Designing & Implementing an Emergency HOME TBRA Program

Part 2 – Developing Policies and Procedures

Webinar Transcript

0:00:05 Steve Lathom: Thank you, Sandy, and good afternoon, everyone. As Sandy pointed out, today's webinar is the second in a three part series on designing and implementing an Emergency HOME TBRA program. Last week, we talked about the initial stages of designing your program and planning for needed local and HUD approvals, and this week we're going to be digging deeper into the development of policies and procedures. As is the case with all of our HOME program webinars the session is sponsored by the Office of Affordable Housing Programs, which oversees the HOME Program at HUD headquarters.

0:00:50 Steve Lathom: Again I'm Steve Lathom with TDA Consulting, and as is typical, I'm joined today again by Monte Franke, who many of you know well, and will be speaking to us here in a few minutes. And again, this is one of several webinars on the broader topic. Last week's webinar on initial program planning that I already mentioned, today's session, and next week, same time, same virtual place, we have an office hours session. Also, many of you tuned into a webinar hosted by HUD staff yesterday on using IDIS to administer a HOME TBRA program, which is something of a companion to our three sessions, but was also a standalone piece in the sense that it was intended to address long standing issues that HUD has seen with how PJs are entering TBRA programs and activities into IDIS. So whether you're doing an emergency program for the first time or you've been doing TBRA for a while, if you were not able to join yesterday we would absolutely encourage you to go back and listen to that webinar recording once it becomes available.

0:01:54 Steve Lathom: Today, our primary focus is going to be on developing your local policies and procedures. As a block grant program, HUD HOME provides tremendous flexibility to state and local PJs but to paraphrase Spider Man's uncle, with great flexibility comes great responsibility. One of our critical responsibilities as a PJ is the establishment of local policies and procedures that lay out the rules of the road for program participants and provide a roadmap for the staff that need to implement the program, fleshing out details about who does what, when, and how we document and record it all. In developing policies and procedures for an Emergency TBRA program, we're going to have to be clear about which statutory suspensions and regulatory waivers we're taking advantage of. Remember that HUD is not requiring you to use any or all of these, but they are being made available and inevitably some of you will find certain waivers useful while others may determine that a given waiver is unnecessary to include in your local program design.

0:02:55 Steve Lathom: And of course, in addition to just being good government and providing fairness and transparency to those seeking our help, another major point of this exercise is ensuring that we're set up to comply with the HOME program's requirements, even in the midst of working quickly to expedite the delivery of an emergency program. So to try and head off a couple of the questions that we regularly get, I do want to point out that we have several resources accompanying today's webinar that are available to you on the HUD exchange. We've put a link on the screen here, but unfortunately, the WebEx presenter doesn't make that into a clickable link.

0:03:32 Steve Lathom: So if you want to find the resources for today and can't write this down while the slide is up, just go to Google, in the search box enter HOME Emergency TBRA part two. And the first page that comes up in the Google search should be the page for this webinar on the HUD exchange, the same one that you originally went to to register for today's session, and that will be the first link listed. You can go there and we have already posted the slide deck from today's presentation, we have posted the TBRA program design crosswalk that we had made available last week as well, along with the program design decisions piece for those of you that maybe haven't seen those, that walk you through the steps we've outlined both in last week and this week's webinar.

0:04:18 Steve Lathom: Of course, the other two background resources that most of you have already seen are the two memos that HUD released on April 10th outlining the various statutory suspensions and regulatory waivers intended to respond to the COVID-19 pandemic. The first of those two memos outlined a range of suspensions and waivers across several categories of program requirements, while the second one is focused specifically on flexibilities intended to allow PJs to develop and deploy emergency TBRA programs. That one is obviously the primary basis of much of the material that we're covering today, so if you've not had a chance to do so yet, you may want to go back and look at that webinar that was conducted on April 20th that HUD did that walked us through those two memos. So another resource piece for you. A couple more slides on background issues, and I'll turn stuff over to Monte, but based on some of the questions we saw in last week's webinar, we did want to step back here at the beginning and really remind everyone that these sessions are focused on emergency TBRA in response to the pandemic. We're talking about how you can set up your program to provide short-term assistance, recognizing that we're setting up a program that will intentionally be temporary in nature.

0:05:27 Steve Lathom: The waivers that HUD issued are only available from April 10th, when the memos were issued, through the end of the year. So all of this will expire when we're singing Auld Lang Syne and kissing our sweethearts at midnight on December 31st. And despite the extraordinary flexibilities that are available, another key point to keep in mind is that the memos waived and suspended some but not all of the standard requirements for TBRA programs, which is a big part of why we developed the crosswalk, to help make sure that we're all clear on which TBRA requirements were waived and suspended and which were not and still are in play.

0:06:01 Steve Lathom: So in a similar vein, we want to be clear about some of what's not affected. If you have a regular TBRA program that was already up and running under the standard rule, other than the ability to push back annual inspections to accommodate social distancing protocols, none of these waivers change anything about those standing pre-existing, kind of normal TBRA programs. And finally, to the extent that any of you decide to continue a TBRA program, whether that's by continuing to assist folks who started in your emergency program or establishing a new TBRA program, or just continuing to run your normal program beyond December 31st, as of January 1st with the New Year, everything goes back to normal, and we have to follow all standard HOME regulations pertaining to TBRA.

0:06:50 Steve Lathom: The other thing to remind everybody about is the difference between tenant-based and project-based assistance, it's right in the name, but even with that, we sometimes kind of confuse ourselves, so TBRA is tenant-based, it means we're giving assistance to a specific household who generally speaking, is free to take that assistance to rent any unit they want. Of course, the unit has to meet certain standards, be in the right location, things like that, but the point is the assistance is provided directly to or on behalf of the tenant. Project-based assistance on the other hand, is tied to the project or even to specific units within a given project.

0:07:24 Steve Lathom: So anyone who meets the requirements and lives in a project-based unit will receive a rent subsidy, but if they move out, the assistance stays with that unit or with that project and subsidizes the next tenant. It doesn't go with the tenant. When we're talking about a TBRA program then, it's permissible for an assisted tenant, somebody with TBRA vouchers, to rent a HOME funded unit, a unit that we originally developed with HOME funds. Similarly, a TBRA tenant can take that assistance to a project that for example, was funded with tax credits, a project that has FHA financing or other forms of both direct and indirect federal assistance, it goes with the tenant, and it's not a double dip if that tenant happens to be renting a HOME unit, for example.

0:08:06 Steve Lathom: What we can't do, however, is tie our TBRA program to a given property or require participating tenants to use their assistance at a given property or a given portfolio, which in effect would impermissibly turn the tenant-based assistance into project-based assistance. It's also probably worth noting here as an aside that in the case of both public housing and the Section 8 Housing Choice Voucher Program, the CARES Act provided additional funding streams to those portfolios to address pandemic-related needs, so we really don't expect a lot of overlap there. Folks in those programs and those units who have been affected by the pandemic already have resources in place to assist them.

0:08:51 Steve Lathom: And just to go back to this graphic that we used last week for a moment, last week's session focused on the first two steps in the process of designing and implementing an emergency TBRA program, the initial planning and the approval process. We know that in most cases, those of you on the line today are still working through those steps, but as we already noted in that session last week, you're already thinking ahead to the more detailed policies and procedures that we're going to be talking about today.

0:09:19 Steve Lathom: In just a second, when I hand things over to Monte, he's going to remind us of some of the core program administration issues we need to keep in mind, and then we'll be talking through program policies, including selection criteria, such as income eligibility and financial hardship, the types and levels of assistance that we're providing for and unit requirements. From there today, we'll get into the administrative procedures, including marketing and outreach, intake and approval, contracting requirements, the written agreements between various parties that are involved in some of the financial tracking and monitoring responsibilities. So with that, one other quick thing, we will be pausing at a couple of different points today to address questions, so you can use the Q&A box at any point during the presentation to ask the questions, and those will kind of stack up and we'll be able to answer them, but if you can try to remember, use the Q&A portion of the client window on the right side, not the chat portion to ask those questions. So with that, I am going to move the ball over to Monte, let him introduce himself and get going with the substance of the presentation... There you go Monte, you should have the ball.

[pause] [crosstalk]

0:11:32 Monte Franke: The thing that I'm going to open up with is to go back and anchor us in the program administration requirements. As Steve just mentioned, there are some waivers that help and facilitate doing this kind of program activity, but there are still the basic administrative responsibilities that we have as well as the regulatory requirements of the TBRA programs. But I want to go back to §92.504, which is the basic or essential PJ administrative responsibility. As we start into this discussion, I want to remind you that as the PJs on the call, you are responsible for managing the day-to-day operations of your program, ensuring that the HOME funds are used in accordance with all program requirements and written agreements and taking appropriate actions when performance problems arise. That responsibility rests with you, whether or not you choose to use a subrecipient or a contractor to help you administer the program.

0:12:36 Monte Franke: When I am in training with PJs, I always say, any time I say "who's responsible?" I want you to take your finger and point it at yourself because you are ultimately responsible for whatever happens in your program regardless of who you use. Now, in addition, §92.504 tells us that the PJ must have written policies, procedures and systems to control its program, and that before dispersing any HOME funds the PJ or a subrecipient must enter into a written agreement with that entity or individual to ensure compliance with the requirements.

0:13:23 Monte Franke: Both of those are really, really critical, and we will be spending a lot of our time today talking about those two elements in particular, so the bottom line is that the PJ is responsible for its programs and must ensure they're fairly and transparently administered following written guidelines, and these requirements are in place regardless of any COVID waivers or suspensions that you may be using.

0:13:51 Monte Franke: Now, one of the things that I mentioned last time, and we got a number of questions, so I'm going to go back and re-anchor us in this discussion a little bit as well, is using subrecipients or contractors. As I pointed out, you are permitted to use subrecipients or contractors to help you administer the program, and you may recall from that presentation that I actually talked about three things that come into play in your consideration. What I called adaptive capacity, opportunity costs, and the time frame of the program.

0:14:30 Monte Franke: With respect to adaptive capacity, I mentioned a recent Urban Institute review, state and local rental assistance programs created a re-purpose for the pandemic, that this review used the phrase, adaptive capacity, as the characteristic of programs that were able to successfully leverage existing programs or existing capacity to achieve quick startup and delivery of assistance. In other words, when we have a program that has to be started up quickly and urgently, we're looking for existing capacity that can quickly be redirected to the program. And I asked you PJs on the call last week, "Do you the PJ have the adaptive capacity to administer the program?"

0:15:16 Monte Franke: The second thing I talked about was opportunity cost. Opportunity cost is what you can't do because of a choice that you're making. I noted that your existing staff likely has full staff loads already, whether they're working remotely or are back in the office as we re-open. So the decision to reassign staff to an emergency TBRA program would likely disrupt or delay other activities that are part of their responsibilities. So I ask you again, Will adding this program to your current staff loads delay your other critical program activities?' But just to make a side comment, when the NSP program came out, not quite a decade ago, we saw a lot of diversion of capacity to the NSP program, and the production in the HOME program slowed. It's just a necessary evil that we deal with of how to direct staff, and I want you to think about what won't happen if you re-deploy your existing staff to running this program.

0:16:25 Monte Franke: And third, I talked about the program time frame. I noted that not only does the program have to start up quickly but that if you re-deploy experienced staff, you don't have to spend the time hiring and/or training new or experienced staff, but I also reminded you that this is a temporary program as Steve has just said, potentially expiring by the end of the year. So the staffing needs for this program are likely temporary and staff may have to be re-deployed or even released after that, so I asked you, will you be able to redeploy your staff properly when this program ends? Next, we talked about use of subrecipient or contractors in lieu of in-house PJ administration. We received a lot of questions about the distinctions between the two terms, so let me do a bit of a summary review here. Subrecipients are non-profits or public agencies that administer some or all of the program on behalf of the PJ. Under federal rules, subrecipients are part of the PJ's administrative team, and they have fairly broad-based administrative policy and authority to the extent you give it to them, and are subject to all federal requirements, including the uniform administrative rules at 2 CFR Part 200.

0:17:53 Monte Franke: As part of your administration, they do not have to be selected following procurement rules, but can be selected by the method that the PJ uses locally. We had a number of questions on that saying, "We don't have to procure a subrecipient?," and the answer is, "No, you do not." And if you want to look that up, it's in §92.2 in the definitions section of the HOME rule, look under subrecipient, and you'll see that's the last sentence in the definition. That it's not a procurement when you select subrecipients, and that's a standard federal rule. However, you do have to execute a written agreement between the PJ and the subrecipient that includes all the requirements, §92.504(c) has the written agreement requirements. §92.504(C)(2) is the section on subrecipients, and basically that lists all the things that have to be in the written agreement.

0:18:48 Monte Franke: On the other hand, we have contractors. Contractors not only can be non-profits, but they can also be for-profit entities, they are retained by the PJ to perform a very specific service for you in your program. Unlike subrecipients, they do not have broad administrative policy or authority, and they're not subject to all the uniform federal requirements automatically, but they can really only perform the specific services that you have specified for them in a written agreement, and you see there the written agreement section for contractors is in §92.504(c)(4).

0:19:29 Monte Franke: The key thing here is the contractors must be selected through a process that follows procurement rules, federal rules, and any applicable local requirements, most likely following an RFP method, or a similar method that's permitted by 2 CFR 200 and any state or local procurement requirements that you have. Because they're contracted for a specific service, they're subject to your direct and regular supervision, it's not just a monitoring kind of a function that you have with them. Hopefully, this clarification works and helps you understand the difference between these two, if you choose to use either a subrecipient or a contractor to augment your PJ capacity to administer the program, and I'll just remind you one other thing, even if you use a subrecipient or a contractor, as the PJ, you're still responsible for monitoring them. So you haven't passed off all your responsibility, and you still have staff time that have to be devoted to overseeing that entity and overseeing the production of the program, and you need to make sure you budget for that as well.

0:20:47 Monte Franke: Now I mentioned that one of the things that §92.504 requires, is written policies and procedures for your program, and you hear the phrase policies and procedures as though it's one thing, but in fact, they're really complementary elements that come together for successful program administration. Policies are the big picture framework for the program, the rules, the limits, the objectives, and the principles by which the program is implemented. Policies define what is acceptable or is intended to be achieved. They're a combination of federal rules and requirements and any local policies that shape or target the use of the program resources that go beyond those mandated by federal rules.

0:21:34 Monte Franke: Some organizations like to use the term program guidelines when they talk about policies, and it's a very comparable term. Either way, policies are the statement of what the program is designed to accomplish and who will be served. On the other hand, procedures encompass the who, how, what, where, and when. The program administration, enumerating the specific and consistent steps and assignments by which a program and its policies are implemented, procedures are key to ensuring timely and consistent treatment of all the projects or households that flow through your program pipeline.

0:22:16 Monte Franke: So for an emergency TBRA program, you see some of the policies that we think are key are listed on the left-hand column of the slide, we talked about several of these last week as initial program decisions, and Steve's going to come back to it again in a few minutes, but the key ones include who the target households are, the selection criteria, any priorities that you may choose to apply to the selection of households, the assistance types, in other words, what kind of rental assistance are you going to provide, and the limits of what you'll provide. The assisted unit requirements, and any other policies that you might, as a PJ, choose to impose; such as occupancy standards.

0:23:00 Monte Franke: Some of the key procedures are listed in the right-hand column, and they include marketing and outreach, intake and processing, unit approval, rental assistance contracts, leases, financial administration and program monitoring. Since we introduced the policies last time, we're probably going to spend more of our time in this webinar on the procedures, but we will circle back to some of those in just a couple of seconds here. Next, I want to go back to the written agreement comment that I put on that first slide that comes out of §92.504, that requires you to have written agreements with everybody that you're providing funds to. I have this statement that I use in training that I say everyone in the HOME food chain gets a written agreement.

0:23:56 Monte Franke: If HOME dollars flow to or through you, you need an agreement. That's the basic rule here that everybody is going to have some form of a written agreement, those requirements again are in §92.504(c), you see the different subsections listed there for the different type of entities, and then you will also notice that the beneficiaries, the recipients of the payments, in this case, the landlords our owners and the tenants, are also required to be under a specific written agreement.

0:24:30 Monte Franke: And we will talk more about that and talk about the possibilities of doing a three-party agreement as opposed to individual agreements with the tenant and owner a little bit later. So the bottom line here is that the administrative details that I wanted to draw your attention to before we get into the actual policies and procedures is that as the PJ, number one, you're responsible for program performance and compliance, whether or not you designate a subrecipient or a contractor to implement the program on your behalf. Secondly, you need written policies and procedures, which is where we will focus heavily today. And third, you'll need written agreements executed with every participant to which or through which program funds will flow. With that, I am going to hand it back to Steve.

0:25:33 Steve Lathom: Thank you Monte. So we're going to dig in just a second into some program policies. Just need to get the {presenter controls}...

[crosstalk]

0:25:43 Steve Lathom: … Again, as a brief review of last week's discussion on initial program design, we're going to talk today about some of the policies that you may establish relative to tenant eligibility, including income, financial hardship, and some other regulatory requirements to keep in mind. In terms of your local policy as we discussed last week, one of the key things that you need to think through is if you're going to establish local priorities that go beyond the minimum HUD requirements for income, financial hardship and the like. Recognizing that many of you may well want to do this, given how limited HOME is in comparison to the potential needs in your community. When demand is going to outstrip the supply of funding we have available and likely to a significant degree, it's natural to ask who is most in need of our assistance and design our program in that manner.

0:26:36 Steve Lathom: To the degree we establish priorities; we need to recognize we're establishing the queue for assistance or in some cases, parallel queues, if we've decided to allocate a given amount for different segments of the potential need. For example, folks who are in need of housing that are homeless or on the cusp of homelessness versus those who are already in housing but need help catching up and staying current on their rent, for example. And the hard truth is that if and how we establish these various lines for assistance, is going to be a primary driver of who gets help and who is so far back in the line that we're just not going to be able to get to them because the resources we have are limited.

0:27:15 Steve Lathom: In a second, Monte will talk more about the process for determining income eligibility that has been modified by the available waivers, but the thing I want to remind people in terms of income eligibility is there's no change in the fact that when it comes to HOME, every household we serve has to qualify as low-income. That is, they're at or below 80% of the Area Median Income or AMI. But with TBRA, we also have to take into account what is known as the program rule, that is that 90% of the tenants that we serve in a given HOME year, including the initial tenants of HOME units, HOME rental units, as well as any household receiving TBRA, when you put that group together, at least 90% of those households have to be at or below 60% of the Area Median Income. In practice, even in so-called normal times, to ensure compliance with the program rule, most PJs target all of their TBRA and HOME rental units to households at or below 60% AMI. It's quite common for PJs to design their standard TBRA programs to limit assistance to households even lower in the income scale.

0:28:28 Steve Lathom: So when putting together your emergency program, you need to think through where we're going to target the assistance in terms of income level, and as we talked about last week, we would suggest that in so much as possible, you try to think through this in the context of the full range of programmatic resources that are available, trying to make sure that each program available on a local level is serving the best fit needs, while leaving as few gaps as possible in the overall system.

0:28:56 Steve Lathom: The waiver that's relevant here, of course is the one allowing for self-certification of income rather than requiring that income determination be backed up by at least two months of source documentation. So when it comes time to accept applications, we can allow applicants to self-certify as to their income, but the level of income that we're going to serve is the key point that we want to establish from a policy standpoint.

0:29:18 Steve Lathom: Also as a brief reminder here for those who may not have been on last week's webinar or maybe missed this as we talked about it, HUD has now determined that the $600 a week in supplemental Unemployment Insurance that's being provided by the CARES Act, the technical name for this is the Federal Pandemic Unemployment Compensation or FPUC, if it's an acronym I'm not even going to try to turn into a word.

0:29:42 Steve Lathom: That $600 supplement is <u>not</u> to be counted as income under the Part 5 definition, which nearly everyone uses for their TBRA programs. The reason being that this is temporary assistance that under current law will expire as of July 31st. I know that's a different message than folks that were on the April 20th webinar heard, but it's a helpful clarification as HUD has been working to standardize its approach to this issue across the department. And additionally, as we've said from the beginning, the one-time stimulus checks more formally called Economic Impact Payments and technically counting as tax credits, which is a whole lot of mumbo jumbo that 99% of the population doesn't care about. These were the checks of up to $1,200 per individual and up to $500 for minor dependents. Those aren't included either as they were one-time payments that are not going to be repeated going into the future.

0:30:38 Steve Lathom: Most of the waivers in the TBRA memo on April 10th are specifically tied to households who are experiencing financial hardship as a result of the pandemic. Largely, we tend to think about that in terms of the loss of income, whether somebody lost a job, lost the hours, etcetera, but also recognizing that HUD designates anybody who's homeless as also in financial hardship which is a prima facie type of thing as well.

0:31:08 Steve Lathom: The current income level, which we determine based on the tenant self-certification is similar in that we're going to be able to accept the tenant self-certification as to the financial hardship they've experienced, but most of these waivers are really around people who are in financial hardship. In the context of thinking about the range of needs and the mix of other resources that are available, a lot of PJs have been thinking and asking about the ability to prioritize or to target their emergency programs to given segments of the need. For example maybe exclusively to homeless households in need of new housing compared to those in need of help staying in housing or maybe people with temporary periods of unemployment versus those who have had jobs that have disappeared permanently, because their employer went out of business, for example.

0:31:54 Steve Lathom: And to be clear here HUD's not trying to suggest that a PJ has to set up these types of priorities in their local program, whether that's saying that we're going to deal with all of this type of case first, and then move on to these types or whether that's setting aside X dollars for this portion of the need and Y dollars for this type of scenario. But it is permissible to do so with the standard caveat that any such preferences cannot be discriminatory under Fair Housing, and they also need to be disclosed and transparent so that applicants know what to expect.

0:32:26 Steve Lathom: The other thing we do want to continue to note here is that speeding delivery of assistance to households in need is its own policy goal. Even more so than in normal times, than in an emergency situation, we have to balance the impulse to set up the perfectly tuned policy with the administrative burdens that can come with really fine-tune approaches. So while you may determine that some level of targeting and prioritization is appropriate, the bottom line is we want to caution people against going so far in that direction that we slow down the program and miss the pending waves of need especially as various eviction moratoriums are set to expire across most of the country in the next month or so.

0:33:12 Steve Lathom: Two other issues that we want to remind everybody about, and these are both standard items that are part of a normal regulation so there's no particular change here, but we don't want to miss them in all of the excitement and attention that's otherwise devoted to the waivers and that revolves around student households and conflict of interest. So remember, the HOME program follows the Section 8 housing choice voucher rules for college students.

0:33:37 Steve Lathom: A college student in that traditional 18 to 23-year-old age bracket is generally deemed not to be an independent household and therefore not eligible to be considered as a low-income household eligible for HOME assistance. The basic idea here is that if I'm a college student under the age of 24, I'm really a member of my parents household and shouldn't be treated as independent just to apply for HOME assistance. Now remember, if we're talking about a situation where I'm a college student living at home with my family, my mom, my dad, my little sister, and my household, my mom and dad are applying to live in the HOME unit or to get TBRA, that's not what we're talking about here. The household in which I'm a dependent member, assuming that the household income is otherwise within the limit, there's no impact on the eligibility for assistance.

0:34:25 Steve Lathom: What we're really looking at is when I as a college student want to be treated on my own as if I'm my own household. So there are some exceptions. First, maybe, in fact, I am an independent household. Maybe I was an emancipated minor, maybe I was the youth in foster care who's aged out of the system, maybe my parents or guardians are deceased, if nobody else out there is eligible to claim me as a dependent, then I actually can be treated as my own household and potentially then income eligible.

0:34:54 Steve Lathom: And then there are some other exceptions, if I'm a veteran, if I'm married, if I have a dependent child of my own, then I can also be looked at as my own household and eligible for HOME assistance. Remember the other thing about this is that all of this only applies to students through and including the age of 23. Once I turn 24, my status as a student has no bearing on whether or not I'm eligible for the HOME program. And then on students, one other note that I would make as well is that when we're talking about the "HOME student rules" as it were, whether that traditional aged college student, 18 to 23 is a full-time or a part-time student doesn't matter. It's the fact that they're a student that triggers this rule, so the restrictions we just talked about apply even if that's a student who's going to school part-time and holding down a job.

We also need to talk about conflict of interest. Under the provisions at §92.356, anyone who's an official, an employee, an agent or even a consultant to the PJ or to a subrecipient running the program, if that's how you have set things up locally, has a conflict of interest.

0:36:08 Steve Lathom: So do any of those folk's immediate family members or other people with whom they have business ties, for example, maybe they own a business together. And I want to point out that this is a much broader net than I think a lot of folks in the field realize. Let's take a city PJ, for example. It's not just the city council members and the employees who work in the community development department who are conflicted, I think we all understand that, but it actually includes any city employee, even someone working in, say the Water Department or for Parks and Rec. Same thing at the subrecipient level. Let's say we have a community action agency that's acting as a subrecipient to manage an emergency TBRA program, even one of the CAAs Head Start employees is presumed to be conflicted. Now, there is a process by which HUD can approve on a case-by-case basis waivers of the conflict of interest rules when it determines that the exception will serve the purposes of the program. And one of the key considerations includes whether the given person has responsibility for the program or is completely removed from it, like in the example of someone who is otherwise a part-time Parks and Recs employee.

0:37:14 Steve Lathom: That's a factor in the review process. But what we need to understand is we start with a broad net and only HUD can approve the waiver. This isn't something that you can do at the local level when it comes to participation in a TBRA Program. And finally, the conflict issues apply both to tenants seeking assistance and also to the property owners participating in the program and receiving those TBRA payments. So even if the tenant applying for assistance has nothing to do with the PJ or the subrecipient, but let's say that tenant is renting from their landlord as a member of the city council, for example, then we still have an issue, because the city council member in that PJ is covered by the conflict of interest position.

0:37:54 Steve Lathom: So we just want to make sure that we're setting that up for people to not walk themselves into a conflict of interest problem. And so after making policy decisions about who we're going to serve, potentially focusing our program at lower income levels or particular portions of the overall need in our community, we also need to decide which forms of assistance we intend to provide and at what levels. And as you can see from the chart here, we have four categories or types of assistance that we might include in our local program. Monthly rent assistance, which of course is the bread and butter of TBRA under the standard program regulations, PJs establish a rent standard. Often this is based on the local PHAs housing choice voucher program, and then cover the difference between that rent standard and 30% of each tenant's adjusted income.

0:38:46 Steve Lathom: We also have to establish a minimum tenant contribution, so even if 30% of a household's income is $0, for example, we may still have a standard locally that says, "Everybody has to kick in at least $30 or $50." So you've got to establish that minimum standard. That's sort of the norm. Under the waiver, we don't have to require any kind of contribution and can pay up to 100% of the tenant's rent and we can even directly pay for up to 100% of their water, gas and/or electric bills instead of indirectly addressing Utilities through a utility allowance included in the rent standard.

0:39:20 Steve Lathom: When we're helping folks move into a new unit, which of course would be the expected approach in normal times, we can help provide both security deposits, and in those communities where they're the norm, utility deposits. As we'll touch on again in a minute, I could have a program that provides just security deposit assistance without ongoing rent assistance, but I can only provide utility deposits if I'm also providing either security deposit or rent assistance to a household. I can't do a TBRA program that's just utility deposits.

0:39:52 Steve Lathom: Security deposits by rule, are limited to two times the monthly rent, but I would remind you that in some states, state law may limit those further. For example, in my home state of Michigan, the maximum security deposit that a landlord can require is one and a half times the monthly rent. The waivers really don't change anything about security deposits or utility deposits, so if these are going to be included in your emergency program, those specific aspects of your program will really look no different than they normally would.

0:40:20 Steve Lathom: Finally, when we come back to utility cost, in the standard program, we address utility costs through the rent standard by including a utility allowance in the calculations. We're indirectly supporting a tenants ability to pay their utilities, even though we're generally just paying towards their rent in terms of the check that we're distributing, and expecting them to pay their utilities with that being counted towards the tenants contribution. Under the temporary waivers though, HUD is allowing us to directly pay the utility bills for the tenant, and to pay the actual costs of those bills rather than providing a standard utility allowance based on unit size.

0:40:57 Steve Lathom: So let's go a little deeper on the monthly rent assistance. The waiver does a lot, we don't have to do a rent reasonableness review, we can pay up to 100% of both the rent and the utilities, meaning in effect that we don't have to require any tenant contribution. And we can even go back in time to help people catch up on both rent and utilities that were originally due as far back as March 13th. These are extraordinary flexibilities, but they also represent the limits of what you can do, not requirements for how far you have to go. So PJs need to think through this, in terms of how they intend to address program design issues, including making sure that we're not supporting artificially high rents, because we didn't waive 2 CFR 200, we always have to consider cost reasonableness under the cost principles.

0:41:45 Steve Lathom: Similarly, just because we may and can pay 100% of somebody's rent without a tenant contribution, it doesn't mean that all of us are going to want to do that. There are many folks who are experiencing financial hardship as a result of the pandemic who can still reasonably afford some portion of their rent, and given the limited funding available, it's natural to want to design your program in a way to stretch dollars as far as possible and assist as many households as possible. So, it may be that you still want to use the normal metric of having the tenant contribute 30% of their adjusted income towards their rent and utilities. Or the waivers give you room to maneuver, potentially establishing a whole different local policy. For example, and again, this is just an example, not meant to suggest that HUD is specifically promoting this, you might want to base your local policy on some percentage of gross household income. If for no other reason than to simplify the administrative burden of determining adjustments to income, and if we're using the waiver to allow for tenant self-certifications, having the tenant have to certify as to the various adjustments and the calculations that go into that could be overly complicated and slow things down.

0:42:58 Steve Lathom: But we also need to think about whether or not, and to what degree, we want to include back rent. Again, we can go back as far as rent due on or after March 13th, but I've also had people ask me if it would be okay to set a lesser limit, for example, saying that we're not going to pay any more than one month of back rent for any given household or no more than a certain number of dollars. That's permissible. And folks have also asked if they could do a program that was only about back rent. That is focused on situations where a household may have been temporarily unemployed, or even missed work because they contracted the virus and didn't have sick leave but now they're back to work again, they're able to stay current moving forward, and the assistance they need is really exclusively about catching up and dealing with those arrearages. Those are both permissible program design choices that a PJ could build in to its local policy. And again, it bears repeating that all of this only applies to December 31st. As of January 1st, all of the standard rules snap back into place, and if we plan to continue assistance to a given household at that point, we're essentially going to have to reset everything and start fresh with "Normal TBRA" for that household under all of the standard rules.

0:44:17 Steve Lathom: Coming back to deposits for a minute, if your local program is going to include affected households seeking housing, then we need to determine if we're going to provide security deposits and potentially utility deposits. If so, will this assistance be in the form of a loan, expecting tenants to repay the program for any portion of the deposit that's eventually refunded to them when they move out, which of course would mean that you need the administrative capacity to track a series of pretty small loans. Or, will you do a program where you're providing those deposits in the form of a grant to the household, which administratively obviously is easier and is a quite common program design.

0:44:56 Steve Lathom: We've also already touched on the cap of security deposit of two times the rent. In the case of utility deposits where those may be needed, which utilities are we going to pay for, what limits might we apply? Is there a dollar cap, for example, on how much of a deposit will pay forward program funds? Will we pay the deposit directly to the utility company or will we send it to the tenant, which then means that we need to have a way of documenting that they in turn paid the utility companies. We need to think through those choices. Again, in terms of deposits, these are all issues that aren't really new or different under the waivers, but we may take different approaches to how we answer those, given our read on the situation in our communities, and how the needs may have shifted in this pandemic environment.

0:45:42 Steve Lathom: The thing that is new and different here, but still temporary is the ability to provide utility assistance directly rather than applying a utility allowance within the rent standard. And here, I think PJ's really need to be aware of the trade-offs between a highly refined policy and administrative practicality. Under the waiver, we can pay water, which typically also includes the sewer charges, electric and gas bills directly, we can pay 100% of those bills and we could choose to do so by sending checks or electronic payments directly to the gas company or by sending them to the tenant. But we also have to make sure that we're getting copies of the bills, so we're paying the actual amounts, which are almost always going to vary from month to month. We may need to make multiple payments each month. And if we're going to send the money to the tenants, we need to then collect documentation that they actually paid the bills and the money ended up where it was supposed to be.

0:46:35 Steve Lathom: So you need to choose carefully. We want a policy that's tailored to local needs, but we also want a process that is as streamlined as possible, and for that reason, I've heard PJs suggest that for example, they may not try to include direct utility payments at all, they'll just still use the utility allowance approach or maybe they'll pay a higher share of the rent than they were otherwise initially planning to do, which reduces the administrative burden by reducing the number of payments each month and then letting the tenants just pay their own utilities, or maybe they will go ahead and include the utility payments, but will always send the payment directly to the utility company, so as to not have to add that additional step of tracking down proof that the money they sent to the tenants for this purpose made it to the utility company. These are both permissible approaches, and again, HUD is being very careful not to endorse specific local policy decisions in a way that would suggest that these are informally required.

0:47:32 Steve Lathom: I do think that the underlying thought process here, recognizing that having a streamlined process is important, even if that means we have to think through different ways to skin the cat in terms of the policy outcome we're after, that way of thinking is something we do want to encourage from a strategic standpoint. One last slide, and we're going to take a break to answer some of the questions that have been coming in. Remember, we need to make sure we've identified the types of housing that we can assist, the waivers don't change the definition of housing in the HOME program at §92.2, so our emergency programs aren't going to be able to help folks by getting them into renting a hotel room for example, or a room in some sort of a shelter, treatment facilities, dorms, student housing, halfway houses or the like. And as we talked about last week, there may be limited cases, particularly in coastal barrier zones, where the environmental review requirements preclude us from providing TBRA assistance. And then finally, we need to avoid properties that we know are otherwise unsafe. HUD has waived the requirement for HQS inspections, but we still need to take steps to avoid providing assistance to manifestly unsafe units.

0:48:47 Steve Lathom: There are a lot of ways we might get at that including reviews of other public sector inspections that have taken place recently, maybe your fire marshal or your code division inspects rentals on a recurring basis locally, and we can look at some recent records there, maybe we can at least drive by to see if they're clear and obvious concerns that are visible from the street, maybe in those cases where we're asking or assisting existing tenants, we ask them about whether they're aware of specific critical issues like malfunctioning smoke detectors, shorting outlets and the like. So well, we don't have to do the HQS inspection per se, we still need to take some reasonable steps to not be providing assistance to units that are just manifestly problematic. With that, I'm going to hand off to Monte for a couple of seconds on the questions, but I would remind people real quick, I'm going to pull this up, that when you do the questions, please make sure that you're entering them here in the question box and not up here in the chat box. The chat goes primarily to our technical host, and then down here in the questions is where we will see the Q&A. So with that, I am going to switch back here and ask Monte if he has any questions that we've seen coming in.

0:50:08 Monte Franke: Hi Steve, we have had a few questions come in, and I was wondering, first of all, one of them that came up had to do with... It came up while you were talking about the student rule, and the question was children aging out of foster care and how that might affect the determination there. I don't know if you have any insights or perspective to share on that.

0:50:35 Steve Lathom: Yeah, youths that are aging out of foster care are independent households because they're not eligible to be claimed as a dependent by another household. The whole reason they were in foster care is that they don't have a legal guardian... From a legal standpoint, they're dependent of the state, not a dependent of other people. And so as they age out of foster care, they are considered as independent households because the issue there is that they're not eligible to be claimed as the dependent of somebody else.

0:51:07 Monte Franke: Okay, yeah, that's the key thing is we were talking about student households as those who cannot establish being independent or meet one of those exceptions.

[Note, a brief segment of Q&A on conflict of interest issues was removed from this transcript. That discussion has been superseded by further HUD guidance, discussed in Part 3 of the webinar series on June 24, 2020.]

0:55:25 Monte Franke: Another one that came up was when you mentioned the back rent and I know we had a slide on that last time and a few questions came in on the back rent and can you comment a little bit further on that?

0:55:43 Steve Lathom: Sure, again, HUD has and I think that they're going to be publishing an FAQ on this point, but they did allow us to include this in last week's webinar, and in this week's webinar, HUD has made the determination that rent originally due on or after March 13th, which was when the first major wave of declaring a public health emergency in response to the pandemic was made, that's the key date, and that we will be able to go back in time to and somebody who's rent...

0:56:16 Steve Lathom: … Any rent that was due originally on or after that date, if it's still delinquent, it is something that we will be able to catch people up on, that is a flexibility that is not a normal part of the program in terms of being able to go back in time prior to the project-specific commitment, but it's something that HUD has allowed in this case, recognizing that in part, if you think about the broad policy background, the CARES Act did put an eviction moratorium in place, which bought us all a lot of time to be able to deploy these other types of resources, but the eviction moratorium doesn't do anything to require, I don't think probably could, require landlords to just waive back rent. And so, we're going to be able to catch that up, but noting that that is something that is unique and special to this waiver environment in this period and not a normal part of the program.

0:57:12 Monte Franke: Right, and this was not in the original set of waivers issued on April 10th, this has been a HUD interpretation since then, because the question was, "Was it in the waivers?" And no, it wasn't explicitly addressed in the waivers, but there will be guidance on that. The other thing that came up was the question of documentation, if you're going to pay back rent, what should you have in terms of documentation?

0:57:39 Steve Lathom: Sure, and I think we're going to... We'll probably touch on that just a little bit. You're still going to want to see the lease, and there's a lot of stuff about the lease in terms of the types of review we would normally do that are sort of short-circuited under the waivers, but the lease still establishes what the rent was supposed to be, and at that point, if I'm paying back rent, I'm probably going to ask the owner and include perhaps in the written agreement or someplace else, some sort of a certification from the owner that, "Yes, this rent was in fact outstanding and is still outstanding and was due under the lease in such and such a manner.

0:58:16 Steve Lathom: So I think we're not going to be able to just automatically assume that they're behind and pay back rent no matter what. But if there's outstanding delinquent rent, we're going to need to document that like we would any other cost. But it shouldn't really be that heavy of a lift, and I would presume that any landlord who has outstanding rent from back in April and May or even part of March, is going to be more than happy to help provide a piece of paper documenting that if it means that they're going to get caught up.

0:58:50 Monte Franke: Okay, great, thanks Steve. There are a number of others that I think we will be getting to, as we get into the procedures part in addition to that one. So, I think maybe I'll move ahead right now, if you can send the ball back to me.

0:59:04 Steve Lathom: I will absolutely do that. Okay, you should have that, Monte.

0:59:16 Monte Franke: I do, thank you. Okay, what we're going to switch now to is the discussion of procedures, and as I mentioned before, this is the who, what, when, where of implementing your emergency TBRA program. Of course, procedures are PJ specific. Your procedures will be unique to your program and will depend upon the staff you've assigned and the internal administrative processes that you use and even some of the policy elements of your program, so all that will be established locally. We can't say, "Here's your procedures", but we can point out some things from the regulations and the waivers that you need to think about as you develop those, and remember, I told you you're required to have written policies and procedures as a matter of being fair and transparent. First thing we wanted to talk about a little bit more for procedures is marketing and outreach. Most of you are aware that HOME programs are subject to affirmative marketing requirements as stated in the rule, you see the section there, 92351A, this would apply to any TBRA program you create, including any emergency programs we're discussing in this webinar series.

1:00:42 Monte Franke: As you think about the outreach and affirmative marketing procedures you'll adopt for this program, we want to raise just a couple of questions that we think are a little bit unique right now, and first, given the pandemic-related closures and social distancing, what kinds of methods of outreach will most likely reach the eligible population? We know that there's been a lot... A lot of people are not at work, a lot of people are not at their usual places where they get information and people are a lot more heavily dependent upon internet access and web-based information, but when you think about that, relying, even though we want to use web-based marketing, you need to think about how do you reach those who might not have internet access and you also want to ask, does this correlate with protected classes that are least likely to apply? So I think those things raise the issue of, yes, we do web-based marketing but you can't just rely on that because not everybody has equal access to the information that way.

1:02:03 Monte Franke: You should not abandon alternative non-digital forms of outreach. You see some of them on the screen that are designed to get information out, even to those folks who do not have internet access and are least likely to apply. In addition to traditional advertising, you might want to consider things like robo-call systems, inserts and mailings or handouts from other entities to continue to communicate with their populations, like the schools, utility bills, food banks, things of that nature, and in addition, outreach through the non-traditional organizations, like religious organizations, food banks and other organizations that are providing emergency assistance to folks who are affected by the pandemic right now. Outreach needs to occur quickly, but it does not excuse you from making certain that everybody who's eligible hears about the opportunity for assistance. So you want to design a marketing outreach program that takes into account your affirmative obligation and your need to reach out beyond the traditional means, especially given the kind of pandemic environment that we're in right now.

1:03:23 Monte Franke: Keep in mind that HUD will allow you to increase your administrative budget under the general waivers and that can help fund these extra marketing and outreach efforts that you undertake. Next, I want to talk about application and intake. While Steve has just talked about the eligibility policies again and we talked about priorities earlier and last time, we've not yet addressed the mechanics of producing an application and accepting applications. So let's take a few minutes to talk about the application pipeline. First, you're going to need an application form that's appropriate for this program. As a starting point, you have existing application forms that might be suitable but need to be modified to meet the specific requirements of this program. Well, certainly your HOME applications have the household income and asset disclosures that are required for any HOME activity, but there might be some modifications that you need to help you identify, say the forms of assistance that you're going to provide, whether you're providing rent, utilities or deposits, whether the household is experiencing financial hardship or is homeless, which is the basis for granting you the waivers and suspensions that were in the April 10 memo.

1:04:49 Monte Franke: Whether the applicant has any priority status, if you as a PJ have elected to have priorities in your program and you need to know if they qualify for those priorities, and then if you choose to use the waiver of income source documentation and allow a tenant self-certification, what modifications do you need to make to your form to accommodate that, and do you want the application form to also be your tenant self-certification form that ultimately is used to justify it.

1:05:27 Monte Franke: Now HUD's working on a sample, and hopefully we'll be able to make that available to you of what might be used as a self-certification form, but these are all changes that you'll need to make to standard applications that you do. In addition to the form itself, the methods of accepting applications will need to be determined and disclosed. We're assuming you probably accept applications online, but you also probably need to accept them by mail or in person or some other way of people submitting it, because we can't require people just to apply online.

1:06:08 Monte Franke: What time period are you going to allow people to apply? And that gets into the discussion of whether you have an application window during which people can submit and all be considered as having arrived at the same time. The other thing I want to mention, while we're talking about the methods of accepting applications, is that you have the requirement to safeguard people's information and ensure that it is safely stored, and that includes whether it's received in hard copy or whether it's received online. So make certain that you have set up the appropriate safeguards for the submissions that your applicants make. As we've noted previously, online applications are preferred in the pandemic setting, but having alternative ways, particularly for those without internet access is crucial.

1:07:05 Monte Franke: You don't want procedures that encourage people to have to stand in line and have problems with social distancing under the current distancing guidelines that most of us are living under. This is why we've suggested alternative approaches, such as maybe you consider having a lottery following an application window of say a few weeks, to avoid gatherings that could put applicants at risk or staff at risk as people rush to get their applications in. At the same time, you don't want to have too long of a period before you begin processing as the need for assistance is urgent, so this will have to be balanced. Finally, we noted previously and we continue to note, that you are subject to Fair Housing, as well as Section 504, of the Rehabilitation Act of 1973, for making your programs accessible. So you have to think about not only the social distancing aspects of this, but how will you provide application accessibility and assistance to those who are protected under Section 504 of the Americans with Disabilities Act? What different formats will you make the application available in? How will you provide assistance to people that are not able to submit during your usual application submission requirements.

1:08:39 Monte Franke: Next, let's talk about application review, how do you arrange the applications in the queue for review and processing? Remember what we said last time, when given a potentially large demand exceeding supply, the order of processing is likely to determine who ends up being assisted and who might not be processed by the time the funds are fully committed and no longer available. Having a clear policy and procedures for processing applications is critical for fair access and transparency. The PJ needs to determine the procedures, whether it's the order in which they're received, which we called last time, "first qualified, first served." By lottery, by priority category, or some other method that is fair and transparent. If the PJ elects to use the lottery or some other method, you need to think about the time frame or window applications can be submitted, after which a lottery will be used to determine the order of processing.

1:09:38 Monte Franke: If you elect to add priorities, when and in what order will the applications be processed? Will all priority ones be processed before priority twos, for example? Or will you sub-allocate some of the funds to the different priorities so that some applications in lower priorities are also reviewed and have access to funding at the same time, something we tend to call parallel processing. Also, if you have a window for the initial lot of applicants, how will you handle the applications that are received after the initial window closes? For example, if you receive an application after the closing of the window that is your priority one or highest priority, will that be considered before lower priority applications received during the open window are received? We're just suggesting that you need to think through your procedures for how you're going to handle this processing because you won't have the funding to assist every household that might be eligible, and you're going to have a lot of applicants that are going to wonder why they never had a chance with the funding. Having your procedures very clearly laid out and transparent to the applicant is critical for them to understand and recognize the risk that they might not be able to receive assistance.

1:11:06 Monte Franke: And finally, I just want to mention two other things in your application, your review procedures. One is how will your waiting list be constructed and operated after the initial round? You'll still have applicants that are there and applications coming in, how do you want to handle that? And also, how will you handle incomplete applications? If it comes in and it's incomplete, do you reject it? Do you give them a chance to complete it? What are your procedures? Again, this is about having procedures that are transparent so that people understand that how you treat their application is consistent with how you're treating everybody else. Let's move to the application approval step, and this is, what we're talking about is determining that a family is eligible and compliance with the program rules and the policies that you've established. So how will you review household size and income with the source documentation waivers, staff may not have the usual documents to review, but the application nonetheless needs careful review to determine that it's complete, that the information that the applicant's provided is complete and then to calculate their income eligibility.

1:12:28 Monte Franke: Also, are you going to do the calculations in-house or use the CPD income calculator? How will staff document the calculations? All these things are part of your procedures. Financial hardship is the other requirement that you've heard us talk about for making these waivers available, and so we'll need to have some way of saying that the households that we're serving are experiencing financial hardship, how will you establish that the applicant meets this requirement. Again, the waivers permit us not to have extensive source documentation, but you'll want to know that the person is experiencing financial hardship, which the waivers talked about as loss of job or loss of income, or being homeless.

1:13:18 Monte Franke: Previously, we've noted also that there are other HOME requirements, and Steve talked about them again, so you'll want to make certain that you're able to deal with issues related to student housing qualification conflict of interest. Your procedure should document what you want to review, how you're going to review it, and how you're going to document that you've determined that a household is qualified or not qualified. Next then is, how will you handle the notification of approval of assistance? A lot of regular TBRA programs issue a document that they sometimes call a coupon, or a certificate, or a voucher, or some other documents to the applicant, which the applicant can provide to the property owner, making them aware of the terms of assistance that are available. This is especially important for applicants seeking housing as they'll need to provide evidence to the owner of the availability of assistance, but it's also going to be useful in dealing with the landlords of in-place tenants with existing leases.

1:14:26 Monte Franke: Finally, you need to have a process for notifying applicants that are denied assistance and procedures for appeal. Applicants who are denied assistance need to be notified in writing and given an opportunity to appeal the decision. All appeals can be reviewed by program staff. Many PJs have designated a higher level of review for appeals to ensure fairness, and then an objective review. You need to establish what your procedures will be for the appeal process.

1:15:00 Monte Franke: Next step then would be unit approval. With the unit we're talking about, either the current unit that an applicant is occupying or a new unit that an applicant has located, depending upon how you've designed the priorities in your program. Most PJs have a form that I'll call for this presentation, a request for unit approval, signed by the applicant and property owner, specifying the unit and the proposed rent. Typically, this form also indicates the owner's acknowledgment that their unit will meet the criteria for approval, and includes... Including unit eligibility under the rules, and acceptable rent and meeting in-unit condition requirements.

1:15:44 Monte Franke: Qualifying a unit, program staff will need to determine that the unit is eligible under the HOME rules. We talked last week about the definition of housing being permanent or transitional housing. We also talked about how some units might be disqualified under the environmental review. If your local program has an occupancy standard, and by that I mean household size relative to unit size, the unit size should be reviewed and approved. Again, if that is part of your program. The proposed rent also has to be determined to be... I'm going to put in air quotes, "acceptable", because the term reasonable has almost been appropriated by the program.

1:16:30 Monte Franke: Even if you elect the rent waivers, that include not having to determine that the rent is reasonable under the traditional program standards. We mentioned last time, and I'll emphasize again, as a PJ, you are responsible to ensure that all of your expenditures under the program are reasonable, and so even if there isn't a specific rent reasonableness test that is imposed or if it's currently waived, you still need to make certain that you find the rent to be acceptable. And we don't want you to be in situations where there's rent gouging and you're paying an unreasonable amount for those units. So you want to have some standards that you will use to determine rent acceptability, that is the phrase I'll use.

1:17:18 Monte Franke: Also, another waiver that was made available to you was the requirement to inspect the unit prior to approving it. And the unit should meet HQS in that inspection. While this has been temporarily waived, or the waiver's been made available to you, you're still obligated under the waiver to minimize the risk that tenants in housing are not put at risk by the condition of the property. So you need to have some way of noting, if you become aware of any unit that cannot meet safety standards, and have a procedure for making certain any deficiencies that are identified to you are taken care of. There may be tenant forms that you use, there may be things that you can check in with your building codes, a department or your fire marshal to see if there are any violations. Whatever those processes that you use, you want to have some assurance that you believe the tenant's moving into a safe unit, even though you are not independently verifying it by inspection, and you also want to have a process to make sure that an owner who has been asked to correct any identified deficiencies has done so. Again, we're not requiring inspections, but you still have the obligation to try to get tenants into safe units.

1:18:45 Monte Franke: And then finally, we mentioned this last time and we'll mention it again, if it's a pre-1978 unit, in other words, if it was originally placed in service prior to 1978, and a child under the age of six is going to be part of the household that's going to occupy the unit. 24 CFR Part 35, the HUD lead rule, requires under Subpart M, the TBRA rules, requires a visual assessment for lead based paint. Actually, it's for deteriorated paint, is required. That has not been waived or suspended under these requirements, it is still in effect and we're looking for more guidance for you on how that can be done, but at this point, we have to say that the requirement for the visual assessment for lead-based paint is still in place.

1:19:45 Monte Franke: Finally, we probably want to suggest that you have some sort of a unit approval checklist that goes with all these different conditions that you are approving, so staff can make notes as they go along, and note that a unit is in fact approved. We get to the assistance calculation, now that we know the unit that's in place and the proposed rent, we can actually calculate the monthly assistance payments. Steve did talk about that, and he talked a little bit about the fact that the waiver only permits payments of the assistance under the waivers through the end of December. And also he talked a little bit and also answered in the questions about the back rent interpretation that HUD has given, to say that you can pay rent that was originally due on or after March 13th, 2020. So there can be some back rent paid. The guidance will also allow paying reasonable late fees that are covered by the lease, but we urge you to keep in mind that the CARES Act, eviction moratorium on HUD assisted units, federally assisted units, also prohibited the accrual of late fees during that period. So, if you happen to be dealing with assisted units, be sure to pay attention to the CARES Act, eviction moratorium for that.

1:21:13 Monte Franke: In addition, utilities might be included in the calculation of the tenant contribution if your program continues to use the utility allowance approach. But, if you are electing instead under the waivers to directly pay utilities, then there will need to be a separate calculation or estimation of the amount of assistance. I say estimation, because you have to keep in mind that direct payment of utilities requires you to collect and disperse payments based on actual bills. So at this stage of approving a tenant, we're only working with an estimate that can be done for purposes of committing the funds. Remember that if you choose to pay utility costs directly, and you can pay them either to the tenant or to the utility company, your procedures will need to include the collection and approval of monthly utility bills. And payment, if you're dispersing the money to the tenant, you'll need evidence from them that they have paid the bills that you provided the assistance for. So, there are some additional documentation burdens that will exist if you elect to pay actual utility costs instead of the standard program utility allowance.

1:22:30 Monte Franke: If your program will also pay security or the utility deposits, they should be determined at this time as well. I just want to remind you that the HOME rule permits rent security deposits up to two months rent, although your state laws and local program guidelines may limit that further. For example, we're aware of some state tenant laws that limit security deposits to one month's rent, and some local policies that are similar to that. So, the HOME rule will go up to two months, but you may have state or local limitations that reduce that further. Rental assistance contracts. When you have approved the applicant, and you've approved the unit, and you've calculated the assistance amount, you can then execute a rental assistance agreement. We call it a rental assistance contract, the terms are somewhat both used, but I'll use the phrase rental assistance contract from here on. As we have previously noted, the contract can be with the tenant, the property owner or both. We tend to think that a three-party contract is the most efficient and helps to ensure that all parties on the transaction are on board and agreeing to the same provisions, and we've previously mentioned and you saw in the answers in the Q&A, that HUD is reviewing a sample third party agreement that we hope to make available in the near future.

1:24:07 Monte Franke: However, I want to stress that it's an option for the PJ to decide who executes the contract. It seems like at very least, the contract should be executed with the party to whom the payments are being made to govern the payout of those funds, whether that be the owner or the tenant. Just remember that if the contract is only with the owner, the rule still requires a written agreement to be executed with the tenant. So if you have the rental assistance contract with the owner, you will also have an agreement with the tenant.

1:24:43 Monte Franke: The term of the contract should cover the months of assistance, which can go to as we've talked, December 31st of this year. Under the regular HOME rules, the start date should be the same as the lease date, and that remains in places as a requirement for new occupancy, however HUD has provided a waiver for in-place tenants under an existing lease that may have different starting and end dates than the rental assistance contract. In other words, so we're not requiring the in-place lease to be negated or to be rewritten in order to accommodate the contract, but that is for in-place tenants under existing leases. Again, after December 31st, as Steve has mentioned, all requirements of the HOME rule will apply if you choose to extend the assistance into next year.

1:25:37 Monte Franke: Leases. I mentioned the lease on the previous slide, the rule requires PJs to approve the lease and to make certain it meets program requirements. However, HUD has recognized that in-place tenants and existing housing may be under an existing lease, and accordingly has provided some waivers regarding existing leases. For existing leases, the lease is not required to start or end with the rental assistance contract. I just mentioned that. In addition, the existing lease does not have to be modified for compliance with §92.253(a) and (b), which are the tenant protections. However, the VAWA provisions still must be applied and will need to be amended to the lease, either as a lease amendment or we believe, might be able to be amended to the lease as part of a three-way rental assistance contract.

1:26:36 Monte Franke: For new occupancy, the lease and contract start date must be the same, and lease approval must ensure that the §92.253(a) and (b) tenant protections are included, as well as the VAWA requirements. So the waiver pertains to in-place tenants with existing leases. A few other implementation questions, we talked about the major steps in the processing pipeline, the applicant approval, the unit approval, the assistant calculation, lease approval and contract execution, but there are a few more things you need to think about as you develop these procedures.

1:27:16 Monte Franke: First, we're doing more and more online documents, and recent guidance has encouraged the use of online documents and to even allow for electronic signatures, but it encourages it, it does not require it. And secondly, it cannot be the only thing, you cannot make it a condition of program participation to require the ability to do electronic signatures. You still need to be able to accept and process wet signatures, and so you'll need to have procedures for both electronic and hard copies of the various documents that we've been talking about today. Secondly, this is a short-term program, a short-term assistance with some requirements that are ongoing, and you'll want to orient the owner and tenant to the program. How will you interact with them during the term of the assistance? That may be affected by the current pandemic guidelines, but you also need to consider accessibility needs as you talk about your being available to the owner and the tenant.

1:28:25 Monte Franke: Third, we want to remind you that although there was the waiver for the initial inspection, under the April 10th waivers, however, I said that you are still obligated as a PJ to try to ensure the tenants are in safe units and to respond to tenant concerns and complaints about housing conditions. How will you allow the tenants to notify you of unsafe conditions, and how will you notify the owner, and what evidence of corrected conditions will you require? It would be useful to think through that before you get those... So that tenants are aware they can submit their concerns to you, and how will you make certain that those concerns are addressed? Finally, I just want to remind you that since the assistance is temporary through the end of this year, you probably want to have a procedure for notifying owners and tenants that the assistance is about to expire, so that they can be prepared for termination of assistance.

1:29:32 Monte Franke: And I guess while I'm mentioning it, you want to have procedures for termination if it's required prior to the expiration of the contract. There are a number of financial administration and IDIS issues, a lot of those were addressed in yesterday's webinar. When HUD talked about IDIS issues related to TBRA. The one that I do want to talk about here, is to just remind you that this is a fast-paced program, you'll be allocating money quickly in a short amount of time with lots of small commitments and potential commitments floating out there. How will you keep track of everything that you've put out there, and how will you make certain that you're fully utilizing but not over-utilizing the budget that you've allocated?

1:30:29 Monte Franke: You need to think about how many applications you process at one time given your available funds. How many applicants do you authorize to shop or contact or landlords to initiate that process? How do you keep track of commitments against budget, commitments being the executed contracts with the owner or tenant. And then once you reach capacity, how do you notify the applicants that they are on the wait list and they're not going to receive assistance and the assistance is committed. It seems to me that this is a challenge given the volume of activity that will occur in a very short period of time with a lot of small commitments. This is not your traditional commit several hundred thousand dollars to an individual project and then track that project. There are multiple, multiple commitments that are floating, or potential commitments, that are floating around out there and you need to manage it.

1:31:27 Monte Franke: The one last thing about administration is, I'm going to go back to the record-keeping issue. In our training, you know I say, "If it isn't documented, it didn't happen." That's just the way it is in the federal system. Documentation is always the last step. And as you may recall in the cost principles in 2 CFR 200, the last of the cost principles, is that the cost is documentable. That documentation requirement remains a key for us as PJs. While there have been a number of waivers to reduce some administrative requirements intended documentation burdens during the pandemic, the record-keeping requirements continue to be an important responsibility of the PJ and its subrecipients. I have to remind you of all the record-keeping requirements in §92.508 and the overall retention requirement to maintain records for five years after completion of the activity. So even though the activity will end by the end of this year, the record-keeping requirement carries on. I'm not going to bother to read through the list that's where, you see it, and it's also in §92.508. We're working on some sample documents and hopefully file checklists and things like that, that might help you, make sure you have the proper documentation, but remember the documentation is always the last step in the administrative process.

1:32:49 Monte Franke: Oh, I forgot the one other slide is monitoring, and just to remind you what we said earlier, that you are responsible for the program and even if you use a subrecipient or a contractor, you have an obligation to monitor what reviews and approvals? Do you want to build into the pipeline? How will you review records? How will you monitor disbursement? How will you make certain that any subrecipient or contractor that you use is doing things according to the written policies and procedures that you've adopted? Please don't forget this as an integral step.

1:33:27 Monte Franke: The one thing I will say is that although our monitoring obligation says at least annually in the rule, it wasn't contemplating short-term programs like this. In a year our program will be over. You need to bring that monitoring up front and do a more proactive early monitoring to make certain that the program is implemented according to requirements. With that I will then turn it back to Steve.

[crosstalk]

1:34:52 Steve Lathom: ... So I'll remind everybody again, use the Q&A box, in so much as possible. Not the chat box for submitting your questions, and then let me handle one Monte and then I'll throw a couple your way. Somebody asked, this is an issue we addressed a little bit last week, asking, does each household need an environmental review once the address is identified? And the answer is that your mileage may vary. In many cases, we expect the PJs will be able to make a program-wide environmental determination, particularly if your jurisdiction has no coastal barrier units, no airport clear zones and no flood plains. And so in many cases, people will be able to make that on a program-wide basis, in some cases, you will be doing this on an activity by activity basis. But when you go in and you look at what really needs to be done, it's a light lift and it should not be a particular problem.

1:35:52 Monte Franke: Right.

1:35:55 Steve Lathom: Could you go back, Monte? We had a couple of questions around the lead-based paint. The issue, of course, is that, and again, this is a limited universe, so...

1:36:09 Steve Lathom: This is a limited universe, we're only dealing with occupied units, pre 1978, that already have a child six or under in them, we're still going to have to do a visual assessment. Can you talk about what the normal documentation process for that is, and what piece of paper that you could expect to typically see in the file, because this is not a risk assessment per se. But what's the documentation you would typically see on that one?

1:36:38 Monte Franke: Okay, and the thing I want to emphasize again, is that because we're dealing with tenant based assistance, and we know the household that's going to be assisted, you will know whether or not a child under the age of six is going to be present. So I'm assuming most of the units we would assist, will not be pre 1978, and may not have children under the age of six, and so this does not become an issue. It only is an issue for pre 1978 units, where a child under the age of six is a member of the household. What the rule requires is a visual assessment, that is the term that the rule uses. What that is, I don't want to understate it, but it's sort of a glorified paint visual assessment where you're looking for deteriorated chipping, peeling, cracking, chalking paint as part of the assessment.

1:37:38 Monte Franke: The visual assessment curriculum is actually available on the EPA website, and it used to be on the HUD website as well, and it can be taken online and somebody can be quickly certified. Everybody who's an HQS Inspector for Section 8, presumably has taken that visual assessment course as they've historically been noting deteriorated paint as part of the HQS inspection. So what it would require is for somebody who's taken the visual assessment course to go through and look for deteriorated paint and to note those conditions and require them to be corrected if there are any.

1:38:23 Steve Lathom: Great, thank you, Monte. Here's another one I'll handle and then see if you get any more feedback, so the question is, this PJ is anticipating having a subrecipient administer a TBRA program for them, and they want to know, is it permissible to set an allowance for their administrative or service delivery cost, associated with administering the program. So, let me sort of take a first stab at it. The one thing, when I hear somebody talk about setting an allowance, I always want to step back, in a subrecipient relationship they can only reimburse for actual cost of administration, or in some cases, project delivery. Those costs have to be documented through, in particular, things like payroll records. And so, I can't just set a flat fee and say, "I'm going to give you $500 for every intake." Or this or that.

1:39:14 Steve Lathom: So, it has to be tied to actual costs when we're passing on administrative or project delivery costs in the HOME program. We're not just setting a fee and paying it. That said, I can set an upper limit and say actual costs but not to exceed X-dollars per, or X-percent of the award or what have you, but that's another area that sometimes I think people misunderstand between the relationship with a subrecipient or a contractor, or in other parts of the program a subrecipient and a developer, is how they are compensated and a subrecipient can only be reimbursed for actual documented applicable cost. Anything you want to add on that, Monte.

1:39:57 Monte Franke: No, I agree with you, Steve, and just to sort of add to that, if you procured a contractor and you've done it on the basis of a fee, the contractor can be paid a fee if it's been procured and that's how it is different from the subrecipient. The one other thing I'll remind people of, is we talked about last time, that project delivery costs are permissible under TBRA. But, they only run to two things, and that is the income qualification, the family and unit inspections, both of which might be waived or partially waived, under the current set of waivers. So these costs are likely to be charged to the administrative budget for the project rather than as a project delivery cost.

1:40:48 Steve Lathom: Here's another one I'd like to pitch your way, Monte, somebody's written in, "Given the short time period involved with limited funds, would it be permissible to run their emergency TBRA program based exclusively on referrals from community agencies, such as the Women's Resource Center, or a housing counselor, etcetera." Can you speak to that?

1:41:10 Monte Franke: I think that what we're raising here is a fair housing issue, and referral programs, exclusive referral programs have been detected to run afoul of fair housing because it's a limited base of people that know about the program. If you just go through agencies, the Fair Housing Guidance that was issued for the HOME program back in 2005, talked about the issue of not having exclusive agency sources of tenants and that would run to this program as well, so while we'd certainly welcome the referrals from agencies, that certainly identifies the people who are likely to be most in need and have sought assistance, that does not relieve us of the responsibility to get out there and market it generally under affirmative marketing principles.

1:42:09 Steve Lathom: Yeah, I would totally agree. Thank you for that Monte. There are some questions here that there is a constellation of issues around calculating the minimum tenant payment. Here's a question about do they still have to provide deductions for childcare expenses, et cetera. So, let me kind of try to address those as a bit of a group. It is permissible under the program waivers to go as far as simply accepting the tenant self-certification as to their level of income and paying all of their rent and all of their utilities with zero monthly contribution from the tenant. While that's the boundary of what's permissible, we don't necessarily believe that that's what most people will do. When we go to set eligibility for the program, we are always looking at gross income. In a traditional TBRA program design, we set the tenant contribution based on adjusted income, because we don't have to have a minimum tenant contribution, there's no requirement in this sort of set of waivers that we collect the information necessary to do the adjusted income calculation. And the only reason that we would need to include that, is if our program designed locally ended up using adjusted income.

1:43:37 Steve Lathom: It is therefore permissible to do that, but not required, and it's also permissible and personally I would say, at least worth considering basing your program exclusively on gross income, simply because of the administrative ease of being able to calculate that one number and work everything from that instead of having to calculate two different numbers. So in one sense, the answer to that is going to vary based on the policy decisions you make, but I think one of the key messages that we want people to take away is recognizing the trade-off between a more subtle policy, taking into account adjustments to income and what you'll hear me say in the training room, the administrative brain damage that goes with it and the additional effort, and so sometimes we're better off coming up with a more streamlined program design that allows us to move more quickly even if on the margins we give up a little a bit of that policy finesse.

1:44:45 Monte Franke: I would agree with you on that, Steve, and just add that it's up to the PJ to decide what assistance is reasonable. And so, although we have set aside those standard HUD rules, it's up to them to figure out the level of assistance that they consider to be fair and reasonable.

1:45:05 Steve Lathom: Right, exactly. I'm looking through here. Here's another one Monte, that both touches on marketing and outreach, but also goes back to the relationship between the PJ and the subrecipient. Wanting to know, is the marketing and outreach, is it something that has to be set or guided by the PJ, so is this something that the PJ has to absolutely dictate, or can they defer some of the specifics of that down to the subrecipient level, can we talk, you want to talk a little bit about the issues at play there?

1:45:43 Monte Franke: Yeah, what the rule says is that the PJ must have affirmative marketing procedures. As a practical matter, the PJ will usually pass those responsibilities initially through to developers for projects and subrecipients for programs, because they tend to specialize with the particular population that's being served and can come up with the procedures, but it is ultimately the PJ that must approve the procedures and make sure that they meet affirmative marketing requirements.

1:46:18 Steve Lathom: And I think HUD in a sort of strict way would sometimes argue that those should be outlined in the written agreement so that you can't just sort of say, "Okay, I'm going to put you under agreement and then have you go off and design the program." But in practice, there will obviously be some back and forth in that the subrecipient often is in a better position to help make something workable and practicable, but the PJ clearly needs to make sure that they've fully signed off on that, and that it's embedded appropriately in the contractual documents, so that people can be held accountable to it?

1:46:56 Monte Franke: And for ongoing programs, you want to evaluate the effectiveness of the procedures and modify them as you go along, so the best you can do is to document the initial procedures that will be followed, but it's also something that must be evaluated over time.

1:47:15 Steve Lathom: Yup. I'm trying to get back to one here. Here was another question that I thought was interesting, because of the pandemic, would verbal phone interviews be allowed with program staff asking for the information to complete the forms and then the client could just sort of swing by and in a socially distant way sign the application?

1:47:35 Steve Lathom: So I thought that was an interesting question, just in the, one simple answer is, yes, that's a practical way that a PJ could decide to address the procedures in their program and I think it balances the things, it may also be a bit overwhelming depending on the volume of applications, but this is one of those things where we can do a lot to sort of talk, often when we talk about policies and procedures, it's easier for us to talk about the policy choices and the sort of trade-offs there and the procedures inevitably, there's so many creative ways that PJs come up with to manage the work on a day-to-day basis, but it is important that you be clear on what you're going to do and that you also think through the mechanics of providing multiple doors of entry as it were, so that somebody that doesn't have internet access or doesn't have this type of access or doesn't have that type of access, has a different way to still get in the door in a way that's not structurally disadvantaged, but I think that's a very practical approach. Anything you want to add to that, Monte?

1:48:49 Monte Franke: Nope, you answered it.

1:48:53 Steve Lathom: Alright. Here's one, again, back to the lead-based paint issues, can you talk a little bit Monte, about... So we do end up having, having a unit where we have to do a visual inspection and it fails the visual inspection, what's the responsibility, who needs to do what moving forward to make that workable and to get that unit to the point that we can provide TBRA assistance to the family?

1:49:26 Monte Franke: I'm going to give the regulatory answer first, and that is what the rule says is that a visual assessment must be conducted and if defective paint is found, the paint surface must be corrected using paint stabilization techniques and the work space cleared, so technically, by the rule it triggers a clearance. As a practical matter, what usually happens is that units that are not going to be able to pass a visual assessment probably won't make it into the program because it would mean a return to, by somebody who's qualified to do a clearance to do it, if we were to follow the rules literally, that's what would be triggered.

1:50:17 Steve Lathom: But in no case, just to be clear, that we're not suggesting that the PJ is the responsible party to do the work?

1:50:26 Monte Franke: No.

1:50:27 Steve Lathom: It's in essence, the owner, the owner's responsibility to fix their unit and absent their willingness and/or ability to do so, the unit would remain ineligible for assistance?

1:50:40 Monte Franke: Correct.

1:50:47 Steve Lathom: Okay, I see we still got some questions, we're going to take those under advisement and use those to help inform as well as the chat logs and the Q&A to help inform the office hours for next week. So what we're going to do, I think, is go ahead, because we're coming right up on our 3 o'clock hour. For those of you that downloaded the slides, we've got a couple of slides here that we're actually going to skip right past that we've addressed, these are slides that were repeated from last week's session that we thought we would pull up if needed, but again, I think that the big thing that we talked about last week was initial program design and approval, that was just our start, and now we're really getting up to our elbows and the blood and guts of clear policies and procedures. Keep in mind, again, that balancing act of making sure that we're being clear and transparent about the rules of the road, but giving our staff the guidance that they need to implement the program and to do so in a consistent and fair manner. Look to the existing resources, in many cases that you already have for those of you that are running TBRA programs and modify them as needed for the waivers.

1:52:06 Steve Lathom: We will be providing some samples, hopefully, a couple of those will be next week and a couple maybe coming shortly after that, but in particular, we are working on a sample three-party agreement between the PJ or it's subrecipient as the program administrator, the landlord and the assisted tenant that's built around the flexibilities in the April 10th memo that would include, for example, provisions in that agreement that automatically modify the least to bring the bylaw provisions into it. So watch for that. We're also working on a sample emergency TBRA subrecipient agreement. In any case, when we're providing samples, these are documents that you're free to go use, they always are going to have the need to be reviewed at the local level for state law or local regulation specific things that we may not be able to have identified for the whole country as well as reviewed through competent local council to make sure that they're working for you from a legal standpoint, but we are trying to provide and HUD is trying to provide as much of a tool kit really as possible, so we're going to be fleshing out a tool kit with some additional resources.

1:53:24 Steve Lathom: Next up is going to be the office hours, again, June 24th from 1:00 to 3:00 Eastern, I believe the registration link for that just came out this morning on the HUD Exchange, and so you should be able now to sign up for that, and what we'll be doing with that is kind of culling the questions from today as well as from last week and questions that we hear from the field, that HUD is hearing from the field and try to address those, we'll have more time for Q&A, and we hope to roll out a couple of the practical on the ground step into resources at that time as well. So with that, I think, Monte, do you have any last words of wisdom for us for today?

1:54:09 Monte Franke: I think I've said enough, Steve.

1:54:11 Steve Lathom: Okay. [chuckle] Well, yeah. Well, it's always fun to be along for the ride with you on this, so thank you so much everybody, and we will go ahead and end the webinar now, and I hope to hear or hope many of you will be able to hear us next week and look forward to trying to continue to provide assistance that helps you roll this program out on a local level in a way that's compliant, but also practical and quick.

1:54:42 Monte Franke: Yeah.

1:54:44 Steve Lathom: Thank you so much.

1:54:45 Monte Franke: Bye now.