LAYERING HOME FUNDS AND THE LOW-INCOME HOUSING TAX CREDIT PROGRAM

Introduction to the Housing Trust Fund

A. J. Johnson

June 28, 2018

2018 PHFA Housing Services Conference

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AGENDA

- Occupancy Requirements & Eligibility
- Rents
- Dealing with Over-Income Households
- Monitoring Requirements
- Introduction to the Housing Trust Fund

<u>Occupancy Requirements & Eligibility</u>

<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 two 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.

Effective for properties with HOME funds allocated on or after August 23, 2013, owners must have at least two months of source documentation (e.g., wage statements, interest statements, etc.) when determining income for HOME beneficiaries. Written verification from employer is acceptable if it states annual income.

When combining the HOME and LIHTC programs, the PJ should adopt the Section 8 definition of income so that it complies with both programs. The PJ must provide this definition to the owner (ideally in the written agreement between the PJ and the owner) and provide guidance on how to apply the definition to the income determination process. This requirement is outlined in HUD Publication 2013, which outlines the HUD requirements when combining HOME and LIHTC funds.

Unless the HOME units are governed under a HAP contract (through the HUD Office of Multifamily Housing) or are public housing (under a local PHA), owners or projects with HOME funds are not authorized to use EIV.

<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 (***at least two months*** for HOME), if employment is steady; or for the past year, if employment is not steady or is seasonal (such as construction workers or teachers);
        - *Note – if an employer verifies annual income, the two-month requirement for HOME is considered to be met.*
    - 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.)*

Major issues relating to income include:

- Household Membership;
- Age of members;
- Employment Income;
- Asset income;
- Unearned income (pensions, social security, child support, recurring gifts, etc.)

<u>Income Limits</u>

- ❖ HOME income limits and LIHTC Income Limits will differ:
  - o Low-Home = 50% of the Area Median Income;
  - o High-HOME = 80% of the Area Median Income; and
  - o LIHTC limits are set at either 50% or 60% of AMGI
- ❖ LIHTC Income Limits are "held-harmless," while HOME limits are not.
- ❖ If a unit is both HOME & LIHTC, the lower of the two limits should be used.

<u>Recertification of Tenant Eligibility (HOME)</u>

- Tenants must be recertified each year of the affordability period.
  - o Source documents are required every sixth year.
  - o 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.
  - o The same method must be used for <u>all</u> tenants.
  - o 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 of lease renewal; or
    - ▪ All tenant verifications done at the same time.
    - ▪ If using LIHTC, coordinate with tax credit requirements.

<u>LIHTC Recertifications</u>

Annual income recertifications are only required for mixed-income projects (although HFAs will have their own requirements).

Student Eligibility

- **HOME:** Effective August 23, 2013, the HOME program adopted the Section 8 program restrictions on student participation as found at 24 CFR 5.612, which exclude any student that:
  - Is enrolled in a higher education institution**;**
  - Is under age 24;
  - Is not a veteran of the U.S. military;
  - Is not married;
  - Does not have a dependent child(ren);
  - Is not a person with disabilities (if they were receiving Section 8 assistance as of November 30, 2005); or
  - Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income.
  - *Excluded students are prohibited from receiving any type of HOME assistance, including renting HOME-assisted rental units, receiving HOME tenant-based rental assistance, or otherwise participating in the HOME program independent of their low- or very low-income families.*

- **LIHTC**
  - Generally, if all the members of a household are full-time students (as defined by the school), the unit is not considered to be low-income;
  - The student must be a student during five months of the year;
  - If all members are full-time students, the household may still qualify if one of the following exceptions is met:
    - Any member is enrolled in a federal, state, or local job training program;
    - Any member receives assistance under Title IV of the SSA
      - TANF;
      - Stephanie Jones Child Welfare Services Program; or
      - Foster care/Adoption assistance
    - Any member was ever in the Foster Care Program under Title IV;
    - All adults are single parents with children in the household and none of the household members are claimed as tax dependents by a third party
      - The children may be claimed by the absent parent; or
    - All adults are married and eligible to file a joint federal tax return.

Rents

Tax Credit Rents

- Maximum LIHTC rent is calculated based on (1) number of bedrooms ; (2) area income limits; and (3) an assumption of 1.5 persons per bedroom for purposes of calculating the income to be used in the maximum rent determination.

HOME Rent Limits

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

- The Section 8 Fair Market Rents (FMRs) for existing housing (voucher program); 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 the HOME rent 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, *but the rents may go down from one year to the next.*
All rent increases must be approved by the PJ, and the PJ may establish lower rents than HUD published rents.

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.

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.

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.

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.
- Over-income tenants may not be removed from the property due to income, but the rent must be adjusted (when permitted by the lease.)

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 (e.g., if Unit 101 is a HOME unit, Unit 101 will not be swapped with another unit and will remain a HOME unit).
- 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 (80%), *by any amount*, 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 (50%), 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.
        - The units "swap" status.

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 must 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.

Maintaining Unit Mix in Properties with "Floating" HOME-Assisted Units

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-HOME 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-HOME unit.

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

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.

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).
- *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).*

Tax Credit with HOME:
Each agency will monitor according to its program requirements.

Introduction to the Pennsylvania Housing Trust Fund

The Housing Trust Fund (HTF) was enacted as part of the Housing & Economic Recovery Act of 2008 (HERA 2008) to provide funding for housing for very low (50% of AMGI) and extremely low income households.

PHFA administers the fund in PA.

- PHFA will utilize the same process for applicant selection as is used for the LIHTC program.
- HTF funds will only be awarded to projects that meet LIHTC guidelines and receive an allocation of LIHTCs.
    - The funds are intended to increase the feasibility of LIHTC projects and ensure deeper targeting for extremely low-income households.
- Developments must meet the site and neighborhood standards contained in 24 CFR §93.150:
    - Promotion of housing choice opportunities;
    - With some exceptions, the project may not generally be located in an area of minority concentration or in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area;
    - The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions; and
    - The housing must be accessible to social, recreational, educational, and health facilities and services and other municipal facilities and services that are at least the same as those typically found in neighborhoods that consist largely of unassisted, standard housing of similar market rents.
- Applicants for HTF funds must meet the eligibility criteria required for the awarding of LIHTCs, including, but not limited to:
    - Limited displacement of low-income residents;
    - Commitment to serve low-income residents for a period of not less than 30 years;
    - Financial capacity to complete the development;
    - Provision of specific project amenities such as
        - Community rooms;
        - Laundry facilities and management offices;
        - Visibility;
        - Accessibility requirements; and
        - Energy efficiency.
- Qualified developments must be affordable to tenants whose incomes do not exceed the extremely low-income level, as published by HUD.
    - This may encourage developers to select the new Income Averaging minimum set-aside for LIHTC purposes.
- HTF funds will be allocated approximately 50% to urban communities and 50% to suburban/rural communities.

- Projects with Federal, State, or local project-based rental assistance or internal subsidies will be given priority.
- Preference will be given to projects that:
    - Target supportive housing;
    - Provide senior housing (62+) with services;
    - Preservation of existing housing;
    - Developments that demonstrate community impact; and
    - Developments in areas of opportunity.
- PHFA will establish per unit maximum subsidy amounts based on the number of bedrooms.