DESIGNING & IMPLEMENTING AN EMERGENCY HOME TBRA PROGRAM
PART 1 – INITIAL PROGRAM PLANNING

WEBINAR TRANSCRIPT

00:07 Steve Lathom: Thank you, Sandy, and good afternoon everybody. We're going to just take one second to switch over the controls and I will bring up today's webinar. So good afternoon. Again, welcome everybody. Today's webinar is about designing and implementing an emergency HOME TBRA program in response to the COVID-19 pandemic. It's a little bit of a tongue twister, try to say that six times really fast. We're glad to have you. This is, again, Steve Lathom from TDA Consulting. Our webinar today is sponsored by HUD's office of Affordable Housing Programs, the home of the HOME program, as most of you know, and I'm really glad to be joined today by Monte Franke, who many of you on the line have had the pleasure of meeting and hearing from and training over the years. So, he'll introduce himself in a few minutes here.

01:05 Steve Lathom: Just a quick note, there are several resources that we'll be referring to today that are already available on the HUD Exchange. Those have been linked from the webinar page. So the same page that has today's webinar information already has a copy of the slides from today's presentation available. Next, there are two new resources that have been added, the first of those is a program design crosswalk. It's something of a checklist that PJs can use to identify the range of regulatory requirements applicable to TBRA. Notably, it lists the key regulatory requirements of TBRA under the standing regulation, and then has a separate column that summarizes the various suspensions and waivers that are currently available. Part of the goal with that crosswalk is to make sure that those of you, in particular, that are approaching TBRA for the first time don't forget about all of the things that you otherwise need to account for. All the suspensions and waivers are critical to deploying our TBRA program quickly in this environment. We do want to make sure that everyone's aware of all the things you still have to do under the standing regulation to make sure that you've accounted for that in your program design and implementation.

02:12 Steve Lathom: Finally, the third piece is another new piece. It's more of a narrative piece on program design decisions for PJs, who are considering an emergency TBRA program in response to the pandemic here, instead of just kind of a checklist of the regulatory requirements that you have to make sure you've hit. We try to identify some of the options that PJs should be thinking about and choosing from when designing a program that meets both your local conditions but also of equal importance, I think, one that is achievable and practical to implement.

02:45 Steve Lathom: So with that... Of course, as a reminder, the context and background for today's webinar includes the two memoranda that were issued by HUD on April 10th and signed by acting Assistant Secretary John Gibbs, outlining various statutory suspensions and regulatory waivers, particularly that one around those waivers and suspensions intended to facilitate emergency TBRA programs, that really forms most of the basis of what we're talking about today. And HUD did do a webinar on both of those memos back on April 20th, which again is available on the exchange for those that maybe missed it that want to go back and listen to that again today. Not right now, of course.

03:31 Steve Lathom: And then finally, our next slide, of course, is about, what's the goal for today? What do we want to accomplish? Our biggest objective is to really outline a methodical approach to thinking through the design of your program. We know that most of the attention on this issue right now has been around the suspensions and the waivers, naturally so. But even with all of the flexibility that those can provide us, we want to make sure that we don't get too far ahead of ourselves in ways that might come back to bite us. So, a lot of today's session is about asking questions that you need to think through and answer for yourselves before we start amending our ConPlans, before we send a notice to HUD of our intent to use the various waivers and suspensions, and before we go in front of city council or whatever local body you have that needs to approve the implementation of a program.

04:20 Steve Lathom: So, what needs are we going to address? Undoubtedly, there will be more demand than we have funding, so how will we prioritize among competing needs? What resources do we have available and what's needed? Who's going to implement a new TBRA program? What approvals do we need before we can start? These are the types of questions that we really need to start thinking through now and quickly to be able to make sure that we can implement this. Next, towards the end, we do have some policy clarifications that we're able to talk through today, including a discussion of how some of the assistance to individuals through the CARES Act will play into income determinations and how we can work with tenants who may already be behind on their rent or utilities, since of course, the pandemic and its economic impacts, as we all know, really started to take shape two or three months ago in most parts of the country.

05:11 Steve Lathom: Finally, I do want to note, this is the first of four planned webinars on the overall topic. This week, our focus is on the initial program planning, almost the pre-planning that needs to go into an emergency program. Next Tuesday, the 16th, HUD staff are hosting a webinar about TBRA and IDIS, covering the issues raised in HOME FACTS Volume 9, number 1. Next Wednesday, the 17th, in what we've dubbed part two of our series will dive deeper into the development of detailed policies and procedures, and two weeks from today, we'll hold an office hours webinar that will allow us to clarify things as needed, address questions that have come up in the webinars where they just maybe haven't had a chance to get to during those webinars' Q&A periods and those sorts of things. So with that, I'm going to hand things over to my co-pilot today, Monte Franke. Both to let him introduce himself and to start to get us into the material, so I will flip the slide and pass the ball to you, Monte.

06:10 Monte Franke: Thanks, Steve. Hi, everybody. What I'd like to do is to first give you an overview of what we're going to cover today versus what will be in the later webinars. The thing that I want to emphasize is that we can't cover everything in one webinar. There's a lot of details to cover, so we're going to split it into a couple of webinars. This webinar will deal with, as you see on the screen, the first two arrows, the initial program design and the approval process. What we have learned is that designing and implementing a new TBRA program is a challenge under any circumstance, but to do so in the midst of a pandemic is so much more so challenging. Delivering emergency assistance as quickly as possible is certainly an imperative. And the natural tendency is to rush into implementation. But it's risky to do so without doing at least a certain amount of planning.

07:20 Monte Franke: When HUD first made available the waivers to facilitate the use of HOME for emergency TBRA, PJs across the country began to look at TBRA, and some of you jumped into the opportunity to provide the emergency assistance which was what was sorely needed. However, as we've seen some of the other stimulus and emergency response efforts come online, the rush to provide funds can result in some problems if you don't have things adequately planned. As PJs, your job is to ensure that the program is designed to comply with the rules, and that's the regular TBRA rules as they may be modified by some of the suspensions and waivers that HUD has provided. And also to be able to handle the demand for assistance that's likely to come in for such a needed resource, in a manner that's fair and transparent to all participants and stakeholders. We've decided that we wanted to encourage the PJs to approach this deliberately and to provide you some guidance in making sure upfront critical decisions were made before you launch into creating a substantial amendment in implementing the program. At the same time, we realized that some of you have already started to implement your programs, but hopefully, what we talk about today and next week will give you a little more guidance and help you tweak your programs as you roll them out.

08:56 Monte Franke: We decided to talk about the TBRA program design and planning process in three steps.

First, the initial step to create an overall program design and to get enough detail so that we can move into the second step, which is what we're calling in this slide the approval process. And then a third step of actually developing the detailed policies and procedures. You can see the three steps on the slide. At the same time, you may notice that these activities are overlapping or concurrent rather than sequential. The arrows overlap with one another because we realize that program design is an ongoing thing that occurs while you're obtaining approvals and you'll be working on policies and procedures before all the approvals of the program are secured.

09:49 Monte Franke: The goal is to be able to stand up the program and begin operations as soon as you have all approvals and that you have all policies, procedures, forms and materials in place at that time, so that you can quickly start once the approvals are done. These again are overlapping or parallel steps, not sequential steps, but nonetheless, we think it has to be taken in some order. Now, there's been a lot of talk about the waivers that HUD has provided. And we are going to talk about waivers in the context of program design because it is very clear to us that the waivers don't change everything in the TBRA rules, but they do change some critical elements. So we'll get into those in a little more detail today and also next week, when we go into the next webinar on policies and procedures. What I'm going to do now is start in this first phase that we've called initial program design. We highlight this step because some key decisions that you have to make should be made before you begin working on your substantial amendment and seeking approvals and notifying HUD of waivers that you want to utilize.

11:18 Monte Franke: HUD has provided numerous suspensions and waivers that are clearly intended to enable you as PJs to implement emergency TBRA programs in response to the pandemic. But as the PJ, you're still responsible for effective use of HOME funds and for implementing the program in compliance with HOME rules. In the first phase we believe that you need to address three critical things. First of all, what are the needs and priorities? What are the resources? And how should the program be administered? Also, in this webinar, we're going to address the second phase of planning, the necessary actions, the formal approval process, the selection of the waivers and notifying HUD of the waivers you intend to utilize and environmental clearance. And then phase three will be covered more in next week's webinars. Our webinar on June 17th and I also want to mention again that HUD will be providing an IDIS webinar as well on Tuesday the 16th, that relates to setting up TBRA programs and IDIS. So let's begin with the needs assessment part of step one.

12:43 Monte Franke: Among the statutory suspensions and regulatory waivers that HUD has provided to PJs, several of them are intended to enable you to accelerate the assessment of needs. In particular, for PJs that are covered by major disaster declarations, which effectively now is the entire country, HUD has substantiated that consolidated plan requirements or an analysis of local market conditions and needs and certification that TBRA is an essential element of the PJs plan. In effect, the suspension removes the formal requirements for an assessment of needs, although that does not relieve the PJ of the responsibility to consider needs as it designs the program. The suspensions also remove the ConPlan requirement for written tenant selection criteria because it is linked to the ConPlan findings and needs that HUD has suspended. But please bear in mind that HUD still requires you as PJs to document your selection criteria. It's simply a matter of ensuring that you have a fair and transparent process.

13:54 Monte Franke: The third change to the formal process is that HUD has provided a waiver to shorten the citizen comment period on substantial amendments from 30 days to 5 days, which we'll address further in the next step. Effectively, HUD has suspended formal declaration of assessment and selection criteria in the ConPlan. But as a practical matter, the PJ must still consider needs and documented selection criteria as it designs its emergency TBRA program.

14:31 Monte Franke: Now, we all recognize that this pandemic is a dynamic situation with rapidly evolving needs based on changing social and economic conditions. We see different numbers being posted everyday about everything from COVID-19 exposures and people being hospitalized, to numbers of jobs that have been lost, people on unemployment, all kinds of things, and those numbers change regularly and rapidly. We also need to recognize that the needs we're addressing do not flow from the typical housing program design and analysis that we have done as PJs in the past for our consolidated plans. The needs are too recent to show up in the traditional databases, and we need to recognize that there's two very different things or challenges that we face in trying to design our program. First of all, we need to look at data beyond the traditional housing needs databases and then secondly, we need to engage a larger group of experts and stakeholders to make sure we understand the evolving needs that are coming from this. The suspensions and waivers are available to such families that are experiencing loss or financial hardship as a result of the pandemic. So we need to look at which households are experiencing loss of jobs, loss of income, and households that are facing homelessness as a result of the pandemic.

16:08 Monte Franke: We can look at the national unemployment statistics weekly but as PJs, you need to look more closely at your local market. How many of the households in your jurisdiction have lost jobs, or income, or housing as a result of the pandemic? How are these numbers evolving and what financial hardships are not captured in those statistics? While you certainly need to access all the current data on employment and unemployment, you also need to understand who's been most effected. We certainly can start with the Bureau of Labor Statistics, like the local area unemployment statistics and understand unemployment, as those numbers may be issued and modified. But the traditional sources don't capture all persons with all hardships, such as those who are underemployed or otherwise vulnerable to longer term unemployment as opposed to temporary lay-offs or furloughs. There's a lot of detail behind those large numbers that we see in terms of unemployment.

17:12 Monte Franke: Even though we don't have to do the formal needs analysis in the ConPlan, you need to understand what's going on in your jurisdiction and that understanding involves not only the standard databases, but also the supplementary local data and anecdotal insights from local agencies that are working with the vulnerable populations. You'll need to reach out to local, public, and non-profit agencies that work with the unemployed and the underemployed for a full understanding of persons at risk, even those who might not be in the formal unemployment statistics. Other non-traditional sources might include food banks and even local school districts, many of which have been working to provide nutrition to children who are not in school during the pandemic and these agencies may have a good understanding of the families that have significant needs.

[pause]

{Note, audio recording cuts in and out at this point, italicized text within the next several paragraphs below is recreated from trainer notes for the webinar but may not be a verbatim transcript.} *PJs also should consider homelessness and risk of homelessness related to the pandemic. While homeless data may be available through local continuum of care providers, understanding those who may be at risk of homelessness may require more anecdotal information and service agency information regarding those who have reached out for assistance. How many have become homeless or are at imminent risk of becoming homeless? How is that changing as we move through phases of the pandemic and the re-opening?*

Also, it is important as part of the needs assessment to understand the local framework of tenant protections that may exist to prevent or slow tenants becoming homeless. Beyond the temporary CARES Act moratorium on evictions of tenants in certain covered housing, are there state or local moratoriums or other tenant protections in place to assist tenants impacted by the pandemic? Tenant advocates and legal aid organizations can provide insights into tenant vulnerability and any protections.

[crosswalk]

19:41 Monte Franke: *Of course, we cannot talk about need analysis without addressing Consultation*. This is an essential part of the needs analysis. As we have suggested, the unique social and economic nature of this emergency compels you as PJs to reach beyond the usual roster of housing partners, such as housing authorities and non-profits and social service agencies that as a PJ you typically consult under your consolidated planning process. You might have to reach out to broader potential partners in the community, as we've talked about, agencies and organizations that deal with or work with unemployment and employment, homeless and continuum care providers, food pantries and organizations that serve emergency needs, schools that are working to keep children fed, tenant advocates, legal aid organizations, and so on. We think that doing this outreach will help you to understand better who's really being affected by this. *In addition, a PJ should consider* consulting other agencies or departments that might act as clearing houses or have access *to current and relevant data, such as those agencies running other programs serving persons who may…*

[pause]

21:01 Monte Franke: …Be affected such as housing counselors, CAP agencies, United Way, continuum of care, and so on. Again, let me acknowledge that time is of the essence here. We have an emergency, we have a need for emergency assistance. We're not suggesting a protracted needs analysis process, but we believe that a broadened outreach can provide the PJ with a better understanding of the depth and breadth of the needs that are emerging as a result of the pandemic and will help you as PJs to have a better and more targeted program design.

21:44 Monte Franke: The numbers of people who are affected by the pandemic are enormous. You've seen the numbers on unemployment and how they've grown in the months of April and May. The National Low Income Housing Coalition, as you know, they regularly track those who are cost-burdened, and they have a running number of about 10 million who are already cost-burdened, but they suggested in a recent analysis that that number of cost-burdened renter households could have increased by 1.5 million or more as a result of the pandemic, and they estimate the need for rental assistance can run in the 100 billion a year per year range. Obviously, the HOME Program at 1.35 billion in 2020 is not able to address all of these needs, regardless of which portion of the needs that you pick, so if demand will outstrip available funding and likely significantly, who should be served first? We think this is a critical decision for you to think about before proceeding with finalizing your program design and going after approvals.

22:56 Monte Franke: Now, HUD provided these suspensions and waivers to allow a PJ to assist those who are experiencing financial hardship as a result of the pandemic, and HUD indicated that can include individuals and families facing homelessness and seeking immediate housing; individuals and families, who are currently housed, but facing financial hardships, and even existing TBRA tenants that need additional assistance due to reduced or lost wages. There's a wide range of circumstances and needs and obviously, not all will be able to be addressed. That leads us to this issue of do you have priorities?

23:33 Monte Franke: Now, a recent Urban Institute review of 43 state and local emergency TBRA programs that were created and repurposed to respond to COVID, indicated that many of the programs do prioritize based on their assessment of needs. While it is difficult to say that some needs are more important than others, and I don't minimize that comment in the least, a PJ may want to direct its limited assistance to those most in need and perhaps not assisted through other programs, which Steve will address in a little bit. A PJ could choose to hand out assistance to qualified applicants on a first qualified first serve basis, or by a lottery to get the funds out as fast as possible given the emergency conditions. However, there are many that believe that those who get into line first are not necessarily those with the greatest need and suggest that PJs might want to consider targeting funds or prioritizing households with the greatest needs as you define them locally, but doing so in a way that doesn't slow down the delivery of assistance.

24:43 Monte Franke: So let's talk for a moment about priorities that a PJ might consider. Priorities are established locally to divide applicants into multiple queues or lines for processing based on characteristics or type of need. For an emergency TBRA program, a PJ might consider prioritizing based on type of financial hardship, levels of income, homelessness or risk of homelessness or other characteristics where subpopulations are disproportionately affected. I want to talk about two of those, financial hardships first.

25:17 Monte Franke: A PJ might consider certain types of financial hardship to be a priority, such as those who have actually lost a job and are unemployed versus somebody who's had reduced income, or those who have had the most dramatic drop in incomes, or those who are homeless or at risk of being homeless. The needs assessment might have identified certain subgroups or subpopulations as being disproportionately affected by the pandemic and a priority for temporary assistance. A PJ, for example, might consider prioritizing families with children that are homeless or at risk of homelessness as the highest priority. Those are certainly things for you to think about and consider. The other issue is income. As you know, HOME requires all tenants assisted under HOME to be low income, which is at or below 80% of area median income, but it also requires what we call the program rule for 90% of the PJ's rental units and rental assistance annually to assist households at or below 60% of area median income. A lot of PJs will naturally default to the 60% limit, but some might choose to target even lower, given the number of people who are out of work and unemployed at the moment. Also, PJs may want to think about whether there are priority needs of households that are above 60% but below 80% and might fit into that 10% that the PJ has each year to be able to assist tenants above 60% and plan for that in your program as well.

27:10 Monte Franke: Again, to be clear, the HOME rule and the COVID-19 waivers do not require you as a PJ to establish priorities, rather we're just acknowledging that you as a PJ, you can choose to prioritize certain needs over others and do so in such a way that achieves the best use of your program funds. What HUD does require is that whatever tenant selection criteria you choose to follow, including any priorities, should be documented, that's in the waiver. Even though they've waived the ConPlan requirement, you still must document selection criteria, and you must do so in such a way that ensures fairness and transparency. Obviously, your priorities must be consistent with fair housing laws and it must be fully disclosed in your program documents as well as your tenant selection criteria.

28:16 Monte Franke: So to summarize the discussion of needs and assessments and priorities, HUD has provided waivers to you to reduce the formal requirements of assessment and tenant selection criteria in order to expedite processing, but as a PJ, you are still responsible for the effective use of HOME funds, and you have to consider needs as you design your programs to respond to this crisis. You can choose to prioritize assistance to certain types of households and based on certain financial hardship. However, given the urgency of the financial hardships imposed by the pandemic, any analysis that you do should be expeditious and the priorities, if you choose them, should not be burdensome or slow the delivery of assistance. With that, I will hand it back to Steve.

29:17 Steve Lathom: Well, thank you, Monte. So next, we're going to start talking about the resources available. And so I think that as Monte pointed out a minute ago...

[crosstalk]

[pause]

29:39 Steve Lathom: Okay. So again, I'm sorry, as Monte pointed out a minute ago, we expect that the need and demand for TBRA will vastly exceed the available funding. And Frankely, when you look at the national statistics with over 42 million people having filed for unemployment in the last few months, and I read recently that around 20% of all tenants across the country didn't pay their rent during the first week of May, the depth and breadth of the challenges that we're dealing with can look overwhelming. That said it's important to start by recognizing HOME is just one tool in the overall toolbox, and so as PJs, we need to think about how our emergency TBRA programs are going to fit into the overall ecosystem of both policy responses and financial resources that have been put in place by the public and the private sectors. This includes elements of the CARES Act, like the moratorium on evictions from rental properties with federal financing, the temporary supplemental federally paid $600-a-week boost in unemployment compensation, which was intended to help replace a larger share of most workers' incomes than traditional state unemployment systems otherwise typically do. And even the paycheck protection program that, despite its sometimes rocky rollout, was intended to help people stay on payroll and businesses keep people on payroll during many of the shutdowns.

31:00 Steve Lathom: So none of these were perfect solutions for everyone, we know that. But these have definitely been important policy responses that so far have helped most households stay in housing, which is good. We also have the supplemental funding in the form of both the CDBG and ESG CARES Act funding, the CDBG-CV and ESG-CV, both of which can be used to help with many of the same issues that a HOME TBRA program also can address. And in many places, state and local governments have stepped up with resources, albeit on an even smaller scale, there are also philanthropic resources available in some communities to address the housing needs of households that have been impacted by the pandemic. The point here is we want to be careful and deliberate in our thinking, not just about segmenting the needs that Monte talked about earlier, but in cataloging and coordinating the resources that are available. In so much as possible, we'd like to set up our programs and our systems locally in a way that triage people in need to the best fit resource for their situation.

32:06 Steve Lathom: For example, if I'm a PJ that also has the CDBG-CV funding, and I've decided to use that as short-term assistance, it may be a better fit resource for a household who's experienced a temporary job loss while their employer was closed, got behind on their rent, and needs some help catching up, but has otherwise now been called back to work and should be able to pay their rent moving forward. Because of the program rule implications Monte discussed, if that family happens to be between 60% and 80% AMI, that actually makes CDBG probably a better fit resource from an administrative and compliance standpoint. On the other hand, if a household is below 60% AMI whose employer went out of business and therefore they're not likely to be back to work soon, and is going to need assistance for a longer period of time through the end of the year, HOME TBRA is likely to be a better fit for that scenario.

33:03 Steve Lathom: So to be clear, these are just examples, and in all of your program planning, you need to balance between good policy that's tailored to your priorities and also not creating a program that's so complex that you can't get your money out the door. In an emergency situation like we're in, speeding delivery is itself a key policy goal, so we've got to keep that in mind. So when it comes to HOME, I think everyone's already heard and realizes this, but we did not receive any supplemental HOME funding under the CARES Act. So when we start to talk about deploying HOME for emergency TBRA, we're looking at HOME resources that have already been allocated to us, there's no new money. So the first step in determining what we can do with HOME is reviewing our local programs to identify if and where we have funding that can be reprogrammed.

33:57 Steve Lathom: So some of the most obvious places to look would include currently uncommitted HOME funds. Clearly, we're not talking about taking away money from projects that have already been committed and are underway, but there may be projects we had programmed for funding in the action plan that are no longer moving forward and will be postponed. There might be projects or activities that we had in our plans that just don't make sense moving forward because of the changes in the economic environment that could be canceled altogether rather than only being pushed back. And while arguably already included in these two categories, you should be looking at your CHDO set-asides to determine if there are funds there that aren't otherwise committed or likely to lead to project-specific CHDO commitments. As most of you know at any other time, we couldn't have looked at the CHDO set aside to find funding for TBRA, but with HUD allowing PJs to apply the suspension of the CHDO set-aside requirement to your 2017 through 2020 allocations, you may have funds there that can be moved out of the set aside and deployed for this purpose.

35:00 Steve Lathom: One quick thing I want to note here because we have seen some questions over the last few weeks on this point, the ability under the suspension to ask to reduce or even eliminate your CHDO set-aside is not specifically tied to using those funds for emergency TBRA. While that's one place you might go to get the funding for TBRA, under the April 10th memo, a PJ can move funds from the set-aside into other HOME eligible activities as well. The most obvious example being using that to increase your administrative budget, given the other statutory suspension allowing us to go to 25% admin potentially. So the ability to reduce the CHDO set-aside may be where we find some of the money for emergency TBRA, but those two waivers and suspensions are not tie-barred together as it were. Just a quick clarification.

35:54 Steve Lathom: But I think that's a good segue to our next slide because no matter where you find the money, funding an emergency TBRA program is going to involve an opportunity cost. We're pulling funds that, at least at the action plan level, have already been planned for some other activity, whether that's a standing program or for many of you, specific projects that you've identified in your pipeline that aren't yet at the commitment stage. It's also fair to point out this is true of any of the funding that we're moving from project funding, whether that was money in the entitlement bucket and some other sub-fund or in the CHDO set-aside.

36:31 Steve Lathom: So as we do that, it's important to acknowledge and think through the trade-offs. In some cases, that shift will be relatively easy, freeing up money by canceling a project that now is never going to happen isn't really going to hurt anybody. For example, I had a local PJ client recently lose a project because the seller of the property refused to extend the closing deadline and decided to sell the property to another developer for a non-housing purpose, and so in that situation, moving the money away from that project, that hadn't yet been committed, that's not really going to hurt anything. But unfortunately, it's also true that we're not likely to find substantial resources in that kind of painless way. So that means we need to ask ourselves and our local stakeholders which of our previous planned activities can be deferred while creating the fewest downstream problems. For example, maybe reducing how much we were going to spend on down payment assistance this year or next isn't likely to matter that much because the other changes in the market, perhaps locally means that people have just stopped applying for that assistance right now. Or maybe your homeowner rehab program is already delayed because of the need for social distancing and the inability to get contractors into the houses. And so that's the type of thing that may be a sort of lower opportunity cost to find the money.

38:01 Steve Lathom: If we're going to move funds out of the CHDO set-aside, and in some ways the whole discussion of CHDOs could be its own separate topic of conversation, but it's important to assess how that's going to affect our CHDO partners. As PJs, many of us have invested substantial time, energy, and effort as well as funding over the years to build up the capacity of our CHDO partners. And in the future, CHDOs will continue to be a vital part of the program and they are today, so we want to be thoughtful about how we're working with our CHDOs during this time. And finally, and in a similar vein, are there activities that can be supported in other ways? The same notion of the best fit resource, maybe we can free up HOME funds, not just by taking them away, as it were, from another activity, but by swapping the resources and using funds for some other revenue stream. Again, an example, just an example, it may not apply to all of you, but maybe we still have a pipeline for DPA, we still want to do it, but maybe CDBG would be a better fit for that to free up the HOME for TBRA. It just depends on the mix of resources and the mix of needs that you're dealing with locally.

39:10 Steve Lathom: So once we have a sense of the needs we're facing and the funding we have to work with, we can start to really develop the budget for our program. Alright, so we need to make decisions about which forms of assistance we plan to offer. Will we focus primarily on households who are already in housing and now need help paying their rent due to a loss of income? Will we be helping just with rent, or do we want to pay for utilities as well? As we know, one of the waivers allows us to do that. Or do you plan to focus your program, or have a meaningful part of your program be on helping folks who aren't in housing and need to get into new housing units, and therefore, may also need assistance with their security deposit or potentially a utility deposit? With the exception of utility deposits, which can only be provided when you're also helping somebody either with ongoing rental assistance or with their upfront security deposit, you could design your program locally to include just one of these or all of these different items, so you need to think that through. You might, for example, focus on paying rent and utilities, or maybe you decide that to limit the administrative burden, you're only going to pay rental assistance and not try to manage the complexity of cutting additional checks per household each month for the utilities.

40:24 Steve Lathom: So you need to think through what are the typical or average scenarios that you anticipate? Do you think a typical tenant is going to need assistance for the next three months, for example? Or are you planning on working with folks and prioritizing folks who are likely to need assistance all the way through the end of the year, which is when these waivers expire? How many people do you think are going to have back rent that needs to be addressed? Or is there going to be a substantial number who only need help catching up on their back rent and don't need meaningful assistance moving forward? Of course, it's likely that you're not focusing on just one of these sort of centers of gravity of the different types of scenarios, it may be that you've got different groupings. And so thinking through how many folks need ongoing assistance versus just need help catching up. Obviously, we might not have all of the details nailed down at this stage, but what you're going to end up doing is testing different examples of the amount of assistance, right?

41:23 Steve Lathom: What's the typical rent on a unit that we're likely to be helping people with? Do we plan to go ahead and use the waiver to allow us to pay all of their rent? Or will we still expect tenants to make some contribution towards their rent? If so, how much is that likely to be? Alright. When we put this all together, we can start making reasonable projections about how many households we're likely to serve given the level of HOME funding available to us. And in reality, we realize you're probably going to run a lot of different sets of assumptions. What if things work out this way? What does that mean for the number of households we can serve? What if we design the program that way? How many more or how many fewer people can we help? The truth of the matter is we're going to be wrong about something in terms of making the mathematical projections, but if for no other reason than we know the situation on the ground is fluid and continues to shift. If your community has a second substantial wave of infections and you have to go back into a much more stringent sort of shutdown environment, that could change the whole ball game, of course. But we also have to start somewhere and establishing the best set of baseline assumptions we can is going to give us a way to get started and a path, even if we have to vary from it or change our plans later, we at least have that starting point and that direction that we're trying to go.

42:44 Steve Lathom: Finally, much of this we've been discussing for the last couple of minutes has been talking about the project funding, right? The HOME funds being used directly to assist the income-eligible household, but don't forget about the administrative funding. With the suspension of the 10% cap on admin, we may have additional room to maneuver though as we already talked about we're going to have to find that money somewhere, and it comes with an opportunity cost. Will that 25% admin be sufficient, or do you also need to plan to charge project-related soft costs? In the case of TBRA that would only be limited to the time and therefore the cost invested in the income determination and the unit inspections for assisted households. So given the waivers for self-certifications of income and the ability to limit or to bypass HQS inspections, those costs are not likely to be substantial and might not be worth the effort of trying to track those all the way down to the project level, but if you are going to do that, then you need to factor that in when you're thinking around the budget for how much needs to be set aside on a per household basis and how many households can we assist with that money?

43:52 Steve: So what I'm going to do is flip the slide and hand the ball back to Monte, and let him talk about some of our administrative options.

[crosstalk]

0:01:06 Monte: Okay. Steve ended on the notion of the admin budget and admin costs, and we do need to talk a little bit more about that. But to do that we need to talk about how you're going to administer the program, and so I want to talk about the options that you have in administration. Given the urgency of the problem and the short-term availability of the waivers, the administrator of the program must be able to staff and implement the program quickly. Generally, agencies that have run or continue to run TBRA programs are more likely to have skilled and available staff to quickly mobilize the new program. The recent Urban Institute review of state and local assistance programs under their Housing Matters blog identified that programs that were created or repurposed for the pandemic that used... The phrase that UI used was "adaptive capacity" as the descriptor for programs that were able to successfully leverage existing programs and capacity to achieve quick start-up and delivery of assistance. The availability of experienced staffing is key to quick start-up since hiring and training new or inexperienced staff will delay implementation. And furthermore, since this is a temporary program, staffing needs are not likely to be permanent, so the availability of existing staff that can be redeployed avoids problems of what you do with staff as things wind down.

0:02:50 Monte: So I start with the question that I ask you, Does your jurisdiction have adaptive capacity to run this program? And then secondly, is it in-house or is it external? A PJ must decide whether it has the capacity and expertise to quickly stand up and administer the program, or whether it might be more expedient to select another entity such as a subrecipient, or if you happen to be a state PJ, a state recipient, or a contractor to administer the TBRA program or portions of the program on your behalf. The PJ needs to evaluate both the available internal and the external adaptive capacity and make the expedient decision regarding the best administration option and the appropriate administrative budget associated with that.

0:03:41 Monte: With respect to internal administrative capacity and staff to administer the program, and I'm talking about either within the HOME administrative agency or department, or more broadly within other agencies or departments of the PJ, the questions to ask are, "Do you have, as the HOME agency or as the participating jurisdiction, prior experience in administering TBRA or comparable rental assistance programs? Do PJ staff have the skills and experience needed for TBRA, such as being able to do income eligibility", which I assume most of you have in the HOME program, "Doing landlord-tenant orientations, landlord-tenant relations, lease and contract processing, and things like that?"

0:04:31 Monte: And then, "Can PJ staff be redeployed in the near term, likely to be a substantial or full-time commitment in the next couple of months, to starting up and running the program? And what impact will that have on other staff obligations?" I'm going back to Steve's phrase of opportunity costs. The opportunity costs of diverting your current staff to running this program when there are other HOME activities that need to be administered. While some PJs directly administer TBRA programs or have the capacity to administer TBRA, it's also common for PJs without direct TBRA administrative experience and capacity to utilize housing authorities or non-profits that have experience with tenant-based rental assistance. So you could retain a housing authority, a non-profit, or some other local entity to administer the TBRA program on your behalf as a subrecipient or a contractor. And so the question you want to ask is, "Are there local entities that have experience with rental assistance and working with landlords, and do they have the current capacity and willingness to administer TBRA for us over the next several months?" And alternatively, "Are there experienced contractors that can provide the skilled staff to administer certain aspects of the program?"

0:06:11 Monte: In addition to existing ongoing rental assistance programs that are around the country, both in terms of Section 8 and in terms of various voucher programs that are available for emergency assistance, the National Low Income Housing Coalition has an inventory of 69 state and local programs that are already providing rent relief during the pandemic and recession. And these are just a sampling of the agencies that are already out there doing what you're considering doing with this emergency TBRA program. It's important to recognize that while subrecipients and contractors may be used to administer a TBRA program, the roles are different, as are the requirements for selection or designation. Now, we don't have time today to detour into a discussion of all the differences between a subrecipient and contractor in this webinar. Now, let me just say, the subrecipient is a non-profit or public agency that a PJ designates to administer a program or activity on behalf of the PJ. And the subrecipient, by federal rules, by 2 CFR 200, is subject to the same federal administrative responsibilities as the PJ.

0:07:33 Monte: On the other hand, a contractor is an entity, potentially a for-profit, in addition to what I previously mentioned as public or non-profit entities, that performs a specific service for the PJ in assisting it to implement an activity or a program. Its authority is generally narrower than a subrecipient's in program and administration. They're usually hired for very specific services. Whether a PJ designates a subrecipient or a contractor depends in part upon the role it needs the administrative entity to perform. A PJ looking to outsource the entire program is likely to engage a subrecipient and allow it to run the program, but with the appropriate PJ oversight and monitoring, as we've already mentioned. On the other hand, if the PJ's just looking for assistance with, say, application intake and processing, but wants to retain other administrative functions in-house, it might just engage a contractor to perform that specific service for the period of time that it's needed under the PJ's direction.

0:08:39 Monte: So the roles could be very different between a subrecipient and a contractor. But in addition to the role, the other critical distinction at this stage of the game is the required method for designating an administrator in those two categories. Under federal rules, contractors must be selected following PJ and federal procurement requirements, while subrecipient selection is not subject to federal procurement rules. In an emergency program where fast implementation is essential, designation of a subrecipient might be accomplished more quickly under the federal requirements than the hiring of a contractor. However, you need to also pay attention to any state and local procurement requirements that might alter that assumption.

0:09:28 Monte: Finally, while a PJ could choose to designate a subrecipient or contractor to administer the program on its behalf, I have to remind you that, as the PJ, you are still responsible for your program, and you must at least have the capacity to oversee the entity that you retain, and conduct adequate monitoring of program implementation as they do the work for you. So, you haven't sent all of your responsibility out the door. That brings me back around to the administrative budget that Steve was referring to just a few minutes ago. Obviously, it includes the costs of direct implementation by the PJ, but it could also include the costs of the subrecipient or a contractor. And in addition, as I've just mentioned, even if you have chosen to designate a subrecipient or a contractor, do not overlook your responsibilities for oversight and monitoring of that activity.

0:10:38 Monte: Now, HOME funds can be used to pay for reasonable planning and administrative expenses associated with the TBRA program. And as Steve just mentioned, one of the waivers that HUD... Or, I should say a suspension that HUD provided, was of the 10% admin cap, which is statutory permitting PJs to use up to 25% of their fiscal year 2019 and 2020 HOME allocations for administrative costs that might be incurred as a result of the pandemic, and that can include the costs of planning and administrating an emergency TBRA program. That should allow you to stand up a new program even though your current 10% admin cap is fully utilized. But of course, as Steve mentioned, there's a trade-off because those funds are moved from other project activities into the admin pot if you choose to use that particular suspension.

0:11:41 Monte: Most of you know that the HOME rule also permits PJs to charge some staff time and costs as what we call project delivery costs. Steve just addressed that and reminded you that, for TBRA, the two things that the rule acknowledges in §92.209 and in §92.206 that can be used as project delivery costs under TBRA are income qualifications of tenants and unit inspections. Both of those tasks have been potentially altered by waivers that HUD has provided, so there may be minimal staff time allocated to those activities. If the PJ will engage a subrecipient or a contractor, in addition to working out a budget with them, you'll need to enter into a subrecipient written agreement or a contract with a contractor following the requirements of §92.504. Most of you know subrecipient agreements are outline in §92.504(c)(2) and contractor agreements are in §92.504(c)(4). Just as their roles differ, as I mentioned, and the method you select them, so will the agreements that you have with subrecipient contractors based on those requirements.

0:13:12 Monte: Now, if you have an existing template for HOME subrecipients or contractor agreements, obviously that'll help you to expedite the drafting of an agreement. But keep in mind that the agreement really needs to reflect the HOME requirements as they may have been modified by the temporary suspensions and waivers, and that could lead to a very different sort of agreement with different business terms or requirements than you have in your standard template. So please pay attention to the template and the changes that need to be made if you are using one from prior activities. Now, we hope to provide more guidance on subrecipient agreements in the next webinar as we get into the more detailed policies and procedures, but I wanted to mention that now to keep that in mind as you make your selection of how you will administer. With that, I'll hand it back to Steve.

[crosstalk]

0:14:34 Steve: Alrighty. So go ahead and keep those questions coming in. Please try to make sure that you're using the Q&A area and not the chat area. I see that we've got several of those, and we are going to be taking some time later to address the questions coming in, in so much as we can. So we've evaluated the data about needs; we've made difficult but important decisions about how we are going to prioritize potentially different segments of the need, taking into account the range of other resources that are available. We've figured out how much HOME funding we can assemble, we've developed some initial budgets that determine how far that money is likely to go, we've figured out who should implement our program on a day-to-day basis in the midst of a global pandemic and the resulting economic crisis. What's next? As if that wasn't enough.

0:15:30 Steve: So we've got to start getting the needed approvals. First, of course, we have to determine what that looks like within each PJ. For some of you, that means going to city council. For others, it's going to be the mayor's office, maybe the County Board of Commissioners. For state PJs out there, maybe it's the executive director of your HFA, if that authority has been delegated there. Maybe it's the governor herself. As much as we might like, HUD can't wave a magic wand and get you out of these local processes, so you need to start determining what that approval path is based on the specific state and local requirements that you have in place as may be modified locally by the pandemic situation. But what sort of hearings or notices or how many readings at council are going to be needed, all of those sorts of things.

0:16:17 Steve: Of course, we still have to work through our con plan requirements. While it's possible that in some cases there will be a PJ here or there where this is a minor change to your annual action plan, in practice, we expect that for the vast majority of you, you're going to need to do a substantial amendment to one or more action plan years. While HUD has offered a waiver to shorten the public notice period to five days down from 30, we still have to do it, we still need to seek input from appropriate stakeholders in a transparent and open-access way. And some of those efforts will serve double duty, not just getting us the input that we need to legitimately help shape our response and our program, but also remember that good outreach can smooth the path needed for local approvals. The last thing I think any of us want to deal with is going to city council, either in person or on a Zoom meeting, and having that formal approval process go sideways because a key partner, or advocate, or community gadfly shows up with objections or exceptions that we could have anticipated and tried to head off ahead of time.

0:17:25 Steve: Ultimately, our point here isn't to try to tell you what your specific local approval path is, we know that you know those better than we're ever going to from afar, but to remind you that we need to take them seriously and take the steps now to make sure that they're as smooth and therefore as quick as possible, while at the same time still providing the opportunity for substantive public input. Now we come to our friends at HUD. First, remember the suspensions and waivers outlined in the two memos from April 10th aren't automatically applied to every PJ, you have to let HUD know which of those you intend to take advantage of. And the reason for that, in particular, is that for some of them, particularly increasing your admin to 25% or reducing the CHDO set-aside below 15%, HUD is going to have to go in and manually override on the back end of the IDIS system some of the programming to allow that to happen, because 10% admin and 15% CHDO set-aside are baked into the core programming for IDIS.

0:18:29 Steve: So while it's not really a matter of HUD approving the flexibilities that you can use, you simply have to notify them, you do have to let them know which of those suspensions and waivers you intend to use. This is important, again, not just for those IDIS reasons, but later, HUD needs to know that so that when they're monitoring we're all on the same page about the standards to which your program will be monitored and those sorts of things. To provide that notice to HUD, which we recognize that some of you on the call have already done, in which case, depending on what you learn today and next week, you may need to go back and re-assess some of that, PJs need to notify their assigned HUD field office. And also, when you send that to the field office, you've been asked to email that request as well to the Office of Affordable Housing Programs at headquarters using the email address HomeCovid19@HUD.gov.

0:19:25 Steve: And finally, you're going to need to prepare your formal ConPlan and/or Action Plan amendments, which we've already noted are likely to be substantial under most of your citizen participation plans. Make sure you're really clear on which program years are being affected. And again, you do need to publish those for comment for at least five days but not the full 30 that we would typically have to do.

0:19:48 Steve: Finally, one other thing to think about early, and fortunately for most of you this will be a relatively easy one, though it's still something that we have to do and document in our program files, is environmental review. As most of you know, every HOME activity, whether it's TBRA simply to help with a security deposit, all the way up to building a 200-unit mixed-use, multi-family complex on a brownfield site, is subject to environmental review. Each PJ is responsible for evaluating its planned activities, determining what level of environmental review is required, and then taking the steps to complete the required review, whether that's as simple as recording a determination that an activity is exempt or having to do a full-blown environmental impact statement.

0:20:32 Steve: TBRA is classified as a categorically excluded activity that is not subject to the authorities listed in section 58.5, the abbreviation being "CENST", for those of you that deal with this all the time. And for those of you that work with environmental regularly, you know this isn't really that big of a deal. It's one step away from actually being exempt altogether from environmental review. It means there are really only three issues, those are found in Section 58.6, that's 24 CFR 58.6, that need to be considered. These are coastal barrier zones, airport clear zones, and flood plains.

0:21:11 Steve: And of these, the only one that's a hard stop is coastal barrier zones. We cannot provide TBRA to a tenant living in a coastal barrier zone area. Never say never, but I think that's a restriction that will have very little, if no, practical impact on our programs. Typically, there aren't a lot of units that are available in the first place. In terms of airport clear zones and flood plains, it is permissible to provide TBRA to tenants in such areas. For those folks whose units are in flood plains, obviously, we would very clearly suggest obtaining flood insurance, both to the degree it's available for tenants, just like renter's insurance, and also for owners. It's also permissible for a PJ to design its program to say that you're simply not going to assist units in any of those areas, though I suspect that given the short-term and emergency nature of what we're talking about it would be uncommon for most of you to just categorically exclude flood plains and airport clear zones.

0:22:11 Steve: So for many of us, if we can determine that there are no §58.6 issues in play; we're in a community without an airport clear zone, there's no flood plains, and we're not in a coastal county... Which is a reminder to those of you and those of us, since I'm here in Michigan, that are in the Great Lakes, it doesn't have to mean salt water. So it's not simply you're on the ocean. Then we'll be able to make an overall program determination, no publication will be required, and we won't have to ask HUD for a release of funds. If not, if you've got coastal barrier units in your jurisdiction, you may need to do project-by-project determinations, but again, this should not be a huge barrier for most of us. On the whole, the bottom line is environmental review is a step we still have to address, it's one we should address early and proactively, and the best news here for most of us is that in terms of a TBRA program, environmental review is unlikely to be a heavy lift. So with that, I'm going to turn things back over to Monte for a couple of more slides on some policy clarifications that have come up in the past couple of weeks that we're able to share today, and then we will move into some Q&A.

[crosstalk]

0:23:32 Monte: Okay. These last three things that we're going to talk about are policy questions. They're sort of detail, in-the-weeds, kinds of questions. And normally we would save them for next week when we get into the details of policies and procedures, but with HUD's permission, and in advance of them issuing a written guidance on these, we're going to give you some information on a couple of key questions that some of you have been asking that hopefully may influence a little bit how you design your program going forward. So we'll give you a little heads up. The first one I want to talk about is the CARES Assistance Act, and two types of assistance that are provided under the CARES Act that, in fact, we don't have to count in doing income determinations. And the first one is the economic impact payments, what we commonly refer to as the up to $1200 per person stimulus payments. Those are one-time benefits that are not required to be included in the projection of income to determine eligibility for HOME TBRA. I think we had made that clear previously, and that was mentioned in the April 20th webinar.

0:25:08 Monte: But the second one I do need to mention. For those of you who sat in on April 20th webinar, this is a bit of an update on HUD policy on this. HUD's been working to make sure that they're consistent across programs in interpreting these things. And so what I'm able to say today is that while most unemployment assistance is included in income for purposes of determining income eligibility, there's one type of assistance in the CARES Act that we are not requiring you to include in the income determination. It's called Federal Pandemic Unemployment Compensation, or FPUC, which is what most of you refer to as the $600 booster, the additional $600 per week through the end of July for workers impacted by the pandemic. The federal government pays it through the states and it's added to unemployment insurance. But HUD has made a determination consistent across its programs that this does not have to be included in the income determination. Because it is temporary assistance and it expires at the end of July, they're not going to require it to be included. And so please note that as an update if you happen to have heard otherwise in the previous webinar.

0:26:43 Monte: However, I want to stress that the regular base state unemployment insurance and the CARES

Act extensions from 26 weeks to 39 weeks, which some of you know by the acronyms of PUA and PEUC, but those extensions from the 26 to 39 weeks, those are extensions of regular unemployment insurance and they must be counted. They're included in the income determination. So just to emphasize this point once more, only the $600 temporary boost to unemployment insurance is excluded from income, all other unemployment insurance continues to be included. I also want to note that hazard pay is required to be included in the standard definition of income. So some people are receiving hazard pay in the near term due to the pandemic conditions, that must be included.

0:27:50 Monte: The third question I want to address right now is the question of back rent and utilities. Most of you know that the general rule in the HOME program is that we only pay for eligible project costs that are incurred after project commitment. And in the case of TBRA commitments, a TBRA tenant-owner contract that commits the assistance. And while the statutory suspensions and regulatory waivers became effective on April 10th, 2020 and run through December 31, 2020, HUD recognizes that many families were affected by the pandemic prior to the issuance of those memos, and the time it may take you to get into contract with the landlord and tenant, and they may be behind on rent and utilities before rental assistance contracts are executed.

0:28:48 Monte: So based on HUD's understanding of its authority under the federal statutes, HUD is able to permit PJs to use HOME TBRA to pay rent and utilities that were originally due on or after March 13th, 2020, which was the effective date of the statewide emergency declarations issued under Title V of the Stafford Act. PJs may also pay customary and reasonable late fees that are associated with past due rent payments as long as such late fees are clearly defined in the tenant's lease. Now, as part of its policies, if you're going to pay back rent and utilities, you've got to establish the time frame that you will consider for TBRA assistance and the conditions under which you will pay those overdue bills. This means that you need to have a way of collecting that information and being sure that it was originally due on or after March 13th, 2020. Finally, I want to state that PJs that want to seek to provide rental assistance to otherwise eligible tenants prior to the March 13th date will have to contact HUD and request a waiver providing just cause. So at this point, the practical guidance is that you can go back to any rent or utility bill that was originally due on or after March 13th and include that in the assistance that you deliver.

0:30:33 Monte: Finally, we've had some questions on what utility costs can be paid. As you know, the waiver allows you to pay up to all utility costs, 100% of utility costs, of households. What may have been previously, or under a regular TBRA program utility allowance, this allows you to actually pay the direct cost. We want to stress that HUD, with this waiver, is allowing the payment of the water/sewer bill, the electric bill, and the gas bill. Under utility allowances, there might be other things such as tenant-paid trash removal and things like that that's not included in this waiver. And internet, broadband, or phone are not included in this waiver. You are permitted to pay water, electric, and gas.

0:31:33 Monte: These payments can be made either directly to the tenant or directly to the utility company. If the tenant receives payment, the PJ must have procedures to ensure that HOME funds are used to pay the past due utility costs, and the tenant file must include evidence of payment for each utility paid. While this waiver allows the PJ to provide additional assistance with utility expenses beyond the standard utility allowance approach, you really need to consider carefully the administrative burden that you would be taking on by collecting and paying monthly bills during the emergency period, and whether that's worth it in relation to the benefit that it delivers to the tenant. But that hopefully clarifies for you what you can pay if you choose to directly pay utility costs. With those three updates on policy questions, Steve, I'm going to turn it back to you to see what we have in the question log.

[crosstalk]

0:32:53 Steve: No worries, no worries. So again, please use the Q&A box. We've tried to clear some of the questions that have been answered, or that can't be answered today. So I see one right now about CDBG, we're going to actually defer on that since this is a HOME webinar and not one that we can address today. So on to the first... I'm going to go back up in the queue, Monte, and start... So we had a question that said, "Are individual Part 5 income certifications still required for all program participants?" So let me unpack that. First, remember as a PJ, you can always choose between the Part 5 definition of income and the 1040 definition of income for each of your different HOME programs. We do believe that almost universally people are using the Part 5 definition in their TBRA programs and in their rental programs, because so many of our other programs use that. It's very rare to find somebody using the 1040 definition.

0:34:03 Steve: Once we've determined the definition, we still, regardless of definition, have a standard process for doing the income determination. Sometimes we talk about that as the verification or the certification, we sometimes will mix those terms up. The general starting point for the rule, as we all know, is that at intake, when we first assist someone with TBRA, a tenant moving into a HOME rental, somebody getting down payment assistance, the normal standard expectation is that we do that income determination based on at least two months of source documents, things like pay stubs, bank statements, etcetera. The waiver that HUD has allowed PJs to elect to use is related only to new tenants in rental housing, which is not our topic for today, or to folks receiving assistance under one of these emergency TBRA programs.

0:34:58 Steve: In those two instances, HUD is allowing a PJ to elect to waive the requirement for two months of source documentation and instead rely on a self-certification from the tenant. As you'll hear me say in a few minutes, HUD is working on it and hopefully in the next couple of weeks, we'll be able to post a sample form for people to use for that. But you also obviously have the opportunity to make one of those forms up for yourself. So the distinction here is that somebody who's receiving emergency TBRA assistance as a result of financial hardship will be allowed to self-certify their income if you so choose that waiver. Everybody else... If we're going to still be doing a homeowner rehab program, if we're still doing a down payment assistance program, if we for some reason didn't elect to use that waiver, then you're back to the sort of standard expectation of two months of source documentation.

0:36:02 Steve: Another question... Oh, go ahead, Monte.

0:36:05 Monte: Yeah, I was going to take the next one I'm looking at. It asked about the program budget and how long assistance can help and also HQS inspections. And both of these can be brought together really. The waivers run from April 10th until December 31st, 2020. So the assistance that we're talking about as emergency HOME TBRA assistance can only be delivered in this calendar year. If you're going to continue assistance beyond December 31st, you would be, at this point, under the regular TBRA rules. You would no longer be under the waivers, and you'd have to adopt the full TBRA program requirements, and you would have to meet and execute new agreements with the parties that you're assisting based on the funds that you allocate next year to that.

0:37:10 Monte: Now, in terms of the HQS inspection waiver, they've waived through the end of December the requirement to do the in-person inspections. Should you elect to continue assistance beyond December 31st, under the regular TBRA rules, you will have to conduct unit inspections at the start of the program and annually thereafter just like the regular TBRA rules require.

0:37:39 Steve: Thank you, Monte. A couple of other questions have come in around this issue of selecting a subrecipient and whether or not you have to do an RFP. And this is a really common question that comes up, and I think a lot of times when we say a subrecipient doesn't have to be procured, people often are like, "Well, that's not my understanding. Where does it say that?" And the regulation doesn't explicitly say, "A subrecipient doesn't have to be procured." What it says is, "A contractor does have to be procured."

0:38:15 Steve: And so the issue to understand here is that from a federal standpoint, from a HOME standpoint, as a PJ, if I'm going to choose a subrecipient I can pretty much choose a subrecipient in any manner I see fit. I can go pick the public housing authority because we have a good relationship with them and they're in the ability to do that. I can pick a non-profit, etcetera. This is not a procurement because we're not hiring them to provide goods and services, we're bringing them in as a partner to help step into our shoes and administer the program on our behalf still subject to our oversight. So that's not a procurement subject to the requirements of 2 CFR 200 in the same way that if I go hire a builder or hire an architect to do inspections on my behalf, for example. And so it's not that you're going to see in 2 CFR 200 something that explicitly says, "You don't have to procure a subrecipient", it just doesn't exist in that way. But I think often people, again, confuse this issue.

0:39:24 Steve: So if I'm going to hire somebody who's charging me fees, or I'm evaluating their proposal on a price basis among other things, then there probably will be a contractor, I do have to go through some sort of a procurement method depending on the size and the level of that procurement. A subrecipient who's only going to be able to be reimbursed for actual cost from my administrative budget, perhaps from project-related soft costs, subject to all the normal requirements, and in many ways, the same requirements that I as a PJ am responsible for in terms of documenting what was an eligible and appropriate use of admin, that is not, per se, a procurement. Sometimes on a local level you may have policies or state requirements to do RFPs for those sorts of things. HUD can't get you out of those requirements, but from a federal standpoint it's just an apples and oranges thing. Do you want to add anything to that, Monte?

0:40:22 Monte: No, I think you've stated it well, Steve.

0:40:26 Steve: Any others that you see, Monte, that you want to talk about here?

[pause]

0:40:42 Monte: One of the questions was asking about running into the administrative model again. I'm interpreting it to mean that this is a PJ that has another agency or department within the PJ that will administer the program on their behalf, and they're asking do they need to have an agreement with them. When you're administering within the PJ, the PJ as a whole is taking responsibility for the program so there's not a specific guidance or requirement, but the standard practice and the recommended practice is to have at least an MOU or some other kind of internal working agreement between the two agencies or the two departments or the two units that are administering. Because you as the HOME PJ administrator in your unit or department or agency needs to oversee and review what that other entity within the PJ is doing on your behalf. So it's not technically a subrecipient relationship, or a state recipient relationship if you're a state, but it is useful to have some sort of an MOU or other internal agreement as a working agreement between the two agencies or units.

0:42:10 Steve: Yeah, thank you. That's a good point. So we had a question about somebody looking to use TBRA to get people rapidly into housing, so presumably these are folks that have been displaced, and wanted to know if this could be used for a rented room type situation. I think we maybe also saw a question about a hotel or something like that. TBRA is still about assisting people in housing, so nothing about the definition of housing for purposes of the HOME Program has changed. So we're not helping people rent a room, or rent a hotel, or get into a dormitory or a halfway house, or something like that. It still has to qualify as housing.

0:42:55 Steve: I did see somebody ask about transitional housing. HOME does allow for transitional housing, but even there we want to be really careful. We're making sure that somebody has a lease, that they have... Sometimes I hear people say transitional housing and it's really what we would say is more of a facility. So you have to be careful and make sure they have a lease and that it's an appropriate type of housing. So this is not necessarily something we can do, like we see with some of the ESG type programs and some of the other emergency programs that are out there where we can take somebody and get them off the street even if that means we're putting them in a hotel for a couple weeks or something like that.

0:43:33 Monte: Yeah, and we will be covering that next week, Steve, getting into eligible housing and what can and can't be provided by TBRA. I saw another question in here about, "Can TBRA be restricted only to households residing in our jurisdiction?" The §92.209 part of the rule that covers TBRA has a clause in there that says the PJ can elect whether or not to allow their rental assistance to be portable. In other words, be taken to another jurisdiction. So the answer is you can elect to restrict it to housing within your jurisdiction, or you can allow it to be taken elsewhere. That is a local design option or choice that you make.

0:44:29 Steve: Perfect. Let's see what else. So I see a question here saying, "Well, it's permitted to pay back rent to March 13th, but the environmental review can't be completed until the applicant is known." Yeah, there's definitely... This ability to go back in time is some additional flexibility that HUD's providing, as we mentioned. Generally speaking, you can't pay for costs that were incurred prior to the agreement. That said, the environmental review really ultimately the primary issue here is whether or not it's in a coastal barrier zone. And so you can still do that but until you've cleared the unit from the environmental standpoint, you should not be actually dispersing the money. But what's special here is that we're actually able to disperse money for a cost, in essence the rent that was incurred back to March 13th prior to when we committed the money. But that should not be a fundamental disconnect. It should still be fine.

0:45:41 Monte: Yeah. I see a question here, Steve, about an unemployed person that because of the $600 booster actually has higher income during the pandemic, and can you deny their application. This goes back to what I was talking about under the priority slide. It is up to you to decide who you're going to assist, but you have to set your standards for it. What the waivers say is that we're talking about assisting households that have been experiencing financial hardship, which HUD has defined or called out as being job loss or loss of income. Somebody whose income goes up because of additional assistance technically might not have experienced either job loss or loss of income. But the other thing to keep in mind is that booster payment only runs through July 31st. So they might be seeing a temporary boost, but not seeing a longer term boost, and may still have a severe need as a result of the pandemic after July 31st. It's not something that HUD is specifying how you handle or make a decision about this, but they are asking you to develop your policy and to be very clear about your tenant selection criteria and to have those documented so that you are treating everybody fairly and transparently. Steve, would you add anything to that?

0:47:26 Steve: Yeah, I agree. I think there's two... I would reiterate one point you made, and maybe add one more. And that is, again, remember that additional $600 under current law is going to stop at the end of July. Which, when it first started, it sounded like a long time from now, but we're already at June 10th. And if you don't have your program up and running, then chances are by the time we're taking applications and processing those, in reality, most folks may only have a couple of additional weeks of that $600 assistance remaining. Again, reminder, HUD has said that it is not included in the forward-looking projection of whether or not they're income eligible. And then finally, I think this whole issue raises that trade-off between having a policy that sort of is, for lack of a better term, intricate and kind of tries to really finely tune, versus having a policy that can be practically implemented in an expeditious fashion. And as much as these are complicated issues, sometimes keeping it simpler and keeping it sort of good enough in order to allow it to speed forward is a better outcome. And so just acknowledging that trade-off, I think, is useful.

0:48:56 Monte: Steve, a couple more questions have come in on the HQS inspection. And to go back to that one, we are talking about waivers that run through December 31st, and that includes the HQS inspection waiver. But the waiver also talks about inspections occurring within 120 days after. What HUD was anticipating, I think, with that comment was, if you choose to continue assistance, which would mean you were no longer under the waiver after December 31st. If you choose to continue assistance then you must conduct the unit inspection. And they gave you a 120-day window to complete that inspection, understanding that there would at that point be a backlog of inspections. But if you're only delivering, say, six months' worth of assistance with the last payment being in December and no further assistance is provided after December 31st, you no longer have a legal relationship with the landlord and the ability to enforce HQS. So we're not talking about inspections of units where assistance has been terminated by the end of December being conducted after December 31st.

0:50:17 Steve: Yeah, correct, correct. And I think HUD's working on a written clarification, whether it's in an FAQ or something else. But if you just step back and think about it, obviously, if I'm no longer paying the rent as of the end of December, then what would be the point of doing an inspection in mid-February? Even if I go in and find that the unit is sub-standard, in practice there's nothing I can do about it at that point.

0:50:51 Monte: And I think, Steve, that also we can connect that to the question of, "Can assistance be less than 12 months?" Yes, the presumption is under the waiver you can't deliver assistance for 12 months, you can only deliver assistance using the waivers until the end of December. If you want to go beyond the end of December, you are entering into an agreement that's subject to the full TBRA rules. So this assistance will be short-term emergency assistance, not the usual minimum one-year term that we would specify in TBRA.

0:51:28 Steve: Right. Right. Yeah, this is by design. And maybe it wasn't said as explicitly in the memo that, "You can have shorter than 12 months," but given that it ends on 12/31, it's implicitly less than a 12-month program. And then I just saw a question that just came in, just to reiterate the point that you made on the prior slide. So the two things that do not have to be counted in determining whether or not a household is income eligible are those "stimulus payments", the $1200 per person, plus I think there was a little bit more per dependent child to a household, that came through the IRS. And then also to the degree that that household is receiving the supplemental Federal Pandemic Unemployment Compensation, is the technical term, the extra $600 a week above and beyond what their otherwise normal, as it were, state unemployment benefits would be. Those do not have to be included. The extra $1,200 was just a one-time payment. It's not something that continues into the future. And the $600, again, HUD has standardized across the department will not be considered, and again, will be expiring here in about six more weeks anyway.

0:52:58 Monte: There was a duplication of payments question, somebody must be from CDBG-DR side where there is a duplication of benefits tests that is required to deliver assistance. There's not anything like that specified for this particular set of waivers or activity, but practically speaking, a PJ is expected under the federal rules to only be assisting where it's needed and to not be duplicating other federal assistance that might be out there. There's not a specified test, but the PJ would want to have some way of being certain that they're not duplicating assistance that's being delivered through some other program. And HUD's given you flexibility to look at the other assistance and to deliver up to 100% of rent and utilities in case there is other assistance but it is inadequate while somebody is experiencing financial hardship under the pandemic, including those who are already receiving some TBRA but not enough that they would qualify for given their pandemic circumstances. So yes, consider it. There's not a strict duplication of benefits test though.

0:54:17 Steve: Yeah. But obviously, the other thing that always goes back is it's never okay for somebody to bill the same expense twice to two different programs. So if somebody is participating in another program that's already paying their rent, we can't pay their rent too. That's just basic.

0:54:37 Monte: We can pay a bigger gap, but not the rent itself, if it's being paid.

0:54:43 Steve: Yeah. I don't want to get too far ahead of ourselves and steal our own thunder for next week, but we've seen some questions about lead paint. So I want to be clear quickly, but also let you know that we'll try to talk a little bit more about that next week in the next webinar. But the lead paint rules at 24 CFR Part 35, and in particular as they relate to TBRA that requires a visual inspection for pre-'78 units and paint stabilization of any deteriorated paint surfaces, have not been waived. And we recognize that there's a little bit of a disconnect there of, "I still have to do a visual inspection, but I may not have to do an HQS inspection." And at some level, it kind of is what it is, and we will dig into that a little bit further. But to be very clear, the lead rules have not been waived. And at some level, if you step back and think about that, we are in a public health crisis, but lead is itself... The reason that we worry about that is it an incredibly powerful neurotoxin that is a public health crisis in its own stead. And so we're going to have to continue to figure out how to make that work.

0:55:56 Monte: A lot of the questions that are coming in, Steve, are going to lead us to the point where we'll conclude we don't have to do next week's webinar. So should we continue to answer them or say, "Tune back in next week"? But one of them came in that raised the question about payment standards. And there's a whole set of things that we need to discuss next week about the rent reasonableness test, the payment standard, the minimum tenant payment, and other things that have been waived and give the PJ discretionary authority to determine how much assistance to deliver up to 100% of rent and utilities. And so the federal standards, the HUD standards that we're used to there are temporarily waived, but it's incumbent on the PJ to come up with its own standards to determine what is reasonable, including how much do they require the tenant to pay.

0:56:51 Steve: Yeah, no, I think that's a great sort of short preview, and we'll definitely dig into that and some of the options and the trade-offs more deeply next week. Just looking through to see... A quick question here about stipulations with regard to paying late fees. I'm not 100% certain what that question means, but as a reminder, HUD's going to allow us to pay late fees on back rent if they otherwise were already part of the lease, and were reasonable and customary. Obviously, if the unit otherwise should have been subject to some sort of a local, state, or federal requirement that they had to waive those fees, you can't then still charge them. But we will be able to pay those late fees for rent due on or after March 13th if you would like to include that as part of your program design.

0:57:48 Steve: I'm just looking to see... We've had several questions, and I see one more. We are recording the webinar, and we'll be posting a recording of this webinar along with a transcript to the HUD Exchange. And so for those of you that maybe missed a portion or would like to re-hear a portion, usually it takes about a week to get everything posted. Given the timing of all of these, we're going to try to accelerate that as much as we can. And to the degree that we've addressed these questions, you'll be able to see those in writing in the transcript. We're also going to be continuing to go through the chat logs and the Q&A logs to see what the questions were and use those to try to inform our thinking about what goes into the next webinar and what goes into other products and materials being developed. So know that if we didn't get to your specific question today, it's not that we were trying to ignore you, but in some cases it's something that is going to inform how we develop additional materials.

0:59:06 Monte: Steve, there was one question in here, "Can HOME operating funds be used for subrecipient agreements?" I am assuming that the question is intended to refer to CHDO operating funds. And CHDO operating funds are a separate thing, it's assistance to a CHDO to pay for the operating expenses of the CHDO organization. It's not for administration of projects or activities, so it would be something separate. If you're going to have one of your CHDOs act as the subrecipient to administer this you should do a separate subrecipient agreement and negotiate with them in terms of the administrative costs that you'll need to pay out of these funds.

0:59:50 Steve: Yeah. I absolutely agree. Okay.

0:59:57 Monte: There are also some questions that have to do with Section 8 or public housing. I just have to caution people that there is a moratorium on evictions under the CARES Act related to federally assisted housing that covers most federally assisted housing, and that moratorium also prohibited the accrual of late fees due during that moratorium period. And so if there's any tenant that is in federally assisted housing, including HOME assisted housing, the owner has to comply with that moratorium, and a PJ should not be paying something that is not permitted under the moratorium. And I think there was some guidance out from HUD today, a sample letter posted on the HUD Exchange...

1:00:53 Steve: Yeah, I was just going to mention that.

1:00:56 Monte: PJs could look at that.

1:00:56 Steve: Yes, I agree. One other quick question that just now came in, Monte. It says, "But CHDOs can't do TBRAs since that's not a development activity." And so, again, just to step back, an organization that's a CHDO, when they receive funding from the CHDO set-aside, have to be acting as the owner, developer, or sponsor. And as a PJ, I cannot fund you from the set-aside to do TBRA. That same organization that is also a non-profit may, at times, interact with the program as a subrecipient. And so often you'll hear us talk about, "Hey, when I'm developing housing, I've got my CHDO uniform on. When I'm running the program, I've got my subrecipient uniform on." And so we would not fund an organization that does, in fact, qualify as a CHDO for TBRA as a CHDO, we would be funding them as a non-profit subrecipient from the entitlement portion of our grant, or a portion of the entitlement that we moved into a sub-fund, and not from the CHDO reserve. But an organization that's a CHDO can, in fact, serve as a subrecipient. So just to provide some clarification there.

1:02:07 Monte: And I would add, and it's not TBRA specific, it was in the more general COVID waivers that HUD provided. They did waive the requirements that suspended the CHDO set-aside for certain years, and they also increased the ability to do operating assistance. So independently, a PJ needs to consider what it needs to do to keep its CHDOs alive and well during these suspensions and waivers. If it might be that they're not developing housing, having them administer other activities might be something that can be done. But as you said, there is a wardrobe change when they're acting as a subrecipient for us as opposed to when they use our set-aside funds as the developer.

1:02:51 Steve: Yeah. Okay. With that, I think we've probably gotten to most of the questions we're going to be able to today, Monte. Several of them clearly relate to the payment standard issue, "How much are we paying? How much are we going to expect the tenant to pay?" Again, we promise everybody we will dig into that in much more detail next week and talk about the limits of how far you can go with the waiver, and then also practical considerations of ways that you might think about otherwise doing that. So we'll dig into that. And again, just a couple of quick reminders as we go ahead and move towards wrapping up for the day.

1:03:35 Steve: Today what we really focused on, again, are the first two stages in that graphic that we started with, the initial program design and approval. We recognize that that's just the start. Implementation is going to require detailed policies and procedures about our selection criteria, the types of assistance, the levels, the duration, the limits on which we'll give, which waivers we're using and which ones we're not. All of that. We don't want to forget the second P of policies and procedures. A lot of times we talk a lot about the policy and what the rules of the road are, and forget to focus as well on the procedures, the who does what, when, with what paperwork, things around payment flows and documentation standards. Trying to give everybody not only an understanding of what the rules of the road are and what's expected, but giving the staff, whether it's at the PJ or at the subrecipient, that are doing this, a good, solid fighting chance to get it right.

1:04:37 Steve: So we know this is the first step. Again, there's more help coming, so I would remind everybody, for those of you that are IDIS geeks, go ahead and make sure that you have signed up for the webinar on the 16th from 2:00 PM-3:00 PM. HUD is holding that webinar, and if you have not already seen it, make sure that you look for HOME Facts Volume 9-Number 1, which was published in May and is kind of a preview of the webinar material. But for those of you that had some IDIS questions very early on today, this is your opportunity to get those answered by the folks that are up to their elbows in the blood and guts of that system.

1:05:23 Steve: A week from today, same time, same virtual place, it will be a separate link so don't use today's webinar link. June 17th from 1:00 PM-3:00 PM, we'll do part two of the series focusing on developing your policy and procedures. Again, a more detailed set of discussions about, "You could do this, you could do that. These are the trade-offs, these are the practical considerations." And then we'll follow that up a week later on the 24th with an office hours webinar that will give us the opportunity to share hopefully some other additional products that are helpful, but also to follow up on all of the issues and the questions that were raised today as well as next week that maybe we didn't get to, or additional information that comes out between now and then.

1:06:08 Steve: Some other things to watch for. We're working on a sample written agreement between a PJ and a subrecipient for an emergency TBRA program, so kind of tailored to a presumption that many of these waivers and suspensions are in use. A sample TBRA contract that's been structured as a three-party agreement between the PJ or the subrecipient, the tenant and the owner, trying to pull all that together into one document to speed the delivery and also allow for fewer pieces of paper floating around where it's difficult for people to be signing in person given the pandemic. And as we mentioned, HUD is working on a tenant income self-certification form package, and so watch for those things. And then again, a reminder, if you go back to the HUD Exchange today and go to the HOME page and the COVID-19 stuff and click on webinars, you'll be able to go to today's webinar and you can get the slides from today's session, you can get that cross-walk, and you can get the Designing and Implementing an Emergency HOME TBRA Program Design Decisions piece, all of which are already posted and are available for you to download and review. And again, we've recorded the webinar today and we'll have it transcribed, and we'll be working to get that recording and the transcription up as soon as possible.

1:07:42 Steve: So with that, I'm going to tell everybody thank you so much for your time and your participation today. Monte, I don't know if you have anything else that you would like to add, but it's been a pleasure doing this virtually with everybody. Webinars are now the popular thing to do in the environment, unfortunately. And we will look forward to talking to you again over the next couple of weeks. Monte, anything else to add?

1:08:11 Monte: No, nope. I will look forward to next week as well.

1:08:16 Steve: Okay. Well, thank you everybody. And go ahead and make sure that you've signed up for the additional webinars. And we hope that this has been useful and that the other materials we'll be able to provide over the next few weeks will be useful as well. Thank you so much.

1:08:31 Monte: Bye now.