HOME Investment Partnerships Reauthorization and Improvement Act of 2024, S. 3793
Sponsored by Senators Cortez Masto, Smith, Fetterman and Rosen

Supported by National Council of State Housing Agencies, National Association of Counties, Institute of Real Estate Management (IREM), National Association of Hispanic Real Estate Professionals (NAHREP), National Association of Realtors (NAR), Enterprise Community Partners, National Apartment Association, National Multifamily Housing Council, National NeighborWorks Association, National Community Development Association, National Alliance of Community Economic Development Associations, National Association of Local Housing Finance Agencies, Council of State Community Development Agencies, National Coalition for Asian Pacific American Community Development (National CAPACD), National Association for Latino Community Asset Builders (NALCAB), Local Initiatives Support Corporation, Grounded Solutions , Housing Assistance Council, and Habitat for Humanity.

Section-by-Section

TITLE I- Reforms of HOME Authorization and Disbursement Formula

Sec. 101 REAUTHORIZATION OF HOME INVESTMENT PARTNERSHIPS PROGRAM

Issue: The HOME Investment Partnerships (HOME) program, initially authorized in the Cranston-Gonzalez National Affordable Housing Act of 1990, was last reauthorized in the Housing and Community Development Act of 1992. The 1992 Act set authorized funding for the program at $2,086,000,000 for 1993 and $2,173,612,000 for 1994. Since then, congressional appropriators have continued to fund the HOME program even though its authorization lapsed, as is typical of many programs. In modernizing the HOME program, Congress should consider authorized funding levels that take into consideration inflation and affordable housing need. Land, construction materials, appliances, labor, insurance and other elements of housing construction and cost have increased dramatically in the past thirty years, yet HOME's funding has remained inadequate for the demand.

HOME is often used in conjunction with the Low-Income Housing Tax Credit (Housing Credit) to produce affordable rental housing. Congress has increased authority for the Housing Credit several times since the mid-1990s, whereas HOME's authorized and actual funding levels have not seen similar increases.

HOME is also the primary federal resource available for the production of affordable single family for-sale homes and essential to homeowner rehabilitation initiatives. The private sector on its own typically builds luxury for-sale housing, but has little incentive to build affordable starter homes, which are essential to helping low-income, creditworthy households build wealth. Without HOME it can be impossible to produce affordable for-sale housing in most housing markets, particularly outside low-income areas, especially for buildings with fewer than 100-150 units which are favored by LIHTC investors.

Statutory Changes:

- Authorize $5 billion in HOME funding for fiscal year (FY) 2024 and increase funding for the program five percent annually through FY 2028.

Sec. 102 INCREASE PROGRAM ADMINISTRATION RESOURCES

Issue: HOME administrators, or Participating Jurisdictions (PJs), dedicate considerable resources and time on program administration yet are limited to 10 percent of available funds[1] to cover these costs. Project portfolios expand with each new investment, increasing compliance administrative needs without a corresponding increase in administrative funds. Given the complexity of HOME program requirements, cross-cutting federal requirements applied to the program, varying state and local standards that PJs must adhere to, and the growing portfolio of HOME projects which PJs must monitor for compliance, 10 percent of total funds has proven to be insufficient to cover administrative costs.

HOME funding has never reached its authorized level (even in 1994 dollars) and in some years has dipped even lower than $1 billion, making it even more problematic to cover HOME administrative costs with only 10 percent of program funds. For these reasons, PJs are often forced to redirect other resources to cover their administrative activities for HOME.

Statutory Changes:

- Increases the administrative cap from 10 percent to at least 15 percent, bringing the administrative fees closer to the 20 percent available under the Community Development Block Grant (CDBG) program.
- Allow additional administrative expenses that exceed the administrative cap to count towards the local match[2].

Sec. 103 MODIFICATION OF HOME PARTICIPATING JURISDICTION QUALIFICATION THRESHOLD AND PROCESS FOR REALLOCATIONS

Issue: State or local governments must meet a certain funding threshold, depending on the level of appropriations for the program, in order to receive a HOME program grant and become a participating jurisdiction[3].

In years in which the appropriated HOME level is $1.5 billion or higher, states and local governments must receive at least $750,000 via the HOME program formula in order to qualify as a PJ. If a local government receives at least $500,000 according to the HOME program formula, they still may become a PJ if they can raise enough money to cover the difference between their formula allocation and $750,000. Local governments need only to cover the difference between their formula allocation and $750,000 in the first year in which they qualify as a PJ, and are grandfathered into the program thereafter.

In years when the HOME appropriated level is less than $1.5 billion, states and local governments must receive by formula at least $500,000 to qualify as a PJ, or at least $350,000 if they are able to raise enough additional funding to make up the difference between their formula

[1] Section 212(c)
[2] Section 220(b)(2)
[3] Section 216

allocation and $500,000. Congress has suspended this lower threshold in appropriations language since FY 2012[4].

Congress established thresholds for administration with the understanding that HOME would require a level of sophistication from an administrative perspective and that the activities HOME is intended for are often costly and require a certain economy of scale to undertake.

These threshold levels were put in place when the program was first authorized in 1990 and have not been updated since, despite inflation during that time. $500,000 in 1994 dollars is now worth more than $1 million. However, PJs are still able to qualify for the program with a formula grant amount of only $350,000. This does not provide enough resources to adequately administer a program as sophisticated as HOME, given the cost of real estate finance and the need for highly qualified and trained staff. Moreover, the amount of the HOME appropriation is irrelevant to the threshold needs of administering the program.

Statutory Changes:

- Establishes a threshold of no less than $750,000 from the HOME formula to qualify as a HOME PJ and index that amount for inflation for future years.
- This includes eliminating the threshold reduction when the appropriated HOME funding level is less than $1.5 billion[5], codifying what Congress has already done through appropriations legislation for many years, and prohibiting governments to make up the difference between their formula allocation and the minimum threshold requirement[6].
- PJs that have qualified in the past, even if they qualified under the rules prior to enactment of this bill, will be grandfathered in and allowed to continue operating as PJs.

Sec. 104. MODIFICATION OF JURISDICTIONS ELIGIBLE FOR REALLOCATIONS

Issue: When HUD recaptures funds from a PJ for noncompliance with HOME program requirements or through voluntary grant reductions, those funds are then reallocated by formula to other PJs.[7] Under current law, this can mean that some portion of the recaptured funds may in fact be reallocated to the PJ that was out of compliance with HOME requirements.

Statutory Change:

- Clarifies that a non-compliant PJ is not eligible for reallocation of HOME funds that are recaptured due to PJ noncompliance or through voluntary grant reductions.

[4] Language from FY 2012 THUD appropriations bill: *Provided, That notwithstanding the amount made available under this heading, the threshold reduction requirements in sections 216(10) and 217(b)(4) of such Act shall not apply to allocation of such amount*
[5] Section 216(10)
[6] Section 216(3)(ii).
[7] Section 217(d)

TITLE II- Reforms Relating to HOME Investment Partnerships Program Administration and Rules

Sec. 201. AMENDMENTS TO QUALIFICATION AS AFFORDABLE HOUSING. Issue: The amount of time for which a HOME project must remain in compliance with the program's low-income affordability restrictions depends on the amount of HOME funds invested in the project. If a property is determined to be noncompliant at any point during the affordability period, the owner is required to repay the full amount of the HOME funding invested in the property. If the owner is unable or unwilling to pay, the PJ is responsible for the repayment. For homeownership units, the PJ will look to the developer/sub-recipient for full repayment when there is no recourse against the homeowner. Full repayment is required regardless of how long the property was in compliance with the low-income affordability restrictions, or how long a homeownership unit is marketed for resale.

HOME Affordability Period (set by regulation):

New Construction of Rental Properties: 20 Years

Rehabilitation of Rental Properties: Between 5 and 20 years depending on the amount of HOME funding invested

Homeownership Activities: Up to 15 years depending on the amount of HOME funding invested

Currently, HUD has limited authority to terminate the affordability period when a project is damaged or destroyed by a natural disaster, fire, etc. However, repayment is still required even in instances where a project is no longer financially viable due to unforeseen acts or occurrences beyond the reasonable contemplation or control of the PJ or owner, or when a property is no longer in compliance due to foreclosure.

Finally, under current law, homeownership support using HOME funds, such as down payment assistance (DPA), is only available for properties up to 95 percent of area median sales price. In many markets, this effectively makes HOME unusable for these important homeownership activities, despite the fact that potential homebuyers are already subject to income limits to receive HOME assistance.

Statutory Changes:

- Expand HUD's authority to terminate the affordability period in cases where:
  - Foreclosure, provided the foreclosure is not for the purpose of avoiding or terminating affordability restrictions and the rights of PJs, nonprofit sponsors, and others to take action to preserve affordability are protected; or
  - The project is no longer financially viable due to unforeseen acts or circumstances beyond the reasonable contemplation or control of the PJ or owner.
- Provide that small-scale housing (consisting of no more than four rental units) shall qualify as affordable so long as rents are reasonable, all units are occupied by low-income families, and all units are made available to holders of Housing Choice Vouchers.
- Raise the statutory limit for homeownership support to 110 percent of area median sales price, with additional discretionary authority provided to the Secretary to increase this amount through notice.

Sec. 202. ELIMINATION OF COMMITMENT DEADLINE

Issue: PJs have a 24-month commitment deadline for HOME funds[8]. This requirement may not provide PJs sufficient time for proper oversight and vetting of properties. Moreover, HOME also has a four-year project completion deadline, which ensures timely outcomes for the program; making the commitment deadline unnecessary. In recognition of these concerns, annual THUD appropriations bills, since FY 2017, have suspended the 24-month commitment deadline[9].

Statutory Change:

- Eliminates the 24-month commitment deadline, codifying the provision that has been included in appropriations legislation in recent years.

Sec. 203 REFORM OF HOMEOWNERSHIP RESALE RESTRICTIONS

Issue: HOME-assisted homeownership properties are subject to either resale or recapture restrictions[10] if sold prior to the end of the affordability period, which could be up to 15-years. Resale restrictions are currently subject to statutory requirements to: 1) provide the owner a "fair return on investment" and 2) be resold at a price that is "affordable to a reasonable range of low-income homebuyers."

Each of these concepts are important to enable the initial homebuyer to build some equity in the home and to preserve the affordability for subsequent homebuyers. HUD has indicated that the statutory language requiring a "fair return on investment" is difficult to incorporate into any formula that is not market based. However, practitioners, especially in high cost or rapidly appreciating markets, have been able to design various resale formulas to determine resale prices, including the use of index-based and fixed rate formulas, that allow homebuyers to build a reasonable amount of equity and a predictable return on their investment while taking into account various market conditions and community needs to enable future sales to low- or moderate-income homebuyers.

HUD should not be constrained from approving various resale formulas that allow HOME-assisted homebuyer to receive some equity if the home increases in value while ensuring affordability for subsequent income-eligible homebuyers, so long as the restrictions are presented to the homebuyer in a clear and transparent manner prior to the homebuyer's purchase of the home. Removing the "fair return" requirement from statute would allow HUD this flexibility.

One way to provide affordable housing, stability of tenure and equity growth are Community land trusts (CLTs). CLTs must have preemptive purchase options to ensure homes remain permanently affordable resale after resale to lower income homebuyers. In particular, CLTs use a preemptive purchase option to add subsidy to a home to increase its affordability, enter into the

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[8] Section 218(g)

[9] Language from FY 2020 THUD appropriations bill: *Provided further, That section 218(g) of such Act (42 U.S.C. 12748(g)) shall not apply with respect to the right of a jurisdiction to draw funds from its HOME Investment Trust Fund that otherwise expired or would expire in 2016, 2017, 2018, 2019, 2020, 2021, or 2022 under that section.*

[10] Section 215(b)(3)

chain of title to prevent unrestricted sales, direct homes towards buyers on a waitlist, or perform necessary repairs and/or rehabilitation to set up the next lower income homebuyer for success.

In addition, under current law, a member of the armed forces or National Guard who has been called up to deploy with a military unit or in support of a military operations or has a permanent change of station, could be hindered by resale restrictions ability to sell their HOME-assisted home if necessary. Similarly, the heir or beneficiary of a deceased HOME-assisted homeowner could be subject to penalty under the resale restrictions described above.

Statutory Changes:

- Eliminates the requirement that resale restrictions must provide a "fair" return on investment to the originally assisted HOME homebuyer. Allow a "reasonable" return on investment for the buyer based on a formula or return including investments in the property.
- Suspend or waive resale restrictions for HOME-assisted properties for members of the armed forces or National Guard who are called up to deploy or receives a permanent change of station.
- Permit Participating Jurisdictions to allow CLTs (as defined in Sec. 301 of this bill) to maintain preemptive purchase properties, in accordance with the terms of the legal instrument used to ensure lasting affordability (ground lease, deed restriction, etc.) for various purposes enumerated in the Section and as determined by the Secretary.
- Allow the heir or beneficiary of a deceased HOME-assisted homeowner to inherit the property without penalty, provided the heir or beneficiary uses the property as his or her principal residence and assumes the duties and obligations of the deceased owner.

Sec. 204. HOME PROPERTY INSPECTIONS

Issue: PJs are required to monitor properties for compliance with state or local habitability codes, if they exist[11]. Only if there are no state or local habitability codes may a PJ use the often simpler and more readily available Uniform Physical Condition Standards (UPCS), which is currently being used by HUD's Real Estate Assessment Center. For state PJs and HOME consortia inspecting to local codes is burdensome, as local codes vary significantly from location to location; information about such codes is not always easily obtained. Moreover, local habitability codes may change over time, so states must check to determine if they have changed each time they inspect a property.

In recent years, HUD, the Federal Housing Finance Agency, the Federal Home Loan Bank System, the U.S. Department of Agriculture's Rural Housing Service, and the Internal Revenue Service have attempted to coordinate on housing program compliance monitoring requirements in order to streamline inspection processes to reduce costs, lessen administrative burden, and be less invasive for tenants, who otherwise have to deal with multiple inspections of their homes when the property in which they live is financed with multiple funding sources. It has been particularly difficult to integrate the HOME program into this alignment initiative, in part

[11] Section 226(b)

because of the statutory requirement to inspect to local codes—a requirement that is not applicable to other programs, which simply must adhere to UPCS.
Statutory Change:

- Removes the reference to housing codes (which HUD has determined to mean a statutory requirement to inspect in accordance with all state and local codes).
- Requires inspections to be in adherence with applicable regulations as determined by HUD.
- Allows state PJs to inspect all HOME properties in accordance with a single national standard as defined by HUD that is easy to obtain and apply uniformly across the state, rather than local codes. However, if a local community wishes to contract with a state PJ for inspection, the local community can still require inspection to its local code.

Sec. 205. REVISIONS TO STRENGHTEN ENFORCEMENT AND PENALTIES FOR NONCOMPLIANCE.

Issue: HUD seeks additional authority to strengthen its ability to enforce requirements from the program statute and regulations through the end of a project's period of affordability, as well as to codify the use voluntary grant reductions as an available remedy to address noncompliance by a PJ. This latter change would mirror the statutory language for the Community Development Block Grant (CDBG) program, bringing the two programs into closer alignment.

Statutory Changes:

- Expressly grant HUD enforcement authority for violations of program statutory and regulatory requirements throughout the affordability period.
- Provide for voluntary grant reduction as an available enforcement remedy, as is the case with the CDBG program.

Sec 206. TENANT AND PARTICIPANT PROTECTIONS FOR SMALL-SCALE AFFORDABLE HOUSING.

Issue: Owners of small properties with four or fewer units may have less capacity to comply with the variety of HOME program requirements. HUD has requested language that would grant targeted regulatory flexibility for these small property owners to ensure they can participate successfully in the program.

Statutory Change:

- For owners of properties with fewer than four units, waive the requirement that they adopt written tenant selection criteria, except for a written policy that tenant selection will be conducted with the purpose of providing housing for very low-income and low-income families. Small-unit property owners must not maintain a waitlist of tenants.

Sec. 207. ESTABLISHMENT OF HOME LOAN GUARANTEE PROGRAM

Issue: Limited funding through annual appropriations fails to meet the demand for affordable housing. A loan guarantee program under the HOME program would offer a low-cost financing option for PJs with HUD providing a 100 percent full faith and credit guarantee to the private investors who purchase the notes at a public offering.

Similar to the CDBG Section 108 program, a HOME loan guarantee program would allow PJs to access capital up to five times their most recent HOME grant amount.

Statutory Changes:

- Establishes a loan guarantee program to offer an additional financing tool for PJs to develop affordable housing.
  - The PJ may use the funds raised by the sale of the notes to undertake the approved project directly or through a third party (investors, developers, non-profits, CDFIs, Federal Home Loan Banks, and other entities).
  - The loan repayments may be used to repay investors.
  - Funds to repay the note can come from future HOME funds, program income generated by the project, or other revenue sources available to the grantee.
  - Grantees could only receive a loan guarantee for a project if they are unable to secure proper financing for a project without it, need the guarantee to meet the time requirements of the plan and will repay the funds within twenty years.
  - A limit of $2 billion for the first year and an overall limit of $4.5 billion at any one time unless authorized.
  - To comply with the Credit Reform Act of 1992, HUD cannot rely solely on the pledge of future HOME funds to repay the loan. Accordingly, the PJ must prove to HUD that either:
    - The project has sufficient collateral and satisfies sound underwriting; or
    - The community pledges other assets that provide additional security beyond HOME funds to bridge any repayment shortfalls.

TITLE III- Reforms Relating to CHDO and Nonprofit Participation

Sec. 301. MODIFICATION OF RULES RELATED TO COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS

Issue: Under current statute, state and local governments, also referred to as Participating Jurisdictions (PJs), must dedicate 15 percent of funds to Community Housing Development Organizations (CHDOs). Due to complex eligibility requirements, many nonprofits do not meet the criteria to become CHDOs, despite having the capacity to produce affordable housing and missions aligned with the goals of the HOME program. Moreover, many nonprofits opt not to take on the administrative burdens or organizational changes that would be required to become a CHDO and maintain CHDO designation over the long term. In particular, it has been difficult for PJs to certify and maintain CHDOs in rural areas.

For these reasons, it is difficult for some PJs to meet the CHDO set-aside requirement and expend the funds associated with it. Funds which are not dispersed to CHDOs are required to be

recaptured by HUD, creating inefficiencies in the program. Since 2019, THUD appropriations bills included provisions to allow unused CHDO set-aside funds to be returned to the PJ rather than recaptured by HUD after the two-year period[12].

In addition, there are several issues with the definition of "community land trust" as currently found in 42 U.S.C. 12773. These definitions are too restrictive to capture the variety of ways that the CLT model has been structured and deployed by nonprofits across the country. The definition itself was never meant to define CLTs across the board; the language specifically states the definition is only "[f]or the purposes of this section," which pertains to CHDO technical assistance and resources. However, there is no other definition of CLT anywhere else in federal statute, so this has been the definition that HUD and other agencies have relied on (see 42 U.S.C. 1472, for example).

Statutory Changes:

- Amends the CHDO requirements to enable additional capable organizations to qualify, increasing potential partner and project options for PJs, by eliminating the requirement that low-income community residents must have "significant" representation on a CHDOs governing board. HUD has interpreted "significant' to require that low-income residents make up at least a third of a CHDO's governing board, a difficult standard to meet in rural or other underserved communities.
- Creates a broader and more practicable definition of community land trust in 42 U.S.C. 12704 and removes the overly restrictive definition in 42 U.S.C. 12773.
- Lowers the high bar on CHDO involvement on projects. Currently to get CHDO funds, the housing must be developed, sponsored, or owned, by a CHDO. Entities that meet CHDO requirements often don't have the capacity to play that role. The bill would change the standard so that CHDOs will be required to "materially participate" in the sponsorship, ownership, or development of the project instead of having to play those roles themselves. This will allow CHDOs to work alongside and learn from more seasoned developer partners. There is precedence for using the term "material participation," as it is used in the nonprofit set-aside for the Low-Income Housing Tax Credit
- Allows a PJ, if it is unable to use its CHDO set-aside funding within two years, to certify the reason why it was unable to do so, and, upon HUD's receipt of the certification, the Department should make the CHDO set-aside funds available to the PJ in its HOME trust fund for any HOME eligible activity, codifying the change first made in the FY 2020 THUD appropriations bill.

[12] Language from FY 2020 THUD appropriations bill: Provided further, That section 231(b) of such Act (42 U.S.C. 12771(b)) shall not apply to any uninvested funds that otherwise were deducted or would be deducted from the line of credit in the participating jurisdiction's HOME Investment Trust Fund in 2018, 2019, 2020, 2021, or 2022 under that section. https://www.hud.gov/sites/dfiles/CFO/documents/2024_CJ_Program_-_HOME.pdf

TITLE IV- Technical Corrections

SEC. 401. TECHNICAL CORRECTIONS

Includes a number of technical corrections and fixes a number of drafting errors in the existing HOME statute. These fixes include amendments to language in the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701 et seq.) to align language with current law including defining the term “insular area”; striking “Stewart B. McKinney Homeless Assistance Act” and inserting “McKinney-Vento Homeless Assistance Act”; replacing “grand children” with “grandchildren”; replacing “Banking, Finance and Urban Affairs” with “Financial Services”; replacing “General Accounting Office” with “Government Accountability Office”, and other similar alignments and corrections.