NCDA
NATIONAL COMMUNITY DEVELOPMENT ASSOCIATION

Distinction Between Housing and Facilities

Background: Under Title II of NAHA, HOME funds may be used for the acquisition or development of housing, or the provision of tenant-based rental assistance. Section 92.2 of the HOME Final Rule defines housing as "manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO) units that are small, freestanding, barrier-free, energy efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing does not include emergency shelters (including shelters for disaster victims), or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, and student dormitories." HOME offers PJs the flexibility to fund supportive, special needs, and service enriched housing in such settings as group homes, SROs, etc.

Issue: Over the past 10 years, HUD has encountered proposed and completed projects that constitute facilities rather than housing. Examples of facilities funded or proposed for HOME funding include medical/nursing facilities, halfway houses, and group homes for minors and wards of the state. HUD is considering developing regulatory language that more clearly distinguishes between housing and facilities.

HUD is examining IRS Revenue Ruling 98-47 and the Low Income Housing Tax Credit regulations at 26 CFR 1.42-11. Both the IRS ruling and the LIHTC regulations provide detailed definitions of residential rental property that clearly delineate the difference between residential rental housing and facilities based on the frequency of the services provided, and whether the services are required as a condition of occupancy. According to Title 26, Section 1.42-11 and IRS Ruling 98-47, if a project provides continual or frequent nursing, medical, or psychiatric services, it is presumed that the project would not qualify as residential housing. The IRS guidelines do provide exceptions for certain services in otherwise eligible housing. Specifically, any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped is permissible. In addition, services designed to assist tenants in locating and retaining permanent housing are allowed.

Questions:

Does the IRS guidance provide adequate and appropriate guidelines for application to HOME PJs?

What issues should HUD consider in developing an expanded definition of housing (i.e., clarifies the status of halfway houses, facilities for housing of minor children, nursing facilities, etc.)?

HOME Loan Guarantees/Loan Loss Reserves

Background: A HOME-funded guarantee of a specific loan for HOME-eligible housing has always been a permissible form of HOME assistance.

However, in response to widespread interest in developing additional tools to leverage private funds, HUD added a provision in the HOME interim rule of July 12, 1995, to permit the use of HOME funds for a loan guarantee pool. The September 16,1996, HOME Rule made final this provision and clarified the procedures for establishing a loan guarantee pool as a HOME-assisted "project".
The September 1998 issue of IDIS Live clarified how a loan guarantee pool should be set up in IDIS.

<u>Current HOME Requirements: 92.205(b)(2) – Forms of Assistance</u>

- PJs may establish a loan guarantee account with HOME funds that guarantees a "pool" of loans.
- All loans covered by the HOME loan guarantee account are treated as a single HOME "project".
- All units in all properties included in the loan guarantee project must be HOME eligible and are considered home "assisted". Therefore, all HOME requirements (including rent and income limits, affordability periods, Davis Bacon etc.) apply.
- HOME funds may be used to guarantee the timely payment of principal and interest (i.e. a temporary period of "missed payments") or the payment of the outstanding principal and overdue interest upon foreclosure of the loan.
- A property that receives HOME loan guarantee assistance may also receive HOME funds for other purposes such as rehabilitation costs and/or downpayment assistance.
- The amount of HOME funds deposited in the loan guarantee account must be based on a reasonable estimate of the default rate on the guaranteed loans.
- Under no circumstances may the amount on deposit exceed 20 percent of the total outstanding principal amount guaranteed, except that sufficient HOME funds may be deposited to establish a reasonable minimum balance in the loan guarantee account.
- The HOME loan guarantee project is "committed" when it is set up in IDIS.
- The HOME loan guarantee "project" is set up in IDIS as a multi-site project based on the estimate of the total properties and units to be guaranteed and the total guaranteed loan funds required. A placeholder address is used. The address field is updated as soon as the first property address is known.
- HOME funds may not be drawn down in a lump sum. Rather, HOME funds are drawn down at the point in time that the HOME funds are needed to guarantee the first loan for an individual property (e.g. "invested in the project") – generally at loan closing – in an amount not to exceed the principal amount of the guaranteed loan.
- To establish a minimum balance, HOME funds in an amount up to the full amount of each guaranteed loan "closed" may be deposited in the loan guarantee account until such time as the minimum balance is reached. After that, the amount of additional HOME funds deposited is based on the amount needed to reach 20% of the principal amount of all the guaranteed loans closed (NB: a PJ can establish a lesser percentage).

- The loan guarantee project is “complete” when all guaranteed loans covered by the pool have been closed, all HOME loan guarantee funds have been drawn, all guaranteed units have been completed and occupancy information has been entered.
- The amount of HOME assistance attributed to each unit is based on the total HOME funds drawn divided by the total units in the loan guarantee pool. If any unit also receives other forms of HOME assistance (i.e. rehabilitation assistance or downpayment assistance), this assistance must be added to the total for that unit.
- Once a loan guarantee project is “complete”, additional HOME funds and guaranteed loans may not be added to the pool.
- A PJ must monitor the balance of HOME funds in its loan guarantee account over time. As the loans mature, the PJ is expected to reduce the amount of HOME funds on deposit so that the funds do not exceed 20% of the outstanding loan principal and/or to reflect a lower-than-anticipated default rate.
- HOME funds that are no longer needed for the loan guarantee account are treated as program income and must be returned to the local HOME Trust Fund account.
- Funds resulting from the repayment of the guaranteed loans are not considered program income and are not subject to the HOME requirements.

Issue: In the last seven years, lower interest rates and the development of additional affordable housing financing tools by intermediary organizations and the secondary lenders have made the HOME loan guarantee/loan loss reserve option less attractive. PJs do not appear to be using this form of assistance.

HUD also realizes that there is a difference between loan guarantee and loan loss reserve approaches, and that separate guidance is needed.

Questions:

Are HOME loan guarantee/loan loss reserve tools still needed to develop affordable housing?

When are these tools most effective in leveraging other funds?

When are these tools least effective in leveraging other funds?

When are these tools most likely to be used?

Why are PJs not making more use of this form of HOME assistance?

Is the HOME loan guarantee approach, as currently structured, workable for PJs and lenders?

Should HUD establish different requirements for loan guarantee and loan loss reserve?

Is there a difference in the need or the demand for loan guarantee/loan loss reserve accounts for single family and multi-family loans? Should they be structured differently?

Are there other guarantee approaches that should be considered?

What limits/requirements should be established to make HOME loan guarantees/loan loss reserve accounts a more effective tool?

Are different approaches needed for single family and multi-family loan guarantee/loan loss reserve accounts?

CHDO Performance Standards

Background: The HOME statute requires each PJ to use 15% of its HOME allocations for housing owned, developed or sponsored by Community Housing Development Organizations (CHDOs). Consequently, each PJ is required to identify a sufficient number of organizations to comply with this requirement. PJs are also responsible for the day-to-day operations of their programs, including the performance of entities receiving HOME funds.

Issue: Ten years after the advent of HOME Program, many CHDOs are not performing adequately (i.e., not producing quality housing in a efficient and timely manner). CHDO capacity continues to vary widely among PJs and regions of the country. Even among PJs with numerous CHDOs, there are non-performing CHDOs that have been awarded HOME funding. Many PJs are not taking steps to deal with these nonperformers; in fact, many PJs continue to fund CHDOs that are not producing housing timely or at all. There appear to be numerous reasons for this (e.g., lack of sufficient qualified organizations, local political consideration, insufficient oversight by the PJ, etc.). The Department is considering instituting performance standards that PJs would be required to apply to their CHDOs.

Possible progress-related standards include:

- time from reservation to project commitment;
- time from reservation to disbursement of funds;
- time from reservation to project completion.

Questions:

What type of standards would be most effective in measuring performance and encouraging PJs to actively oversee and manage their CHDOs?

Are there existing models for increasing CHDO accountability?

Are there other progress measures that should be considered?

Should standard measures be imposed by regulation on all PJs? Should PJs be permitted to develop local performance standards?

If PJs develop local performance standards, should they be submitted as part of Con Plan? Approved by HUD? Should HUD publish a safe harbor?

What type of action should HUD be authorized to take in the event that a PJ declines to take action in the event of continued CHDO failure to meet performance standards?

CHDO Service Areas

Background: The HOME rules with respect to CHDOs are generally predicated upon the presumption that CHDOs are generally small, grass-roots organizations that are formed through neighborhood organizations and activism. The final rule requires that at least one-third of CHDO board representation be residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood.

Issue: In many areas of the country, particularly those with a history of nonprofit housing development and a track record that indicates adequate CHDO capacity, CHDOs fit this model. In other areas of the country (most notably the south and southwest), many PJs have been unwilling or unable to develop capable CHDOs from within the local community. The problem appears to be most acute in rural or very rural areas, although it also occurs in smaller metropolitan areas.

Some PJs have expressed a desire to bring in CHDOs from outside their own communities to undertake HOME-funded projects. While this practice is not prohibited (in fact, State CHDOs may have a service area only slightly smaller than the entire state), the HOME rule does not adequately address how adequate board representation is to be achieved in these instances.

Questions:

What are the factors contributing to continuing lack of capacity among certain PJs and regions of the country? Is the "importation" of capable CHDOs from other areas of the state an effective method of providing or supplementing CHDO capacity?

The final rule requires one-year experience in serving the community. If PJs are using CHDOs that originated outside the area, how should this provision apply? For instance, should the definition of "community" be expanded so that, for local PJs, new service areas could be interpreted as part of the community already being served. Or should CHDOs wishing to expand into other service areas be required to fulfill the one-year requirement in the new area before being designated as a CHDO by the PJ?

In cases where PJs use CHDOs that did not originate in their area, what should be the requirements with respect to board representation (i.e., to ensure adequate representation of new areas)?

How can the formal process for consultation on project design, siting, development development and management be made more meaningful and effective, both in the context of this discussion and generally?

Temporary Relocation Associated with Lead Safe Housing Rule

Background: Section 35.1345 of the Lead Safe Housing Rule, which became effective for all HOME and CDBG grantees on January 10, 2002, requires that, under certain circumstances, occupants be relocated. Specifically, occupants must be relocated unless 1) the work will not disturb lead-based paint or lead-based paint hazards; 2)only exterior work is being conducted and openings to the interior are closed during the work and lead-hazard-free-entry to the dwelling is provided; 3) the interior work will be completed in 8 hours, the work sites are contained to prevent dust release into other areas, and no other health or safety hazards are created; or 4) interior work will be completed in 5 consecutive days, work sites are contained, no other health or safety hazards are created, work sites and areas 10 feet from the containment are cleaned at the end of each work day, and occupants have safe access to sleeping areas, bathroom and kitchen facilities in the unit or another convenient location.

Issue: PJs have cited the cost and logistical challenges associated with relocation of occupants required by the lead safe housing rule as a great concern. Anecdotal evidence suggests that some PJs have stopped performing rehabilitation in order to avoid the cost of compliance with lead safety rules, including the relocation requirements. Although the cost of temporary relocation is an eligible HOME cost, HUD is interested in exploring other methods of assisting PJs to comply with the relocation provisions of the lead safe housing rule.

Questions:

How common is it for PJs to relocate occupants during HOME-funded rehabilitation (as opposed to allowing occupants to remain in their housing)?

Have PJs learned how to design projects so as to minimize relocation? Or do liability concerns cause most PJs to relocate occupants routinely?

Are most PJs permitting elderly owner-occupants to remain in their housing during lead work under the exemption provided in 24 CFR 35. ?

When occupants are relocated, how are PJs currently dealing with the relocation requirements? Is relocation being funded by HOME or CDBG funds? Are occupants being relocated to hotels? Other temporary housing? Relatives? Do approaches vary depending upon the volume of rehabilitation performed, tenure type of housing being rehabilitated, PJ location (urban, suburban, rural)?

What is the typical length of temporary relocation related to lead safe housing compliance? Does this differ by tenure types?

Have PJs acquired (through purchase or rental) housing units available for temporary relocation?

If HUD were to permit PJs to acquire, rehabilitate or construct units with HOME funds to be used exclusively for temporary relocation related to the lead safe housing rule, would PJs:

a) use this authority?
b) find the flexibility helpful in complying with the lead safe housing rule?