

# THE HFA INSTITUTE 2025

## Multiple Subsidy Deal Structuring & Compliance



**MRBs and Other Federal Homeownership Programs**  
JANUARY 15 – 17



**Housing Credit**  
JANUARY 14 – 16



**Section 8 and Other Federally Assisted Multifamily Housing**  
JANUARY 15 – 17



**HOME and Housing Trust Fund**  
JANUARY 12 – 14



National Council of State Housing Agencies

# Welcome & Introductions

- Sponsored by
  - NCSHA &
  - HUD's Office of Affordable Housing Programs (OAHP)
- Presenter



Steve Lathom  
TDA Consulting  
[slathom@tdainc.org](mailto:slathom@tdainc.org)

## Topics for Today

- Initial Thoughts on 2025 HOME Rule
  - *Just a couple*
- Field Dispatch
  - *Basic blocking and tackling on NEPA and URA*
- Role as LIHTC Allocator v. Gap Lender
  - *Responsibility for repayment*
- Sign Agreement with the Right Party
  - *Not just HOME, seeing impermissible transaction structures w/HTF*
- Don't Make It Harder than It Needs to Be



## 2025 HOME Rule

- You just heard from HUD...
- Significant streamlining, will reduce (but not eliminate) disconnects between HOME & LIHTC (as well as project-based assistance)
  - Aligns rent limits when tenant receives rent assistance (project or tenant based) to treatment under LIHTC
  - Restores use of PHA utility allowances
  - Creates safe harbors for accepting/using income determination made under LIHTC, PHA PBV or HCV, project-based Section 8, etc.
  - Allows PJ to accept NSPIRE inspection results carried out under another funding source – e.g., PHA in PBV project, State agency with LIHTC



## 2025 HOME Rule continued...



- Take a breath... we actually have up to one year to fully implement
  - Need to update policies & procedures, guidelines, compliance handbooks, written agreements, etc.
- There will be lots of questions...
- There will be people giving “wrong” answers, because...
  - There are still nuanced issues involved
  - Sometimes we hear what we want to hear, not what’s really said
  - Sometimes the changes expose existing misunderstandings

## (Steve's) Field Bulletin





- Seeing uptick in critical errors by development partners
- §58.22... neither PJ nor “**any participant in the development process**” may commit HUD **or non-HUD funds** or undertake an activity... if doing so would “limit the choice of reasonable alternatives”
- URA... Notices due to existing tenants no later than application for covered funding. Applicants failing to provide proper notices, “informally” beginning relocation, etc.

# What's Your Role

## LIHTC Allocator

- Want to make good allocations...
  - Maximize production at reasonable cost
  - Respond to state's housing needs & priorities
- Responsible for regulatory oversight
- But, if things go wrong...
  - **You don't** repay Treasury, owners (underlying investors) do

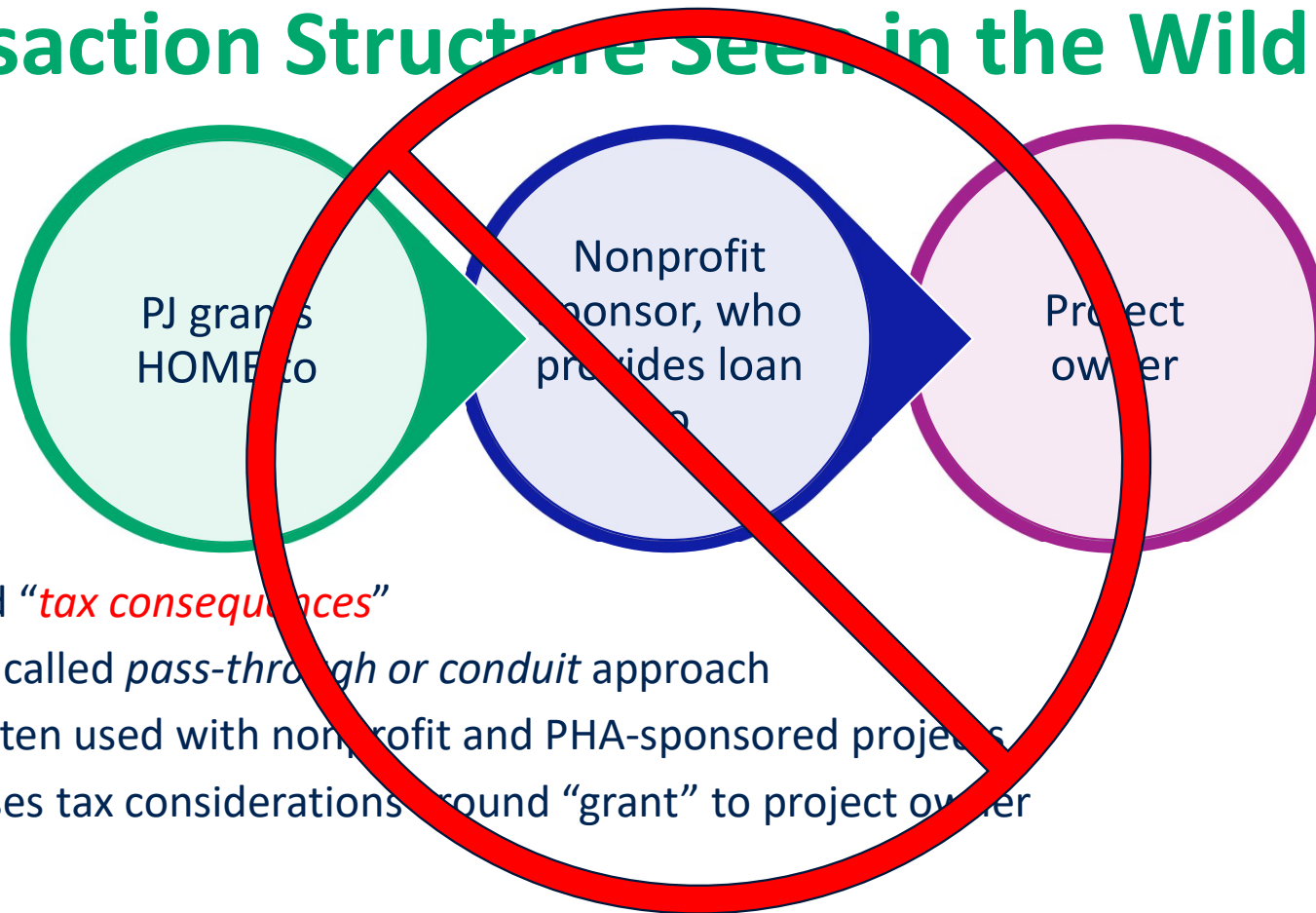
## HOME/HOME-ARP/HTF Lender

-  all that...
  - Award good projects
  - Respond to needs/priorities
-  that too...
  - Compliance & performance monitoring
- But, if things go wrong...
  - **You repay** HUD, even if you can't collect from the owner

## How Is That Different?

- Different tolerance for risk, e.g., “exceptions” to underwriting metrics
  - Total vacancy loss
  - Lower than average OpEx or reserve deposits
  - DCR
- (It’s ok to be) more hands-on with respect to:
  - Cash flow distributions
  - Reserve levels and releases
  - Approval rights over property management
  - Approval rights over sale or transfer of ownership interests

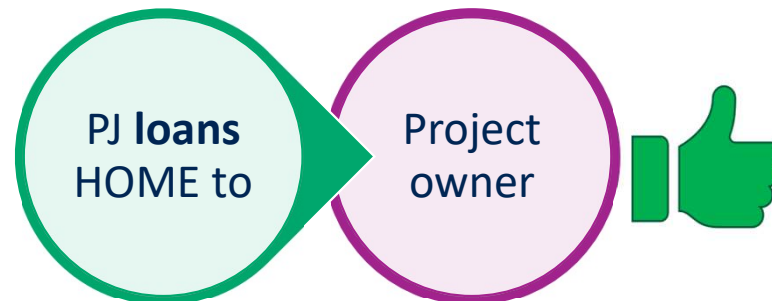
# Transaction Structure seen in the Wild



- To avoid “*tax consequences*”
- May be called *pass-through or conduit* approach
- Most often used with nonprofit and PHA-sponsored projects
- Addresses tax considerations around “grant” to project owner

# HOMEfires – Volume 16, No. 1

- Grant/Loan structure **not permissible** in **HOME**
  - Nor in **HTF** or **HOME-ARP**
- It **never** was, but we know this structure was used frequently in HOME
- Agreement and provision of funds **must** be between PJ & owner
  - In addition to being a statutory & regulatory requirement, absent contractual relationship with owner, PJ has less control, fewer enforcement mechanisms, increased risk of noncompliance and requirement to repay HOME
- HOME can be a loan; was **never** a requirement funds be granted
  - PJ can lend on amortizing, cash-flow, deferred terms; interest bearing or 0%



# HOMEfires – Volume 16, No. 1 continued...



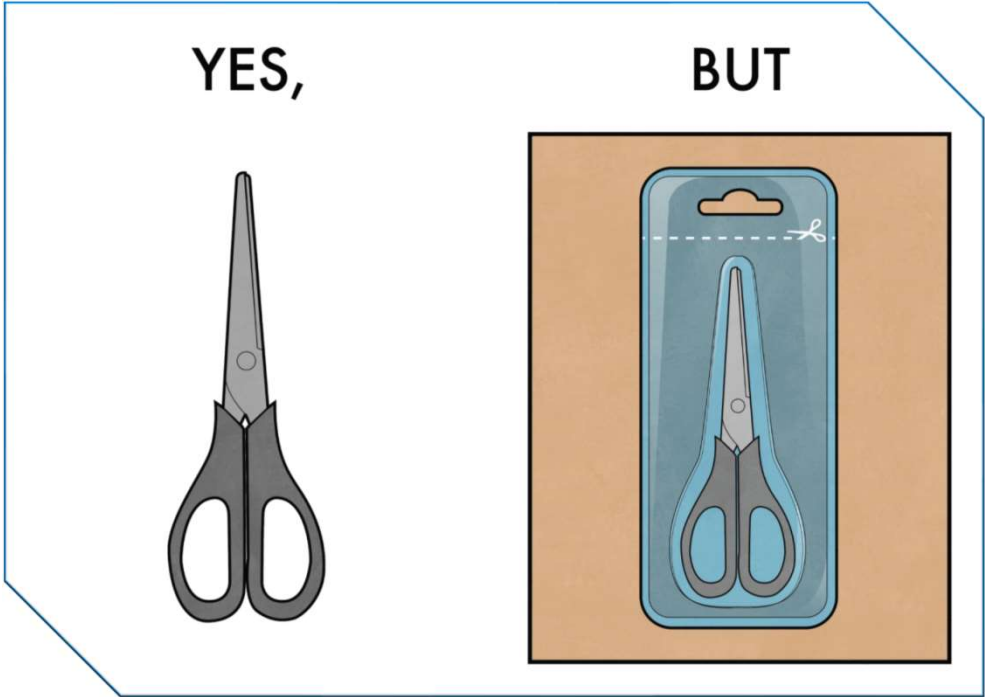
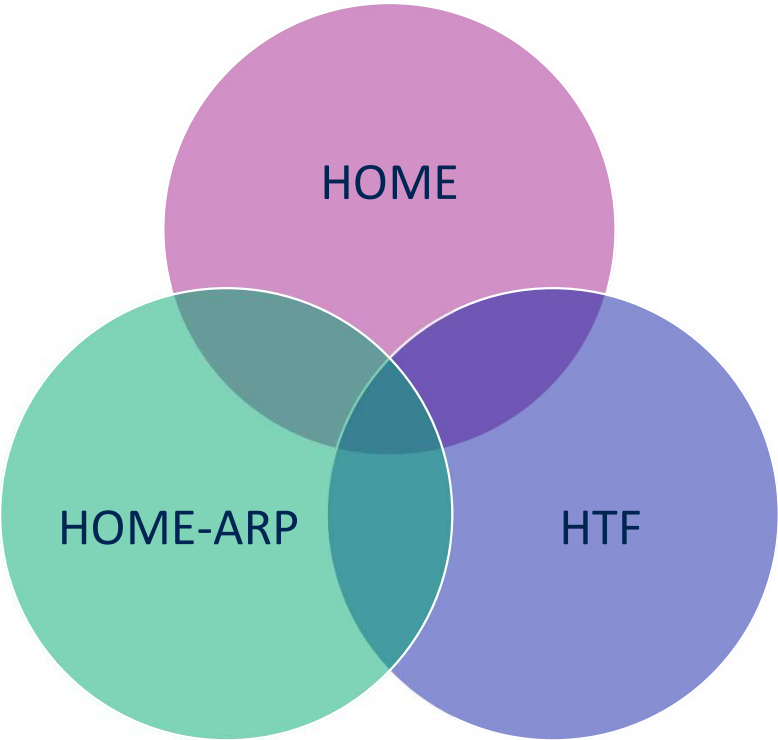
- Forward looking
  - If you've been doing this, stop now!
  - Same statutory/regulatory provisions apply to HOME-ARP
  - Different statute, **but same result for HTF**

- Past projects

- HUD applying discretion in enforcement, but... clean up where you can
- Any payments on HOME loan paid to 3<sup>rd</sup> party (e.g., nonprofit sponsor) should be Program Income returned to PJ for additional projects
- Consider amending/restating agreements, requiring assignment of receivable loans to PJ, etc.
  - Review prior agreements for broad “corrective” provisions
  - Consider conditioning new funds on clean up of prior projects



# Can These Overlap?



## At the PROJECT Level

- Layered finance is what we do (*sometimes to our own detriment*)
- Relative to cross-cutting req. HOME/HOME-ARP largely identical
  - Minor distinctions vs. HTF around DBRA, Env. Review, 1:1 replacement
- Affordability and Compliance periods measured from same “project completion” threshold but durations vary
  - HOME: 5, 10, 15 years for rehab; or 20 years for new construction
  - HOME-ARP: 15 years no matter \$ amount or new v. rehab
  - HTF: 30 years no matter \$ amount or new v. rehab

## At the UNIT Level

- Many (maybe most) times you cannot, but occasionally you must
- Things quickly get messy, ***strongly recommend avoiding where you can***
  - Identify distinct tranches of HOME units, HOME-ARP units, and HTF units
  - Also remember, two types of HOME-ARP units – QP and Low Income (LI) units
- Also ***recommend designating fixed units*** when combining HOME-ARP with HOME/HTF
  - If not, at least clearly specify that any given unit may not be designated by both programs (\*unless some units must be both, then say so)
  - If you must, where possible overlap regular HOME with HOME-ARP Low-Income (not QP) units

## When You Cannot Double-Designate

- Cost allocation is independently required for HOME, HOME-ARP, and HTF
- Process is materially the same for each, except:
  - Max per-unit subsidy in HTF is state defined and does not apply to HOME-ARP
  - Also, some very deep in the weeds differences between HOME/HOME-ARP and HTF re: projects involving public housing units could impact cost allocation *methodology*
- In practice, PJs/Grantees most often designate minimum number of required units
  - In that approach, the idea is HOME paid for (nearly) all eligible costs of the designated HOME units
  - Basic cost principles prohibit charging the same expense to two different sources





- Project is a side-by-side duplex
  - Two comparable units
- Total *eligible* project costs = \$500,000
  - HOME award of \$250,000
  - HTF award of \$250,000
- HOME & HTF each independently require cost allocation
  - Ignoring HTF, cost allocation for HOME requires 1 HOME unit
  - Ignoring HOME, 1 HTF unit required
- *Can we designate one unit as both HOME & HTF, letting the other be an unassisted market rate unit?*
  - *Why not?*

## Cost Allocation Thought Experiment

*(Massively Oversimplified)*



- Same duplex project, **but**
- Total *eligible* project costs = \$500,000
  - HOME award of **\$400,000**
  - HTF award of **\$100,000**
- HOME & HTF each independently require cost allocation
  - Ignore HTF, cost allocation for HOME requires **2** HOME units
  - Ignore HOME, 1 HTF unit required
- Result
  - One unit **must** be both HOME & HTF
  - Other unit **must** be HOME
    - Could also be HTF, but only if “over designating”

## Cost Allocation Thought Experiment

*(Massively Oversimplified – But Different)*

## Why Not Combine at Unit Level?

- It adds unnecessary complexity
  - *Did you just follow cost allocation? ヽ\_(ツ)\_/*
- Complexity increases compliance risk & admin. burden for PJs, owners, management
  - Initial eligibility may vary, income is not part of eligibility for HOME-ARP for **all** QPs
    - But still applies for projects w/LIHTC, PBVs, etc.
  - Over-income rules between programs vary
    - HOME-ARP even different btw QP & LI units
- Lose regulatory flexibility afforded to HOME-ARP
  - With **tenant-based** voucher, HOME & HTF still **restrict rent to published rent limit** while HOME-ARP allows (higher) voucher rent
  - HOME **doesn't allow local PHA's utility allowance**, HOME-ARP & HTF do



2025 HOME Rule reduces some misalignments, but others will remain.

## Brief Foray Into Coordinated Entry

“For {Program X}, HUD requires...” often ***overstated*** as “HUD requires...”

- HOME and HTF projects may **NOT** use coordinated entry to select tenants from waiting list
- HOME has ***statutory*** requirement for chronological selection from a project-specific waiting list, even when there are preferences/limitations
  - e.g., preference for homeless still requires chronological selection from among those qualifying for preference
- HTF same, except requirements are regulatory, not statutory
  - HUD could waiver for good cause (*but the bar would be high*)

## Coordinated Entry & HOME-ARP

- Project-specific waitlist is always acceptable
  - Coordinated entry system, and others, can refer applicants to project for placement on waitlist
- HOME-ARP *allows* coordinated entry (CE), *but does not require it*
  - Only for QP units, low-income units must use project-specific waitlist
- *However*, to use with HOME-ARP, *CE system must meet specific conditions or be changed*, revised, updated...
  - Must include all QPs, geography must align (e.g., project market area & CoC geography)
- If not, project-specific waitlist is required

# What We Know about Deep Affordability

- Deep targeted units require rent or operating subsidies to be viable
  - Whether units are formally income restricted at/below ELI/30% AMI\* or
  - For QPs who will overwhelmingly be ELI at intake
- Making ELI/QP units viable requires:
  - PBVs or other project-based rent assistance
    - But supply is limited, coordination can be difficult
  - “Internal subsidy” from other units, e.g., units at 60% to 80% AMI
    - Still requires deep capital subsidies
    - Doesn’t work in every project
    - When it does, need still outpaces number of ELI/QP units supported
  - OR... operating subsidies from HOME-ARP itself

# Operating Cost Assistance

- **HOME-ARP gets this right(er)**
  - Still doesn't mean it will work for every project everywhere or be easy.
- Allows PJ to either provide ongoing operating cost assistance or **capitalize an operating cost assistance reserve**
  - Only applicable to HOME-ARP QP units, not “just” HOME-ARP LI units
  - Cannot be used for units with PBVs or other PBRA (e.g., Sec. 8, USDA-RA, etc.)
  - Must be sized relative to required 15-year compliance period, cannot be sized for any PJ-imposed extended period

## Operating Cost Assistance continued...

- Definition of operating costs aligns with industry norms, includes standard OpEx and Replacement Reserve deposits
  - Note: HTF regulation does not and therefore may not work in practice
- Operating Deficit =
  - Actual Revenue from HOME-ARP units (tenant contributions + any tenant-based voucher assistance)
  - Less allocable OpEx less allocable RR deposits
  - But **does not** include debt service – presumption is HOME-ARP funded (nearly) entire cost of HOME-ARP units

## (Another over-simplified) Example

	# of Units	Monthly/Unit	Annual/Unit	Annual Gross
LIHTC Units	40	700	8,400	336,000
HOME-ARP Tenant Contributions	10	100	1,200	12,000
HOME-ARP Balance of QP Rent		300	3,600	36,000
Other/Misc Revenue		8	100	5,000
		<i>Subtotal</i>	13,300	389,000
Vacancy (7%)			(931)	(27,230)
<b>Net Revenue</b>			<b>12,369</b>	<b>361,770</b>
Operating Expenses			4,500	225,000
Replacement Reserve Deposits			300	15,000
<b>Net Operating Income</b>			<b>7,569</b>	<b>121,770</b>
Debt Service (at 1.15 DCR)			2,118	105,887
<b>Cash Flow</b>			<b>318</b>	<b>15,883</b>

- Projected OpEx+RR = \$4,800/unit
  - Excludes debt service
- Less Projected Tenant Contributions to Rent (after UA)= \$1,200/unit
- Yields HOME-ARP Operating Deficit \$3,600 x 10 units = \$36,000/year
- 15 years x \$36K = **\$540,000**
- *Note: Project cash flow is attributable to non-HOME-ARP units & reasonable w/in PJ underwriting standards*

## Critical Assumption: Tenant contribution to rent

- PJ sets standard for “affordable” tenant contribution
  - e.g., 30% of adjusted income
- Tenant contribution to rent determined for each QP household, for many segments of overall QPs, this could be very little or even \$0 at move-in
  - But we shouldn’t assume this will be true forever, annual reevaluations are required
  - **NOT required**, but PJ **could** provide for interim income reviews and adjustments to tenant contribution – could reduce pressure on budget
- Underwriting balance:

Be cautious, hedging a bit conservative, but...

don’t be unrealistically pessimistic either

## Thought experiment...

- At move-in, 1-person HH has \$0 income, so \$0 rent contribution
- Assume \$100/month UA; tenant stays for total of 3 years
- Receives case management and other supportive services, including signing up for SSI, VA, or other available benefits...
- 2025 SSI: \$967/month... 30% of \$967 = +/--\$290/month = \$3,481/yr
  - SSI – Yr 1 tenant contribution \$0, but...
  - Yrs 2 & 3 tenant contribution is \$2,280/yr
  - Avg tenant contribution over 3-yr period \$127/month = \$1,520/yr
- 2025 VA 80% Disability rate: \$2,044/month ... \$613/month; \$7,358/yr
  - Yr 1 tenant contribution is \$0; Yrs 2 & 3 is \$6,158/yr
  - Avg tenant contribution over occupancy = \$342/month = \$4,105/yr

## Deeper Still

- **Capitalized reserve** vs. ongoing operating cost assistance
  - *Steve Says: Capitalized reserve practically required*
- **PJ must**
  - Require operating assistance reserve be in separate interest-bearing account
    - *Steve Says: Some of you have the capacity to hold the reserve, consider that*
  - Require owner to request written approval for any withdrawals and review documentation supporting any withdrawals
    - *Steve Says: If not holding the reserve, require a deposit account control agreement*
  - At least annually review balance, burn rate, and projected depletion
    - *Steve Says: Expect to reconcile periodic withdrawals w/actual year-end performance*
- Remaining balance in reserve at the end of Compliance Period...
  - May be retained if project will continue to serve QP tenants in accordance with HOME-ARP requirements via “enforceable restrictions imposed by PJ”
  - Otherwise, must be returned to PJ, receipted as HOME Program Income

# Questions...



## Final Thoughts

- It's already complicated, keep it simple(r) when and where we can...
  - Think of the sources you control in a holistic framework; you decide “best fit” resource for each project
  - Don't layer sources unnecessarily, avoid doing so at the unit level
  - Consider fixing units to limit confusion or unintended complexity
- Plan for surprises & shifts. Something more will change, probably many things.