient areas.

There are three main issues with the FHA regulations for approving loans made to participants in shared equity homeownership programs. These issues have been addressed in recent guidance developed by Fannie Mae but FHA has not yet updated its guidance to address them:[18]

- *Fair return guarantee required for programs using FHA-insured loan is too strict*. While the requirement that homebuyers receive a "fair return" on their down payment investment in sensible, in practice FHA has applied it in a way that unduly restricts the ability of shared equity programs to operate, undermining efforts to maintain long-term affordability. For example, although community land trusts and other shared equity homeownership programs do their best to help homeowners get at least their initial investment back upon resale—and indeed generally structure their programs to allow families to build substantial additional assets—it is not realistic for them to strictly guarantee this. In addition, FHA requires the program to allow a credit for the full original cost of improvements in calculating the resale price. This is also unrealistic given that this type of valuation does not even occur with market-rate home appraisals (value of improvements are assumed to depreciate).

- *Enforcement of key program requirements not allowed*. Although FHA regulations will insure loans for shared equity programs that require owners occupy their home and resell it to an income-eligible buyer, they technically do not allow these programs to take appropriate action when these requirements are not met by the homeowner holding the FHA first mortgage.

- *Certification of affordable homeownership programs*. The FHA rule requires individual lenders to certify that local affordable housing program documents meet FHA requirements. To the extent that the rules are subject to interpretation, this approach places lenders in a difficult position. Mortgage lenders generally lack expertise in interpreting resale pricing formulas, for example. As a result, some lenders are reluctant to finance resale-restricted units—such as those that are part of a shared equity homeownership program—because of potential liability should FHA later determine that they misinterpreted the regulations or because of the increased complexity of underwriting these projects.

- *Conforming status, and approved entity status is difficult and an administrative burde*n. There are strict regulations regarding the administration of shared equity second loan programs paired

[17] National Community Land Trust Network press release, April 8, 2010. http://cltnetwork.org/doc_library/p308-2009-foreclosure-survey-pr-final.pdf.
[18] The regulations that these issues relate to are found in 24 CFR § 203.41 and FHA Mortgagee Letter 94-2.

with FHA-insured first loans. An FHA-approved entity must both service and hold these second loans, even if a non-approved entity is related to an approved servicing/holding entity. In some cases, this is an issue since a certified entity may service the loans, but require that another entity, which may not be certified by FHA, provide the funds and technically hold the loans.

In addition to the above regulatory issues regarding FHA, there is also an administrative/process issue in terms of certifying that government or nonprofit affordable homeownership programs meet FHA standards. FHA's regional offices often interpret and dictate certification criteria, and there have been geographic inconsistencies in approving the loans for buyers under certain types of affordable homeownership programs. This can result in buyers under similar programs in different parts of the country getting different approval decisions.

The following policy options could help address these problems and make it easier to use FHA insurance to purchase a community land trust or other shared equity home:

Policy Option: Clarify "fair return" guarantee and modify the requirement to make it more compatible for housing programs providing long-term affordability.

HUD could make it easier for communities to provide long-term affordability by eliminating the requirement that programs *guarantee* that families recover 100 percent of their initial investment and by clarifying that most commonly used approaches to setting resale prices in shared equity homeownership programs meet the "fair return" requirement.

Policy Option: Allow and encourage enforcement of long-term affordability requirements for approved programs.

In addition to insuring loans for programs that have homeowner requirements such as owner occupancy and resale to income eligible buyers, FHA should consider allowing the programs to take appropriate action to remedy a breach of these requirements by a homeowner holding the FHA first mortgage during occupancy or upon resale.

Policy Option: Streamline certification process.

FHA should consider developing a process through which program sponsors can obtain advance certification that their specific regulatory documents conform to FHA's revised standards and lenders should be able to rely on this program level certification rather than reviewing documents on a loan-by-loan basis. A unified certification would significantly streamline and standardize what is currently a burdensome and fractured process. Fannie Mae worked closely with a coalition of community land trusts to develop a standardized rider that lenders could attach to applications for FHA insurance. This rider included language that covered the most common formulas used by land trusts in order to standardize and expedite approval for lenders.

Similarly, HUD and FHA should consider making regulatory changes that are more favorable to entities servicing and holding shared equity second loans. Entities servicing and/or holding these loans face many of the same issues that the first mortgage lenders do in getting FHA approval. Non-profit entities that have their FHA Certification should be allowed to originate and service shared appreciation loans in conjunction with FHA first lien financing, even though these originating and servicing entities may not hold the shared appreciation note.

In addition, it would be beneficial if FHA were to standardize and/or centralize the administrative process for approving entities for insured loans and shared equity second loan programs. Currently, regional offices handle approvals for their respective areas, and have made inconsistent decisions in approving similar long-term affordable homeownership programs.

c. Serving Very Low Income Residents around Transit

While local government policies such as inclusionary zoning or density bonuses can often help bring housing down to levels affordable to moderate or even low-income families, they generally cannot bring housing down to levels affordable to very low income families (defined by HUD as a family making 50 percent or less of the area median income) or extremely low-income families (30 percent or less of the area median income). Very low and extremely low income households often have greater need than higher income families for public transportation to connect them to employment and vital services, such as health care. If communities do not provide and preserve housing affordable to very low income families close to transit in communities with quality jobs, schools and hospitals at the outset of major transit investments, it will only become more difficult to do so in the future as rents and home prices in these areas increase.

The following are challenges to providing affordable housing for very low-income residents near transit along with policy options for addressing these challenges:

Challenges	Policy Options
1. The subsidies for many existing federally subsidized affordable rental units proximate to public transit are at risk of expiring within the next five years.	1. Provide guidance and support to jurisdictions to help them identify subsidized housing closest to transit that is at highest risk of losing affordability. 2. Focus on improving the physical condition and financial viability of public housing developments near transit. 3. Give explicit points/priority for HOPE VI and Choice Neighborhoods projects that preserve deeply affordable rental units near transit and job centers.
2. Many public housing authorities lack incentives to attach their housing vouchers to projects near transit and job centers.	1. Encourage greater use of tenant-based and project-based vouchers in developments close to transit. 2. Incorporate indicators of sustainability and opportunity into the Housing Choice Voucher performance indicators used for the Section Eight Management Assessment Program (SEMAP). 3. Modify Section 8 fair market rents to apply to smaller areas, to allow appropriate rents in high-cost TOD areas.

Challenge 1: The subsidies for many existing federally subsidized affordable rental units proximate to public transit are at risk of expiring within the next five years.

A recent study of 20 metropolitan areas across the country found that there are nearly 200,000 federally subsidized affordable rental units within one quarter-mile of public transportation (over 250,000 such units within one half-mile of public transit). However, the subsidies for more than two-thirds of these apartments are at risk of expiring within the next five years.[19]

[19] Rodney Harrell, Allison Brooks and Todd Nedwick (2010). *Preserving Affordability and Access in Livable Communities: Subsidized Housing Opportunities Near Transit and the 50+ Population*. AARP Public Policy Institute, http://www.aarp.org/home-garden/housing/info-09-2009/2009-15.html.

Policy Option: Provide guidance and support to jurisdictions to help them identify subsidized housing closest to transit that is at highest risk of losing affordability.

Some key functions of such an effort could be collecting and disseminating information on properties near transit that are in danger of losing affordability so that localities can adopt preservation strategies, and providing technical assistance on how to target these properties for preservation. By creating a rental preservation program within the Office of Sustainable Housing and Communities, HUD could focus on efforts to preserve the substantial amount of subsidized affordable rental housing that already exists close to public transit.

Policy Option: Focus on improving the physical condition and financial viability of public housing developments near transit.

HUD could help rehab or recapitalize some public housing with physical or financial problems by prioritizing them for funding under HOPE VI, Choice Neighborhoods, and potentially the proposed Preservation, Enhancement and Transformation of Rental Assistance (PETRA) program. HUD could also issue guidance encouraging local housing authorities to prioritize these developments for rehabilitation under the capital fund and capital fund borrowing, as well as provide technical assistance to smaller agencies to help accomplish this.

Additionally, since the construction of many of these subsidized rental units predated energy-efficiency and environmental standards, HUD could collaborate with the U.S. Department of Energy (DOE) to package financial resources for rehabilitation, weatherization and energy-efficiency. One recommendation would be for HUD to work with DOE to give affordable rental units slated for rehabilitation a preference for DOE resources, such as Weatherization Assistance Program funds. This would allow these funding sources to be combined, enhancing their effectiveness.

Policy Option: Give explicit points/priority for HOPE VI and Choice Neighborhoods projects that preserve deeply affordable rental units near transit and job centers.

The FY 2010 NOFAs for the HOPE VI Revitalization Grants Program[20] and the Choice Neighborhoods Initiative[21] reference "access to public transportation" as one small part of the rating factor for "neighborhood strengths," which altogether constitutes 4 of 100 total points. However, access to public transportation is not explicitly allotted any points itself and projects that are not otherwise location-efficient appear to be able to receive full points under this criterion.

Given the importance of proximity to transit for very low income residents—in terms of having better access to jobs, services and amenities—HUD may wish to make this location factor an explicit rating factor for both HOPE VI and Choice Neighborhood grants, with a specific number of points allotted to "access to transportation," "proximity to transit" or other measures of location-efficiency. Additionally, HUD may wish to give priority in the new Choice Neighborhoods program to redevelopment projects that are located near existing or planned transit centers.

Challenge 2: Many public housing authorities lack incentives to attach their housing vouchers to projects near transit and job centers.

[20] FY 2010HOPE VI Revitalization Grants Program NOFA: http://www.hud.gov/offices/adm/grants/nofa10/hope6revisec.pdf.

[21] FY 2010 Choice Neighborhoods NOFA: http://www.hud.gov/offices/pih/programs/ph/cn/docs/2010-cn-nofa.pdf.

Housing authorities can attach up to 20 percent of their allocated housing choice vouchers to specific projects. However there are no clear incentives for the PHAs to project base their vouchers in location-efficient areas, although the benefits to very low income residents—especially in the context of providing affordable housing near transit and job centers—is clear.

Policy Option: Encourage greater use of tenant-based and project-based vouchers in developments close to transit.
HUD could provide guidance to encourage local housing agencies to consider a range of policies to ensure that households with housing vouchers can afford to live near transit. These policies could include:

- Converting a portion of housing choice vouchers to project-based vouchers in transit-oriented developments, as well as creating incentives for property owners near transit centers to accept vouchers. At the same time, HUD could encourage housing authorities to develop strategies to preserve the affordability of project-based voucher units beyond the initial 10-year affordability period (one of the provisions in the proposed PETRA program, which, as currently proposed, would extend initial project-based voucher contracts to 20 years[22]).

- Working with local government to ensure that voucher holders receive a preference for the affordable set-aside units created through inclusionary zoning programs (in areas where inclusionary zoning is permitted). For example, assume a jurisdiction has an inclusionary zoning policy requiring that 20 percent of rental units must be affordable to renters with incomes below 60 percent of the area median income. The housing authority and local government would require that owners give preference to families with vouchers for half of those set-aside units (and preferably those below 50 percent AMI in order to truly serve the very low income population). (An alternative approach—adopted, for example, in Montgomery County Maryland—is to give the housing authority the option of purchasing some of the inclusionary zoning and layering additional subsidies to make them affordable to very low-income families.)

- Encouraging communities that develop housing near transit and job centers with HOME funds or CDBG funds to give priority to voucher holders for a share of the units. This would also require coordination between the local government and the local housing authority and would help to provide affordable housing near transit across the income spectrum.

Policy Option: Incorporate indicators of sustainability and opportunity into the Housing Choice Voucher performance indicators used for the Section Eight Management Assessment Program (SEMAP).
SEMAP—HUD's formal measure of administrative competence of housing voucher programs administered by public housing agencies—currently includes an indicator to assess whether housing authorities have expanded housing choice for voucher holders outside areas of poverty or minority concentration. When HUD has determined that a housing authority sufficiently meets the criteria to promote deconcentration of poverty through its voucher program, HUD awards a bonus in SEMAP scoring. This indicator is vital, but HUD could balance this with an additional indicator that assesses

[22] U.S. Department of Housing and Urban Development (http://portal.hud.gov/portal/page/portal/HUD/fy2011budget/signature_initiatives/transforming_rental_assistance)

whether housing authorities have expanded housing choice near transit centers, job centers and other location-efficient areas. These areas may not always be low-poverty areas, however, so it may be appropriate to balance this indicator with the existing indicator for poverty de-concentration or develop a new composite indicator that rewards PHAs for expanding housing opportunities for voucher holders in "opportunity areas," which could be a composite of multiple factors, including transit accessibility, lower poverty, school performance, etc.

Policy Option: Modify Section 8 fair market rents to apply to smaller areas, to allow appropriate rents in high-cost TOD areas.

In certain high-cost neighborhoods—such as neighborhoods close to public transit –the market rents exceed the FMRs for the whole metro area. In these areas, unless housing agencies have been granted exception payment standards, the subsidy amount provided to Housing Choice Voucher (HCV) recipients may not be sufficient to cover the gap between the going rent and what the family can afford to pay. If HUD calculated the FMRs independently for these high-cost "micro-areas"—particularly those areas close to public transit—they could allow a larger subsidy to cover that gap. This would encourage property owners to accept Housing Choice Vouchers in high-cost areas close to transit and thus provide voucher holders more housing options in such areas.

HUD has introduced a demonstration project for Fiscal Year 2011 that will set "small area" FMRs for the Housing Choice Vouchers program within certain metro areas.[23] It would be useful to conduct an evaluation of the effects of this demonstration on the number of voucher holders who are able to move to these small areas with recalculated FMRs, particularly those small areas that are close to transit, job centers and vital services. It would also be useful to examine how well the new small area FMRs cover the actual gap between tenant payments and market rents in those areas. If found to be effective, this new method of FMR calculation could also be used for project-based vouchers, HOME tenant-based rental assistance and other major rental assistance programs targeting very low income households.

[23] Federal Register 75(95), Tuesday, May 18, 2010 (http://www.huduser.org/portal/datasets/fmr/fmr2010f/Small_Area_FMRs.pdf)

d. Preserving and Fostering Affordable Housing Opportunities in the Broader Neighborhood

Major public investments, like new transit stations or major housing rehabilitation projects, can catalyze significant revitalization in a neighborhood. This revitalization often leads to an influx of resources into the neighborhood and the creation of greater services and amenities. These amenities are a great benefit to residents of all income levels, yet they can also lead to significant increases in housing costs. While gentrification can be a boon for more affluent homeowners, it can lead to significant financial burdens for existing lower income residents due to increased rents and property tax increases. This can lead to working families and others being priced out of these neighborhoods that are proximate to vital transit services.

The following are challenges to maintaining affordability in the broader neighborhood surrounding a transit-oriented development along with policy options for addressing them:

Challenges	Policy Options
1. Transit-oriented development can lead to spillover effects that compromise affordability in the surrounding community.	1. Provide guidance and technical assistance to aid jurisdictions in assessing gentrification potential around transit centers and areas undergoing major transit investment in order to determine future affordability needs. 2. Aid jurisdictions in developing and implementing a toolkit of strategies to manage the spillover effects of transit improvements and related revitalization activities.
2. HOPE VI redevelopment projects in location-efficient areas sometimes create spillover effects that are not accounted for in the initial project strategy.	1. Require communities receiving HOPE VI funds to develop and implement strategies to manage the spillover effects of revitalization activities. 2. Tailor HOPE VI redevelopment strategies according to the economic character and gentrification potential of the target area.
3. The regulations for HUD programs that provide funding for land-banking activities are not always compatible with community development goals.	1. Provide more flexible uses of resources for land banking near transit centers.

Challenge 1: Transit-oriented development can lead to spillover effects that compromise affordability in the surrounding community.

Even when a community incorporates an effective strategy to create and preserve affordable housing in a specific development near a transit center or other location-efficient area, there is the potential for major development and investment in the area to increase housing prices and compromise affordability in the broader neighborhood unless strong affordability strategies are in place.

Policy Option: Provide guidance and technical assistance to aid jurisdictions in assessing gentrification potential around transit centers and areas undergoing major transit investment in order to determine future affordability needs.

HUD could conduct research into the neighborhood factors associated with gentrification potential and provide technical assistance to Metropolitan Planning Organizations, state and local transportation agencies, housing agencies, and other local agencies planning and implementing the redevelopment projects so that these agencies can assess and anticipate the effects on the surrounding community. Conducting such assessments prior to major redevelopments and investments in transit centers could help jurisdictions determine strategies and the need for programs to help maintain affordability in the surrounding areas and promote inclusive and sustainable communities.

Policy Option: Aid jurisdictions in developing and implementing a toolkit of strategies to manage the spillover effects of transit improvements and related revitalization activities.

An assessment of gentrification potential in and around a transit center undergoing major investment can provide the foundation for appropriate strategies to manage spillover effects. HUD can play a major role in researching and promoting promising policies for maintaining affordability for low- and moderate-income households in neighborhoods surrounding transit centers that are likely to experience gentrification.

Such policies could include:

- **Inclusionary zoning/housing programs**[24] to leverage private residential development catalyzed by transit investments to create a steady stock of affordable housing as a neighborhood revitalizes.

- **A mandatory set-aside for affordable housing as part of tax district assessment mechanism** (e.g., tax increment financing) so that a portion of increased property taxes resulting from increased property values associated with the transit improvements can be reserved for the creation and preservation of affordable housing.

- **A policy that gives preference to Housing Choice Voucher holders for affordable housing units located in and around transit centers**. This preference could be incorporated into several programs that lead to the production of below-market housing units, such as inclusionary zoning or affordable housing programs funded by HOME or CDBG funds.

- **Converting a portion of a jurisdiction's Housing Choice Vouchers into project**-based vouchers that are reserved for developments close to transit centers or in the neighborhoods surrounding these centers.

- **Policies and funding to support land acquisition in areas projected to gentrify in the future**. This could include decisions by transportation agencies to routinely acquire and allocate land around transit stations for affordable housing development, as well as state and/or local financial support or incentives to bank land that can be used for affordable housing when costs rise in the face of revitalization. HUD could provide best practices to help guide jurisdictions in implementing such tools, such as Denver's TOD Fund, which in part provides funding to bank land for affordable housing.

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[24] Inclusionary zoning cannot be implemented in some states and jurisdictions due to legal or statutory barriers, these recommendations refer to states and communities where inclusionary zoning can be implemented.

Additionally, to help plan and implement such measures, HUD could encourage jurisdictions to include their respective housing agencies—as well as experienced affordable housing practitioners working in the area—as part of the land use planning process for areas in and around transit centers and other location-efficient areas.

Challenge 2: HOPE VI redevelopment projects in location-efficient areas sometimes create spillover effects that are not accounted for in the initial project strategy.

Major redevelopment projects near transit centers and in other location-efficient areas can be a strong catalyst to revitalizing blighted neighborhoods. Often, these redevelopment projects are public-private partnerships orchestrated by local government and developers—federal agencies, such as HUD usually have a limited role, if any. However, when localities depend on HOPE VI projects to anchor redevelopment efforts near transit, HUD has more influence and therefore the ability to assure that neighborhood change takes place in an equitable manner by ensuring a supply of housing affordable to a mix of incomes as the neighborhood improves and housing costs go up.

While the benefits of such redevelopment efforts anchored by HOPE VI projects sometimes spillover into the surrounding community, helping to revitalize these peripheral areas, the resultant housing cost increases can compromise affordability in these outlying areas.[25] Many HOPE VI project strategies do not fully consider the potential to compromise affordability in the surrounding neighborhoods; as a result, the HOPE VI project's success can lead to lost opportunities for affordable housing in the surrounding neighborhoods as the area revitalizes.

Policy Option: Require communities receiving HOPE VI funds to develop and implement strategies to manage the spillover effects of revitalization activities.
In addition to giving priority to applicants that have sites near transit, job centers or village centers (see above) HUD could require communities to develop and implement strategies for managing the spillover effects of the development that can compromise affordability in the surrounding neighborhoods. This would include requiring jurisdictions to assess the potential for, and expected extent of, gentrification in areas where a HOPE VI redevelopment is taking place and to work collaboratively with local governments to implement policies designed to ensure that low- and moderate-income families can continue to afford to live in the surrounding areas.

Policy Option: Tailor HOPE VI redevelopment strategies according to the economic character and gentrification potential of the target area.
Not all HOPE VI redevelopment projects and the neighborhoods they occur in are alike. In fact, there may be stark differences among different projects, particularly in how they will affect the surrounding neighborhood. HUD could work with jurisdictions to help them consider neighborhood conditions and gentrification potential in the design of the ultimate project.

For example, take two public housing projects, both near transit or an area slated for new major transit investment. One is in a highly depressed area where there is little prospect for gentrification and the other is in a desirable area where gentrification is already taking place. In the first case, it may make

[25] Several studies (e.g., LaTanya N. Brown, "HOPE VI: An Analysis to Determine the HOPE VI Program's Influence on Home Sales," *Community Development* 40, no. 1 [2009]: 54–63) have shown that HOPE VI redevelopment projects often lead to increased land values and home prices in areas surrounding the project, reducing affordability for low- and moderate-income families.

sense to consider the more conventional mixed-income HOPE VI model to attract higher income families. In the second, however, where higher income families are already coming into the neighborhood, it may make sense to seek to retain all of the deeply affordable units. In this case, it may be more effective to consider a more scattered site approach and parcel the public housing units out to be incorporated into market-rate development—all of the units would still be within walking distance of a transit stop, but not necessarily in the same building or subsection of the neighborhood.

Challenge 3: The regulations for HUD programs that provide funding for land-banking activities are not always compatible with community development goals.

Housing and community development programs that support land banking do not provide sufficient resources and do not offer the ability to land bank for sufficient amount of time. This a critical barrier to setting aside land for future development of affordable housing in transit-oriented areas where development costs are likely to spike in the future.

The Community Development Block Grant (CDBG) program, in particular, only allows jurisdictions to land bank for up to two years. Practitioners we have talked to say this rarely offers a sufficient amount of time to bank land for community redevelopment and revitalization purposes, especially in neighborhoods close to transit, or within neighborhoods of change, in which the targeted date for initiating development of such land may not be for several years.

In addition, the regulations for the money allocated under the Neighborhood Stabilization Program (NSP) to date are restrictive in terms of eligible land banking and development activities. Although NSP allows jurisdictions to land bank for up to ten years through 2019—a long-enough period of time –the regulations make it difficult to leverage other sources of money for redevelopment. Additionally, even if land could be banked for several years, additional NSP funds slated to be used for redeveloping that land would still have to be expended and the affordable housing would have to be developed by 2013.

Policy Option: Provide more flexible uses of resources for land banking near transit centers.
Providing more flexible resources that enable land banking in current low-cost areas undergoing transit improvements would help ensure that land can be used for affordable housing in the future when costs go up. More specifically:

- As noted above, HUD could modify the CDBG regulations so that jurisdictions can use their program funds to land bank for a longer time period. Discussions with practitioners revealed that a period of five years or longer would be needed for redevelopment strategies in areas undergoing major transit investment.

- HUD could modify NSP regulations both to allow more flexibility in land banking activities, and to allow a jurisdiction and local partners more time to expend funds to be used for redeveloping land banked to provide affordable housing—especially in areas where development costs are expected to increase rapidly (e.g. new/revitalized transit centers and other location-efficient areas).

V. Conclusion

Transit-oriented development (TOD) provides many benefits to a community, including reduced energy usage and air pollution due to a reduction in the total vehicle miles traveled by TOD residents, as well as increased tax revenues from new TOD, which is often higher density and mixed-use. Yet along with these benefits, TOD can also create some unintended negative consequences. The success and popularity of TOD often results in rising property and land values around new transit centers, pricing out low- and moderate-income families—the population segment who generally benefits the most from the greater access to transit, services and amenities that TOD often affords.

Well-designed federal policies and sound practices are vital to facilitating access by low- and moderate-income households to these transit-oriented, location-efficient communities. HUD is the agency best equipped and positioned to bring such policy and practice to fruition. This report lays out a number of policy options for how HUD and partner federal agencies, such as DOT, can help make these new TOD communities more inclusive. These policy options represent the ideas of practitioners at the federal, state and local levels, and are intended to aid HUD and its partners in guiding and facilitating the creation of sustainable, inclusive, location-efficient communities near transit and in job and town centers.

Appendix A: Existing Federal Programs and Funding Sources Supporting Transit-Oriented Development

U.S. Department of Housing and Urban Development (HUD)

HOME Investment Partnerships Program
HOME provides formula grants to States and localities that communities use-often in partnership with local nonprofit groups-to fund a wide range of activities that build, buy, and/or rehabilitate affordable housing for rent or homeownership or provide direct rental assistance to low-income people.
HOME is the largest federal block grant to State and local governments designed exclusively to create affordable housing for low-income households. Each year it allocates approximately $2 billion among the States and hundreds of localities nationwide. The program was designed to reinforce several important values and principles of community development.

Community Development Block Grants
The Community Development Block Grant (CDBG) program is a flexible program that provides communities with resources to address a wide range of unique community development needs. Beginning in 1974, the CDBG program is one of the longest continuously run programs at HUD. The CDBG program provides annual grants on a formula basis to 1209 general units of local government and States.

Project-based Section 8 Vouchers
A PHA can attach up to 20 percent of its voucher assistance to specific housing units if the owner agrees to either rehabilitate or construct the units, or the owner agrees to set-aside a portion of the units in an existing development. Rehabilitated units must require at least $1,000 of rehabilitation per unit to be subsidized, and all units must meet HUD housing quality standards.

Community Challenge Grants
HUD's $40 million Community Challenge Planning Grant Program will foster reform and reduce barriers to achieving affordable, economically vital, and sustainable communities. Such efforts may include amending or replacing local master plans, zoning codes, and building codes on a jurisdiction wide basis or in a specific neighborhood, district, corridor, or sector to promote mixed-use development, affordable housing, the reuse of older buildings and structures for new purposes, and similar activities with the goal of promoting sustainability at the local or neighborhood level. HUD's Community Challenge Planning Grant Program also supports the development of affordable housing through the development and adoption of inclusionary zoning ordinances and other activities such as acquisition of land for affordable housing projects.

FHA Mortgage Insurance: 221 (d)(3) and 221 (d)(4)
Section 221(d)(3) and 221(d)(4) insures mortgage loans to facilitate the new construction or substantial rehabilitation of multifamily rental or cooperative housing for moderate-income families, elderly, and the handicapped. Single Room Occupancy (SRO) projects may also be insured under this section. Section 221(d)(3) and Section 221(d)(4) insures lenders against loss on mortgage defaults. Section 221(d)(3) is used by nonprofit sponsors and Section 221(d)(4) is used by profit-motivated sponsors. Both programs assist private industry in the construction or rehabilitation of rental and cooperative housing for moderate-income and displaced families by making capital more readily available. The program

allows for long-term mortgages (up to 40 years) that can be financed with Government National Mortgage Association (GNMA) Mortgage Backed Securities.

FHA Mortgage Insurance: 203(b)

The FHA 203b program provides mortgage insurance for a person to purchase or refinance a principal residence. The mortgage loan is funded by a lending institution, such as a mortgage company, bank, savings and loan association and the mortgage is insured by HUD. The borrower must meet standard FHA credit qualifications, and is eligible for approximately 96.5 percent financing. The borrower is able to finance the upfront mortgage insurance premium into the mortgage and will also be responsible for paying an annual premium. One-to-four unit structures are eligible.

Choice Neighborhoods

The Choice Neighborhoods initiative will transform distressed neighborhoods and public and assisted projects into viable and sustainable mixed-income neighborhoods by linking housing improvements with appropriate services, schools, public assets, transportation, and access to jobs. A strong emphasis will be placed on local community planning for access to high-quality educational opportunities, including early childhood education. Choice Neighborhoods grants will build upon the successes of public housing transformation under HOPE VI to provide support for the preservation and rehabilitation of public and HUD-assisted housing, within the context of a broader approach to concentrated poverty. In addition to public housing authorities, the initiative will involve local governments, non-profits, and for-profit developers in undertaking comprehensive local planning with residents and the community.

HOPE VI

The HOPE VI Program was developed as a result of recommendations by National Commission on Severely Distressed Public Housing, which was charged with proposing a National Action Plan to eradicate severely distressed public housing. The Commission recommended revitalization in three general areas: physical improvements, management improvements, and social and community services to address resident needs.

Other Federal Agencies

U.S. Department of the Treasury

Low Income Housing Tax Credit Program (LIHTC)

The LIHTC Program, is based on Section 42 of the Internal Revenue Code, was enacted by Congress in 1986 to provide the private market with an incentive to invest in affordable rental housing. Federal housing tax credits are awarded to developers of qualified projects. Developers then sell these credits to investors to raise capital (or equity) for their projects, which reduces the debt that the developer would otherwise have to borrow. Because the debt is lower, a tax credit property can in turn offer lower, more affordable rents.

Provided the property maintains compliance with the program requirements, investors receive a dollar-for-dollar credit against their federal tax liability each year over a period of 10 years. The amount of the annual credit is based on the amount invested in the affordable housing.

New Markets Tax Credit Program

The New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities

(CDEs). Substantially all of the qualified equity investment must in turn be used by the CDE to provide investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year credit allowance period. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period.

Throughout the life of the NMTC Program, the Fund is authorized to allocate to CDEs the authority to issue to their investors up to the aggregate amount of $26 billion in equity as to which NMTCs can be claimed, including $3 billion in Recovery Act Awards and $1 billion of special allocation authority to be used for the recovery and redevelopment of the Gulf Opportunity Zone.

Community Reinvestment Act (CRA)
The Community Reinvestment Act (CRA), is a United States federal law designed to encourage commercial banks and savings associations to meet the needs of borrowers in all segments of their communities, including low- and moderate-income neighborhoods. Congress passed the Act in 1977 to reduce discriminatory credit practices against low-income neighborhoods, a practice known as redlining. The Act requires the appropriate federal financial supervisory agencies to encourage regulated financial institutions to meet the credit needs of the local communities in which they are chartered, consistent with safe and sound operation. To enforce the statute, federal regulatory agencies examine banking institutions for CRA compliance, and take this information into consideration when approving applications for new bank branches or for mergers or acquisitions.

U.S. Department of Transportation (DOT)

Transportation Investment Generating Economic Recovery (TIGER) Discretionary Grant Program
TIGER grants provide capital assistance to states, local governments and transit agencies for TIFIA financing, capital grants or transportation planning activities. Grants are awarded on a competitive basis for projects that will have a significant impact on the nation, a metropolitan area or a region. Initial funds were made available through the American Recovery and Reinvestment Act of 2009; additional funds have been made available through the FY 2010 Appropriations Act.

New Starts Program (The Federal Transit Administration)
The Federal Transit Administration's (FTA) discretionary New Starts program is the federal government's primary financial resource for supporting locally-planned, implemented, and operated transit "guideway" capital investments. From heavy to light rail, from commuter rail to bus rapid transit systems, the New Starts program has helped to make possible nearly 100 of new or extended transit fixed guideway systems across the country.

The *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU) has been extended and in fiscal year 2010, Congress appropriated $2 billion in New Starts funding. Annually, $200 million of this funding is set-aside for "Small Starts;" that is, major transit capital projects costing less than $250 million, and requiring less than $75 million in Small Starts resources. While the level of New Starts funding has never been higher, neither has the demand for it. SAFETEA-LU authorized over 330 projects nationwide to compete for these discretionary federal dollars. Many of these projects are currently in FTA's New Starts pipeline.

Joint Development (Federal Transit Administration)
Joint development is a form of Transit-Oriented Development (TOD) which directly involves FTA participation. While not a discrete program of the FTA, joint development provides capital assistance

from a number of FTA programs for development taking place concurrent with the development of an FTA assisted project (such as a transit center or fixed guideway) or as stand-alone development at an existing at an existing facility. Joint development can also occur on real property in which the FTA has an interest.

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides federal credit assistance in the form of direct loans, loan guarantees, and standby lines of credit to finance surface transportation projects of national and regional significance. TIFIA credit assistance provides improved access to capital markets, flexible repayment terms, and potentially more favorable interest rates than can be found in private capital markets for similar instruments. TIFIA can help advance qualified, large-scale projects that otherwise might be delayed or deferred because of size, complexity, or uncertainty over the timing of revenues. Many surface transportation projects—highway, transit, railroad, intermodal freight, and port access—are eligible for assistance. Each dollar of federal funds can provide up to $10 in TIFIA credit assistance—and leverage $30 in transportation infrastructure investment.