Building HOME Webinar Series
Office Hours 2-8-18

Les Warner: Okay. We're going to transition over and spend the rest of our time together answering any questions that you have. So if you have some questions about either today's or this week's materials or anything from the entire series, those can be entered in in the question and answer box. I'm going to go ahead and revisit a couple of questions in looking back at yesterday's session, thought probably deserved a little bit more time.

One of the things that was mentioned somewhat briefly in yesterday's session that the new HOME rule provided for the ability to be able to charge projects that are committed under the new HOME rule to be able to charge an annual monitoring fee to that project.

And we talked about the fact that that's going to have to be included as part of the underwriting, but I wanted to talk a little bit more about how those fees are established and what could be included in them and I do believe there will be some forthcoming additional written guidance on this, but I thought it might be helpful to visit this a little bit. So mentioned, and this is really important, your monitoring fees need to be based on average actual costs that are being experienced by your HOME program. So you can't just randomly select a number, you would need to have documented what your actual costs that are incurred in doing your ongoing oversight of your portfolio of rental housing during the affordability period.

So it's not the cost that you might be incurring during the development period, that's something that's going to be covered by admin funds, but this is once your project has been completed, that affordability period has begun and you are doing your ongoing monitoring of that project that these costs would be recognized. And so we talked about there are a number of actions that the PJ is responsible for on an annual basis. So that includes things like reviewing and approving the annual owner's report on rent and occupancy, reviewing the utility allowances. I believe Kris talked about, yesterday, the fact that you're required, within the first 12 months, to do a onsite monitoring for that project and then periodically you can do it on a 3-year basis unless you're going more frequently to do an onsite monitoring looking at occupancy files and doing physical inspections on those units.

We also mentioned about the fact that you, as the PJ, would be conducting annual reviews of financial information from those projects. This is required for projects that have 10 or more HOME-assisted units. That's something that's found at 925.04D Part 2. So when a PJ is -- has decided yes, I want to utilize this opportunity to recoup some of the costs related to monitoring, you would then need to start this process of determining, okay, what all is going to be included in this? Is it just the onsite actions that the PJ is taking on an annual basis, would it also include your offsite? And based on collecting that data, come up with a fee schedule, essentially, to be able to document that.

So we mentioned it needs to be included in your underwriting to determine is this actually something that if I charge this cost to the project, are they going to be to afford it or will that negatively impact their bottom line. So as part of that, you could make some assumptions, as you're doing your underwriting for the life of the program, that you expect those fees to escalate over time. And so you could incorporate those assumptions in your underwriting, but when you want an annual basis come to actually setting those monitoring fees in those subsequent years, it's every time going to need to be based on looking at your actual costs that are being incurred and setting the monitoring fee based on that.

So important systems to have in place if you were going to utilize this opportunity. This does allow you to bring in some additional revenue from those projects to offset some of those long-term costs that you, as the PJ, would be incurring in overseeing those projects during the affordability period.

Let's see. We've got a couple of other questions that are coming in, questions about -- with cuts in HOME funding over the past years, your admin dollars are limited. Is there a way to charge the three-year HQS inspections of HOME rental units as project delivery, like they're doing [inaudible]?

No. Our project has been completed at the point that we've placed that project in service, but this is what we're talking about here on the ability to be able to charge that monitoring fee towards the project that's going to be paid out of cash flow. It is not a project cost and that's why we have to identify that fee and include it in the underwriting to be able to implement that. But that is a way for you to offset some of those expenses that currently are having an impact on your admin budget and being able to cover all of your expenses.

We also have a question on the homebuyer program. A PJ has chosen the recapture methodology for how they're going to oversee long-term affordability. Are there times when recapture cannot be applied and resale must be used?

So when this was covered, I guess, the week before last, it's very specific that you can only use recapture when we have at least $1,000 of direct assistance that's being provided to a homebuyer. So generally, we're looking at down payment assistance, maybe closing costs that are being provided as direct assistance. It might be some kind of a secondary loan that's being provided. If I had a property that, based on our underwriting, that individual homebuyer didn't qualify for assistance -- so maybe we did our underwriting and determined that this household actually was able to afford the purchase of that home without additional assistance. If we're not providing that direct assistance to the homebuyer, then recapture could not be used and in that case, resale would be the only option that would be available to you.

Let's see. I also have a question. Does the monitoring fee become program income when the PJ refuses it? Really good question.

So as we mentioned yesterday, the monitoring fees that they're being paid to the PJ are what we call an applicable credit. So they are not program income, they are not being receded into IDIS and tracked as we would with program income. The PJ will have to have a system to be able to track the receipts of the monitoring fees, because they're going to use those receipts to offset what their costs are that they're charging off to admin. So in other words, if I, as a PJ, had, let's say, $100,000 in costs for the annual monitoring oversight of my portfolio of rental units, if I am collecting $40,000 in monitoring fees, I'm going to reduce -- I must utilize or offset those expenses $100,000 by the $40,000 in receipts that I have received.

And so the maximum that I could charge off to HUD, under admin, would be capped at that reduced amount of $60,000. So it will be important to be able to track those funds coming in and show that I was using those funds to offset those expenses. A couple of other things that I highlighted from yesterday, which I thought might make sense to mention, there was a question about the budget range for what replacement reserves should be and they were mentioning that they're seeing kind of a range of numbers. Well, it's going to be based on the standard that the PJ has put in place that should be based on their portfolio and what they're expecting and that may be that for particular types of units or populations, that we need a slightly higher or we're going to need a lower replacement reserve.

So a PJ, in setting appropriate replacement reserves, will be tracking what are those expenses that are actually being incurred by my project and then making adjustments over time and I would think that would be something that the PJ would need to have a system of revisiting from time to time much like you would do with any of your other standards that you might use as part of your underwriting and subsidy layering just to make sure that the presumptions that you are utilizing still are appropriate.

There was a question yesterday about, if we have unpaid taxes on a property, can we use our HOME funds to redeem those taxes?

And we mentioned that one of the things that is an ineligible use of your HOME funds would to be pay back-taxes and some other fees on that. Now, oftentimes in working with programs much like -- let's say we were doing a homeowner rehab program, we may have a situation where we limit eligibility to be eligible for receiving homeowner rehab. They have to be current on taxes.

In those cases, it may be that that homeowner is able to work out some kind of a payment plan. And so based on initiating that payment plan would then be deemed to be in good standing on their taxes, but there is not a way for you to use it, would not be an eligible use of your HOME funds to pay off that deficit using your HOME funds.

There was a question about do you recommend the operating reserve be escrowed with the PJ? And I think typically, we are not seeing the escrow accounts actually being held by the PJ themselves, but it does raise a very legitimate concern about we want to know that those reserves actually are in place, that the annual deposits are being made into those accounts.

So that's one aspect that I would think would be standardly included in your financial oversight and review of projects during that affordability period would be to know -- I want to know, what's the current balance in those reserves? We're expecting them to be building up over time so that when there are capital needs where they need to replace systems, that we actually are going to have those funds available.

So I would think that as part of your financial oversight, you would be asking about existing balances, you might be asking about withdrawals that are being made to be able to look at that versus your projections that you would have in place and determine do we think that these reserves are adequate, is this an early warning sign, that there are larger withdrawals happening earlier in this project than we might've expected and having a concern about that. So I do think it makes sense to have some reporting on that.

Let's see what else was on the list. We had a question about if we had a HOME loan that the PJ had been receiving payments over time, and those payments coming back to the PJ are going to be program income -- so they're going to be receded back into the system, they are going to be utilized for other eligible projects.

In the case where this project, at some point, becomes no longer viable, so they're not completing that affordability period, the question was is the PJ having to pay back their total original investment or would we be able to recognize, essentially, those payments that have already been made?

And so it is going to be the unpaid balance at that point. So if the project received, let's say, $600,000 in subsidy, they had over maybe 10 years made payments and we had maybe $200,000 of money that had been paid back to the PJ as program income, that's going to offset the amount that would need to be recaptured or repaid, I should say if they failed to complete their affordability period.

Another question here. Could we explain the subsidy layering requirements for a HOME-funded project which has some other funds as well from the PJ?

First off, I would reference to the underwriting and subsidy layering notice and also mention that on the HUD Exchange, there is a webinar that was done concerning underwriting and subsidy layering that would be a good resource for you in trying to understand this topic. But essentially, our subsidy layering is looking at that trying to determine what is the actual gap in funding that is needed? So we are sizing that level of assistance of our HOME funds for that project. We're looking at what their total sources are, uses and determining how much of that needs to be filled by the HOME program.

So that's one of the reasons that, as part of that process, we need to be able to have final commitments on all the other sources of funding before we are able to finalize our commitment of HOME funds, because we are filling that gap once all the other sources -- we have final numbers on that.

Let's see. There was a question about being able to put additional HOME funds into a HOME project that was still within its affordability period. And so I just want to confirm that generally, once we are in our affordability period for a HOME project, you are blocked from being able to add additional HOME subsidy. That's one of the reasons we're very concerned about doing the underwriting carefully so that we are confident that this is going to be a sustainable project.

The exceptions to that rule would be during that first year of the affordability period, if there were additional costs or changes that were identified during that period, we sort of have a window of time to be able to make those additional investments. So one of our reasons for, within the initial 12 months of doing that onsite monitoring, is making sure that the finished project is adequate, is going to be sustainable for the life of that project. So from that point forward, generally, you are not able to put additional HOME funds in.

Kris mentioned in our session yesterday about under the new HOME rule, we have a classification of a troubled HOME project, that the new rule allows some flexibility for HUD to, based on an analysis, allow for additional investment, essentially, to stabilize an at-risk HOME project. So that is not something that you, as the PJ, can say, they're running into some financial difficulty, we're simply going to call this a trouble project and put additional funding in.

You would be making a request to HUD showing what's the situation with the project, how it was at-risk, you would be making a case for the amount and the way that those corrections were going to be made to stabilize that project and with HUD's approval and we underwriting, that is a possibility.

But other than that, you've got to get it right the first time, because you do not have the ability to go back in.

Kris Richmond: And Les, there was a question that came in about VAWA.

Les Warner: So I don't -- I'm trying to see if I can see it on the screen. Oh, here we go.

So the question is asking about do we mean the project or property versus the PJ?

Well, there are aspects of VAWA, which are property by property specific, but there also is a requirement for the PJ themselves to oversee the VAWA requirements and make sure that those plans are in place. So I would just reference you back to the VAWA regulations themselves and there is, within that guidance, not only some sample policies and forms, but I think it will help you with the clarity on what's my responsibility as the PJ versus what I need to direct that property owner to have in place to meet -- to be in compliance with VAWA.

Let's see. A couple of other things I wanted to mention from yesterday's questions, there was a question about, well, is there a sample HOME lease checklist?

And Kris answered back saying, no, but there is a list of the prohibited clauses. I wanted to mention just a little bit about thinking through, for a PJ, on how you make sure you're going to be in compliance with this.

So you have a couple of options. You could, as the PJ, adopt a standard lease and make that available to your projects and say, I'm going to require you, if you're receiving my funds, to use my lease so that you're sure about those provisions. You also, as the PJ, could require that the owner submit the lease that they intend to use and you would review it and approve it based on the HOME requirements about what provisions are allowed.

And that would be something you probably would want to do on a -- maybe an annual or ongoing basis to make sure that that continued to be in compliance. The other thing that some communities are doing, which I think has worked pretty well, is to create an addendum, which is required to be used with whatever lease that local project is using and essentially, the addendum attaches to their lease document and says, if the attached lease includes any of the following provisions, and listing out these are all of the prohibited HOME lease provisions -- the addendum would say that these are null and void. And so it's a way for sort of a standard overlay for the PJ to have protection, that they're voiding out any of those ineligible clauses if they were included in a lease form.

And that's another alternative to be able to have some coverage on that. And there have been -- there was a somewhat recent HUD inspector general finding on lease provisions and interestingly, in that, we had, in some cases, the same developer that had some properties that had perfectly acceptable leases and other properties that were using a different lease format and had some of the prohibited clauses in it. So it is something that you need some system of having oversight on that.

And then I'll also mention there was a question about, well, how do I determine if the low rent should be used or the high rent should be used during my project? So we have a number of things that are going to apply.

We first talked about the program rule and talked about at initial rent-up, having restrictions on 90 percent of our units for households at 60 percent, but we also talked about with our project rule, that when we had 5 or more HOME-assisted units, that we had a minimum set-aside of 20 percent of those units were going to be essentially set aside for households at 50 percent and below and were going to be charged that low HOME rent. You, as the PJ, and that may be based on policy, may be based on a project-specific negotiation is you may have more restricted or lower targeting on some of those units.

So it becomes really important within that written agreement to very clearly lay out, not only at initial occupancy for the program rule, but over the life of that project, be able to clearly lay out within that written agreement what are my -- what's my rent structure that's required based on my investment of HOME funds?

And that -- more and more we're seeing written agreements that have gone to using a chart and are laying out -- you know, defining all of the different unit sizes in the project and breaking those out on what rent is going to be charged. And keep in mind, some of these projects, of course, have a blend of HOME funds, tax credits, maybe MSP. So we have an overlay of multiple funding sources, which may each be bringing a different restriction.

So the better job that we can do of making sure that whomever that property manager is over the life of that project understands what are the restrictions that apply to each of those units? And that incorporates things, like when we talked yesterday, about fixed versus floating and understanding what that next action might be to try to maintain the mix that would be required. So as we have incomes go up over time and maybe we have an over-income individual in a low HOME unit, thinking about what's the next required action becomes really important on understanding what's in the written agreement, but also, what re-designation might be needed based on maintaining that unit mix over the life of the project.

Kris, I think that brings us just about to the end of the time we have available. As Kris mentioned, we will be sending out a survey form. I would ask that folks respond to that, but with that, we will also be providing you, again, a resource list.

So we've tried to capture for notices and guidebooks and other things that we've mentioned as resources during this training. That attachment will provide those linkages or references and I would encourage you to use some of those resources. Utilize some of the things that are on the

HUD Exchange, but as Kris mentioned, also, stay in communication with your HUD field office, ask questions, seek guidance as appropriate on that.

I want to thank everybody for your participation and remember that these sessions have been recorded and will be posted so you have the ability to go back on some of these sessions. Thanks, everybody.

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