HTF Basics Webinar Series

Part 3

Thursday, June 2, 2022

Les Warner: Great. Thanks, Kate. Welcome back everyone. This is our third session of our three-session webinar series on the basics of Housing Trust Fund. So we've covered a lot of territory already.

And so if we've got anyone that's joining us that missed session one or session two, I would highly recommend that when these are posted, that you also participate, use those recordings and go through that material that you might have missed for session one or session two, because we are as part of the series, walking you through all the Housing Trust Fund regulations.

And so we need to make sure that you have not missed any portions of that. They're going to be essential for you to understand to be able to ensure that you are working in compliance with those regulations.

Today, again, I'm joined by Carrie Kronberg, who's going to be my co-trainer. And we have Kate and Chantel helping host the platform here today. So I much appreciated our team that's been assembled. And let's jump into our material.

So when you look at the regulation, the Housing Trust Fund regulations, there are subparts that are part of us. And in subpart G, is where the project requirements are found. And so we're going to be starting out looking at those requirements.

So we mentioned this, I think, on day one. But the fact that you are required to adopt, you as the grantee are required to adopt your maximum per-unit subsidy amount. So for other programs, that's something that is provided by HUD.

In this case, you have the flexibility to be able to make that determination for your program. Now, there are some guidance on that. Both limits need to be based on actual costs that you would see that would be reasonable for your area and the type of housing that you are working in.

And of course, that's going to be based on the number of bedrooms or the size of that unit. And of course, there are going to be geographic differences on that. So that's something that you as the grantee, need to establish that's included in your consolidated plan. And that's something that would be updated annually.

And I would think that's something that over time, you're going to be tracking; how does that work? Does that continue to reflect what's a reasonable per-unit subsidy in my community?

And keep in mind -- and even some of you may even said, "Well, gee, why don't we just adopt the subsidy limits that are in place already for our HOME program?" Because our Housing Trust Fund program is a different target and we have the opportunity to have that flexibility on setting what those limitations are in place, I recommend that folks kind of take some time on determining what's going to be workable for them.

And so that maximum subsidy limit is something you will already have in place at the point you've established your program. As you were then underwriting projects, you'll be utilizing that

to ensure that the amount of funding that you are putting in, remains within those limits that you've set as a per-unit limit for that.

So when we talk about underwriting and subsidy layering, what we're doing as part of that process, is ensuring that all of the funds that are needed for that project, have been lined up. So we're going to make sure that what are our total costs for the project and then ensure that all of those sources have been determined, that they are committed in place to be able to do that.

We're also as part of that subsidy layering process, trying to determine what's the gap, what's the shortfall in this project. And so how much of our Housing Trust Fund dollars do we need to put into this. And so we're going to evaluate this on a project-by-project basis, following our underwriting and subsidy layering guidelines that I'm going to talk about in just a moment.

And that process will then be determined what's that correct amount of Housing Trust Fund. So we're required not to invest more trust fund dollars than are needed to make sure that this is not only -- we can accomplish, we can complete the project, whether we're building something or rehabbing something. But also so that it's going to be financially viable for a reasonable period of time, and we know that we have trust fund imposed affordability periods.

And so that's the period of time that we need to make sure that this project is going remain sustainable. So we talked yesterday about part of that being thinking about do we have project-based subsidies for this property, or do we need to think about operating cost assistance or an operating cost assistance reserve as part of our underwriting and financing for this project.

Also we're here to making sure that we're not providing a too high of a level or unreasonable level of profit or return to that recipient's investment. And so as part of your underwriting standards, you would establish what that would be. That might again be something that you might look to your HOME program, your low-income housing tax credit program, where you probably also have those standards already in place.

So when we talk about our underwriting subsidy-layering guidelines, part of those standards that we're putting in place, are what we consider to be an acceptable assumption.

So I mentioned yesterday that as part of our underwriting, we're not only looking at sources and uses, and making sure that we have the funds in place to be able to build the new housing or rehab and put that into service, but we also need to make sure that it's going to be sustainable over that affordability period.

So with a 30-year affordability period, we're going to want to make assumptions about what do we think the rents will be in year 10, what do we think our utility cost will be. And so as part of our underwriting standards, we would adopt some assumptions about that change over time. Maybe things like what we are going to impose as a vacancy rate.

So assuming there's going to be some loss of revenue over time as we have turnover in these units. But also, as I mentioned, things like rent and utilities are really key on being able to project, is this going to be a financially stable project.

We're going to be looking at rents in a little bit, but the key thing here is that, that cashflow that's coming into your property, are the rents that are being paid in, which are [capped at ?] the Housing Trust Fund rent, minus utilities, is then we determine what that rent that we can charge to the tenant will be.

So as utilities rise over time, it may limit or even reduce the rents that are going to be charged to those tenants. And of course, we are targeting very low-income households, so we're going to have kind of a restricted cashflow on that.

So really important on those assumptions on, what do we think is going to happen over time with any of those costs, whether it's income coming in or costs that that project is going to experience. And that would be part of our underwriting standards and guidelines that we would put in place.

And so as we underwrite, review each one of these projects, we would utilize those standards to then determine whether this was a project that was viable, that was something that ought to be funded.

And in many or maybe most all cases, you would have the initial sources and uses and that operating performer, submitted to you by the developer. So we're checking the assumptions they used, about what is going to happen over time with what our standards are that we've adopted. So it becomes really important that have those carefully thought out.

So that's our underwriting and subsidy-layering requirements. So as part of this, as I mentioned, needing to make sure that we have those standards in place, and then once we have projects submitted to us, we're going to be examining that sources and uses that are listed in that proposal, to make sure that we think it reflects all of the cost that are going to be incurred as part of that property development, and then all the sources are in place as part of that.

And we mentioned yesterday about the fact of needing to have in some cases, having operating cost assistance or operating cost reserves, or maybe project-based rental assistance.

And so that becomes part of our evaluation on, do we need the operating cost or reserve assistance as part of this; what's the correct level on that; is that going to be part of our funding; are there project-based rental assistance; is that committed for that project; how does that impact our level of stability for this project.

As part of that, we need to be able to determine that our cost are reasonable. So in many cases, if it's a developer that's applying for assistance, they're not required to go through procurement, so we may not have a bidding process as a way to determine those costs are reasonable. So you as you as the Housing Trust Fund grantee will have to have a process to be able evaluate that.

That might be looking at comparable projects and costs, maybe it's a cost per square footage. We're using some other kind of cost evaluation process to determine, yes, we think this a reasonable amount for the scope of this proposed project.

With that, we also need to be looking at the market for this and ensuring that if we build the units, that we have tenants that need those units so that we can expect that they will remain occupied, that there's a demand for that, and that these units are going to be affordable for the target population that is in need of housing.

As part of that of course, we're also evaluating the capacity of those partners. So if we have a non-profit that's applying for a Housing Trust Fund to develop some very affordable units, we are really depending on them to have the appropriate capacity to assemble the financing, oversee construction, oversee that property during its affordability period.

So looking at not only the financial capacity of that recipient but also the team that they've assembled and their skills, are they appropriate for the kind of project that they are proposing, would be really important. And this firm written financial commitment for the project.

So if you as a Housing Trust Fund grantee were to approve your funding and allow this project to go forward without firm financial commitments for those other sources, for that project, you could find yourself in a situation where you had a partially built project, one of those needed other sources actually wasn't approved.

And you already have Housing Trust Fund spent that will not have an eligible use if that project isn't completed. So it would put you as the grantee at risk. So it's really important as part of that underwriting process, to make sure you know what all the sources are, that they are firm commitments and that those match the total uses of funds that are needed for that project.

So let's switch gears a little bit and talk about property standards. And so depending on the type of construction we're going to be doing, we're going to have different standards that it will apply.

So for new construction projects, you would need to meet your state and local codes. You may also have ordinances and zoning requirements that are going to apply to that. You also may have state local residential building codes that would apply as part of that.

And if you were in an area where you had no standards that would apply, I don't know that we see much of that at this point, but we certainly have in the past, then you would need to utilize the international residential code or the building code as part, since you do not have state and local standards for new construction.

And of course, when we have a project that has been completed, that housing will have to meet those applicable standards. We're going to be responsible for ensuring that it has been inspected and that we can certify that yes, this project is complete, it has met the applicable standards.

So in some cases you're going to have state and local codes, but you also might as a program, have adopted some additional standards. So maybe you've adopted a visibility standard so that you have some additional accessibility standards for not only the site but also individual units.

Those also would be incorporated into that. So when you are at the completion of a project, that you would be able certify if meeting all the applicable standards that we have in place, not only

the Housing Trust Fund requirements, but your local program design that may have added to that.

So as part of that, we also have accessibility standards, our 504 and Fair Housing Act standards. So for those of you that haven't worked with 504, for multi-family construction, 504 for new construction requires that 5 percent of those units be set aside for mobility impaired individuals and 2 percent for sensory. And those are satisfied separate units.

And so those units would have accommodations that would have been made for that user, whether it's mobility or sensory. That would be something that you would include in your written agreements. You would be looking at the design for that project to ensure that that had been incorporated into those standards.

If you're doing rehabilitation that was considered to be substantial rehabilitation -- and that's defined as when you have a project that has 15 or more units, and that level of rehabilitation is 75 percent or more of what the replacement cost would be for that structure, and we're going to consider that to be substantial rehabilitation.

And you will also be required in that case to meet the 504 standards. Because you are investing so much money, you have the opportunity to be able to incorporate that as part of that.

And one thing I'll mention, and I don't know that we have another spot, where we talk about that, when you have 504 set aside units, keep in mind that there are requirements about how you market those units.

And so we're going to market those to make sure that the folks that need those accommodations, would be the first to have that opportunity. When we have a unit come available, we'll first be looking at occupants of that property itself. And then be looking to our waiting list for anyone that needed those accommodations.

We also would do some specialized marketing for those units before we would rent them to someone who did not need that 504 accommodation. So we're really trying to make sure that not only we create accessible units, but also that we're making every effort to make sure that those that need those units, know about them and have the first shot of that.

Those new construction standards also include energy efficiency standards from the Cranston-Gonzalez Housing Act, for those of you in disaster mitigation area. So that might be -- I live in a hurricane area. Some of you live in earthquake or flooding, a lot of wildfire zones, then you may have disaster mitigation standards that would have been adopted.

Those would need to be included. So for instance, where I live there are additional standards about clips that attach the roofing system to the structure, so when we have hurricane-force winds, that we don't have everyone losing their roofing.

So that would be included in those new construction standards. And again, all of that needs to be captured within contracts construction documents. And as part of your review on things, you

would be making sure that you are looking on the front end to make sure that that was proposed, met those standards or were certified as meeting those standards.

And then when we talk later about monitoring, that would be something that you would include in your monitoring to make sure that they actually built it as it was proposed, and you carefully review.

So when we are doing rehabilitation, much like the HOME program, and I think some of you probably are going to be familiar with the HOME program, you're required to establish Housing Trust Fund rehabilitation standards.

And so that's outlining what your standard is going to be, not only for construction or rehab that's being done, but also may include things like performance. We want a 30-year shingle. We a particular level of side wall and ceiling installation or performance on HVAC units.

So those would all be included in your rehab standards and might include installation methodologies. In addition to that, we need to have standards about how we define a life-threatening deficiency. And so we need to make sure that in all cases, those have been addressed immediately. That would also then apply if we had a monitoring and we discovered that there were deficiencies in that property.

If there were ones that fit into this life-threatening deficiencies, we would need to make sure that they were addressed immediately before occupancy was allowed as part of that.

So with those standards, there is a requirement that when that project has been completed, that there is a remaining useful life for all major systems, equal to that affordability period or we have adequate reserves to handle replacements.

So because we have a longer affordability period, a 30-year affordability period, this may be a point -- and we know that having adequate -- we don't have a lot of cashflow that's coming in, either we need to make sure that those reserves are appropriately funded over time to be able to handle any replacements, or it may be on that front end and thinking about what are we going to replace upfront as part of our rehab.

We may be more aggressive in going ahead and replacing systems that don't have a useful life that's equal to that affordability period. Then we go ahead and replace that boiler system that's going to be a big expense at some time during that affordability period so that we can ensure that that project is going to be sustainable in the long run.

When you have 26 or more units, you're required to complete a capital needs assessment, which is really a more formal process of looking at all of your systems and determining what their useful life is, projecting when they will need to be replaced, what the cost will be for that, and then using that analysis to then determine, okay, we will have these capital needs during that life of the project and then looking at what our replacement reserves are and whether that's going to be adequate.

And so either raising our reserve levels or, as I mentioned, choosing to go ahead and replacing some of those systems with something that will not need to be replaced during that affordability period.

We're going to be talking a little bit later about the Lead Safe Housing Rule. But this applies for all of our units that were constructed prior to 1978. So if it was constructed while Elvis was still alive, it's going to fall under the Lead Safe Housing Rule. We'll talk about the details of that a little bit later.

So when we're doing acquisition of standard housing, and that's housing -- if we have housing that's newly constructed or it was rehabilitated within the last 12 months prior to our commitment of funds, we need to make sure that it is meeting our standards for either new or existing structures.

In the case where we do that review, we need to make sure that it was done within 90 days of the commitment, so that we are sure that it's still valid. And then maybe we are looking at building plans or we're looking at Certificate of Occupancy that have been issued, making sure that that's valued and in place.

Any time that we find that we have a property that doesn't meet those standards, we cannot fund that unless we also are funding for the rehabilitation. At the end of each project, all of our units need to be in the stand condition and meeting our applicable property standards.

So let's talk a little bit about manufactured housing. Right now, I don't believe we probably are dealing with manufactured housing. But it's possible if we cross that $1 billion mark, it may be that it's part of homebuyer, homeowner property assistance that we could be dealing with that.

So manufactured housing units are eligible to be included in the program. And land acquisition is eligible. Now, the reason that's important, is in some cases we may have a owner of a manufactured unit that is currently on a rented site.

And of course, we want to make sure when we have an affordability period, that this is going to be affordable and sustainable for them. So they have to have a permanent utility hookup.

But they also either need to be on land that's owned by that housing unit owner. So we have the ability to assist them with that acquisition if that's part of our program design; or if they're going to continue with leasing that site where that unit is, then we need to make sure that they have a lease in place that's going to be equal to that period of affordability. And we would also be determining that that's going to be affordable for them.

So we want to lock that in to make sure that we won't see a sudden increase in the rental cost for the lot, and we just improved or purchase a manufactured unit that would now have to be moved. And in some cases, that's not feasible for projects.

So if you were to include manufactured housing as part of your program design, these are things that would need to be incorporated into your evaluation process.

So we've been talking about property standards that apply at the completion of the project, whether we are building something new or we are rehabbing something.

But for rental properties, we also have ongoing property standards throughout that affordability period. So for 30 years after the point that that property project has been completed and placement service started that affordability period, we also need to have property standards in place that we're going to monitor over time to make sure that that continues to meet that.

So our standards would be at a minimum that they need to remain decent, safe, and sanitary. They need to be free from health and safety defects. And we talked about, under our written rehab standards, things like life-threatening elements on that.

We're going to talk a little bit lead-based paint regulations at 24 CFR Part 35. But we may have properties that have -- we've had some lead hazard reduction work that's been done. But we still have encapsulated or other stable lead painted surfaces that will require monitoring throughout this affordability period, to make sure that they still continue to meet those standards and are safe for them.

So our schedule for monitoring is -- and this is the same as the HOME program -- is that our property inspections must be completed within 12 months of project completion. You'll note yesterday we talked about that there's this window that remains open up to 12 months after project completion, where we could add additional dollars in.

And so this lines up well with that, making sure that we are out inspecting that property and making sure it meets all standards before we lose that opportunity, if needed, to add some additional dollars and be able to address something as part of that.

After that point, as long as they've had an acceptable inspection, then we can go to a once every three-year throughout that affordability period. And so you're going to need systems in place to track; when was this place in service? Did I complete that initial inspection, someone working on my behalf, or my own staff within that 12-month period from project completion? And then tracking throughout that life of the project, that you continue to meet those standards.

Let's talk a little bit about rental housing. So the requirements of rental housing are found at 93.302. So the qualifications include things like the eligibility of the tenants.

So we talked about the fact that our units are targeted for extremely low-income tenants. And so we need to make sure that at initial occupancy, that they continue to meet that -- that they meet that requirement.

We'll talk then over the affordability period, if there are changes in that eligibility, what our actions will be. We also need to make sure that the rents remain in compliance with our Housing Trust Fund rents.

We'll be talking about that. In this section also are mandated affordability period and how we're going to handle our tenant income certifications. And then in the case where we have tenants that during that affordability period, their income rises, we're going to be talking about those actions that will be taken on that. So let's kind of jump into that process.

So we know that all of our Housing Trust Fund units must be occupied by income eligible households. So before we will sign a lease, move a household into our unit, we're going to complete that eligibility review and capture that documentation in our files to show that they are eligible to occupy that unit.

And so that's going to be based on our income-targeting requirements, which are at 93.250. And those are going to, as we mentioned a couple of times, depend on the level of the total Housing Trust Funds that are available.

So in the case where we go over that $1 billion mark, then we have a little bit of additional flexibility, where only 75 percent of our eligibility needs to be for extremely low-income households at the 30 percent and below.

And so we would have then the balance of our funds being able to go up to the very low-income or 50 percent or below. So that has an impact on who the eligible tenants are right now; 100 percent of them need to be at the 30 percent and below.

And so our tenant incomes need to be determined initially based on our standards that are listed at 93.151. We're going to talk about those in another slide or so.

And then annually, we're going to be recertifying those incomes. And we have a separate standard on what we are able to use as part of that.

So we do have a requirement that's called out for Housing Trust Fund that's the same as we have for HOME, that we are required at that initial income determination, and also every six-year of that affordability period, that we have to collect at least two months of source documentation.

So that might be pay stubs or documentation of other benefits that that household is receiving. We would collect at least two months of that in the file. You as a grantee might have more stringent requirements that you put in place. But that is the trust fund requirement.

So the sixth year of affordability; so if I place my property in service in 2020, that starts my affordability period. So in 2026, that's going to be the sixth year of my affordability period, in 2000 -- and so each six-year -- I'm not going to try to do math here -- every six year of our affordability period, we would have to do source documentation.

So any tenant that moves in, in any year, is always going to be -- have to provide that initial income determination with two months worth of source documentation.

So let's say I move in this year and we do that complete source documentation initial determination, but next year is the sixth year of the affordability period for that property, we're going to again do that full source documentation for me as part of that.

So it's not every sixth year for the tenant having occupied that unit. It's the sixth year of that affordability for the property itself. A lot of folks have a little confusion about that.

So let's talk about the rent limitations. So HUD publishes our Housing Trust Fund rent limits for you. These are based on number of bedrooms. So it's not something you have to calculate yourself. And we have maximum rents both for extremely low-income, and that would be 30 percent and below. And then also for very low-income rents, 50 percent and below.

And as we keep saying, right now, we are capped at, all of our units are going to be for 30 percent and below. So we'll be using those ELI rent limitations.

And so I want to mention a little bit, as we mentioned this yesterday, but when we have Housing Trust Fund units that are receiving project-based subsidies, that actual rent that's being collected for that unit, can exceed the Housing Trust Fund limitation and go up to that project-based subsidy limit, as long as that tenant is paying no more than 30 percent of their adjusted household income.

And so we -- it has no impact on that tenant, the fact that the allowable rent under the project-based subsidy is maybe $100 higher. And so in that case, the project is actually collecting more cashflow because of that project-based subsidy, but the tenant still continues to pay that affordable rent.

So that has impact when we're underwriting our project and looking at what's our projected cashflow coming from rents and other income, minus our expenses. Having those project-based subsidies in place has an impact on how that cashflow is going to look.

All right. So as part of our rental housing requirements, you are required to have tenant selection policies in place. You would maintain a waiting list in chronological order of application. But you may have targeting in place for specific populations.

We mentioned yesterday, your affirmative marketing plan would have to incorporate as part of that, thinking about any tenant priorities or targeting that have been adopted for this specific project. So those will be captured in that written agreement. They will be called out within your allocation or Con Plan on that.

And just keep in mind that any preferences that you put in place, they can't violate any of our non-discrimination requirements in place. There needs to be a written lease between the tenant and the owner.

And owners cannot evict that tenant or refuse to renew that lease, except for serious and repeated violation of lease terms. So you would have to have appropriate documentation in place to either terminate tenancy or to refuse to renew that lease.

All right. So let's talk a little bit about prohibited lease terms. So for those of you who have worked with the HOME program, this list will look very similar. And essentially, the regulations are calling out this list of clauses that if they were allowed to be included in that tenant's lease, would take away some of their rights or protections.

And so things like allowing that tenant to be sued, waiving the owner's legal responsibilities as part of that -- and so, none of these clauses can be included in any of our Housing Trust Fund leases that are executed.

So in thinking about well, how do we make sure that we are going to be in compliance with this, there are a couple different options. You could as a Housing Trust Fund grantee, create a standard lease, which you provided and said all of our properties that are being assisted, would need to use this lease that we have put in place that does not include any of these clauses.

A lot of cases, your legal counselor is going to say, "I don't want to be responsible for putting together a lease." You could, to make sure you're in compliance, require properties to annually submit a copy of that lease agreement that they intend to use, and you would review it to make sure that none of these clauses were included.

That is another option. It has some administrative burden that would be part of that. I think what we see probably more grantees do, is to adopt an addendum. So this is an addendum that will be executed or attached and signed off with whatever lease that your properties were using.

And that addendum essentially lists out all of these prohibited clauses and states that if any of those are included in the attached lease, that by executing this addendum to that lease, that they are made null and void.

And so I think, yeah, if you were to check around the country, I think you'd see that a lot of folks for the HOME program, for the Housing Trust Fund program, have gone to a system where they're using an addendum, which simply corrects any lease that it is then executed and attached with. So those are your options on dealing with prohibited lease terms.

Additional rent requirements; so you as a Housing Trust Fund recipient are going to be responsible for establishing an initial rent schedule, a utility schedule that will be done prior to the commitment of your Housing Trust Fund dollars.

And then that's something that annually, you're going to be going back and reviewing and approving. And so you would be -- I think typically, you will be receiving the proposed rent and utility schedules from properties, would be reviewing them and approving them as part of that.

And we're going to be talking in a little bit that we will also be seeking an annual certification from owners, that their properties remain in compliance with our property standards. A lot of times we see those kind of combined into an annual process that has been done as part of that.

So our function is to make sure that those proposed rents are always going to be within our Housing Trust Fund maximus, that they won't exceed that.

And what's actually charged to the tenant, and this is really critical that you understand that the tenant rent that's being charged, is our trust fund, can exceed our maximum, and then it's minus any utilities that the tenant's actually paying.

So let's say our maximum trust fund rent for a one-bedroom unit is $1,000, if based on our utility schedule for the specific utilities that our tenant is going to be responsible for, if we're projecting that their utility expenses are going to be $200 a month, then it's $1,000 limit minus $200 for those tenant-paid utilities.

So the maximum lease rent that we could be charging, would be $800. Now, that's probably not lining up with what your 30 percent rent levels would be. I'm trying to use nice round numbers. But the cap for what we can actually charge on a lease rent or a tenant rent, is going to be the maximum trust fund rent minus those tenants paid utilities. And we're going to be following the proposed rents and utilities schedules to make sure that they remain in compliance as part of that.

So for our income certifications, we're going to be using whatever income definition has been adopted by the program. And so annual income, if we're using our Section 8, Part 5 income, that's based on our 24 CFR 5.609.

You also have the option of using the IRS 1040 income definition. But we don't see this as much because a lot of our trust fund projects are done in conjunction with projects that include low-income housing tax credits. And they require that you're using the Part 5 income definition.

So I just mentioned with the 1040 adjusted gross income method. It doesn't mean that we are taking their tax statements and using that. We are following the definition that the 1040 form has defined on what gets counted, what is adjusted in determining that adjusted gross income.

So that changes over time as that IRS 1040 form changes. So we need to have one definition per program and for rental housing project, so everybody is consistently being evaluated on the same process. And as we mentioned, everybody at their initial income certification, we're going to be following this definition. We're going to have at least two months of source documentation.

For the subsequent annual income determination that we're doing, other than the initial and the every six-year of that project, we would be able to use the source documentation as we're used to doing, or we also could allow for a self-certification, a statement from that family.

We also have the option that where we have households that have been found eligible for -- by another government program that by definition, they will be eligible for our program.

So for instance, if they were receiving a housing voucher or some other kind of government administrative program, they would by definition, document that they were at least 30 percent or below income, meeting our definition. We could also use that and not have to directly collect other documentation.

All right. So the all-important affordability period, it is longer. So Housing Trust Fund has a minimum of a 30-year affordability period.

I don't know that we're going to see grantees that are going to impose a longer period of affordability. If you do, the best practice would be to have a separate -- so you would have my Housing Trust Fund affordability is 30 years. I have an extended affordability period that I have imposed for maybe an additional 10 years.

So at the completion of that 30-year affordability period, you would have met the Housing Trust Fund requirements. And so if there was a need for investment of additional Housing Trust Fund, you would be able to do that. So that's the best practice that folks have been using.

We oftentimes get questions from folks that say, "Well, if I provided financing for this as a loan and I have a 45-year loan term, do I need to then make that affordability period match to have a 45-year affordability period?"

No. It's not tied to that loan term. You need to at least meet that minimum of 30 years that the trust fund requirements would impose.

And all important here is that we need to have the ability to enforce that. And that includes if there was a sale or transfer of that property.

So our affordability restrictions have to be enforced by using a deed restriction or a land covenant. And so what that does, is that imposes this affordability restriction on that property and its use during that affordability period. And that would transfer with -- if the owner of that property sells it or it's transferred, that's recorded on that property and those restrictions would transfer to that new owner.

And I've seen a couple of examples over the years, not with trust fund, but the same rule, where a grantee failed to actually enforce that deed restriction or land covenant. It had not been put in place. A sale of that property happened without the program having the ability to do any enforcement.

And if that new owner was not willing to keep have those restricted, then our affordability period has not been completed, and that would trigger repayment of our Housing Trust Fund dollars. So really important that you have a process, a timely process in place to put in that deed restriction or land covenant. Have that recorded and make sure that's going to be there to protect your ability to enforce that.

In the case of a foreclosure, in some cases, that land covenant or deed restriction might be stripped away by the court system as that process. And so we no longer have this as an affordable property.

In that case, then we have violated those trust fund requirements of completing a 30-year affordability period. And so that -- we would be triggering repayment of those funds.

Grantees do have the right to impose a Right of First Refusal when property is going to be sold. And so they would have then the ability to purchase that property to stop a pending foreclosure and preserve that affordability as part of that.

All right. So in cases where we have over-income tenants -- these are tenants that at initial occupancy, were certified to be eligible to occupy the trust fund units, but since that point, we're going to be doing our annual recertification, and we find that a tenant is now over-income, we're going to be documenting that.

But really important to understand, we're not going to require that tenant to move. We're going to have some prescribed actions that we would take based on that. But we will not say to the tenant, "Oh, you're not eligible to live in a trust fund unit. You now have to move."

So when we have an over-income tenant, we're going to consider that unit to be in temporary non-compliance. And that's really until that non-compliance can be corrected. And so we might be in non-compliance until that tenant moves out.

Depending on whether they are fixed for flooding, which we are going to talk about, I think in the next slide, is going to determine what actions we're able to take in that interim period.

But what compliance will be based on here, is making sure that when that property owner manager has the ability to take an appropriate step to correct that non-compliance, that they would do that. So as quickly as possible, and they will bring it back into compliance.

Sometimes that might be rather quick. Other cases, that might be a number of years before that's able to be done. And the actions that are allowable is going to be based on fixed or floating.

So the concept here is that when we have fixed units, we've designated these units as our Housing Trust Fund units. And they are always going to rename our Housing Trust Fund units throughout that affordability period.

And so in those cases when we have a tenant who goes over-income, then we can raise their rent to 30 percent of their adjusted household income, when it comes up time for lease renewal. So we're not going to require them to move out. We're not going to raise this to a rent that's not affordable, but we're going to adjust it to be 30 percent of what their adjusted household income is.

In that case, they may say, "Well, now I'm paying something where there actually are other units on the market." They may choose to move out. And then you would re-rent their unit to another eligible household. But in the meantime, we're going to adjust their rent when that lease comes up for renewal.

For our floating units, that means that we have designated -- maybe we have 10 -- let's keep this simple -- 10 one-bedrooms Housing Trust Funds unit. When we do floating units, then we're

going to say that we will always have 10 trust fund one-bedroom units in this property, but they could float amongst the one-bedroom units that are available in our property.

So maybe we have 21 bedroom units total. One year it will be a particular set of one-bedroom units are going to be our trust fund units. Over time we can float to another unit. So when we have a unit that goes over-income for their trust fund unit, we may be able to redesignate another one of our one-bedroom units when it becomes available, put in an income-eligible household into that unit and redesignate that as our trust fund unit on that.

So we are going to be raising rents until we are able to make whatever correction on that. And we're going to raise it to either their 30 percent of their household income or market rents, whichever are lower.

And so based on in market rents, we're going to be looking at similar properties in that general area and that adjust our cap. So we're not going to be quite as aggressive necessarily for our floating units, but we'll have more changes to be able to make those corrections.

If this is all new to you and kind of hard to capture, just know that there is extensive training for the HOME program about fixed and floating units and monitoring this over time and making those adjustments.

That information would be applicable for these units. And I think would be a good reference. And we'll talk in on at the end of this about some of the available resources.

All right. So that brings us to our first knowledge check. So Kate's going to open those up for us in a moment here. And we'll ask folks to respond to that.

Here we go. So this is a true or false question. Maximum rent for Housing Trust Fund unit in combination with project subsidies can go above the Housing Trust Fund extremely low-income limit, up to the maximum federal or state rental subsidy limits, if the tenant pays no more than 30 percent of their adjusted household income. Is that true or false?

Kate Steger: Please make sure to hit submit when you answer. Thank you.

Les Warner: Yes. Thank you, Kate. And we've shorten up slightly our poll time, so we're going to ask folks to be a little faster about that, so we conserve a little bit of time today.

All right. The poll has ended. And -- yes, so this is true. And so this is kind of an important flexibility here, that because that tenant rent is capped at 30 percent of their household income, being able to go to that, I would call it contract rent for the project-base subsidy, allows that project to collect additional revenue to help support that property. But it has no impact on the affordability for that household. So yes, that is true.

All right. Our second question; Housing Trust Fund leases may not contain any of the prohibited clauses that are listed at 93.303 B 1-9. And so Housing Trust Fund grantees can use which of the following methods to ensure Housing Trust Fund leases meet this criteria?

If you'll make your selection and then click submit. And it's one of these or all of the above. All right. Our poll has ended. Yay. You were paying attention. So it's all of the above. So any of these would be options for you.

And I'll just mention, this is a real issue we had a couple of years ago. A HUD inspector general audit, and they cited a very large PJ onto the HOME program for having multiple cases where developers had leases that included some of these prohibited clauses. And in some cases the same developer at project [inaudible] had fine leases that had no issues and at the same time then had properties that had some of these prohibited clauses in place.

So it's important that you as a grantee have a process in place and have made a decision on your methodology on this. And so, our last knowledge check here is; Housing Trust Fund must ensure that their trust fund affordability restrictions are enforced through the completion of the affordability period.

What methodologies are grantees required to utilize to ensure these restrictions? You'll choose your best answer here and then hit the submit button. And this is what is required here.

All right. Our poll has ended. So the key here is -- and it's might have been a little tricky -- what's required for your enforcement method, is going to be the deed restriction and land covenant. You are going to be overseeing, monitoring during that affordability period. We are going to be collecting annual certifications and usually reporting about tenant occupancy.

We would include language in that written agreement, but our enforcement methodology is really just deed restrictions or land covenant. All right. With that I'm going to turn things over to Carrie. Carrie, you're on mute.

Carrie Kronberg: Thank you.

Les Warner: There you go.

Carrie Kronberg: I wouldn't be very productive. Had to happen at least once. Okay. So now we're going to spend some time talking about homeownership housing, which is eligible under HTF, though the program as we know, has not been used for this purpose yet. Probably because of the limitation that HTF has to serve. Only ELI at a below 30 percent household, until the national funds exceeds $1 billion.

So if you're considering using HTF for homeownership either now or once you can serve those households earning up to 50 percent AMI, this section is for you.

And homeownership requirements with HTF are pretty similar to HOME. So they include -- eligible activities include new construction, AC rehab and then direct assistance to homebuyers such as down payment assistance.

Assistance is limited to first-time homebuyers, but that has a specific definition in the HTF regulations. And more people may qualify than you would think, based on the standalone term. So of course, they have to be income-eligible. That's separate. But a first-time homebuyer is defined as an individual, and his or her spouse who have not owned a home during three-year period prior to purchase of a home with assistance under HTF.

It also includes an individual who is a displaced homemaker or single parent, as those terms are defined in the regulations. But I won't read you those definitions, too.

So any home purchased with the assistance of HTF, has to be the buyer's principal residence. No second home. Completion of housing counseling with a HUD certified housing counselor is required before purchase. And then similar to HOME, HTF grantees have to determine whether they're going to resale or recapture provision. And in fact, we're going to go over those in a minute, and they'll look very familiar, if you're familiar with HOME.

So there's also a limitation that HTF assisted homes for purchase must be modest non-luxury homes, and not insured by limiting the purchase price to 95 percent of the median purchase price for newly constructed or existing standard housing, depending on the home being purchased. And these are the same limits used for home published at this link here an on annual basis.

There is a little flexibility if a grantee chooses, and typically, if they find the HUD published limits are too low, they can complete their own local study of aggregate sales data. And there are requirements and the regulations kind of the process you have to go through the information that needs to be provided.

And then that study has to be included with the consolidated plan, annual action plan for the area. And I've seen this used once in a community where the home prices were rapidly escalating, and the HUD data was just a little too far behind the most current data that the community was able to produce.

I don't know if anyone watches the news, but the national news may indicate the rapid escalation of housing prices is widespread right now.

So let's talk about resale and recapture. Whichever option is going to apply, have to be determined before assistance is provided. And grantees can choose to use only one or the other for all programs or can use resale in specific neighborhoods where it's appropriate or maybe for specific properties, recapture for all others.

There are options about how you apply that. However, grantees should never try to combine resale and recapture. It's a mistake some jurisdictions make, and you can tie yourself in knots.

Additionally, HUD field office staff need to approve a grantee's resale and recapture provisions as applicable in writing. And that happens separately from approval of the action plan, allocation plan. That is something that is explicit approval, that is required separate just from, yep, your action plan meets the requirements.

So recapture, under this method, means that the grantee is recapturing the HTF investment in the property or a portion of it. Under this, the grantee can't restrict when the homebuyer sells the home or to whom they sell the home. It's essentially sold on the open market.

And if appropriate, a grantee can permit the subsequent homebuyer to assume HTF assistance. And it would be subjected to the HTF's requirements through the remainder of the period of affordability. But that would only be if the homebuyer is income-eligible under HTF and no additional HTF assistance is provided.

And then just keep in mind that grantees can't require an initial buyer subject to recapture to limit the sale to income-eligible buyers. They are allowed to sell it to whomever they want. But if taking advantage of the flexibility to allow a new buyer to assume the HTF assistance, as long as they're eligible, the grantee should have a written policy describing the conditions under which that assumption can take place.

One option could be grantees could require that sellers contact them when the house is going to go up for sale, so they have the first opportunity to purchase the home and maybe could identify potential buyers. But remember, the seller has to be able to establish the sale price and really can sell the home to anyone that they want.

When applying resale provisions, that means we are reselling the home to another income-eligible buyer at an affordable price. And so the subsidy then stays with the home.

So once again, the home must be occupied as the buyer's principal residence. Additionally, the seller has to receive a fair return on their investment upon sale.

And grantees set the definitions of what that means in the consolidated plan, often calculated with a formula where maybe the seller receives a portion of the appreciation as well as compensation for any investment they made, whether that was the initial purchase or for if they made improvements to the home while they live there.

And a good way to ensure resale provisions are enforced smoothly as for the grantees, subgrantees, etc., to record the first right of first [sic] refusal against the title, and then they can take responsibility for a new income-eligible buyer.

When I worked at the local level million years ago, we had these first right of refusal recorded and some of our original homebuyers would forget that they had affordability requirements, and we would get frantic calls from real estate agents saying, "You need to relieve this first right of refusal. We're selling this home." We'd say, "No we don't. That's an affordable home. It has to be resold to an income-eligible buyer."

So it's a good way to enforce it, make sure it's very clear on the title. And remember this is an instance when this is an exception to that investment of additional funds rule. So more HTF funds can be invested during the period of affordability to help that new buyer with the purchase.

Just keep in mind the subsidy limit still apply. And the additional assistance have to be added to the original amount invested and then it's capped by the subsidy limit that the grantee established in his allocation plan.

So when using recapture, going back to that one, we need to determine the direct subsidy amount in order to understand what is subject to recapture.

So a direct subsidy or a direct homebuyer subsidy is the amount of HTF provided to an individual household, so that would be direct loans to the buyer, such as down payment assistance or closing costs assistance, but also includes the amount that the sales price is written down below market value, if there as an HTF subsidy provided to a developer who was say, constructing or acquiring and rehabbing the homes for sale.

So it's important to note that, that market right down as well as the down payment are direct loan to the buyer, is included on the lien to the title, so that it can be recaptured. And just something to keep in mind, in certain neighborhoods, grantees may want to consider ripple effects of reducing sale prices, as that could potentially have a negative effect on comparable home values and exacerbate problems if they are neighborhoods in transition or decline.

So under recapture, funds that are direct subsidy, which we just defined, are subject to recapture. So that's the amount that directly benefited them.

The grantee must file a lien against the property, securing the full amount of the fund subject to recapture. And remember that the recapture of funds is the only requirement under this approach. The owner can choose to sell to anyone at any price they can get, and once the unit is sold, the affordability restrictions go away because that original HTF investment or at least a portion of it, have been recaptured by the HTF program and can be recycled to support affordability on another property.

So HTF, similar to HOME, limits the amount homeowners are required to repay to the net proceeds available from the sales transaction. So once sale closes, the original buyer who just sold the home, won't owe more money back to HTF program than they were able to net in the transaction. So they can't ever be underwater on an HTF loan as they could, with a conventional loan.

And net proceeds is simple math problem. So you take the sale price, subtract any debt that's superior to the HTF lien and closing cost, and there you have your net proceeds.

And it is possible that there wouldn't be net proceeds. For instance, if there is a neighborhood where home prices declined and the homeowner had to sell the home for less than they paid, in that event, if there aren't net proceeds, the grantee wouldn't recapture any HTF funds from the sale. But they also wouldn't owe any funds back to HUD. That's all okay and compliant, not a deal, but we haven't broken any rules.

So the amount that the grantee may recapture will depend on the calculation method they select and describe in their consolidated plan. And there are four HUD approved options for calculating

the recapture amount. They can be used by themselves, or you might combine them with some shared depreciation in the home value between the purchase and the resale.

So one option is the grantee recaptures the full amount of the HTF direct subsidy. And we defined that couple slides ago. And that happens -- that is senior to any funds that the homeowner invested. The grantee could also decide to forgive a pro-rata share of the subsidy over the term of the affordability period.

And remember, different from HOME, HTF has a much longer minimum affordability period. And for homebuyer housing, where under HOME it could be as little as five years, it's 30 years and not dependent on amount of subsidy. So under a pro-rata forgiveness model, the grantee could forgive say one sixth of the subsidy every five years.

Another option would be for the grantee to share net proceeds with the buyer in an amount proportional to their respective investment at the time of purchase. And then the fourth one sort of in contrast to the first one listed here, is the homebuyer gets repaid first for any investment they made, and then HTF funds are recaptured So then we switch the waterfall order between the grantee and the homebuyer in that one.

And then shared appreciation allows the grantee and owner to split any appreciation in the home value since the time of the original investment. And it's a good mechanism. In areas where home prices are increasing rapidly, it can help ensure that assisted owners don't get a windfall profit as a result of the HTF subsidy.

Okay. So that was home ownership. Now we're going to move on to other federal requirements, also known as cross-cutting requirements. And folks may be familiar with a lot of these through other HUD programs.

There are some key differences. And in fact, there are fewer cross-cutting requirements triggered for Housing Trust Funds. So first, things that are the same, including the Fair Housing Act, Affirmative Marketing, lead base paint and the Lead Safe Housing Rule, Uniform Relocation Act, which grantees need to pay careful attention to for projects that involves acquisition and/or rehabilitation.

Notably, the related Section 104(d) does not apply to HTF. It's not listed here but section 3 does apply to HTF as do conflict of interest requirements.

And then cross-cutting requirements that are different include, a key one is that HTF isn't subject to Part 58 for environmental review. Environmental requirements, also known as the environmentally provisions, are self-contained in the HFT regulations.

So that's where you'll find your environmental requirements. We'll go over those in more detail in a few minutes. Additionally, Davis-Bacon doesn't apply to Housing Trust Fund, and then as mentioned, Section 104(d), which is typically considered along with Uniform Relocation Act, doesn't apply with to this program.

So environmental regulations, we just mentioned, these are different from what we're used to and specific to the HTF program. So we'll spend a little time on these.

They are in some ways similar to the requirements of Part 50 and 58, but there are some key differences. And one of those just [through ?] conceptually, is the past to compliance. The HTF environmental provisions are outcome based, while Part 50 and 58 are processed based. So kind of crudely. We talked about, it's not about the journey, it's about the destination, or the other way around.

With HCS, it is about the destination. Compliance is determined by where we end up. And Part 50 and 58, compliance is determined by following the correct steps along that journey. So there's flexibility on both sides and constraints on both sides. So with outcome-based provisions, if the project won't be able to meet the requirement, there isn't any wiggle room.

And forgive me if you've been on other HTF trainings. I've given this example. But when I was an HFT grantee, we were evaluating a project that had applied for funding. It was an affordable senior property and a historic building. And they had applied for HTF.

We looked at it, this old building, it had lead pipes, and it wasn't really feasible for the developer to rip those out and replace them as part of the rehab. And because the HTF environmental provisions require buildings with portable water systems only use lead-free pipes, the building wasn't eligible for HFT assistance. Full stop.

Meanwhile, as mentioned, Part 50 and 58 are more processed-based, and that includes consultation procedures related to several environmental related laws and authority.

So the things that are the same, and these are referenced from those environmental provisions, so it references other laws and requirements, but these include things like avoiding projects and coastal barrier resource system units. That's per US Fish and Wildlife maps.

And then any HTF funding development must be consistent with the states coastal zone management plan. Minimum separation distance from explosives and hazards is the same as well as avoiding any actions that would have adverse impacts on endangered species. We also have to avoid activities that are inconsistent with conservation [inaudible] land use protections, etc., when those are adjacent to wild and scenic rivers.

And finally, we need to avoid sites and activities that could have adverse impacts on Sole Source Aquifers that provide a majority of the drinking water for a specific area.

Now, things that are different include historic preservation. So there are limitations, but I think one key thing is the consultation is sort of survey requirements that come along with Part 50 and 58, don't apply here. However, under historic preservation, you can't perform activities on sites listed in or eligible for listing in the National Register, unless that work meets the requirements of the rehab standards or the Interior Department.

And then additionally, consultation with affected tribes or their descendants, only required if archeological resources or human remains are found during construction. So that resource survey before work begins, isn't required like it is for other programs.

Another different one is HTF activities can't result in the conversion of critical agriculture land to urban uses. The prohibition on locating properties in safety zones around airports, HTF activities can't adversely affect wetlands. All HTF assisted properties must be free of contamination and hazardous substances.

There's threshold outcome requirements for noise. No interior noise levels of no more than 45 decibels are required. And there may be some higher outdoor noise levels, but mitigation will be required to achieve that 45-decibel interior requirement.

And then as mentioned, the safe drinking water requirement prohibit lead pipes. And they also require a specific type of assembly.

So for HTF projects that only receive HTF funds -- and that won't always be the case. Many times you'll have -- in Colorado, we would often fund the project with our state HTF. And our local government might put in home. In that case, we don't have this flexibility. But if HTF is the only source triggering these requirements, you have some flexibility and don't have to follow the same processes as the environmental review procedures for other HUD funds.

So there's no determination of a [inaudible] of review. Based on activity, you don't have categorically excluded subject to or an environmental assessment. It's not a determination that's needed.

Public comment isn't required. There's no release of funds in certification process. And no process by which to receive authority to grant funds.

There's more on this. There's a lot more. And there's additional resources and training on the HUD exchange. And that includes the HTF program. I think very first CPD notice, that addresses the environmental provisions.

So the next cross-cutting requirement that we'll talk about is affirmative marketing and if you're familiar with HOME, this will look similar.

So grantees must adopt affirmative marketing procedures for rental projects that include five or more HTF units as well as for all home ownership programs.

And affirmative marketing means you're implementing steps and actions to provide information to otherwise attract eligible persons in the housing market area, to available housing without regard to protected class. So that ensures your marketing reaches populations that might be least likely to apply, is the term, if they aren't specifically considered in your marketing efforts.

So the HTF [inaudible] lists the affirmative marketing components including how are you going to inform the public and stakeholders about your affirmative marketing policy. That includes the requirement to us the Equal Housing Opportunity logo.

The grantee -- the required marketing components also say the grantee has to have general marketing procedures and practices that the grantee and HTF project owners will follow, and some strategies and procedures to solicit applications from those populations that are least likely to apply or may not learn about the housing opportunity through traditional marketing method.

So for example, when I worked at the state level, considerations we had were, is there a substantial Spanish-speaking population in this community that might require outreach in Spanish, marketing in Spanish. Or maybe there were some areas of the state that had significant refugee populations that might not have access to traditional media and marketing outlets. So how are we going to reach them?

Additionally, record-keeping, how are you going to document that you followed and met the affirmative marketing requirements, of course. And then a process to look back and evaluate your affirmative marketing actions. So when you do look at applicants and project beneficiaries and the demographic characteristics of those, is there anyone that's still underrepresented and why? What can we do about it?

And then finally, you have to have requirements that your subgrantees, your partners follow the grantees procedures. And then finally on tenant preferences and selection, any of those applied must follow the tenant's selection requirements in the HTF regulations.

And if there are preferences, that have to be identified in the written agreement with the project owner as well as in the grantee's consolidated plan. And of course, they can't file a non-discrimination requirements. So I'm going briefly pass it back to Les, who is an expert on lead requirements, lead-based paint. And then I'll jump in to pick up our next cross-cutting requirement.

Les Warner: Right. All right. So this is going to be a quick version of this with you. There will be a much longer training to try to cover lead-based paint. But I will mention that there should be marketing, I think, in the next probably month at most, for another series of [inaudible] training for Subpart J and K, which is what you would be using. So there's a resource if you need to learn more.

So lead-safe housing rule, 24 CFR Part 35, will apply for Housing Trust Funds, as does the EPA Part 745. So the HUD lead-safe housing rule Subpart A simply lays out what the disclosure requirements are. Subpart B is the general requirements. And then Subpart R is where all those specifics about methods and standards, clearance testing, all those sorts of things, are identified.

So for the applicable Subpart J, Subpart J is where all the requirements are for rehabilitation, which I would think would be the most common thing that would be triggered for Housing Trust Fund properties. And then also K is for where there is not rehabilitation, but we have acquisition

and leasing supported services that are being funded on that. And so those would be the subparts that you would specifically look to.

The EPA rule is also going to apply -- the Subpart F, the disclosure part, it's exactly the same as the lead-safe housing rule. And so all of our projects are going to be triggering the HUD rule. But there are some places where there's a difference between the regulations where it's a little more stringent in a few categories under EPA versus under HUD.

So I would suggest if you are going to be working with projects that would trigger the lead-safe housing rule and you don't have staff that are knowledgeable on this, I would have folks access the upcoming training on that.

So a couple things, just basic concepts that you need to understand, so this applies to targeted housing, and that's housing that's built prior to 1978. So lead paint was banned beginning in 1978. So if those structures units that were constructed prior to that, that would have requirements.

There are some exceptions, units that are specifically restricted to the elderly, would be exempt from that. There are a couple of cautionary sorts of things. If you end up having children living in the units that were restricted to seniors, that exemption goes away.

And so, under the requirements under the lead paint hazard rule, you're going to be required to determine where you have deteriorated lead, surfaces that are creating a hazard. But those hazards also are coming from dust that's been generated from friction surfaces, windows and doors that are going up and down and generating dust.

But we also may have soil contamination, where we've got bare soil. We used to use leaded gas, and so we can have contaminated soil for a whole number of reasons, including chipping, peeling paint from the outside of a painted structure.

And then of course, we're always concerned about those impact surfaces, chewable surfaces that are unstable as part of that. So when we define what lead paint is, it's any paint or other surface coating that is one, I believe it's microgram per deciliter, is the definition on that.

So our standard steps on this, there is a disclosure throughout this entire process. So an existing tenant is going to receive information about the hazards of lead paint. But also for those units that have been treated and had lead hazard reduction work done on them, we're going to continue to provide as new tenants are choosing to rent that structure, we're going to give them a disclosure not only about the hazards but also what's been done for that unit.

As part of our investment in funding, we're going to be doing a visual assessment and a risk assessment, depending on the level of investment on this particular property. And then doing the appropriate level of treatment, which might include some standard treatment, might need some things like interim controls where we are going to maybe incapsulate or cover over where we have lead hazards that are part of that.

And then we are going to do a clearance test to make sure at the completion of that work, that we've brought those lead hazards down to an acceptable level. And then much like the disclosure on the front end, we are going to notify that tenant of what's been done, what the testing levels were, and keep them informed about that unit that they're occupying. And we're going to be asking them to keep us informed if they note that there are surfaces that have become unstable.

I mentioned earlier as part of our ongoing property standards, we're going to make sure that if we have any of those treated areas, maybe we have something that's been encapsulated, as part of our inspection, make sure that what's been done to contain to that hazard, is still in place. And that would be part of our ongoing oversight on that.

So I encourage you, if you're going to be involved in this, if you don't have someone with expertise, I would get the training and then also think about how you're going to staff for this work to be done. All right. I'm going hand things back over to Carrie.

Carrie Kronberg: All right. Thank you. So now we're going to finish up with our cross-cutting requirements and then I'll pass it back to Les to finish out the series.

So now we're talking about displacement, relocation, and acquisition. And when we talked about this at the beginning or the cross-cutting requirements at the beginning of the section, the Uniform Relocation Act, which the full title is listed here, we indicated that applies to HTF activities.

So first and foremost, HTF grantees are required to take efforts that they can, to minimize displacement. We want to think about how do we keep people in their homes and businesses and not displace them. But there are times when it is necessary.

So another key point specific to HTF the initiation of negotiations, which is the key milestone related to URA eligibility and entitlement to benefits, and is defined by each program. For HTF, that's when the written agreement is executed for the project.

So then upon initiation of negotiation, I'm just going to say ION, all tenants must receive a notice indicating whether they'll be eligible for relocation benefits or whether they won't be displaced, but here are some information about what's going on.

And then also just keep in mind the project is federalized at the time that the application for HTF funds is submitted. So anyone living there at the time, may also be eligible for benefits.

And then as with other federally funded programs for displaced people, anyone displaced is eligible for relocation assistance. So let's talk a little bit more about them.

So people are entitled to relocation benefits if they move themselves or their stuff from a real property location because of an HTF funded project. It's really important to ensure that folks get the proper notices on time because if they move following ION and they didn't get the right notice, even if they wouldn't have been displaced, even if their move had nothing to do with the activity on the property, they'd be entitled to relocation benefits.

So you want to make sure you tell people what's going on, tell them not to move, and just be informative. So both individuals and families as well as businesses can be entitled to relocation benefits. And the full definition of a displaced individual is in the URA regulations within title 49, which if you're curious, that's the Department of Transportation regulations. They had up URA implementation. But that full extended definition is found at that citation.

And then the required notices for people who will be displaced include a general information notice, a notice of eligibility, and then eventually a notice to relocate, giving them plenty of advance warning as specified in the URA requirements.

And even if people only have to move temporarily, for instance, they have to move out of their unit for two weeks while it's rehabbed, with HTF funds, they are entitled to relocation assistance as well, and that includes things like moving and storage costs, rent or hotel costs, potentially a meal stipend if they won't have the kitchen for the time that they're out.

And then at completion of the project, all occupants must be given the opportunity to lease and occupy a completed and affordable unit. You know, of course, they have to be eligible. If they're not say income-eligible, then they'd be considered permanently displaced.

I'll say I learned a ton about URA when we were monitored for it a several years ago. It was painful but I learned a lot, a lot about the importance of original documentation and really, really good records. And of course, the timeliness of all those notices.

And I think my personal favorite, HUD cross-cutting handbook. If people have such things besides me, is HUD handbook 1378, the URA handbook, is super helpful. Lots of guide form notices and great information.

Okay. So I'm going to finish up with conflicts of interest, which occurs when someone who has influence or implementation responsibilities or maybe inside access to information on HTF funding decisions, is in a position to gain personal or familial benefits from those decisions.

So conflicts of interest must be avoided in almost all cases unless HUD grants an exception. So for instance, representatives of HTF recipient entities including their officers, employees, none of those folks could occupy a HTF assisted unit during the affordability period.

There are exceptions if the grantee request and HUD grants an exception. And that's really key. Right? The grantee doesn't have the authority to grant that exception themselves. They have to submit to HUD for consideration. And HUD will consider the exception on a case-by-case basis, following the factors that are listed in the regulations.

Those include, is there a significant cost benefit or essential expertise associated with this exemption request? Is the person affected a member of the group that's intended the benefit from the activity? Has that person withdrawn from their role in HTF implementation or maybe their decision-making role? Would refusal to grant the exemption create an undue hardship?

And then there may be additional factors included in that decision, specific to each case that we can't really identify right now.

And then additional requirements include FFATA. So hopefully you are all familiar with the Federal Funding Accountability and Transparency Act from 2006. Came about when there was revealed that some executives, I think at a housing authority, really, really high paid.

And so entities that receives federal funding beyond the minimum threshold have to report the compensation of their highest paid employees just for the sake of transparency.

And then Eminent Domain, so properties taken by Eminent Domain typically can't use HTF funds unless it was employed for a public use, the Eminent Domain, and that public use won't favor private entities in particular. But generally speaking, don't use Eminent Domain to take properties that will receive HTF funding.

Now, the last cross-cutting requirement we'll cover today is VAWA, the Violence Against Women Act, which was just reauthorized just in March of this year. And it applies to all rental housing assisted with HTF funds. And the act protects any person who applies for or lives in a covered project, such as an HTF funded project, who is also a survivor of domestic violence, dating violence, sexual assault, and/or stalking.

And the requirements include notification to all tenants of their rights under VAWA. And then the certification that they understand. So think this was commonly implemented as it was where I worked with a lease addendum.

And then applicants who are denied a unit or evicted from -- or tenants who are evicted from an HTF unit, they also have to be provided with a notice and reminder of their rights under VAWA.

And then if you have tenants who feel that their continued occupancy and their current space may pose a threat to their safety because of domestic violence, dating violence, etc., they must be allowed to transfer to another home or HTF unit in the project, if that will be safe, or the owner may assist them with moving out of the project into another home or HTF project.

And then additionally, if the survivor and the abuser are cohabitants, VAWA provides that the lease might be bifurcated, so the [evictor ?] has got to go or the abuser evicted, and other members of the household can stay.

And then an emergency transfer plan is another procedure that's required, and the grantee's method to keep these requirements should be documented there. Now, back to Les for a knowledge check and to finish the day.

Les Warner: All right. I think we're actually going to skip the knowledge check for now, just to make sure that we get through the balance of the material and then we'll come back to that if we have time.

So our requirements for our Housing Trust Fund, we need to have a separate Housing Trust Fund interest-bearing account. It could be a subsidiary account of your general funds, but they need to be held separately. And that account's going then be used for disbursements for program income and then any repayments that might be made to that.

And just a reminder, we have a our [timeliness ?] deadlines, which are important. So we're required to commit the Housing Trust Fund dollars within 24 months or face recapture of those funds.

We also need to make sure that those funds are expended within five years after execution. And that's of the HUD funding agreement. So it's not for the funding agreement for this individual project. So we need to be geared up to be able to get our project moving, get those funds committed, and make sure that our partners are ready to go once we fund them, so that we can stay within those timelines on that.

Also if we have non-compliance or other no actions could trigger our funds being frozen for withdrawals. It could potentially cause us to be temporarily suspended or moved from the Housing Trust Fund allocation. So we obviously don't want any of that to happen. We want to make sure that we have our systems in place and are paying attention to our timeliness on that.

So for those of you that haven't worked with some of the other funding, the system that we're going to be using to draw money, to report, to set up projects and then report the outcomes, is the Integrated Disbursement and Information System, IDIS.

And so once that written agreement has been executed with HUD, then we're going to begin to commit funding to individual projects. And when those written agreements are then committed for the individual projects, we'll be setting those up in IDIS.

So we're taking out of our funding amount. We're going to then be setting those funds aside, saying, "Okay, this project is going to receive this amount of funds." So as those funds are needed for that project, generally it's going to be a reimbursement, they're going to be drawn through the IDIS system directly from the treasury account, going through a federal funds electronic transfer process.

So those can't begin until that project setup has been completed. And those drawn funds need to be disbursed prior to making any additional request for funds. So the idea is to leave those funds in the treasury account until they are needed, and then once they are drawn down, move them, get them disbursed as quickly as possible. And as we mentioned, we can't be making additional draws until that prior draw has been disbursed.

Projects can be amended to commit additional trust funds dollars within one year of the initial project commitment. If the addition of more trust funds are not going to exceed, we still have that maximum per unit subsidy that we need to keep in mind.

All right. Let's talk a little bit about program income and then we'll talk a little bit about repayments. And so program income would be income that's generated from Housing Trust Fund project.

I don't know for trust fund, how likely that is, that we're going to have income that's generated from that, but if we did, those funds are going to retain their federal identity. So they still are going to be considered to be Housing Trust Fund dollars. They still need to follow all the trust fund requirements, in addition all those other federal requirements.

So when we reuse those funds, then our environmental review requirements, our affirmative marketing, URA, all of those will be applied, because the program income still holds that federal identity.

So the program income has to be deposited into that local Housing Trust Fund account unless you could -- if you had a subgrantee, you could be allowing them to hold that money at their level. That would be something that you would detail within the agreement that you executed with them.

And you as a trust fund grantee are required to report that program income into IDIS. So that would also include the funding that's being held at that recipient level, so you would need to collect that information.

And again, it has to be -- because it holds its identity -- has to be used for another trust fund eligible activity and will trigger all those other federal requirements that Carrie was talking about earlier.

So in the case where we have a repayment, and we'll talk about some of those examples, if we had a project that was terminated prior to meeting its completion requirements, then those funds are going to have to be repaid.

And that would include, if we have a project, we complete the construction, we place it in service, but it has a 30-year affordability period. And in year 25, that building stops functioning as affordable housing, stops meeting that criteria, then it's a violation of the terms of the trust fund dollars. And those funds would be subject to repayment.

And so failure to complete that affordability period, other compliance issues, those funds coming back, are not considered to be program income. But they would need to be repaid based on instructions from HUD.

Sometimes they will say it needs to go to your local account and be used on the next eligible project. In other cases they might say, "These are older funds. They need to come back to the treasury account." So HUD would give you instructions on that.

So those repayments also would be required if you had a case where a previous Housing Trust Fund grantee was no longer a trust fund grantee. And so in those cases, it couldn't go back to

their local account. It would have to go back to HUD, and then it would be placed in the pool to be reallocated to other trust fund grantees.

So little bit of guidance here. And I know this may seem a little confusing, but as we mentioned, trust fund is really based on the HOME program. And so some of the guidance that's available under the HOME program is also applicable for this. So there is a HOME Facts Vol 7 # 1, which provides guidance about when you're making repayments to the local account.

There's also then a Vol 1 #1, which has instructions about when you're making repayments to the treasury account. So those would be -- even though they say HOME on them, they would be valid guidance that could use as part of that.

So your grantee responsibilities; you need to make sure that your day-to-day operations are going to be in compliance with those program regulations; that you are making sure that those subgrantees or contractors that are working on your behalf, are following that. But you still are the responsible entity.

So when HUD comes to monitor, if there's a problem with the subgrantee or contractor, you're going to be held responsible for that, which is why you need to have oversight on that.

And so you need to take appropriate action. The key here is, have early information, be able to step in. You need to have written policies and procedures, also written agreements that need to be executed for all of your commitments of trust fund.

And included in that, you need to be evaluating the performance of contractors, subcontractors on an annual basis. Doesn't mean that you're going onsite, but you could be using the documentation that you're receiving as part of your evaluation on an annual basis.

And with that, you need to establish a risk-based monitoring system. So you might have some factors that may consider to be higher risk, and you would then prioritize those particular subgrantees or projects for your first response.

So we mentioned that once that written agreement has been entered into, then that project can be set up in IDIS. And you would be able to then commit those funds and begin the disbursement, but that written agreement has to be in place first. That also applies for subgrantees, for eligible recipients.

So the content is going to be a little different based on the organization type. If you look at 93.404(c), there are lists of provisions within the regulations of what needs to be included in that minimum standards on that.

And you would have written policies and procedures on how you're going to evaluate activities as part of your system of monitoring. But that written agreement is really the go-to document where you're laying out, these are expectations, these are the restrictions for all the funding that needs to be communicated as part of that.

So here's our list of required provisions that are included in the regulations themselves. Pretty standard, I think, all things that we've been talking about. And so I'd refer you to that list. And I would suggest reviewing your sample template documents to make sure that they do include each of these elements.

Let's talk a little bit about onsite inspections. So we talked earlier about this annual oversight that's required, and I said that does not mean you have to go onsite. But we do have some specific restrictions or requirements about when you need to go onsite.

So you need to perform onsite inspections at project completion. We know that we have to certify that that property meets all of our standards. And you're going to need to have inspection procedures that you will follow when you make those inspections.

That might include things like the documents that you're going to use, staff that's going to do it, the appropriate training that would be part of that.

And so we talked about the fact that rental housing needs to remain in compliance during the affordability period. We said that it needs to be inspected within the first 12 months, and then we go to a every three-years during that period of affordability, as long as that initial inspection has been in compliance.

And grantees may establish a list of non-hazardous deficiencies, where they would then allow for those types of deficiencies for a third-party to be able to verify those and sign off, as opposed to the grantee needing to go back and make a reinspection on that.

Also we mentioned that owners are going to be certifying annually, that those properties continue to meet the ongoing property standards. So you have that on an annual basis. And then we have a three-year rotation after that initial inspection, where we're going to onsite and verify that what's being reported by that property owner, actually reflects what we're seeing.

As part of this, we need to have financial oversight. We mentioned the other day that, if we have a operating cost reserve, we want to see what's happening with that. You are required when you have 10 or more assisted units, to examine their finances, as part of that. I think as a best practice, you want to collect some financial information.

Because we need to make sure that that project continues to be viable throughout that affordability period, we want to as early as possible, to notice where there begins to be a trend going towards financial instability or to some kind of change that we could pick up as part of that.

So having some policies in place on how that financial oversight will be completed, what information will be collected from grantees, would be important.

Now let's mention -- so we're used to 2 CFR part 200 as being our super circular, that would include the audit requirements. And then that's in subpart F of that document. But because these are none-appropriated funding, not all of the clauses or parts of subpart 200 are for audit

requirements are going to apply. And so we have a list here then of those provisions that are exempted.

So this is more of a focus on basic financial systems, a record of those transactions. In cases where there is a conflict between what 2 CFR part 200 is calling for and what the regulations are calling for, trust fund will defer to part 93 as part of that.

All right. So here's a -- this is not an all-inclusive record-keeping requirement list, but as you're thinking about designing your systems, so that you're going to collect all the appropriate record that need to be in place to document compliance, this is a pretty good list of those. And then you, of course, are going to need to customize that based on your own program design.

There is not at this point, a HUD monitoring checklist. I would expect that coming in the future. And that may be something that you would then need to compare your own list to that and see if there were any additional edits as part of that.

And keep in mind that some of these records may be kept at the subgrantee level. So you need to make sure that your systems are covering that.

So we have a record retention period of five years. We have some exemptions on that for rental housing. We're essentially looking at the most recent 5 year set of records throughout that affordability period. And that goes until five years after the end of the affordability period.

Similarly for homeownership, written agreements need to be held for five years after the termination of that agreement. If we had any Uniform Relocation Act displacement, all of that documentation would also need to be in place as part of that.

And then of course, any of the audits, litigation, other sorts of things, your monitoring oversight as part of that, would be part of those records that you are going to retain based on the same schedule.

With that, keep in mind that these records are public records, and so they need to be available following your state and local laws. They would need to be available for HUD, for like the HUD inspector general to be able to view those. But they need to be protected because there are some confidential information within those records.

So let's close this out. We're talking about resources. So we mentioned there is a landing page on the HUD Exchange also on HUD.gov, which is sort of the go-to spot, not only for policy guidance, but there is training. This training and recordings will be posted on this website.

When you're looking for the rent levels, those sorts of things, those are all going to be available, along with reports that are available for you. So I think this is a spot that you should be familiar with and explore.

Couple of things I wanted to point out. We gave you a link specifically for the regulations themselves. The HUD income calculator is something that you could use as part of your tools in certifying eligible tenants. Not only initially but ongoing.

There are videos that have recently been posting on using IDIS with Housing Trust Fund. And then I just included the building home online training series. Because some of these things, we had a lot of questions related to when we have an over-income tenant. Carrie was talking about recapture, resale.

There are very extensive versions under HOME on training on that, that would be applicable for Housing Trust Fund. So I know that we are at our time limit. I wanted to check in. Carrie, anything -- I think I had the Q&A emptied at one point. Let's see.

We've got two questions here. Would a project be cancelled in IDIS if no draw is completed within 12 months of commitment?

I'm not sure that those flags and steps are in place for Housing Trust Fund at this point. You may want to verify that with your HUD field office. But I don't think that is in place for folks.

Carrie Kronberg: It took me a minute to find my mute button and camera. But there weren't a ton additional questions that came in. I got a few.

Someone did ask about, I think, operating reserve disbursements. And discussing that, that might be a longer conversation. But I think basically, folks would need to have a procedure in place to make sure that you're verifying what the deficit is, what's the delta between what's the revenue that the unit is producing, each HTF unit is producing, and what it's costing to operate among those costs that are eligible for operating assistance.

So that would be mostly determined by your policy and procedure. I think for more information on that, the HOME R program also included the ability to provide operating support. And I think more guidance will be coming out.

Les Warner: And we also had a question that just came in. Will a tenant be informed of the end of the affordability period at lease signing?

So when we get to the end of that 30-year affordability period, we certainly at lease signing, you're always going to inform them of what requirements are going to apply. I would think some projects will have either longer affordability requirements that will still apply, or maybe there'll be additional funding.

So you're always at lease signing, going to inform them of what restrictions and requirements are going to apply for them.

All right. So that brings us past our available time. I want to thank folks for your participation on all three of these sessions, for your good questions. These sessions have been recorded. They will

be posted. So you could refer back to those if you missed any of these, or you have staff, that this would be helpful.

They will create an ongoing resource that will be posted for your use. Thanks everybody. Hope this was helpful for you. Take care.

Carrie Kronberg: Thank you.

(END)