Managing a Mixed Finance Property

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The HOME Program

The HOME Investment Partnership Program is a block grant program in which the federal government provides funds to support state and local affordable housing programs. Created by the Cranston-Gonzalez National Affordable Housing Act of 1990, HOME (not an acronym) provides formula funding (approximately $2 billion annually) to larger communities and states, and the latter in turn support programs in smaller localities.

The HOME program is administered by Participating Jurisdictions ("PJs") that have a great deal of flexibility in how they administer the program.

On July 24, 2013, HUD published a final rule on the HOME program. Most provisions of the rule are effective for properties that receive HOME funds on or after August 23, 2013. Properties already operating under the HOME program, or that receive HOME funds prior to August 23, 2013 will continue to operate under the prior HOME rules.

This training reflects the changes made effective August 23, 2013.

No HOME project is subject to both the 2013 Final Rule and 2012/2013 Appropriation Laws requirements.

For implementation purposes, a FY2012 or FY2013 HOME-funded project is any HOME activity that is designated as a 2012 or 2013 Consolidated Plan/Annual Action Plan Project regardless of the grant year from which the funds are actually disbursed. A 2012/2013 Action Plan project for which a legally binding written agreement was executed on or after August 23, 2013 is subject only to the 2013 Final Rule requirements. This includes Action Plans entered into before August 23, 2013 that are amended on or after that date.

The Low-Income Housing Tax Credit (LIHTC) Program

The passage of the Tax Reform Act of 1986 established the LIHTC program to provide market incentives to acquire and develop or rehabilitate affordable rental housing.

- IRC Section 42 contains LIHTC provisions and is commonly referred to as "Section 42" of the IRC.)
    - Over the past nearly three decades (1987 – 2013,) this program has helped construct and rehabilitate the nation's affordable housing stock.

The program works as follows:

- The IRS allocates federal tax credits to State Housing Credit Agencies (HCA's).
    - Under Section 42, HCA's may delegate authority to local agencies.
    - 58 state and local agencies are authorized to issue federal tax credits for the acquisition, rehabilitation, or construction of affordable rental housing.
    - HCA's award tax credits to eligible affordable housing developers.
    - The developers use the equity capital generated from the sale of the credits to lower the debt burden on tax credit properties, making it easier to offer lower, more affordable rents.
        - Investors, such as banks, purchase the tax credits to lower their federal tax liability.

Developers typically structure LIHTC projects as limited partnerships (LPs) or limited liability companies (LLCs), providing limited liability to investors.

- This structure allows investors to receive tax credit benefits and passive losses.
- Corporate investors can make direct investments in single projects or in tax credit fund investments.

Larger banks make up the typical investor profile for LIHTC direct investments, which usually range between $2 million and $10 million.

Basic HOME Program Requirements & Terms

1. *Participating Jurisdiction:* Also known as the "PJ," this is the government entity that receives an annual block grant of federal HOME funds from HUD.

2. *HOME Project:* One or more sites or buildings, under common ownership, management, and financing that is assisted with HOME funds as a single undertaking.

3. *HOME-Assisted Rental Units:* These are the units designated as HOME-assisted by the PJ. The information will be contained in a written agreement between the PJ and the property owner.

   a. The <u>minimum</u> number of units designated as HOME-assisted is based on the share of HOME funds to total project costs.

   b. The PJ may designate more than this number.

4. *HOME Requirements apply only to HOME-assisted units and related common space.*

5. *Written Agreements:* A legally binding document between the PJ and the property owner. The agreement will be enforced by a deed restriction.

6. *HOME Rule:* Federal regulation that sets forth the requirements for the HOME program. Found in 24 CFR Part 92.

7. *Affordability Period:* Length of time during which the HOME requirements apply to the property. May be 5, 10, 15, or 20-years, depending on the type of project and amount of HOME investment.

   a. Also known as the "compliance period."

8. *High HOME Rent Units & Low HOME Rent Units:* These HUD published rents are the maximum rents that owners may charge tenants residing in HOME-assisted units (reviewed in detail later).

9. *HOME Unit Mix:* Will be identified by number of units and bedroom size and maintained throughout the affordability period. May be "fixed" or "floating."

10. *Fixed HOME-Assisted Units & Floating HOME-Assisted Units*: This determination is made by the PJ.

    a. **Fixed HOME-Assisted Units:** These units remain designated as HOME units for the entire affordability period – regardless of vacancy or income of the tenant.

        i. The designation as "High" HOME unit or "Low" HOME unit may change.

    b. **Floating HOME-Assisted Units**: Designation of a unit may change as units are vacated or as tenant income changes. Floating units must be comparable

11. *HOME Income Limits:* Low-income is 80% or less of median income and Very-Low-Income is 50% or less of median.

12. *HOME Rent Limits:* HUD updates and publishes HOME rent limits each year. Rents are different for High HOME and Low HOME units.

    a. HOME rent limits include utilities, and the PJ will issue the utility allowances.

13. *Accessible Units:* If there are five or more <u>total</u> units in a project with HOME funds, Section 504 requirements apply.

    a. HUD Regulation 24 CFR §8.3 defines a multifamily housing project as "projects containing five or more dwelling units." §8.22(a) of the same regulation requires that such projects meet the requirements of Section 504 of the Rehabilitation Act of 1973. This requirement applies only to new construction.

    b. If HOME funds are provided for rehab, the 504 requirements apply if there are 15 or more units and the rehab cost will be 75% or more of the replacement cost of the completed facility.

14. *Affirmative Marketing & Tenant Selection:* AFHMP's are required, as are written resident selection policies.

15. *Prohibited Lease Terms & Tenant Protections:* Must be a written lease, occupancy agreement, or comparable legal document. Lease terms must be for a minimum of one-year, <u>unless owner and tenant mutually agree to a lesser term</u>. No lease may be for less than 30-days.

16. *Reports:* At a minimum, owners must submit annual rent and occupancy data reports to the PJ. PJ may have other reporting requirements.

17. *Records:* The owner must maintain Compliance records; these include tenant income verifications, unit rents, affirmative marketing, and property standards. These records must be maintained for at least five years after the end of the affordability period.

2012 Program Changes

Due to negative program publicity, HUD made a number of changes to the HUD program in 2012. While not specifically affecting how HOME projects are managed, the changes are important to developers:

PJs may not commit HOME funds to a project until they have:

a. Underwritten the project;

b. Assessed developer capacity and fiscal soundness; and

c. Ensured an adequate market.

The 2013 rule added two specific deadlines for the initial lease up/occupancy of HOME rental Units:

1. Within six months of the date of project completion, every HOME-assisted rental housing unit must be occupied by income-eligible tenants. If a unit is not leased up, the PJ must submit marketing information to HUD and, if appropriate, submit a new marketing plan; and

2. Within 18 months of the date of project completion, if any housing unit is not yet rented to an income eligible tenant the PJ must repay HOME funds invested in the unoccupied HOME unit(s).

If a HOME homeownership unit is not sold to an eligible buyer within six months of construction completion, it must be converted to a HOME rental unit; and

HOME funds may be provided to CHDOs only if the CHDO has staff with demonstrated development experience.

Management Responsibilities for HOME and LIHTC Program

While neither program imposes specific asset management requirements, there are PJ and Housing Finance Agency (HFA) imposed conditions that directly impact property management. Related areas include:

- Tenant Income Limits;
- Rent Restrictions;
- Minimum Property Standards;
- Marketing; and
- Record-keeping

Property Management: Ensuring HOME Compliance

Key Roles of the Property Manager

1. Marketing;
2. Screening applicants;
3. Determining & documenting tenant income-eligibility;
4. Tenant selection;
5. Rent calculation & collection;
6. Lease enforcement;
7. Property maintenance;
8. Budgeting;
9. Recordkeeping; and
10. Reporting

HOME Reporting & Recordkeeping

At a minimum, owners must submit an Annual Rent & Occupancy Report to the PJ. The PJ may impose additional requirements.

Fee Management of HOME Project

If an owner contracts for the management of a HOME project, they must have a written agreement ("Management Agreement") with at least the following elements:

- Roles & responsibilities of each party;
- Requirement to follow the Management Plan;
- HOME Affordability Requirements:
    - Duration of affordability period
    - Number of High HOME Rent units and Low HOME Rent units that must be maintained through the affordability period and property specific guidance that describes how to maintain the unit mix
    - Guidance on how to use the HOME income limits
        - Income targeting (how many households at what income levels must occupy the High HOME Rent units and Low HOME Rent units)
        - Determining initial income eligibility, including definition of household income and acceptable source documents
        - Certification of continued income-eligibility, including acceptable method of income recertification
    - Establishing rents
        - Using HOME rent limits
        - Using the utility allowance, if applicable
        - Initial rents that may be charged
        - Rent increases, including when rents may be increased and procedures for securing owner and/or PJ approval
- Tenant Selection terms, including occupancy rules of HOME, the application process, and tenant selection procedures.

- Lease terms, including the length of the lease, prohibited lease clauses, and who approves the lease
- Lease enforcement, including property manager's responsibility for monitoring tenant compliance with leases, what constitutes "good cause" for evictions, and process for evictions
- Nondiscrimination provisions
- Marketing, including affirmative marketing requirements (for properties with five or more units) and marketing of accessible units, if applicable
- Maintaining the property and making repairs
    - Meeting applicable property standards, including lead-based paint requirements
    - Identification of who performs maintenance tasks, who has authority to approve repairs, make capital expenditures, etc.
    - Service request response times
    - Providing utilities and services
- Managing property finances to ensure continue financial viability and operation as affordable housing
    - Operating budget and operating account disbursements (guidance on using property operating funds)
    - Rent collections and other accounts receivables
    - Accounting and bookkeeping requirements
    - Insurance
- Reporting to the Owner and/or PJ, including what financial, maintenance, and rent and occupancy reports are required; who must prepare them; and to whom they must be submitted
- Record-keeping, including a description of tenant, property, and marketing files that must be maintained; for how long; and who has access.

- Guidelines for staffing, to ensure adequate maintenance and compliance with HOME requirements:
    - The type and number of employees working at the property
    - Whether staff, such as an on-site manager or maintenance worker, will reside at the property, and if so, on what terms. (*Note: due to a conflict of interest, the owner(s) and other employees, agents, and consultants should not reside at the property.)*
    - Employee compensation
    - Payment of applicable payroll taxes, workers compensation insurance, health insurance, and other employee benefits
- Legal enforcement provisions (how the owner will enforce the agreement if the property manager does not comply with its terms or meet performance standards)
- Conditions under which the agreement will be terminated
- Additional requirements imposed by the PJ and/or the owner on the project

<u>Maintaining Affordability</u>

- HOME Income Limits: *Every* HOME-assisted rental unit must be low-income (80% of median). For properties with five or more HOME-assisted units, at least 20% of the units must be very low income (50% of median.)
    - Income eligibility must be determined at time of application based on **source documentation**.
    - In subsequent years, tenants must be recertified each year during the affordability period.
        - Verification is required every sixth year, with tenant affidavits being acceptable in the interim years.
        - If recertified income is above the current HOME program income limits, the tenant is over-income and the property is out of compliance (*how to handle this is discussed later.)*
    - The PJ is required to provide the applicable income limits.

- HOME Income Targeting: The process of designating units by income is called "income targeting."
    - Initial occupancy: At lease up, most PJ's will require that all HOME-assisted units have income no greater than 60% of median. (*This is because that for the entire allocation the PJ receives, at least 90% of households must be at or below the 60% level.)* The balance may be up to 80%.
        - Initial income targeting does not apply throughout the affordability period, unless the PJ requires it.
        - The PJ may require <u>stricter</u> income targeting requirements.

<u>Determining Income Eligibility</u>

Income eligibility is based on the Annual Gross Income of the applicant.

Annual Gross Income: HOME Program allows the PJ to choose from one of three definitions of annual gross income:

1. The Section 8 Program definition; or
2. The IRS definition of adjusted gross income as reported on the IRS Form 1040.
3. *Effective for properties with HOME funds allocated on or after August 23, 2013, must have at least two months of source documentation (e.g., wage statements, interest statements, etc.) when determining income for HOME beneficiaries.*

Note: Properties with HOME & LIHTC will use the Section 8 definition of income.

<u>Initial Income Eligibility</u>

**Income eligibility <u>must</u> be determined prior to move-in and lease execution.

- The determination is based on *current* income projected for the next 12 months.
- Source documents should be used to verify income, such as
  - Wage statements for approximately the past three months, if employment is steady; or for the past year, if employment is not steady or is seasonal (such as construction workers or teachers);
  - Interest statements;
  - Unemployment compensation statements; and
  - Third party verifications from employers, banks, or others with first hand information about the applicant's finances. Such verifications should be in writing and can include documented telephone interviews.

Owners/managers may not use a self-certification, a certification from another program, or an income tax return from the prior year (it does not establish current income.)

For HOME purposes, an eligibility determination may be used for up to six-months. If the tenant does not move in during this six-month period, a new income determination is required. (*Note: this does not apply if tax credits are present.)*

Recertification of Tenant Eligibility

- Tenants must be recertified each year of the affordability period.
  - Source documents every sixth year.
    - I.e., source documents in year one, six, twelve, etc.
  - In interim years, any of the following methods may be used (PJ will choose:)
    - Source documents (same as initial year);
    - Written statement and certification by tenant; or
    - Written statement by administrator of government program under which the tenant receives benefits.
  - The same method must be used for all tenants.
  - Recertifications do not have to be done at any particular time in the year, but a routine schedule should be adhered to; recommendations are:
    - Anniversary of move-in certification;
    - Time or lease renewal; or
    - All tenant verifications done at the same time.
    - If using LIHTC, coordinate with tax credit requirements.

Special Rule for Persons with Disabilities

If a person with a disability was previously unemployed, and the family's income increases due to the disabled person's employment or participation in a self-sufficiency program:

- Exclude all income earned by the disabled person in the first year and half the income earned in the second year.
- ***This does not apply if there are tax credits.***

Following are some of the major changes made effective by the final rule published in July 2013 (applies to projects subject to the 2013 Final Rule):

- Qualification as Affordable Housing – Rental Housing; A number of new requirements as been added in this area:
  - Initial Occupancy of Vacant Units:
    - Within six months after project completion, the PJ must provide information to HUD on the marketing efforts of any units that have not yet been rented, and if necessary, must submit an enhanced marketing plan;
    - If the unit still has not been rented 18 months after completion, HUD funds invested in the unit must be repaid by the PJ to HUD.
  - Utility Allowances:
    - PJ is required to develop a utility allowance and update it annually.
      - Significant Change: a separate allowance must be developed for <u>each</u> HOME project. They may use the HUD Model Allowance or specific project utilities. *The PJ may no longer rely on the PHA allowance for the Voucher program.*
      - This requirement is effective for projects funded on or after January 24, 2015.
  - Rent Review & Approval:
    - The former rule required that the PJ approve initial rents, and then provide maximum rents on an annual basis;
    - New Rule: PJ must examine and approve rents <u>each</u> year to ensure compliance with maximum HOME rents and that there is not an undue increase from a prior year.
  - Tenant Protections & Selection:
    - Leases are required – all HOME units must have a lease, which must be at least one year (unless a shorter period is agreed to by both the tenant and landlord).
    - A lease may not require a tenant to accept supportive services (except for residents of transitional housing).
    - Leases may only be non-renewed or terminated for good cause.
      - Repeated lease violations;
      - Violations of federal, state, or local law; or
      - Completion of tenancy for transitional housing.
        - If a tenant fails to participate in required supportive services for transitional housing, the lease may be terminated.
      - An increase in a tenant's income does **not** constitute good cause for termination or non-renewal.

- Renting to special needs populations:
  - Owners may limit eligibility of HOME-assisted housing or give preference to a particular group ***only if*** the PJ permits it in the written agreement.
  - This does not apply if the project also receives assistance from a federal program that limits eligibility to a particular population segment, such as
    - HOPWA, HUD's homeless programs, Section 202 program, and Section 811 Program.
- Other Tenant Selection Requirements:
  - Owners must comply with HUDs Affirmative Fair Housing Marketing Plan requirements and adopt and **follow** tenant selection policies and criteria;
    - Tenant selection criteria must limit occupancy in HOME-assisted rental housing to income eligible families; and
    - Tenant selection criteria must be related to an applicant's ability to pay rent, maintain the unit in reasonable condition, and not interfere with the rights of other tenants.

Over-Income Tenants

*Tenants in HOME units are considered over-income when their income exceeds the income limit for their particular category of HOME unit (i.e., Low-HOME or High-HOME).

- Steps taken will depend on whether there are fixed or floating units (discussed in detail later.)
- Over-income tenants may not be removed from the property due to income, but the rent must be adjusted (when permitted by the lease.)

HOME Rent Limits

High HOME Rents – maximum rents that may be charged to low-income households. Based on the *lesser of*:

- The Section 8 Fair Market Rents (FMRs) for existing housing; or
- 30% of the adjusted income of a family whose annual income equals 65% of median income (the published High HOME rent).

Low HOME Rents – maximum rent that may be charged to Low HOME Rent units occupied by very low-income households (50% income level.) *In properties with five or more HOME assisted units, at least 20% of HOME-assisted units must be at the Low HOME level.* Low HOME Rents are based on one of the following:

- 30% of the tenant's monthly adjusted income; or
- 30% of the annual income of a family whose income equals 50% of median income (the HUD-issued Low HOME Rent); or
- If a property has a federal or state project-based rental subsidy and the tenant pays no more than 30% of his or her adjusted income toward rent, the maximum rent may be the rent allowable under the project-based rental subsidy program.
    - This is the only time HOME rents may be exceeded.

>The PJ determines which of the Low HOME Rent options will be used.

- Most use the HUD published Low HOME rents, or the project-based rent limits when there is project-based rental assistance.
- The first option is almost never used due to difficulty underwriting such properties.

The HUD published HOME rent limits include utilities. When a tenant pays directly for utilities, the owner/manager must subtract a PJ-approved **utility allowance** to determine the rent that may be charged for the unit.

HUD updates the HOME rent limits every year. The owner is never required to lower the rents below the initial rents approved by the PJ.

All rent increases must be approved by the PJ, and the PJ may establish lower rents than HUD published rents.

Special rent limits apply for certain projects, such as those with state or Federal project-based rental assistance, low-income housing tax credits, group homes, and SRO units.

Rent Limits for Large Units

For units with seven or more bedrooms, owners must calculate the rent limit.

>Add 15% of the four bedroom rent limit for each additional bedroom; e.g.,

- 7 bedroom rent limit = 1.45 X 4-bedroom rent limit
- 8 bedroom rent limit = 1.60 X 4-bedroom rent limit

Rents for Tenants Receiving *Tenant-Based* Rental Assistance

When *tenant-based* rental assistance is received (e.g., vouchers), the maximum rent for a HOME-assisted unit may not exceed the applicable HUD published HOME rent limit.

>The tenant's total rental assistance payment, plus the tenant rent contribution, cannot exceed the HUD-published HOME rent limit (either High HOME or Low HOME.)

Rents may **not be different for voucher holders and non-voucher holders in HOME-assisted units.

Note how this differs from LIHTC rules.

HOME program regulations (24 CFR 92.252(i)(2)) states that when a unit is both HOME assisted and LIHTC, the rent rules of the tax credit program are followed, meaning that when a HOME tenant goes over-income, if they are in a tax credit unit, they may not be charged more than the LIHTC permitted rent.

HOME Tenant Selection Requirements

- PJs must approve marketing and tenant selection procedures.
- If five or more HOME units, project must have an AFHMP, and Section 504 requirements apply.
- There must be written tenant selection procedures for the HOME-assisted units only.

Combining HOME & Tax Credits

HOME Rent Rules

A HOME-assisted project must have rents that do not exceed the lesser of the following two amounts:

1. The Section 8 FMR for comparable units, minus a utility allowance; or

2. 30% of the adjusted income of a family with a gross income of 65% of area median income, with adjustments for the number of bedrooms, minus a utility allowance.

HUD may permit adjustment to these limits if required to assure the financial stability of the project. Approval for such adjustments is rare and rent increases are normally based on adjustments in FMR and median incomes.

Properties with five or more rental units must meet the lower of the following two very-low-income occupancy requirements:

1. At least 20% of the total units occupied by very low-income families (50% income level) whose rent payment is no more than 30% of adjusted income, as determined by HUD. If the unit received project-based federal or state subsidy, the maximum rent for the unit, including the tenant payment and the subsidy, is the rent allowable under the federal or state program. If there is no project-based subsidy, the maximum rent is the tenant payment (30% of income) minus any applicable utility allowance.

2. At least 20% of the units are occupied by very-low-income families (50% income level) and have rents no higher than 30% of 50% of area median income, with adjustments for family size. The maximum rent must include an allowance for tenant paid utilities.

Rents must be approved by the PJ, who will also establish the utility allowance.

HOME rents never have to be lower than the rents in place when the project receives a HOME commitment.

Other Fees

Any mandatory fee or surcharge on HOME-assisted units must be approved in writing by the PJ. All such fees must be deducted from the HOME rent that may be charged, thus lowering the rent payment to the owner.

Changes in Rent

- PJ's must approve all rent increases in HOME-assisted units.
- It may be possible to raise rents when
    - HUD increases the HOME rent limits;
    - The PJ utility allowance is reduced; or
    - The tenant's income changes.
- Rents must be *lowered* if
    - HUD HOME rent limits decrease; or
    - Utility allowance increases causing rent to exceed HUD published rent limits.
- Owner is never required to charge less rent than initially approved.
- In the case of *extreme* financial hardship, HUD may approve rents in excess of program limits.
    - This is very rare and rents may never exceed market rates.

HOME Rent Limits for Special Types of HOME Units

- Units with state or Federal project-based rental assistance
    - Low HOME rent limit
        - Project-based program rent may be charged as long as
            - Unit is occupied by very low-income tenant; and
            - Tenant pays no more than 30% of adjusted monthly income in rent.
    - High HOME rent limit
        - *Lesser* of the project-based rent or High HOME rent may be charged when the household either
            - Is low-income, but not very low-income; or
            - Pays more than 30% of income toward rent.

- Units with LIHTC assistance
    - Low HOME Units
        - Capped at *lesser* of Low HOME rent limit or LIHTC rent limit for the unit.
    - High HOME Units
        - Capped at *lesser* of High HOME rent limit or LIHTC rent limit for the unit.
- Group Homes
    - Low HOME Units
        - Does not apply because a Group Home is considered a single unit under the HOME program.
    - High HOME Units
        - Rent is based on the rent of a single unit with multiple bedrooms, capped at the HUD published FMR.
- SRO Housing
    - Low HOME Units
        - Depends on
            - Whether the unit has food preparation and / or sanitary facilities, and
            - If the unit has state or Federal project-based assistance.
        - All SRO projects with five or more units must have at least 20% Low HOME units.
    - High HOME Units
        - High HOME rent that is used depends on
            - Whether the unit has food preparation and / or sanitary facilities, and
            - If the unit has state or Federal project-based assistance.

A note on adjusting rents when a tenant in a Project-Based unit goes over-income:

>The unit may not be a Low HOME unit and must be redesignated as a High HOME unit as soon as another unit is designated as a Low HOME unit. The tenant still pays 30% of adjusted income in rent, but the total rent that is paid to the owner will be the lesser of High HOME rent or the Project-based subsidy.

<u>What Utility Allowance is used in a HOME/LIHTC Property?</u>

- The allowance provided by the PJ must be subtracted from the HOME rent limits to determine the maximum HOME rent that may be charged.
- The LIHTC allowance should be used for all non-HOME units.
- <u>The *lesser* of these two rents is the rent that should be charged,</u> as shown in the following example:

	HOME	**LIHTC**
Rent Limit	$550.00	$600.00
Utility Allowance	$110.00	$120.00
Maximum rent	$440.00	$480.00

The maximum rent that can be charged for the unit is $440.00 per month. *Tax credit units that are not HOME units can charge $480.00.*

Handling an Over-Income Tenant in a HOME/LIHTC Unit

For HOME/LIHTC properties, **the HOME program has adopted the LIHTC guidelines for establishing rent for over-income households.**

- Actions will depend on whether the property has fixed or floating HOME units, whether or not 100% of the units are HOME or LIHTC, and what percentage of units are assisted or non-assisted.

Maintaining Unit Mix When the Property has Fixed HOME Units

Properties with **fixed HOME-assisted units** have specific units that are designated as HOME-assisted for the entire affordability period.

The designation of High HOME rent units and Low HOME rent units may need to change to maintain the required unit mix.

In a property with "fixed" units, non-assisted units are never designated as HOME units.

A tenant is considered "**over-income**" in the HOME program when:

- The tenant occupies a High or Low HOME rent unit and the household income increases over the current HOME low-income limit for that family size, or
- The tenant occupies a Low HOME rent unit, and the household's income increases above the current very low-income limit, but does not increase above the low-income limit.
    - I.e., the household is above the 50% limit but not the 80% limit.
    - When this happens, the next vacated High HOME rent unit will be rented as a Low HOME rent unit, and the over-income unit becomes a High HOME rent unit, with rent adjusted according to the lease.

When a tenant is over-income, the unit that the tenant occupies is considered *temporarily out of compliance* with HOME's occupancy and unit mix requirements.

- This is acceptable as long as the owner restores the correct occupancy and unit mix as soon as possible.
- If a tenant goes over the low-income (80%) limit, the rent <u>must</u> be adjusted.
    - Tenant will pay the lesser of
        - The rent amount payable under state or local law;
        - 30% of the family's monthly adjusted income; or
        - In a LIHTC property, the rent dictated by the tax credit program.
- Owners may not terminate the tenancy of a household based on income.

<u>Maintaining Unit Mix in Properties with Floating HOME-Assisted Units</u>

Properties with **floating HOME-assisted units** do not have specific units that are designated HOME-assisted for the affordability period. As long as the total required number of HOME-assisted units is maintained, the actual units may vary.

Unit mix in maintained by changing the unit designations when the next unit becomes available.

- E.g., a property has an over-income tenant in a HOME-assisted unit. When the next non-assisted unit becomes available, it is designated as HOME-assisted and rented to an income eligible tenant.
- The unit occupied by the over-income tenant is redesignated as a non-assisted unit.

The total number of High HOME rent units and Low HOME rent units must be maintained.

<u>Record Keeping and Reporting on Rent & Occupancy</u>

Owners must maintain records on HOME units for the most recent five-year period throughout the affordability period and for five years after it has ended.

At a minimum, the owner must submit a **rent and occupancy report** to the PJ on an annual basis.

Tenant Relations for HOME Projects

The following requirements exist for all HOME properties:

1. Every tenant must have a **written lease**, occupancy agreement, or comparable legal document;

2. The lease term must be for at least 12 months, *unless otherwise approved by the PJ*;

3. The lease term may never be for less than 30-days;

4. The PJ must approve all leases; and

5. The owner must establish *dispute resolution procedures* for settling disagreements with tenants.

Differences in LIHTC and HOME Rules for Property Management

In general, when a property has both HOME funds and tax credits, both sets of rules apply, so the stricter requirements of each program must be met. Key management issues that vary between the programs include:

- **Income Targeting & Occupancy Requirements:** Examine use agreements to determine number of units and income limits for each program. If a household meets only one set of requirements, the unit may be counted for that program only.

- **Maximum Allowable Rent Determinations:** The lower rent of the two programs should be used. Both programs have utility allowance requirements.

    - **Utility Allowances:** Deduct the LIHTC allowance from the LIHTC rent and the HOME allowance from the HOME rent. The lesser of these two is the rent that should be charged.

- **Affordability & Market Rents:** Properties may always charge the "market" rent for either program, if the market rent is less than the program allowable rents.

- **Reductions in Rents:** The HOME program does not require that rents be reduced below the level in effect at the time of project commitment. Due to changes in federal law in 2008, tax credit rents should not experience reductions.

- **Initial Tenant Income/Eligibility:**
    - **Definition of Income**: LIHTC requires the use of the Section 8 Program definitions. HOME program has three methods for income determination. When both programs are present, the Section 8 method should be used.
    - **Asset Income**: HOME program requires verification of *all* asset income, so units that are both HOME and LIHTC must verify all assets.
        - PJ's have three options in setting the imputed rate to be used in the calculation of income from assets when the total cash value of a household's assets exceed $5,000. The PJ may use (1) the passbook rate used by the local PHA; (2) the passbook rate published by HUD's Office of Multifamily Housing as described in Notice H 2014-15 [currently .06%]; or (3) a rate established by the PJ. Once the method is established, it must be used for all HOME participants.

- **Recertification of Tenant Income**:
    - **HOME:** Annual recertification of income is required, but full verification is required only every six years.
    - **LIHTC:** Annual recertification is only required for properties that are not 100% low-income.
    - **Over-Income Tenants:** For HOME/LIHTC properties, the HOME program has adopted the LIHTC guidelines for setting rents for over-income households. A tenant is "over-income" when their income exceeds by more than 140% the qualifying income for that family size. The LIHTC Available Unit rule should be followed in these cases.

- **Affordability/Compliance Period:** HOME affordability periods are specified in the HOME Regulatory Agreement. LIHTC compliance periods will be outlined in the Extended Use Agreement.
    - **HOME Requirements:**
        - Rehab of less than $15,000 per unit – 5 years;
        - Rehab $15,000-$40,000 per unit – 10 years;
        - Rehab of more than $40,000 per unit – 15 years;
        - New construction – 20 years
        - Refinanced rental – 15 years
    - **LIHTC Requirements:**
        - Extended Use Period of at least 30 years

- **Property Inspections:** Inspection schedule of each program may differ, and both must be followed.
    - **HOME:** onsite inspections as follows (applies to <u>total</u> units – not just HOME units):
        - 1-4 units: every three years;
        - 5-25 units: every two years; and
        - 26+ units: annually
        - PJ will inspect units and review tenant files (10-20% of HOME assisted units, with a minimum of one per building).
        - *Effective for properties with HOME funds allocated on or after August 23, 2013, PJs must use state or local codes, or, in the absence of such codes, UPCS (replaces HQS). This standard was to have been in place no later than July 24, 2014.*
    - **LIHTC**
        - Initial review by end of second calendar year after last building in project is placed in service;
        - At least every three years thereafter.

- **Section 8:** Both programs permit the maximum rent to exceed program requirements on units with *project-based* Section 8. (In HOME, this is true only for Low HOME rent units.) LIHTC may also collect more for tenant based rental assistance (vouchers.)

Combining the Programs

As mentioned, each of the different program rules must be met, as illustrated in the following example.

Total Development Cost $5,000,000

HOME Loan 1,500,000

Int. Rate on HOME Loan 3%

Total No. of Units 100

HOME Assisted Units 30 ($1,500,000 divided by $5,000,000)

Tax Credit Units 100

Tax Credit Percentage 9%

To meet HOME requirements, very low-income families paying no more than Low HOME Rents must occupy six (6) HOME assisted units (20%). Remaining 24 HOME units must be rented in accordance with tax credit requirements since HOME requirements would allow for higher income and rents.

So, this all breaks down as follows:

. 6 units at 50% of median income;

. 94 units at 60% of median income (assuming 40/60 tax-credit set aside was chosen);

. 6 units pay lesser of tax credit rent or Low HOME Rent;

. 24 units pay lesser of tax credit rent or High HOME Rent; and

. 70 units pay tax credit rent

. When combining the two programs, rules of both programs must be followed.

Monitoring

Tax Credits:

- Projects monitored at least once every 3 years throughout the affordability period.
- Affordability period: Minimum of 30 years (15 year compliance and 15 year extended use).
- Statement of compliance is submitted annually with documentation of occupancy.
- On site inspections will be performed in conjunction with file reviews. Physical habitability is very important.
- *Effective for properties with HOME funds allocated on or after August 23, 2013, PJs must examine financial condition of projects with ten or more HOME units at least annually (beginning July 24, 2014).*

HOME:

- Projects monitored annually throughout the affordability period.
- Affordability period: 5-20 years depending on activity funded and level of per unit investment.
- Periodic on-site inspections are required to ensure compliance with program property standards and to review a sample of tenant files. The frequency of inspections depends on the number of units in the project. (24 or less, every 2 years; 25+, annual).

Tax Credit with HOME:

Each agency will monitor according to its program requirements.