Combining HOME & LIHTC Programs - Critical Issues

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The HOME Investment Partnership Program is a block grant program from 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 $1 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 apply to properties that received HOME funds on or after August 23, 2013. Properties already operating under the HOME program as of August 23, 2013, or that received HOME funds prior to August 23, 2013 will continue to operate under the prior HOME rules.

<u>This training reflects the changes made effective August 23, 2013.</u>

Management Responsibilities for HOME Program

While the HOME program imposes no specific asset management requirements, there are PJ 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.

Maintaining Affordability

- 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). *These are known as "Low-HOME units."*
    - 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 stricter income targeting requirements.

Determining Income Eligibility

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.

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

Initial Income Eligibility

**Income eligibility must 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.)

Recertification of Tenant Eligibility (HOME)

- Tenants must be recertified each year of the affordability period.
    - Source documents are required every sixth year.
    - 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 of 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 to the LIHTC Program.*

<u>Following are some of the major changes made effective by the final rule published in July 2013:</u>

- 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 any of the methods permitted for the LIHTC program. *The PJ may no longer rely on the PHA allowance for the Voucher program.*
        - For developments with both Housing Choice Voucher and HOME funds, a PJ must submit a request for a waiver of the HOME UA requirements for HOME units occupied by HCV tenants if the PJ wishes to use the Has under the HCV program instead of the UAs under the HOME regulation for those units.
        - The PJ <u>may</u> require that the owner develop the allowance using one of the approved methods.
        - **This only applies to projects that received HOME funds on or after August 23, 2013.**
- 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.
        - *Recommendation – seek PJ approval for <u>any</u> rent change – not just annual.*
- 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.

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 (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.

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.

<u>Rents for Tenants Receiving *Tenant-Based* Rental Assistance</u>

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, <u>plus</u> 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.

Combining HOME & Tax Credits

HOME Rent Rules

A HOME-assisted unit 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.

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.

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

- 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.
- The *lesser* of these two rents is the rent that should be charged, 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 (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 <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 <u>not</u> 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-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.

Record Keeping and Reporting on Rent & Occupancy

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.

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 from year-to-year.

- **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.

- **Recertification of Tenant Income**:
  - **HOME:** Annual recertification of income is required, but full verification is required only every six years.
  - **LIHTC:** Annual income 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" for LIHTC purposes 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.
- **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.

- **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 had 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.

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.