



July 29, 2024

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW
Room 10276
Washington, DC 20410-0500

Re: HOME Investment Partnerships Program: Program Updates and Streamlining

Docket No.: 2024-10975

To Whom it May Concern,

The Public Health Law Center (PHLC) is pleased to submit this comment in response to the Department of Housing and Urban Development's (HUD) HOME Investment Partnership Program (HOME) to develop opportunities in the program for more climate friendly building and renovation in low income and public housing. PHLC applauds this effort and recommends that HUD pursue solid policies to advance decarbonization and lessen the utility burden for tenants.

PHLC is a nonprofit organization working to advance equitable public health policies through the power of law. For over 20 years, PHLC has fought to regulate and eliminate commercial tobacco products, increase access to healthy food, support physical activity, promote equitable transportation, and improve environmental health as means of reducing chronic disease. PHLC partners with Tribal leaders, federal agencies, health advocacy organizations, state and local governments, and many others to combat systems of institutional racism and create healthier communities across the country.

These goals include the pursuit of healthy housing, especially for the historically disenfranchised who are now most vulnerable to the devastating impacts of climate change. Among other projects, we led a coalition of environmental and social justice groups that submitted a citizens' petition to HUD calling for several changes to promote equitable decarbonization and climate resilience in HUD-supported housing.¹ We also provide jurisdictions with legal technical assistance to support efforts to enact equitable building performance standards to support electrification and reduce energy burden.

¹ PUB. HEALTH LAW CTR. ET AL., PETITION FOR RULEMAKING TO ELECTRIFY AND WEATHERIZE PUBLIC HOUSING AND HOUSING UNDER HTF, HOME, AND CDBG (2022) [hereinafter Petition], <https://www.publichealthlawcenter.org/sites/default/files/resources/public-housing-petition.pdf>.

HUD’s Rule Opens Flexibility for Public Housing

In the HOME proposed rule, HUD states that one of its goals is to provide further flexibility in the program. This flexibility will ensure that more HUD assisted housing facilities are eligible for the funds and can use the funds to meet energy efficiency goals of the residents and the government.² For example, HUD is promoting green building standards, and the proposed rule states areas where the funds are eligible for new construction and rehabilitation uses that incorporate such standards or increase energy efficiency.³

These efforts by HUD are laudatory as they recognize the urgency of transitioning to clean energy in homes, especially for residents who rely on HUD assisted housing. This is particularly true in public housing and privately owned rental housing units where residents cannot unilaterally change their appliances to ones that will provide cleaner indoor air quality. In public housing it is the government’s responsibility to provide “decent, safe, and sanitary” housing⁴ and moving to energy efficient appliances, and promoting electrification is a step towards that overall goal.

The proposed update to the definition of “sub-recipient” is helpful in that HOME funds in this updated definition can more readily be used with rental housing using the program’s own income determination guidelines for eligibility. PHLC commends this updated language to continue to promote healthy living in public housing properties.

Energy Efficiency Standards Should Lead to Prioritization of Electrification

While there are many positive movements in the HOME proposed rule, there are areas where HUD can continue to use its authority to move further on clean energy and indoor air quality in affordable and public housing. Our comment will prioritize public housing as those residents have limited ability to update their units on their own.

The changes proposed to § 92.206 correspond closely to the spirit of Proposal V in PHLC’s citizen petition. In our petition, we requested that HUD incentivize decarbonization by preventing the use of HOME funds in new fossil fuel connections. The purpose would be to promote electrification in public housing to pursue higher clean indoor air standards. The proposed HOME rule does incentivize energy efficiency, which

² See Press Release, Dep’t of Hous. & Urb. Dev., Fact Sheet: HUD Prioritizes Resilient, Efficient, and Green Homes and Community Development (Apr. 25, 2024), https://www.hud.gov/press/press_releases_media_advisories/hud_no_24_090.

³ See DEP’T OF HOUS. & URB. DEV., HUD GREEN AND RESILIENT RETROFIT PROGRAM: OVERVIEW (last visited Jul. 22, 2024), https://www.hud.gov/sites/dfiles/Housing/documents/GRRP_Overview_FactSheet.pdf.

⁴ See, e.g., United States Housing Act of 1937, Pub. L. No. 75-412, § 1, 50 Stat. 888, 888 (codified as amended at 42 U.S.C. § 1437).

could include electrification, for new construction projects that meet the energy efficiency standards in section 109 of NAHA.⁵

The energy efficiency standards described in the rule are the same as the building codes that HUD recently adopted. These are the IECC 2021 standards for single family homes and the ASHRAE 90.1-2019 standards for multi-family homes.⁶ With projects having to meet these new high standards, HUD is prioritizing energy efficiency and healthier homes. Yet, by promoting no new fossil fuel hookups it could show greater commitment to energy efficiency.

These projects will also require monitoring to ensure that HUD's energy efficiency goals are being met. One way to ensure that these goals are met is to track developers by their use of inspections and assessments. Project developers can balk at a requirement for environmental assessments because of the costs, but the proposed rule allows reimbursement for these costs. These assessments should show that electrification will be one of the more cost effective and energy efficient building options thus giving HUD another opportunity to promote the move to electrification.

The proposed rule as is will update the investments made in building and rehabilitating HUD assisted homes. Every effort should be made to advance the health and safety of residents. The energy efficiency allowances are a great first step, but it would be an even greater show of commitment for HUD to make the HOME grants more part of its efforts to limit the use of fossil fuels.

Cost Reimbursements for Environmental Assessments Should be Expanded to Include Healthy Home Visits

Under HUD's proposed HOME rule, HUD will allow reimbursement for environmental assessments. These assessments usually address the impact that a unit of housing will have on the natural environment. It is important to prevent the worst of climate change and to ensure that its housing is climate resilient. And HUD should also ensure inspections for healthy homes. The inside of units can be just as detrimental to the health of residents and the wider community as the outside climate impacts.

Indoor air quality is about ensuring that HUD is living up to its commitment to provide decent, safe, and sanitary housing. Low indoor air quality means that more residents are susceptible to asthma.⁷ This is especially true for children who make up a significant

⁵ HOME Investment Partnerships Program: Program Updates and Streamlining, 89 Fed. Reg. 46618, 46661 (May 29, 2024) (to be codified at 24 C.F.R. pt. 92).

⁶ See *Minimum Energy Standards*, U.S. DEP'T OF HOUS. & URB. DEV. (June 28, 2024), https://www.hud.gov/program_offices/comm_planning/environment_energy/mes_notice.

⁷ Cynthia A. Pate et al., *Asthma Surveillance – United States, 2006-2018*, MORBIDITY & MORTALITY WKLY. REP. SURVEILLANCE SUMMARIES, Sept. 17, 2021, at 1, <https://www.cdc.gov/mmwr/volumes/70/ss/ss7005a1.htm>.

portion of public housing residents.⁸ Children with asthma are then at risk of missing school and for adults, time from work. In addition, the pollutants in indoor air from fossil fuel appliances include chemicals, like carbon monoxide, nitrogen oxides, and methane, that exacerbate cardiovascular and respiratory health issues and could potentially lead to death.⁹

The environmental assessment reimbursements are a logical next step in encouraging developers to consider energy efficiency in new construction and retrofit projects. One other aspect that should be included with the environmental assessment, which is discussed in Proposal W of our citizen petition, is allowances for healthy home inspections. These inspections would pair well with the environmental assessment process and could happen in the same review. Our citizen petition suggests using the healthy homes standard under 42 U.S.C. § 711, the Maternal, Infant, and Early Childhood Home Visit Program. We propose this standard because it focuses on those most at risk from poor indoor air quality and would capture the health effects on a significant number of residents in public housing.¹⁰ This addition to the proposed rule could follow HUD's proposed § 92.206(d)(1) or stand alone as another requirement in that section of the regulation.

“Green Building Standards” Should Include Electrification Requirements for New Projects

It is commendable that HUD plans to utilize the HOME program to advance goals of energy efficiency in its housing units for residents who are unable to do so, or who cannot afford that undertaking on their own. PHLC anticipates that this rule will further move developers and owners to electrify more systems in their new construction and retrofit projects. Because of the rule, developers should be encouraged to use materials that are beneficial to the environment and to create homes that are climate resistant.¹¹

PHLC supports HUD's proposal to make additional funds available to HOME recipients that meet certain standards. PHLC also encourages HUD to consider expanding the additional funding beyond the five per cent cap in the proposed rule, but requiring that new projects, whether new construction or substantial rehabilitations, be all electric. The

⁸ See Benny Docter & Martha Galvez, Urb. Inst., *The Future of Public Housing: Public Housing Fact Sheet* (2019),

https://www.urban.org/sites/default/files/publication/101482/the20future20of20public20housing20public20housing20fact20sheet_0.pdf.

⁹ See Rob Jordan, *Stanford Scientists Find the Climate and Health Impacts of Natural Gas Stoves are Greater than Previously Thought*, STANFORD REP. (Jan. 27, 2024),

<https://news.stanford.edu/stories/2022/01/rethinking-cooking-gas>.

¹⁰ Petition, *supra* note 1, at 95.

¹¹ SARA HAYES ET AL., *MAKING HEALTH COUNT: MONETIZING THE HEALTH BENEFITS OF IN-HOME SERVICES DELIVERED BY ENERGY EFFICIENCY PROGRAMS* (2020),

<https://www.aceee.org/sites/default/files/pdfs/h2001.pdf>.

exception would be for projects in cold climates that may need a fossil fuel source as backup. This aligns with Proposal X in our citizen petition, which would require that all new HOME-funded construction be all electric.¹²

Having HUD explicitly state electrification as the standard for new projects would further cement efforts happening in public housing authorities (PHAs) around the country. We know that New York City Housing Authority (NYCHA) deployed a pilot program where they changed over 100 gas stoves into electric induction stoves. The project proved successful and NYCHA then created a request for proposal to change their system to induction stoves.¹³ Similar projects can be seen in Meadville, PA where its housing authority received \$3 million to change over gas stoves among other efforts to create healthier homes.¹⁴ HUD could send strong support for these efforts and incentivize others to do more if there is adequate support at the federal level for this movement to electrification. HUD can be a leader here by pushing their proposed rule further and adopting Proposal X in the citizen petition.

Utility Allowance Benefits Should Go to Residents

We further recommend that HOME utility allowances be designed to maximize the benefits for the residents of rental projects of energy-efficiency and onsite-generation retrofits. Fundamentally, this is a matter of equitably allocating the energy savings generated by these retrofits. While we recognize the important role of building owners in providing affordable housing, our primary concern is ensuring that low-income residents benefit from the energy transition. This approach also aligns with the proposals in the citizen petition to HUD.¹⁵

We start by noting that some benefits of any energy-efficiency or renewable-generation program will accrue to the owner of the rental project. Building owners bear the energy costs of common areas and building systems, and energy use reductions in those areas, or in the building, will benefit them. Likewise, subsidized renewable generation programs generally allow building owners to benefit from some share of the energy generated, even when they require residents to benefit, as well.¹⁶ And many of the retrofits provided

¹² See Petition, *supra* note 1, at 95-96.

¹³ Press Release, N.Y.C., Mayor Adams, Gov. Hochul, and NYCHA Welcome Proposals in Induction Stove Challenge For Public Housing Apartments (Nov. 3, 2023), <https://www.nyc.gov/office-of-the-mayor/news/848-23/mayor-adams-governor-hochul-nycha-welcome-proposals-induction-stove-challenge-public>.

¹⁴ *Housing Authority Receives Federal Grant for \$3 Million*, MEADVILLE TRIB. (Sept. 12, 2023), https://www.meadvilletribune.com/news/housing-authority-receives-federal-grant-for-3-million/article_5db41dfc-50ed-11ee-a28b-0bff4c467ef4.html.

¹⁵ See Petition, *supra* note 1, at 85-89.

¹⁶ For example, California's Solar on Multifamily Affordable Housing program requires a majority, but not all, energy produced by a project to benefit tenants. See *SOMAH Program Handbook*, SOLAR ON MULTIFAMILY AFFORDABLE HOUS. § 1.1.6 (2023), <https://calsomah.org/resources/program-handbook>.

under these programs will increase the value of the property, which building owners can capture through sale or leverage for financing.

The central concern for HOME-supported green retrofits should be to ensure that residents receive some benefit, as well as building owners.¹⁷ All residents of HOME-assisted rental units are people with low incomes,¹⁸ and should be prioritized in receiving benefits from decarbonization policies. In addition, resident benefits are required by many subsidy programs that could be layered with HOME funding.¹⁹ Therefore, the proposed HOME rule should direct as much benefit as possible to residents of HOME-supported units.

To accomplish this, we recommend that energy efficiency measures funded by HOME be excluded from resident utility allowances, so that residents can keep the energy savings provided by the measures. One simple way to do so would be to require HOME projects to use the same utility allowances as the corresponding PHA. PHA calculated utility allowances provide the typical utility usage for households in the area, but do not include the specific energy-efficiency measures at a given project. This approach requires minimal changes from the proposed rule, since the proposed rule already includes a regulatory change permitting HOME projects to use PHA utility-allowance calculations.²⁰ It also has the advantage of eliminating the cost of developing project specific utility allowance calculations.²¹

Alternatively, we would support a change to the proposed rule that permits project specific calculations but specifies that the energy efficiency gains from the HOME supported retrofits would be excluded from any such calculations. We would also support use of the HUD Utility Schedule Model, but only if the assumed reductions in energy use from “Energy Savings Design” were eliminated.²² The “Energy Savings Design” factor reduces utility allowances after energy-efficiency retrofits and is unlikely to accurately reflect energy savings in any case.

¹⁷ We acknowledge that many HOME-supported properties are owned by nonprofit housing providers, and that benefits that accrue to them may ultimately return to tenants.

¹⁸ 24 C.F.R. § 92.252. See also DEP’T OF HOUS. & URB. DEV., 2024 HOME INVESTMENT PARTNERSHIPS PROGRAMS 19-1 (2024), https://www.hud.gov/sites/dfiles/CFO/documents/2024_CJ_Program_HOME.pdf (noting that HOME projects serve people at even lower incomes than those required by statute).

¹⁹ 89 Fed. Reg. at 46634.

²⁰ *Id.*

²¹ For example, one analysis found that the additional rents that project owners could receive as a result of developing project-specific cost calculations could be less than the cost of those calculations themselves, which are estimated at \$4,000 to \$6,000. CAL. HOUS. P’SHIP CORP. & NAT’L HOUS. LAW PROJECT, AN AFFORDABLE HOUSING OWNER’S GUIDE TO UTILITY ALLOWANCES 27 (2016), https://chpc.net/wp-content/uploads/2016/04/UA-Guide_April-2016Web.pdf.

²² See HUD Utility Schedule Model (HUSM), HUD USER (updated 2016), <https://tools.huduser.gov/husm/uam.html> (assuming an 18% reduction in energy use when a project has had any “energy saving rehabilitation” in the last five years, including upgrades to heating, cooling, lighting, or hot-water systems; building appliances; building envelope; “[w]ater measures”; or onsite generation).

We also recommend regulatory changes and guidance to clarify that energy efficiency benefits are not included in HOME residents' income calculations. Under current law, energy efficiency benefits are generally not income: A reduction in household energy usage as a result of energy-efficiency retrofits is not income because it does not represent an "amount" of money provided to residents or to a third party on their behalf. Similarly, reducing the cost of energy through a utility credit, like "virtual net metering," is not income because it is an avoided cost, not a payment made by or on behalf of a resident.²³

However, some retrofits do not reduce resident energy use or costs, but instead provide monetary benefit to residents. The most likely scenario for this case is installation of power generation for a building where residents' electricity costs are included in their rent: in this case, residents could not receive a utility credit against their individual bills but may receive some other sort of direct benefit such as a rent credit. To cover cases like this, we recommend that HUD specifically exclude benefits from HUD funded energy efficiency or renewable generation retrofits from resident income calculations.

Conclusion

PHLC supports HUD's efforts in this proposed rule. The rule could go further in cementing HUD's commitment and responsibility to safe and healthy housing. Public housing residents are dependent on government action to ensure that they live in housing that will not jeopardize their health and safety. The proposals from PHLC's citizen petition pair well with what HUD proposes to enhance the HOME program to allow HOME funds to be used for more energy efficient efforts. HUD can and must do more in this space to ensure that all residents in HUD assisted housing have a safe place to call home.

Respectfully,

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²³ See 24 C.F.R. 5.609(a). It is our understanding that this interpretation aligns with HUD's. See generally Memorandum from Danielle Bastarache, Dep. Asst. Secretary, Off. of Pub. Housing & Voucher Programs, to Dirs. of HUD Regional & Field Offs. of Pub. Hous. et al. 3 (Aug. 4, 2022), <https://www.hud.gov/sites/dfiles/PIH/documents/Community%20Solar%20Credits%20in%20PIH%20Programs.pdf>.