

## 2019 Building HOME Webinar Series IV Office Hours Session 4

Les Warner: All right. So we're going to go into our question and answer session. Looks like we've got a few questions here, we'll go through those and then I have also reviewed -- we had some unanswered questions from yesterday that we also can talk about. Let's see, so there was a question about the -- some of the resources that we mentioned yesterday.

So we talked yesterday about the compliance guide and that's a rental compliance guide and there are two of them. One is for the owner of the property and one is for the PJ. The actual name of these is compliance in HOME rental projects and they are both posted on the HUD Exchange and that will also be included on the resource list that is going to be sent out after these sessions.

So you'll have that information for you to be able to get that. I'll also mention those guides, as I mentioned, are a little bit older and there are a few changes that -- things that would be incorrect in those because of the HOME rule, but kind of minimal. Most of what's there is correct and I would -- I still think they are a very valuable resource.

The process is underway to revise those and my hope is that you will see, coming in the future, a release of an updated version of those. There also is hopefully a document coming forward which will be specific to that combination of HOME and tax credits, which would provide better guidance on that, one of the things I wanted to mention about that interaction between tax credits and the HOME program and we had some questions about that.

So keep in mind that in our rental projects, we may have a mix of financing. And so when we have not only low-income housing tax credits, but we could have other sources of funding that have specific rules. So for those of you that might be working with CDBG -- community development block grant funds -- those require, if we're putting it into a multifamily project, 3 or more units, that you have at least 51 percent of those units being affordable.

And so when we have a multifamily project, that written agreement needs to be very clear on how those unit designations are going to be laid out and in some cases, because of multiple funding sources, that can be a little bit complicated. I've seen written agreements where they went to the length of having a chart that was included.

So we could have units that were HOME units and had only HOME rules, we could have units in that same project that were low-income housing tax credits, but we also would have units that had both sources of funding. And so generally, we're going to have to go with whatever the more restrictive rule would be. So that would mean as a property manager, as a property owner, that you would have to be aware of what each of the programs required for that unit and then be following the more restrictive.

So that would include things like setting the rent levels for that unit. Now, there are -- is an exception on that that I wanted to mention specifically. We talked yesterday about when we have a household whose income goes over 80 percent area median income and Kris talked about the fact that we're immediately going to make changes to their rent.

And so depending on whether it was a fixed unit or a floating unit, we would be charging either 30 percent of their household income or in a floating unit, we -- it would be 30 percent of the household's income or a market rent for a comparable unit in that area. And so the exception here is that with tax credits, tax credits do not consider that household to be over-income and take action until, I believe, 140 percent.

And so in that instance where we have a combination of HOME and tax credits, we're going to defer to the tax credit rule and take no action until they trigger the over-income based on the low-income housing tax credit program. We had a question about can we fund all three rent, security and utility deposits? Absolutely and that's really part of your program design to think about is that something -- you know, what do we want to offer here on that?

That would be perfectly fine. And then we also had a question -- this is -- so wanting to know could TBRA subsidy be shorter in duration than the term of a lease agreement? So could the tenant only receive three months of rent assistance during the 12-month lease agreement? Let me think about that. So generally, we're -- as an affordable housing program, we're looking for a lease term that is going to be for 12 months and we want to make sure that it's going to be affordable and sustainable.

So I guess my concern on a 3-month term would be if they've got a 12-month lease and they only have subsidy to make it affordable for 3 months, what happens then? So I guess I would have some concern about this program design and generally, HOME is a permanent housing program that is looking for stability in that.

And so generally, we talk about a one-year affordability period. So I think before implementing that local design, I think I would want to work with my local HUD office and kind of get their opinion on whether that was going to be acceptable or not. So that's the questions that are in the queue at the moment. If you have other questions, go ahead and please put those in.

Otherwise, I'm going to go to some of the questions that came in yesterday. So one of the questions that was asked was how do I determine if I'm using the high HOME or the low HOME rent limits? So for the PJ, when you are funding that project and executing a written agreement, you're going to designate -- so you're to follow the project rule.

If you have five or more HOME-assisted units, then you're going to be designating that at least 20 percent of those units have to be at a low HOME rent. So the written agreement should be very clear for that project specifying how many HOME-assisted units there are and then designating how many high HOME units, how many low HOME units and that will be broken out by size of unit.

So I might have an agreement that said I have, I don't know, 12 HOME units, I have 5 3-bedroom units that are going to be at high HOME limits, I have 2 3-bedroom units that are going to be at low HOME units and so on so that it'd be very clear what are my -- what's my layout of HOME units and then how those rents would apply.

For a property manager, they really need to clearly understand that so when they have a potential tenant that is applying for occupancy, they need to know what are the income restrictions. So if I've got a low HOME unit, we said that those are for households that -- with an income of 50 percent or below. And so determining who can I rent this to they'd have to be clear is this a low, is this a high HOME unit?

So the better you can do on those written agreements on making that clear very important on that. So there was a related question which I think is a good segue into that. We mentioned yesterday that if we had project-based subsidies that were being provided, we said we couldn't fund those with HOME, but we certainly could receive those for a HOME-funded project.

If we have those subsidies, if we are wanting to be able to charge that contract rent for the subsidies and use that higher rent and exceed the HOME rents, we can only do that in conjunction with a low HOME unit. So the question that was asked was then related to the designation of low HOME units.

So let's say I have a 10-unit property and I have been able to secure project-based subsidies for that property for all 10 units, if I want to be able to use that higher rent and essentially receive more subsidy for that, I know that I can only do that in conjunction with a low HOME unit. So I probably want to designate all 10 units as a low HOME unit.

So the program rule -- or the project rule, I'm sorry, is setting a minimum number of low HOME units that need to be designated, but we -- there may be reasons, such as a project-based subsidy or the part of the population that you have targeted that you're trying to provide housing for, you might choose to designate more than that 20 percent.

We also had a question, kind of going back to project and program rule, we talked about the fact that under the program rule at initial occupancy, that those -- 90 percent of those units are restricted for folks at 60 percent and below and it's really a matter of we've created -- we're bringing new units online, we're kind of giving that first shot at occupancy to folks that have a little lower of income and probably are having a harder challenge in finding affordable housing than those folks that might be close to 80 percent of area median income.

So the question was so we've -- you've been telling us that that's only at initial occupancy. What happens after that initial occupancy? Well, that really is up to the PJ. The program rule is only restricting that at the initial occupancy. So you could have, after that initial occupancy for those units in the first year, that as units are then ready to be re-rented, that you could rent up to 80 percent.

You, as a PJ, might be looking at that and saying we really want to target folks that have an income that's a little bit lower. You could choose to designate that your affordability requirements are going to be more restrictive than that and maybe you say I'm going to keep these at 60 percent and below throughout the affordability period.

That's a local program design decision that you would need to make as part of that. There was also a question about -- oh, and sort of in conjunction in that, I guess my other comment in that is

that in some cases, and I will say having worked as a program administrator at the state level where we had a lot of local programs, we really observed that if we could kind of keep the rules more consistent, that it was oftentimes easier for people to remember them and apply them appropriately.

So some folks have said, we've got this 90 percent rule, 90 percent of these at initial occupancy, maybe I simply want to make my funding requirements at 100 percent of those units at initial occupancy so that I'm not trying to do the math essentially and making sure that we're going to be able to show that we've met that rule.

There was a question about then on -- we talked on income documentation, this requirement at initial occupancy and also on every sixth year of the affordability period that there was a requirement to do full source documentation as part of that income determination and we mentioned that there were some flexibility on doing self-certifications or using documentations that another federal program had found the household to be eligible.

We could use that flexibility in those other years. The question was, could a PJ simply say we're going to require the developer to do full income verification every year as opposed to at initial and every sixth year? Absolutely. And there are many PJs that said, I think this may be a little troublesome on having the property manager remember is this the sixth year of the affordability period, maybe we just keep it simple and say we're going to do it every year.

That's absolutely as acceptable as a local program decision on that. I mentioned yesterday that the 2013 rule changed their requirements about frequency of those onsite monitorings for rental housing. And so the rule change citation on that is 92504 and it's in Section D. And so that's really specifying that we have to do that initial inspection within 12 months of completion of that unit.

If that comes back with no issues, we could then go immediately to a three-year cycle for when that next onsite visit needs to be done. You, as a PJ, as part of your monitoring policies and procedures, need to think about, so if, when I do that initial monitoring, maybe I find some issues, so what's my protocol going to be? What will my frequency be?

Maybe it's that I'm going to do an annual until I find that I have a monitoring with no findings and then I'm going to go to a three-year cycle. Those are the sort of things that you would lay out as part of that. The other thing that I'll mention, since we have a little time here, is as part of that monitoring policy, also think about generally, when you are doing your monitoring, you're doing a sample of units and there are some standards in place that you need to have as far as what that sample size will be.

So if you've got a small-scale project, you're going to be looking at every unit when you do your onsite inspections, but in larger projects, that's only generally going to be a sample of units and you're drawing conclusions based on what you saw in your sample. So I think that as part of your monitoring policy, you need some protocol on since I'm looking at a sample and I'm drawing conclusions, what do I do when some of those units have issues?

What's my response going to be? And generally, I think what you're trying to do is make a determination of is -- does it appear that this compliance issue that I'm seeing is sort of a one-off error or might this indicate that sort of system-wise there is an issue on ensuring compliance?

And so you may have systems about when a sample comes back with some issues, that you're going to add additional units to your review to then test whether this is more of a systemic issue and that's something that would be part of your monitoring requirements. We've had a question that's come in, in a multifamily project consisting of a total of 40 units but we only have 7 HOME units, does the lead requirement apply to all of the units or only to the HOME-assisted units?

I believe that the answer is that it applies to the overall project, because we are putting our HOME funds into the project much like when you fund a project and environmental review or labor schemes are going to apply to the overall project. We've got a couple of other questions here from yesterday I wanted to get to.

There was a question about scattered site projects and we didn't really mention the fact that we could be doing scattered site projects where not all of the units were located at the same site. So sometimes we might be doing -- let's say we're doing a multifamily structure that maybe has 10 units in it, but that project also includes a few scattered standalone units within, let's say, the same neighborhood, that is considered --

If it has common financing, common ownership and common management, that is considered to be a project. And so when we talk about if we have five or more HOME-assisted units, we would be looking at our funding agreement for that project and if cumulatively we have five or more units, then the regulations are going to apply, because we're looking at this as a virtual project even though it might not be all on the exact same site.

Things that don't fall under that, let's say I have a common ownership and common management, but let's say we did two phases, so we funded for construction of part of that property, maybe we built 40 units in our first phase and then maybe a year later or two years later a second phase of another 40 units were constructed.

Because they have separate financing, those are two HOME projects. And so when we're trying to figure out what is the project, we have to apply that -- those sort of questions to determine is this one project, is this several projects? There was a question about, which that was a great question and we really need to talk about, is how long can temporary noncompliance last?

So Kris mentioned that when we do our income re-verification, we're going to sometimes find that we have a household -- let's say they're in a high HOME unit and their income has gone over 80 percent and she talked about making a rent adjustment, but we still have -- but we cannot require that tenant to move out.

So we will have an over-income tenant living in one of our HOME-assisted units. And she also talked about sometimes there are opportunities where you could switch that unit out and be able to solve your compliance issue, but in other cases, the only action that you can take is waiting to

see when that tenant moves out or maybe another tenant moves out of the structure so that you're able to do that swap.

So we will have periods of temporary noncompliance. I think for most people, when you hear noncompliance, you think that's a bad thing.

It's not an issue in terms of that you have this ongoing temporary noncompliance as long as when you do have that opportunity -- so if we have that -- let's say we have the over-income tenant who we have adjusted their rent upwards, when they, at some point, decide to move out, then we need to make sure that you actually re-rent that unit to an income-eligible household, you're charging them the correct rent.

So when you have the opportunity to solve the temporary noncompliance, that you could demonstrate that you've taken those actions. So if I were monitoring a project and I found that there was temporary noncompliance, what I would be looking to see was have there been opportunities where, through re-renting, through swapping, that you could have corrected that?

If not, no issue and you simply will continue to wait and look for the time when you have the ability to be able to make that correction. There was a question about what do we -- how are we defining construction? And I think that goes back to we talked about with land acquisition, we talked about with demolition that construction needed to happen within 12 months.

And so you're not the first person to ask this question. So generally, what we're looking for is that there is something actively beginning to happen on that site that is part of the construction process. That might be that we are starting with the staking off or maybe we're fencing that, maybe we're beginning with the foundation work, but something that is related to the actual construction for that project and that needs to be happening within that 12-month period.

So keep in mind when we talked about environmental review, we said that no choice limiting actions can happen until the environmental clearance has occurred. So it kind of means that you need to get the environmental review process moving forward so that construction could actually begin on that site to be able to meet that 12-month requirement.

Let's see, there was another half of the temporary noncompliance, can we ask or assist a noncompliant household to move to a unit or complex that they can afford at their new income? No.

So let's use the example of that household that maybe they were income-eligible when we rented to them initially, but let's say they have gotten a better job, and so they now earn, I don't know, 90 percent of area median income and we've made that adjustment of raising their rent, but we cannot ask them to move, try to coerce them in any way to move out of that unit.

Now, frankly, at the point that we are raising their rent, sometimes 30 percent of their household income may exceed what a market rent would be for another unit and at that point -- at some point, they're going to look at that and say I could live more affordably somewhere else, I'm going to go ahead and move.

But if that household says I like living here, I'm going to stay, that's absolutely fine, you really can't take any action to try to require them to move. There's a question about how long the previous classes will be online for you guys to review. I'm not sure of the exact answer of that, but I do know that it will be online long enough until the actual posting of these sessions will on the HUD Exchange, which would then be available long term.

So whether it is at this link or at the point that these have been posted to the HUD Exchange, I would think this -- the link that you currently have might go away, but I would guess that that's going to be maybe a couple of months until that actually occurs. So one way or another you will continue to have access for that.

Let's see, we are after our 2:00 o'clock time. So I'm going to end today's session and thank everybody for participating. Again, use the materials that have been provided, the resource list and also talk with your local field office about any questions that you have to get answers before you proceed. Thanks everybody for participating.

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