

# THE HFA INSTITUTE 2021

## COVID Response

Financial Oversight  
&  
Preserving At-Risk Assets



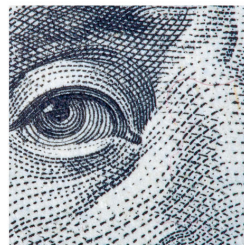
**MRBs and  
Other Federal  
Homeownership  
Programs**  
FEBRUARY 1 – 3



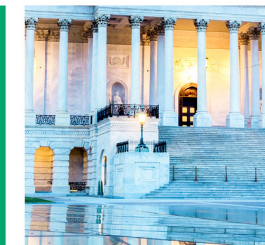
**Housing Credit**  
FEBRUARY 3 – 5



**Section 8 and  
Other Federally  
Assisted  
Multifamily  
Housing**  
FEBRUARY 8 – 10



**HOME and  
Housing Trust  
Fund**  
FEBRUARY 10 – 12



# Welcome & Introductions

- Sponsored by:
  - HUD's Office of Affordable Housing Programs
  - NCSHA
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## Goals/Agenda

- Standard HOME requirements for asset mgt/financial oversight
- Applicable HOME COVID-19 Waivers
  - Workout under §92.210(b) without HUD review/approval
  - Maximum per unit subsidy
- Strategic Considerations
- Administrative Considerations



# Existing Asset Management & Financial Oversight Requirements

- Explicit requirement
  - Annual examination of the “financial condition” of HOME projects with 10+ units pursuant to §92.504(d)(2)(e)
  - PJ must take action to correct problems “to the extent feasible”
  - Added via 2013 HOME Final Rule, applicable to post-2013 projects
- Implicit requirement
  - PJ must repay “any HOME funds invested in housing that does not meet the affordability requirements for the period specified”
  - This is not new
- Broader view
  - General public and political leadership expect reasonable efforts to ensure program’s public purpose is fulfilled; critical to maintaining and building support for appropriations



# Standard Asset Management Tools

- Limited direct options
  - Cannot provide HOME funds to project within HOME affordability period
  - Some of us have access to other sources, e.g. state funding, HFA reserves, etc.
- Indirect options *may* include
  - Additional monitoring/oversight; more frequent reporting by owner
  - Requiring hiring or replacement of property management
  - Legal actions under written agreement & other transactional documents
    - Foreclosure, appoint receiver, force change in general partner/managing member
- ***But*** depends on agreement provisions and will to enforce



# Options Requiring HUD Approval

- Exception rents – **above** published HOME limits – §92.252(g)
  - HUD uses very sparingly
  - Only works if higher rents are achievable in the market
- Reduce designation of HOME units to min. per cost allocation §92.210(c)
  - That is, convert HOME units to market rate
  - Only works if market rents are meaningfully higher and other restrictions don't apply
- Provide additional HOME funds during affordability period §92.210(b)
  - As special exception to §92.214 limits on additional HOME
  - Usually involves recapitalizing operating or replacement reserves
  - Old + additional HOME cannot exceed current maximum subsidy limits
  - Requires MOU with HUD



## COVID-19 HOME Waivers

- PJ may provide additional HOME funds for operating deficit reserve under §92.210(b) *without* HUD review, approval, and MOU as required by §92.210(a)
  - Increases speed in responding
- Maximum per unit subsidy is suspended and waived
  - Removes possible indirect limit on ability to provide new subsidy
    - e.g. if original HOME investment very close to current max. subsidy
- *Reminder: PJs still need to notify HUD of waiver elections*



# Operating Deficit Reserve COVID Workout

- PJ can award additional HOME funds
  - To address operating deficit associated with a project's HOME units
  - For period between April 1, 2020 and September 30, 2021
- Owner must waive:
  - Distributions of cash flow (aka residual receipts or surplus cash) during covered period and six (6) months after
  - Back/missed rent for HOME tenant and waive rights to pursue legal action seeking back rent or late fees
  - Negative credit reporting against HOME tenants



# Digging Deeper

- Focus is on the *actual* deficit attributable to HOME units only
- Basic cost principle: Cannot charge same cost to two sources
  - Must account for other sources of income/revenue
  - Especially rent collected, but also any state/local assistance received, insurance proceeds, etc.
- Sizing the reserve
  - HOME units ÷ Total Units = HOME Share
  - Multiplied by sum of Op Expense, Replacement Reserve, Debt Service
  - Less other income sources (esp. rent)
- Use at least 3-month financial records to validate
- Must reconcile actual deficit within 6 months of waiver expiration



# Example

Step 1: Determine Project-Level Operating Deficit		
1	Operating Expenses	\$200,000
2	Replacement Reserve Deposits	\$15,000
3	Debt Service	\$35,000
4	Total Operating Costs (add lines 1, 2, and 3 together)	\$250,000
5	Total Revenue	\$200,000
6	Deficit (subtract line 5 from line 4, if result is negative, enter \$0)	\$50,000



# Example continued...

Step 2: Determine HOME Share of Deficit		
1	HOME Units	10
2	Total Units	50
3	HOME Share Percentage (divide line 1 by line 2)	20%
4	Total Operating Costs (from Step 1, line 4)	\$250,000
5	Operating Cost of HOME Units Only (multiply lines 3 and 4)	\$50,000
6	Revenue from HOME Units (actual rents + share of other income)	\$30,000
7	HOME Deficit (subtract line 6 from line 5, if result is negative, enter \$0)	\$20,000

Step 3: Determine Maximum HOME-Funded Reserve		
1	Total Deficit (Step 1, line 6)	\$50,000
2	HOME Deficit (Step 2, line 7)	\$20,000
3	Maximum HOME Reserve (lesser of Step 1, line 6 and Step 2, line 7)	\$20,000



## Example continued further...

- Reconcile to actual performance during covered period
  - Within 6 months of end of waiver (i.e. September 30, 2021)

Step 3: Determine Maximum HOME-Funded Reserve		Projected	Actual
1	Total Deficit (Step 1, line 6)	\$50,000	<b>\$45,000</b>
2	HOME Deficit (Step 2, line 7)	\$20,000	<b>\$10,000</b>
3	Maximum HOME Reserve (lesser of lines 1 and 2)	\$20,000	<b>\$10,000</b>

- Remaining HOME-funded reserve returned to PJ
  - Receipt as Program Income



## Practical Caveats

- Whole project must be in a deficit before using HOME for Operating Deficit Reserve
  - Otherwise supplanting other sources
- If HOME share is relatively small, we can only fill part of the hole
  - Shouldn't throw good money after bad
  - May only help if other parties are contributing, e.g. investor, project sponsor/owner, lender forbearance, etc.
- Likely most applicable to smaller “all HOME” projects
  - Including CHDO projects, community scale special needs, etc.



## Strategic Questions

- No new HOME money in supplemental COVID appropriations
  - Opportunity cost – moving HOME funds to this purpose will necessarily mean de-funding other activities
- Transparency – PJ should develop and articulate policies and procedures to identify and prioritize projects
  - Demand/need likely to outstrip funding
    - Which projects are most important to save?
    - Which projects are most likely to be saved?
  - First owners to ask may not be the ones who most need the help
    - Consider reaching out to projects that are most important to address



# Administrative Considerations

- Written agreement
  - **Must** amend agreement to address operating deficit reserve requirements
  - Perfect opportunity to improve/update asset management provisions
    - Also revise agreement to address ambiguities, weaknesses, gaps
    - Build in additional control over reserves/cash flow distributions, require CNAs, etc.
- Plan now for post-waiver reconciliation
  - Smaller-scale owners may not have detailed project-level accounting
  - For larger projects, incorporate into third-party CPA audit protocols



## IDIS

- **After** written agreement, re-open project to add funds
  - Pay attention to original completion date
- Draw and re-close same day
  - Recheck completion date, ensure IDIS still shows original date
- Questions or troubleshooting
  - Seek assistance via HUD Exchange Ask-A-Question



## Discussion and Q&A

- Has your state implemented this waiver yet?
  - Do you intend to?
- Have you taken other steps to help struggling HOME projects?
  - If so, what are those?
- What tools/resources do you need?
- What additional questions do you have?



