HOME Investment Partnerships Program

By Ed Gramlich, Senior Advisor, NLIHC

Administering Agency: The Office of Affordable Housing Programs (OAHP) in HUD's Office of Community Planning and Development (CPD)

Year Started: 1990

Population Targeted: Households with income equal to or less than 80% of the area median income (AMI); when used to assist renters, 90% of a jurisdiction's HOME-assisted rental units must be occupied by households with income equal to or less than 60% AMI.

Funding: Congress appropriated \$1.25 billion for FY24. This was a reduction from \$1.5 billion for FY23 and FY22, which was a \$150 million increase over FY21 and FY20 funding of \$1.35 billion, an increase from FY19 funding of \$1.25 billion. For FY24, the Administration proposed increasing funding for HOME to \$1.8 billion, while the Senate proposed \$1.5 billion and the House proposed a drastic cut to \$0.5 billion. For FY 25, the Administration proposed keeping HOME at \$1.25 billion while the Senate proposed an increase to \$1.425 billion and the House proposed a drastic cut again to \$0.5 billion. As of the date this Advocates' Guide went to press, Congress had yet to agree on a final HOME appropriation.

Program Summary

The HOME Investment Partnerships (HOME) Program is a federal block grant intended to expand the supply of decent, affordable housing for lower-income people. The HOME Program was authorized in 1990 as part of the "Cranston-Gonzalez National Affordable Housing Act." HOME is a federal block grant to about 640 participating jurisdictions (PJs), which are states and certain localities that use the funds to provide affordable housing to lowand moderate-income households. States and localities use the funds for a variety of home-

ownership and rental activities. In general, all HOME money must benefit people with lower incomes, tenant rents must generally be capped at a fixed percentage of the area median income (AMI), and units must be occupied by income-eligible households for a set number of years. The HOME Program regulations are at 24 CFR Part 92: https://bit.ly/4ixOrLM. Numerous changes to the HOME regulations were finalized July 24, 2013. NLIHC has a summary of key changes: http://bit.ly/1gWWD7J. OAHP published new proposed changes: https://bit. ly/3GEhYWE to the regulations in the Federal Register on May 29, 2024. NLIHC prepared a summary: https://nlihc.org/sites/default/files/ Proposed_HOME_Tenant_Protections_ Factsheet.pdf of greatly improved proposed tenant protections, as well as a summary: https://nlihc.org/resourcenlihc-summarychdo-provisions-proposed-home-regulation-changes of the proposed changes to the Community Housing Development Organization (CHDO) component of the HOME regulations and submitted formal comments: https://tinyurl. com/47tvktn2 to OAHP regarding the proposed CHDO provisions on July 29, 2024. A final rule: https://www.govinfo.gov/content/pkg/FR-2025-01-06/pdf/2024-29824.pdf was published in the Federal Register January 6, 2025.

ELIGIBLE ACTIVITIES

HOME dollars can be used as a grant or a loan to meet a variety of development costs such as: buying existing housing or vacant land for affordable housing; building new housing; rehabilitating existing housing; demolishing structures to make way for affordable housing; relocation; making site improvements; and paying soft costs, such as engineering plans, attorneys' fees, title search, and fair housing services. HOME can also be used to help people purchase or rehabilitate a home by offering loans, loan guarantees, or down payment assistance. Tenants can be given grants for security

deposits and rental assistance so that they pay no more than 30% of their income for rent and utilities. Although tenant-based rental assistance (TBRA) agreements are limited to two-year terms, they can be renewed without limit.

PJs may spend no more than 10% of their HOME allocation for overall program planning and administration, but there is no limit on the use of HOME funds for project-specific administrative costs. Among other limitations, PJs cannot spend HOME dollars on public housing modernization, operation, or preservation, because public housing has its own separate funding accounts.

COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS

At least 15% of a participating jurisdiction's HOME funds are set aside exclusively to be spent on housing that is developed, sponsored, or owned by Community Housing Development Organizations (CHDOs). Up to 5% of a PJ's HOME funds can be given to CHDOs for operating expenses; this amount is separate and apart from the minimum 15% CHDO set-aside and does not count against a PJ's 10% cap on administrative uses. Up to 10% of the CHDO set-aside can be used to provide loans for project-specific technical assistance and site control, such as feasibility studies and consultants, as well as for seed money to cover pre-construction costs, such as architectural plans and zoning approval.

Any nonprofit can receive a HOME grant or loan to carry out any eligible activity, but not every nonprofit is a CHDO. The HOME statute requires a CHDO to be accountable to low-income community residents through significant representation on the organization's governing board. However, until the January 2025 changes, the regulations merely required that one-third of a CHDO's board members be elected representatives of low-income neighborhood organizations, be residents of low-income neighborhoods, or be other low-income community residents. The January 2025 regula-

tions now require one-third of a CHDO's board to be residents of low-income neighborhoods, other low-income community residents, low-income beneficiaries of HUD programs, or designees of low-income neighborhood organizations or designees of nonprofit organizations in the community that address the housing or supportive service needs of low-income residents or residents of low-income neighborhoods, including homeless providers, Fair Housing Initiatives Program providers, Legal Aid, disability rights organizations, and victim service providers.

Since a low-income neighborhood can be one where only 51% of the residents have income less than 80% of AMI, it is possible that more affluent people with very different priorities could be on a CHDO board. Also, because the regulations allow "community" to be defined as broadly as an entire city, county, or metropolitan area, it is possible to construct a CHDO that is not accountable to low-income residents in a HOME project's neighborhood.

The regulations have always stated that a CHDO may not be a government entity or be controlled by one. However, the regulations have allowed an organization created by a government entity to qualify as a CHDO; but, the government entity cannot appoint more than one-third of a CHDO's board members and no more than one-third of a CHDO's board members can be "public officials or employees of [a] government entity."

The preamble (introduction) to the proposed 2025 rule explained that the one-third limitation on *any* public officials being on the board had the effect of preventing officials of other units of local government, public school teachers, public university professors, and others from being on a CHDO created by a government entity.

Therefore, for a government-created CHDO, the final rule clarifies that "no more than one-third of the [CHDO's] board members may be officials or employees of the PJ or government entity (for example a public housing agency)

that created the CHDO. The final rule also clarifies that *no governmental entity* (not just the one creating the CHDO) may appoint more than one-third of a CHDO's board members. The final rule also clarified the previous rule and now states, "The board members appointed by a government entity and the board members that are officials or employees of the PJ or government entity that created the organization may not appoint any of the remaining two-thirds of the board members. Unchanged from the previous regulation, the officers or employees of a government entity may not be officers or employees of a CHDO.

The 2013 regulation made detailed distinctions about CHDOs that simply "own" projects from those that "develop" projects and those that "sponsor" projects. This Advocates' Guide article does not go into all of the details concerning these three project types. The 2013 regulation "demonstrated capacity" provision required a CHDO that was a developer or sponsor to have paid employees on staff who have housing development experience and who will work on projects assisted with HOME funds. If an organization's paid staff do not have the required capacity, a January 6, 2025 change allows board members or officers of the organization who are volunteers to meet the demonstrated capacity test as long as they are not compensated by or have their services donated by another organization. As with the 2013 rule, for an organization's first year of funding as a CHDO, the organization may satisfy the demonstrated capacity requirement through a contract with a consultant who has housing development experience to train appropriate, key organization staff.

Until recently, if a PJ failed to commit any portion of the minimum 15% CHDO set-aside within two years, the PJ and its low-income residents would lose that amount of money. However, appropriations acts since FY19 have suspended the two-year deadline to commit CHDO set-aside funds. Consequently, a PJ can choose to not use some or all of the 15%

CHDO set-aside, and after two years use those untapped CHDO funds for other HOME-eligible uses. This rolling, temporary suspension of the two-year commitment rule could make it easier for other nonprofits to access more HOME dollars; or, it could simply enable a PJ to avoid funding community-based nonprofits in order to shift HOME funds to other developers. The Administration and the Senate proposed retaining this suspension for FY 25.

Since FY17, appropriations acts also suspended the two-year commitment rule for non-CHDO funds, as did the Administration's and Senate's FY25 proposals.

FORMULA ALLOCATION

A formula based on six factors reflecting measures of poverty and the condition and supply of the rental housing stock determines which local jurisdictions are PJs. Jurisdictions that do not meet the formula's threshold can get together with neighboring jurisdictions to form a consortium in order to get HOME funding.

Each year, the formula distributes 60% of the HOME dollars appropriated by Congress to local governments and consortia; the remaining 40% is allocated to states. The state share is intended for small cities, towns, and rural areas not receiving HOME money directly from HUD. Local PJs are eligible for an allocation of at least \$500,000 (in years when Congress appropriates less than \$1.5 billion, such as FY20, FY21, and FY24 the statute provides that PJs are to receive a minimum of \$335,000. However, appropriations bills since FY20 have suspended this provision, and the Administration proposed legislation to permanently eliminate this provision). Each state receives the greater of its formula allocation or \$3 million. Every HOME dollar must be matched by 25 cents of state, local, or private contributions, which can be cash (but not Community Development Block Grant funding), bond financing proceeds, donated materials, labor, property, or other noncash contributions.

BENEFICIARIES

When HOME is used to assist renters, at least 90% of a PJ's HOME-assisted rental units must be occupied by households with income equal to or less than 60% of AMI; the remaining 10% of the rental units can benefit those with income up to 80% of AMI, known as low-income households. If a rental project has five or more HOME-assisted units, then at least 20% of the HOME-assisted units must be occupied by households with income equal to or less than 50% of AMI, known as very low-income households. When HOME is used to assist people who are homeowners or who will become homeowners, all of that money must be used for housing occupied by households with income equal to or less than 80% of AMI. These are minimum standards required by law. Advocates should work to convince their PJ or state to improve HOME's targeting to people with extremely low income, those with income equal to or less than 30% AMI.

AFFORDABILITY

Households assisted with the HOME program's TBRA option (that is somewhat like a Section 8 Housing Choice Voucher) pay rent that is 30% of their adjusted income. For other HOME-assisted households, maximum rents that may be charged are not based on a household's actual income. Instead, maximum rents are, with one exception, based on a fixed amount. To qualify as affordable rental housing, rent may be no greater than the lower of the fair market rent (FMR) or 30% of the adjusted income of a hypothetical household with an annual income of 65% of AMI; this is called the "High HOME Rent." In projects with five or more HOME-assisted units in which at least 20% of the HOME-assisted units must be occupied by households with very low incomes, rent is considered affordable if it is less than 30% of the income of a hypothetical household with an annual income at 50% of AMI, or less than 30% of their adjusted income; this is called the Low HOME Rent." Actual rent limit figures: https://www.hudexchange.info/programs/ home/home-rent-limits/ are posted on the HUD Exchange HOME program webpage. https:// www.hudexchange.info/manage-a-program/ home-income-limits

Newly constructed rental projects must remain affordable for 20 years. Existing rental housing that is either purchased or rehabilitated must remain affordable for 15 years if more than \$40,000 is spent per unit, 10 years if between \$15,000 and \$40,000 is spent per unit, and five years if less than \$15,000 is spent per unit.

Homeowner-assisted units are considered affordable if, in general, the value of the home after assistance is less than 95% of the median area purchase price. Homeowner units must remain affordable for the same periods mentioned above. PJs must have resale or recapture provisions. A resale provision is intended to ensure continued benefit to low-income households during the affordability period by requiring purchase by an income-eligible household if an original homeowner sells before the end of the affordability period. A recapture provision must ensure that all or a portion of HOME assistance is recouped if an owner sells or is foreclosed upon during the affordability period.

TENANT PROTECTIONS

The January 6, 2025 final regulation changes strengthened tenant protections for renters living in HOME-assisted properties at <u>24 CFR Part 92.253</u>: https://www.ecfr.gov/current/title-<u>24/subtitle-A/part-92?toc=1</u>, the most essential changes are reflected here.

Lease Contents. The HOME rule has always required a lease. The final rule adds that the lease must contain:

 More than one convenient and accessible method to communicate directly with the owner or property management staff, including in person, by telephone, email, or through a web portal;

- ii. The Participating Jurisdiction's (PJ's) contact information for the HOME program;
- iii. The "Violence Against Women Act's" (VAWA's) lease term/addendum; and,
- iv. The HOME lease addendum.

Lease Addendum. To provide greater tenant protections, the new regulation now requires an addendum to a HOME lease. This section of the regulation has 10 key components, eight are touched upon here.

Physical Condition of a Unit and Project. An owner must meet the PJ's standards as well as state and local codes. Regarding maintenance and repairs, an owner must provide tenants a written estimate of when the work will be done, and an owner must not charge a tenant for normal wear and tear or damage but can charge for damage due to a tenant's negligence, recklessness, or intentional acts. If a project provides owner-controlled utilities, the owner must provide uninterrupted utility service, unless the service interruption is not in the owner's control, such as a general power outage. If a life-threatening deficiency cannot be repaired on the day the deficiency is identified, the tenant must be promptly relocated at no cost to the tenant.

Use and Occupancy of the Unit and Project.

Owners must provide at least two days' notice to tenants before entering a unit during reasonable hours for routine inspections and maintenance and for making repairs or improvements, or to show the unit to prospective tenants. An owner can enter a unit anytime without advance notice if it is reasonable to think that there is an emergency. If an owner enters when there are no adults, the owner must provide a written statement explaining the reason for the entry and the date and time of the entry. A tenant's household must have reasonable access to and use of common areas.

The Right to Organize. A HOME tenancy addendum must contain a provision stating that tenants have the right to organize, create

tenant associations, convene meetings, distribute literature, and post information. The preamble to the proposed rule mentioned the tenant organizing provisions codified as Section 245 for HUD's Multifamily program regulations and that are reflected in the requirements for the Rental Assistance Demonstration (RAD). NLIHC urged HUD to add to the HOME regulations direct reference to the Multifamily Section 245 regulations which would avoid ambiguity by providing specific rights. HUD declined NLIHC's suggestion.

Required Notices. Before an owner proposes to carry out an adverse action (such as charging damages that require repair) the owner must provide a tenant with a written notice explaining the reason for the proposed adverse action. Tenants must be notified five business days before there is a change in ownership or management, and there must be at least 30 days' notice before a sale or foreclosure. Notices must accommodate tenants with a physical disability or with language access needs.

Protection Against Unreasonable Interference or Retaliation. An owner may not unreasonably interfere with a tenant's safety or peaceful enjoyment of a unit or common areas. An owner may not retaliate against a tenant for taking actions allowed by the lease or law by decreasing services (such as maintenance or trash removal) or imposing new or increased fees, interfering with a tenant's right to privacy, or harassing a household or their guests.

Exercising Rights. A tenant may exercise any right of tenancy without fear of retaliation if the tenant reports inadequate housing conditions in the unit or in the property, reports lease violations, or if the tenant requests enforcement of the lease and any of its protections.

Security Deposits. Security deposits may be no greater than two months' rent and refundable. If an owner charges any amount against a tenant's security deposit, the owner must provide a list of all items charged and the amount charged

for each item. An owner must promptly refund the security deposit, minus any amounts used to reimburse the owner for items charged.

Termination of Tenancy. An owner may not terminate the tenancy of a tenant or household member, or refuse to renew a lease, except for: serious or repeated violations of the terms and conditions of a lease; for violations of federal, state, or local law; or for "other good cause." Other good cause includes when a tenant or household member is a direct threat to the safety of other tenants or employees of the property or is an imminent and serious threat to the property or refuses to provide an owner access to a unit to allow repairs to be made.

An owner may establish good cause for violation of federal, state, or local law, only if there is a record of conviction for a crime that directly threatens the health, safety, or rightful peaceful enjoyment of the property by other tenants. An owner must not use a record of arrest, parole, or probation, or current indictment to establish such a violation. NLIHC's comments on the proposed rule noted that the preamble to the proposed rule mentioned that such a conviction takes place "during the tenancy period" and that good cause cannot be based on a violation that occurred prior to tenancy. NLIHC pointed out that the proposed text did not have such explicit language and urged the final rule text contain direct language clarifying that convictions prior to tenancy must not be considered. HUD declined to make the recommended clarification.

At least 30 days before terminating a tenancy or refusing to renew a tenancy, an owner must provide a tenant with a written notice that specifies the reason for the action. An owner must also provide a copy of the notice to vacate to the PJ within five business days if issuing notice to the tenant. (The proposed regulation called for a 60-day advance notice, but HUD shortened the period in response from "overwhelmingly negative comments from owners and managers.") The 30-day minimum is not required if the

termination of tenancy or refusal to renew is due to a direct threat to the safety of tenants and employees of the property or is an imminent and serious threat to the property. An owner may not terminate the tenancy or evict the tenant without undertaking a civil court proceeding at which the tenant has the opportunity to present a defense.

An owner may not perform a "constructive eviction" such as locking a tenant out of their unit or stopping utilities. An owner may not create a hostile living environment or refuse to make a reasonable accommodation for a person who has a disability in order to cause the tenant to end their tenancy.

HOME STATISTICS

As of the close of FY24 on September 30, 2024, HOME has delivered 1,384,404 completed physical units and provided another 417,190 tenant-based rental assistance contracts since 1992. Out of the 1,384,404 physical units, 40% (556,912) were rental units, 19% (264,566) were homeowner rehabilitation and/or new construction units, and 41% (562,926) were homebuyer units.

At the time of initial occupancy, households with income equal to or less than 30% of AMI occupied 44% of the physical rental units. Households with income equal to or less than 30% of the AMI occupied 30% of the homeowner rehabilitation units, and 6% of the homeowner units. Twenty-seven percent of the rental units had households assisted with Housing Choice Vouchers. In addition, 79% of the tenant-based rental assistance units were occupied by extremely low-income people.

Forecast for 2025

FUNDING

Congress appropriated \$1.25 billion for FY24. This was a reduction from \$1.5 billion for FY23 and FY22, which was a \$150 million increase over FY21 and FY20 funding of \$1.35 billion,

an increase from FY19 funding of \$1.25 billion. For FY24, the Administration proposed increasing funding for HOME to \$1.8 billion, while the Senate proposed \$1.5 billion and the House proposed a drastic cut to \$0.5 billion. For FY 25, the Administration proposed keeping HOME at \$1.25 billion while the Senate proposed an increase to \$1.425 billion and the House proposed a drastic cut again to \$0.5 billion. As of the date this *Advocates' Guide* went to press, Congress had yet to agree on a final HOME appropriation.

The Administration proposed the appropriations act include a \$50 million set-aside for a new FirstHOME Downpayment Assistance initiative targeted to first-generation, first-time homebuyers. (Downpayment assistance is already an eligible activity.) As proposed, HUD could provide (unspecified) waivers to "pilot programmatic flexibilities and innovations in subsidy delivery."

NSPIRE

The National Standards for Physical Inspection of Real Estate (NSPIRE) is a protocol intended to align, consolidate, and improve the physical inspection regulations that apply to multiple HUD-assisted housing programs (24 CFR part 5). NSPIRE replaces the Uniform Physical Condition Standards (UPCS) developed in the 1990s and it absorbs much of the Housing Quality Standards (HQS) regulations developed in the 1970s. NSPIRE physical inspections focus on three areas: the housing units where HUD-assisted residents live, elements of their building's non-residential interiors, and the outside of buildings, ensuring that components of these three areas are "functionally adequate, operable, and free of health and safety hazards."

HOME, as well as the CPD programs will not need to implement the NSPIRE changes until October 1, 2025 (an extension: https://bit.ly/4izUiAh from October 1, 2024). HUD published a final rule: https://bit.ly/3RxtUvK implementing the National Standards for Physical Inspection

of Real Estate (NSPIRE) in the Federal Register on May 11, 2023.

CONGRESS

Senator Catherine Cortez Masto (D-NV) introduced S. 3793 "HOME Investment Partnerships Reauthorization and Improvement Act of 2024" on February 2, 2024. NLIHC did not endorse this bill for a number of reasons, especially because it would not improve income targeting by capping affordable rental units at 60% AMI instead of 80% AMI and would not require 30% of HOME-assisted units to be affordable to households with income equal to or less than 30% AMI. Also the bill would reduce the requirement for low-income community groups to have "substantial" representation on CHDO governing boards.

Senator Cortez Masto introduced a similar bill in 2023. NLIHC provided a number of recommendations for the Senator to consider. The four most important recommendations were:

1. CHDO Definition.

- a. To continue to emphasize accountability to low-income people and neighborhoods, NLIHC urged the bill to not eliminate the word "significant" in the phrase "maintains significant representation."
- b. NLIHC learned from small, nonprofit community development organizations that the regulation's requirement that at least one-third of a CHDO's board of directors be low-income residents was too difficult for many such organizations to achieve. NLIHC recommended the bill modify the regulatory definition of CHDO by removing the one-third low-income board member requirement, replacing it with "maintaining meaningful representation...on its governing board or an advisory committee to its governing board."
- c. The 2013 HOME regulation changes required a CHDO to have a full-time developer on staff, something that most small, neighborhood-based organizations do not have the

- financial capacity to do. NLIHC urged the bill to instruct HUD to modify the regulatory definition of CHDO regarding an entity's "demonstrated capacity" by allowing a community development organization to engage housing development consultants or volunteers on an as-needed basis.
- 2. Improve income targeting. NLIHC urged the bill to cap affordable rental units at 60% AMI, not 80% AMI and require 30% of units to be affordable to households at or below 30% of AMI. Targeting eligible rental uses exclusively for people at 60% AMI would be an improvement over current targeting and put the program more in line with other housing programs. The deeper targeting to serve ELI households will ensure that these funds are more effectively deployed to address those with the greatest needs and to address the underlying causes of the housing crisis.

In 2022, the HOME Coalition, a broad group of organizations, submitted a letter: https://bit.ly/4ixeGSv to HUD with many recommended changes to the HOME program regulations. While NLIHC accepted many of the proposed changes, NLIHC did not sign on to the letter due to differences regarding several CHDO provisions.

Tips for Local Success

At the local level advocates will want to continue to be actively involved in the Consolidated Plan's Annual Action Plan public participation process in order to influence the type of housing, location, and beneficiaries of HOME dollars.

Advocates can best influence how HOME dollars are allocated if they know how a jurisdiction has spent its previous allocations. To monitor their local PJ's accomplishments, advocates can access several useful reports on the Grantee Reports and Plans webpage on the HOME program homepage of HUD's Exchange website: https://www.hudexchange.info/programs/home/.

- Open Activities Report: https://www.hudexchange.info/programs/home/home-pjsopen-activities-reports/ is a monthly list of each HOME project in a PJ that is still "open," indicating tenure type (renter or homeowner), type of activity (such as rehabilitation, acquisition, or new construction), ZIP code, number of units, commitment date, and amount budgeted and spent.
- Vacant Unit Report: https://www.hudex change.info/programs/home/home-pjsvacant-unit-reports/ identifies units marked vacant in HUD's reporting system, showing whether the project is completed and its street address.
- National Production Report: https://bit.ly/3
 <u>Yihfke</u> offers cumulative information since
 1992.
- HOME Units Completed within LIHTC Projects by State: https://files.hudexchange.info/resources/documents/HOME_Units_Completed_LIHTC_Projects_20240930.xlsx provides the number of HOME units completed within Low-Income Housing Tax Credit projects by state since 2010. The report also provides a breakdown of overall HOME funds disbursed for LIHTC projects and the average amount of HOME funds disbursed per LIHTC project.
- HOME Units Completed by State: https://bit. ly/442YiFQ provides the number of HOME units completed since 1992 by state. The report also provides a breakdown of completed HOME units by tenure type and the amount of HOME funds committed and disbursed.
- HOME Units Completed by Congressional
 District: https://files.hudexchange.info/
 resources/documents/HOME_Units_

 Completed_Congressional_District_2024

 0930.xlsx provides the number of HOME
 units completed since 1992 by congressional
 district. The report also provides a break down of completed HOME units by tenure
 type and the amount of HOME funds com mitted and disbursed.

What to Say to Legislators

The major responsibility of advocates is to continue pushing for increased federal appropriations. Advocates should ask members of Congress to fully fund the HOME program at \$2.5 billion.

For More Information

National Low Income Housing Coalition, 202-662-1530, www.nlihc.org.

OAHP's HOME Program webpage, https://www.hud.gov/program_offices/comm_planning/home.

HOME Program information is also at HUD Exchange, https://www.hudexchange.info/ programs/home.

HOME regulations, 24 CFR part 92 are at: https://tinyurl.com/yv8d9b8z.