Community Planning and Development

HOMEfires - Vol. 9 No. 1, January 2008

Q: How can Participating Jurisdictions help existing homeowners who are having difficulty paying their private mortgages because of unfavorable financing terms?

A. Although the HOME statute and regulations provide PJs with a great deal of flexibility with respect to the use of their HOME allocations, the potential use of HOME funds to assist existing homeowners who are having difficulty paying their mortgages is quite limited.

The statutory purpose of the HOME Program is to expand the supply of affordable housing through the following activities: acquisition, new construction, or rehabilitation of housing or the provision of tenant-based rental assistance to low-income families. HOME funds cannot be used for any other activity. Consequently, providing financial assistance to a homeowner to make mortgage payments is not itself an eligible HOME activity.

However, the HOME regulation (24 CFR 92.206(b)(1)) permits rehabilitation activities to include the cost of refinancing existing debt secured by one- to four-family housing in limited circumstances. The housing must be owner-occupied and be the principal residence of the homeowner. Rehabilitation of the housing to correct substandard conditions must be the primary HOME use of HOME funds otherwise the refinancing is not statutorily eligible as a cost of the rehabilitation activity. The HOME funds for rehabilitation must be loaned to the family. The refinancing must be necessary to reduce the overall housing cost to the owner, i.e., the refinancing is necessary to consolidate the new rehabilitation loan with the existing mortgage to make the total combined housing loan more affordable to the owner. The HOME funds can be used to refinance the existing private debt or to pay costs associated with refinancing through another private loan. While this option cannot be used to help owners of standard housing, it may be a useful tool to assist those homeowners who occupy substandard housing that fails to meet local and state standards and codes.

Post-purchase or foreclosure prevention counseling cannot be paid as a HOME project cost. However, PJs may wish to consider using HOME administrative funds to pay for post-purchase or default counseling for its HOME beneficiaries. If a PJ used HOME funds to assist homebuyers who are now facing default or foreclosure, it has several options to preserve the unit as an affordable housing resource. These provisions were added to the HOME rule in November 2004, as a new section -- 24 CFR 92.254(a)(9). For HOME homebuyer units still under a period of affordability, the rule permits the PJ to use additional HOME funds to acquire the housing from the existing owner, or to exercise a pre-existing purchase option, right of first refusal or other pre-emptive right to acquire the housing before a foreclosure sale. The PJ must subsequently sell the house to another eligible homebuyer. While these options cannot help an existing homeowner retain homeownership, they may enable the homeowner to remain in the house for a longer period of time, or to receive a higher return on his/her investment. Such actions also enable the PJ to protect what may have been a substantial initial investment in the construction, rehabilitation or acquisition of the property.

HUD encourages PJs to take an active role in preserving the affordability of low-income homeownership housing in their communities. Foreclosures can have a negative effect on many aspects of a neighborhood - reducing property values, increasing vandalism and other property crimes, and reducing the quality of life in or the very viability of the neighborhood. By working directly with lenders, coordinating with or funding local housing counseling agencies to provide default and foreclosure prevention counseling, and advertising the availability of these services, PJs can be part of negotiating "work out" solutions for homeowners who are at risk of foreclosure.

HUD also encourages all PJs to reexamine the design of their ongoing homeownership programs. Does your PJ require pre-purchase counseling for all potential HOME-assisted homebuyers? Is the counseling provided comprehensive, personalized and effective? Does your PJ carefully underwrite its HOME-assisted homeownership projects to ensure that housing and overall debt is reasonable for each family based upon front- and back-end ratios? Does your PJ examine the terms of both primary and other secondary mortgages to ensure that they are reasonable and conducive to the family being able to sustain homeownership? Does your PJ have policies regarding resubordination of HOME secondary debt to new first mortgages to ensure that HOME-assisted homebuyers are not being targeted by predatory lenders? Does your PJ have mechanisms in place (e.g., agreements with lenders, deed restrictions, etc) that ensure that it will receive advance notice of foreclosure proceedings? Is your PJ providing rehabilitation assistance where appropriate to ensure that the housing will remain in good condition over at least its period of affordability? Are your PJ's existing recapture or resale provisions still appropriate in a period of declining markets? If the answer to any of these questions is no, it may be time to redesign your HOME homeownership program.