HOME Program Recommendations

Statutory Changes:

Recommendation: Simplify the HOME rent rules.
The High HOME rent should equal 30 percent of the greatest of either 60 percent AMI or 60 percent of the state median income.
The low HOME rent should equal 30 percent of the greatest of either 50 percent AMI or 50 percent of the state median income.

Discussion: Presently, High HOME rents are the lesser of the FMR and 30 percent of 65 percent AMI. The low HOME rents are the lesser of 30 percent of 50 percent AMI, or if a unit receives project-based rental subsidy, rent may be the rent allowable under the project-based rental subsidy program, so long as the tenant pays no more than 30 percent of his or her adjusted income. The current HOME structure is complex and should be streamlined. In addition to simplifying the HOME rent rules, the above suggestions would ease the process of subsidy layering. The following points illustrate some of the problems in the current system:

HOME rents rely on the Section 8 Fair Market Rents (FMR). In certain counties, the FMR (a component of the High HOME rent) is lower than even the low HOME rent. In these cases, inability to service debt, due to low rents, can threaten a project's financial viability. In report language in the Senate Appropriations Committee-passed FY 2002 VA-HUD appropriations bill, the Committee itself recognized that there are "market distortions in how section 8 rents are calculated" (Page 28, Report 107-43, to accompany S. 1216). Therefore, the FMR should not be a HOME rent component.

The Low Income Housing Tax Credit program uses rents that equal 30 percent of the income of a family at 60 percent AMI, while the HOME program uses 65 percent. Using a 60 percent AMI figure would iron out inconsistencies between these two programs and ease the rent burden on families living in HOME units.

Under HOME, rents are determined by the area median income. It is difficult to keep projects in very poor areas financially solvent because of the extremely low median income level in these areas. The very low rents that must be charged under the HOME regulations make it harder to service the debt for rental projects and causes developers to avoid these areas. Furthermore, in poor areas, families with incomes that are relatively high for the area are still poor in comparison to people living in more affluent areas, yet they are ineligible for housing help. Using the area median income is burdensome to poor areas because they must use the same programs as affluent areas to serve a lower-income population. HOME rents should therefore be based on the greater of either the area median income or the state median income.

Recommendation: Permit PJs to charge compliance monitoring fees to property owners to cover the cost of monitoring throughout the affordability period.

Discussion: Compliance monitoring becomes more and more costly every year because PJs' portfolios are constantly expanding. Monitoring activities are funded with the 10 percent of HOME dollars designated for administrative costs, which must be expended within five years of receipt. PJs must monitor projects throughout the affordability period, which can last up to 20 years. Due to limited administrative funds, PJs must choose between funding projects with shorter periods of affordability, or using current and future administrative dollars to pay for compliance monitoring of past years' projects. Furthermore, a variety of activities, other than compliance monitoring, are paid for with administrative funds. As time goes by, and PJs spend more administrative dollars on compliance monitoring, there are fewer funds left for activities such as administering the Tenant Based Rental Assistance (TBRA) program, fair housing activities, and preparation of the Consolidated Plan. This problem is best addressed by allowing PJs to charge compliance monitoring fees to property owners to pay for monitoring throughout the affordability period. Unlike using the flat 10% administrative fee, a compliance monitoring fee assessed for each property will provide the ongoing resources necessary to adequately monitor an ever increasing number of HOME projects. States are permitted to charge these fees for Housing Credit properties; therefore, the same rule should apply to the HOME program. For a list of state-by-state compliance monitoring fees under the Housing Credit program, contact NCSHA.

Recommendation: Alter the HOME program's rules concerning tenants who become over income during occupancy, so that these rules correspond with over income tenant requirements in the Housing Credit. [Statute, § 215(a)(3)]

Discussion: Tenants may become over income if their income increases as a result of a raise or job change or if there is a decrease in their area's median income. Under the HOME program, over-income tenants must pay either 30 percent of their adjusted income for rent, or the market rate of comparable unassisted units in the neighborhood. This is a difficult and cumbersome task to complete for owners that only need to determine "comparable units in the neighborhood" once in a while (only when a tenant's income has increased). This requirement could be easily simplified if the HOME rules corresponded with rules for over-income tenants occupying Housing Credit units. Under the Housing Credit, if a tenant's income rises above 140 percent of the median income limit (in the case of deep skewed projects the income limit is 170 percent), the next available unit of equal or smaller size that becomes vacant must be rented to a low income tenant. This change has already been made for properties receiving both HOME and Housing Credits, and should be extended to include all HOME projects.

Recommendation: In cases where there is a health or safety concern or if termination is based on serious or repeated violations of the terms and conditions of the lease, date of termination should be in accordance with State or local law, rather than the 30-day notice to terminate a lease required by statute. [Statute, § 225(b)]

Discussion: The statutory 30-day notice to terminate a lease presents problems for owners facing tenants who are a threat to the health or safety of other tenants, such as drug users in a transitional living program for recovering substance abusers. In these instances, HOME should conform to State or local law, which frequently allows 48- or 72-hour notice to vacate.

Recommendation: Allow PJs to decide how much HOME funding they should award to CHDOs for operating expenses. [Statute, § 212(g)]

Discussion: One of the greatest difficulties for CHDOs is finding funding for operating costs. Operating assistance is necessary for nonprofits to build, sponsor, or develop affordable housing. Currently, PJs can provide up to five percent of their HOME allocation for CHDO operating assistance. PJs should have the discretion to provide more than the current limit on CHDO operating assistance, if they feel this is the best use of funds. We recognize that given this flexibility, some PJs may still choose to provide less than five percent of their allocation for CHDO operating costs, however this is a decision that should be made on a local or state level.

Recommendation: Allow PJs to substitute environmental reviews, including state and local reviews, which are substantially equivalent to HOME standards for the HOME environmental review.

Discussion: Environmental review requirements need greater flexibility overall. The environmental review process can impact the construction or rehabilitation timetable by several months and intimidate some communities. PJs that conduct environmental reviews, which satisfy the most important aspects of the HOME environmental review, should not have the further burden of conducting a HOME environmental review. This will aid PJs who use HOME funds with other government programs. Presently, a PJ may use an environmental review conducted for another federally funded program, so long as it satisfies the requirements of 24 CFR Part 58. State or local environmental reviews that are substantially equivalent to the HOME environmental review should also be accepted as an alternative to the HOME environmental review.

Recommendation: Add a new section to the statute providing for a HOME loan guarantee program. **Discussion:** The HOME statute should be amended to provide a loan guarantee program. The purpose of the loan guarantee would be to allow PJs to assemble sufficient funds to undertake larger scale rental projects. PJs could borrow up to five times their annual entitlement, repayable over 20 years. PJs could pledge future entitlements and other forms of collateral toward repayment. This is comparable to CDBG's Section 108 loan guarantee program.

Recommendation: Eliminate the application of the Uniform Relocation Act regulations for HOME-funded downpayment assistance projects if the HOME funds are the sole source of federal funds in the activity and the PJ or other governmental entity is not involved in the targeting of a neighborhood or the selection of the property.

Discussion: The role of HOME funds in this type of transaction is different from rental or single family housing rehabilitation where the availability of the HOME funds triggers the activity and, consequently, the displacement of a tenant. In these cases, the tenant’s displacement is not caused by the federal funds, but by the owner’s decision and action to place the unit up for sale. With a downpayment assistance program, the owner has independently decided to place the unit for sale and has notified the tenant that the unit would be sold. The provisions in the tenant’s lease will dictate the tenant’s protections. The presence of a homebuyer with HOME-funded downpayment assistance has not caused the displacement, and the tenant’s displacement will result whether or not the purchaser has or does not have this federal assistance.

Recommendation: Require PJs to submit a report documenting performance in contributing match once in a 12-month period, rather than based on the federal fiscal year.

Discussion: PJs are required to report to HUD on the PJs performance in contributing match towards its match liability based on the federal fiscal year. A PJ receives its allocation of funds, and reports on the use of those funds, based on a Plan year established during the consolidated planning process. Some states base their Plan year on their state fiscal year, not the federal fiscal year. If HUD allows PJs to report on the use of funds based on the PJs Plan year, it should also allow PJs to report on match based on the Plan year.

Recommendation: Give PJs the ability to use risk management techniques to determine when and how often they should conduct on-site monitoring of projects. Projects should be monitored at least once every three years.

Discussion: Currently, PJs inspect HOME properties once every three years if the property has between one and four units, once every two years if the property has between five and 25 units; and annually if the property has 26 or more units. Property monitoring would be more efficient if PJs could base monitoring efforts on risk management techniques because PJs could target those properties that they believed to be at highest risk. PJs could cut back on monitoring visits to properties that are relatively risk free and increase monitoring of those properties that pose greater risks. Particularly problematic properties could be monitored biannually. According to Abt Associates Inc.'s June 2001 Study of the Ongoing Affordability of HOME Program Rents, there are no statistically significant differences in compliance rates of large and small HOME properties, therefore there is no reason why frequency of monitoring visits should be based solely on the number of units in a property.

Recommendation: Permit PJs to use HOME for refinancing, regardless of whether or not refinancing is done in conjunction with rehabilitation.

Discussion: This recommendation is in the interest of preserving the affordable housing stock. Certain Housing Credit, USDA 515, and other subsidized rental properties that are in jeopardy could be preserved if HOME could be used for refinancing. This would increase program flexibility.

Recommendation: Allow PJs to decide how much HOME funding they should award to CHDOs for predevelopment loans.

Discussion: Currently, the total of HOME funds used for CHDO project pre-development assistance may not exceed 10 percent of the total amount of HOME funds reserved for CHDOs. This amounts to a maximum of 1.5 percent of a PJ's HOME allocation. Predevelopment loans result in more upfront decision-making on projects and therefore better projects in the long run. While many PJs may not choose to fund CHDO predevelopment loans, others would like to do so at a higher level than is currently allowed.

Recommendation: Allow PJs to use HOME dollars to fund housing counseling for low-income families who do not intend to use HOME funds for the purchase of a home.**Discussion:** Housing counseling is only HOME eligible if the home that will be purchased is financed with HOME dollars. If preparing persons and families for homeownership is a worthwhile endeavor, the government should be willing to support it with HOME dollars, regardless of whether the housing that is ultimately purchased is assisted with HOME funds. Housing counseling may not immediately prepare a family for purchasing a home. It may require time to assemble a down payment, clear up credit blemishes, and/or find a suitable and affordable home. PJs and their counseling agencies should not have to wait to be paid for counseling services until the counseled household is able to buy a home and the home is purchased with HOME assistance.

Recommendation: Allow PJs to provide operating assistance to CHDOs that own, sponsor, or develop affordable housing, even if that housing is not assisted by HOME dollars, so long as the housing produced by the CHDO meets the HOME affordability requirements.

Discussion: §92.300(e) of the HOME Final Rule requires that if a CHDO receiving operating support is not also receiving HOME project set-aside dollars, then the PJ must agree to provide set-aside dollars within 24 months of receiving operating funds. This rule limits the universe of CHDOs that could benefit from operating assistance and the possibilities for developing and supporting the strong nonprofit housing sector that Congress and HUD desire. This change would further one of the stated purposes of the Cranston-Gonzalez National Affordable Housing Act: "To extend and strengthen partnerships among all levels of government and the private sector, including for-profit and non-profit organizations, in the production and operation of housing affordable to low-income and moderate-income families."

Recommendation: Allow Public employees who have no decision-making influence, such as city hall mail clerks and teacher's aides, to serve on the CHDO board without counting as public officials, so long as they are otherwise eligible. Individuals who work for an agency administering the HOME program should continue to count towards the public official limit, as this could result in a conflict of interest.

Discussion: CHDO board composition definitions are too narrow and exclude good potential board members and organizations. Presently, a maximum of one-third of the CHDO board may consist of representatives from the public sector. Public "officials" include any public employee, even employees who lack decision-making power. It is difficult to construct a CHDO board that fits these requirements in small communities, where a great number of citizens work in the public sector, are already a member of the school board, or other local board or commission. This requirement makes qualification for CHDO status overly burdensome.

Recommendation: If a property receives project-based assistance and HOME, all HOME units, not just the low-rent units, should rent at the level allowable under the project-based rental subsidy program.

Discussion: Under the HOME rules, low HOME units that receive project-based assistance rent at the rent allowable under the project-based rental subsidy program. High HOME units that receive project-based assistance rent at the regular high HOME rent level, not the project-based subsidy level. Allowing all HOME units in projects receiving project-based assistance to rent at the rents allowed under the project-based subsidy program would simplify HOME rents. Moreover, if an owner of a building receiving project-based assistance uses HOME to rehabilitate the building, the owner may need to reduce the rent level if the high HOME rent is lower than that paid by the tenants under the project-based subsidy program. This is therefore a preservation disincentive for owners.