HOME Investment Partnerships Program Rental Compliance

Part 2

Les Warner: Welcome back, everyone. This is our second half of our HOME Rental Compliance training. If you are joining us today and you were not part of the first half yesterday's delivery of this, know that these sessions are being recorded and they, along with the materials, will be posted on the HUD Exchange.

So, you have a way to be able to go back to yesterday's session on this. Couple of reminders, we sent out the slides and a handout form, which you could print out and utilize to take notes on. There is also, a handout in the same location about unit mix, which we'll be looking at today.

And I also, would encourage you to print that out for yourself, because I think that will be a very useful tool going forward as you're dealing with HOME rental projects and thinking about the actions that you'll be taking over time based on changes in income. So, I'm going to revisit just a couple of the last slides that we ended with yesterday.

So, we had talked about -- we worked through yesterday talking about written agreements and some of the rules that apply, income qualification, all of that. We really ended talking about during the affordability period that's been designated for each of our projects, the PJ then has to make sure that they continue to maintain a list of things.

So, that includes making sure that the number and type of HOME units continue through that project affordability period. That also, includes -- we talked yesterday and we will revisit today about the rights of the existing tenants and that has to do with when we make changes to income and rent, but also, things such as the prohibited lease provisions that we'll be revisiting today.

We will be talking about the timing, rent changes and this issue of whether you have designated these units as fixed or floating. That's something that the PJ would designate at the point that you put the funding in for the project and that will affect the actions that you will be taking over time as you're working with managing this unit mix.

So, as we mentioned, you need to maintain the same unit mix. And because we have the program -- or the project rule that requires that if we have five or more HOME-assisted units, that 20 percent of those be set aside as low HOME units.

A lot of what we're going to be talking about will also, be not just the number of HOME units, but that mix between what units are high HOME units and what units are going to be low HOME units.

So, we mentioned we're never going to require that tenant to move out. So, if their income changes and they're over income for the unit that they are in, we're never going to require them to move, but we're going to talk about, today, the actions that you would be taking over time in that place.

And then keep in mind that the timing on most of these actions really relate to when you're going to recertify income on annual basis and that's when you're going to be renewing leases.

So, on most of the things that we're going to be talking about today, when we talk about taking that action of adjusting rent or re-designating a unit, generally you're going to have to wait until that lease is up for renewal and we're doing our recertification for each of those tenants.

So, fixed units, in projects where we do not have comparable units, then we are going to have to use the fixed unit designation. And so, those same specific units are always going to remain as your HOME units and over the life of the project, we would expect, when we're tracking our compliance, that we would always look at those same specific units.

That has an impact when we talk about over income and the actions that we're going to take based on that designation and we'll be looking at some examples of that today as part of our training. So, with a fixed unit, when the tenant income in a low HOME unit goes over 50 percent, but they're still under the 80 percent maximum --

So, we don't consider them over income for the HOME program, they simply have gone over the more restricted income that is required for a low HOME unit. When we're dealing with a fixed unit or frankly, a floating unit, what we're going to be doing is making sure that when we have the option, we're going to correct that action.

So, it may be that when we have a vacant high HOME unit, that we're going to rent that as a low HOME unit. So, we're going to rent it to a tenant that has an income of 50 percent or below, set that with a low HOME rent.

And now that we've been able to replace out-of-compliance low HOME unit we would then be able to go back and re-designate that noncompliant low HOME unit as a high HOME unit. So, we've been able to make a substitution, but we can never change.

So, when we have that household that goes over the 50 percent income, maybe your first instinct would be to day, okay, let's just designate that as a high HOME unit and adjust their rent. We could never re-designate that low HOME unit until we're able to replace it.

So, we're seeking for a way to be able to replace that low HOME unit, then we can go back and change the designation for that existing tenant, make that a high HOME unit and then raise their rent levels to be high HOME rent. So, we're staying in compliance by being able to get that unit mix back into compliance.

If we have a tenant whose income goes over the 80 percent, so, they're an over income tenant, we're not going to kick them out of the unit, but we are going to adjust their rent. And in this case, with it being a fixed income unit, we are going to be a little more aggressive. So, we're going to raise their rent to whatever is equal to 30 percent of their adjusted monthly income.

So, I mentioned yesterday we may be doing adjusted income in a few instances. This is one of them. And I will note that the income calculator available on the HUD Exchange will help you

calculate adjusted monthly income. But we're going to raise their rent up to 30 percent of their adjusted monthly income.

That may be higher than what other rents would be in that fair market, but 30 percent is what's going to be affordable for that household. We're not going to require them to leave, but at that point, they may say, there's some better deals, rent-wise, out in the market. They may choose to move, but they can stay there as long as they would like.

When we have the next HOME unit available, if this unit was a low HOME unit, we're going to make sure that our next HOME unit is rented to an income-eligible household and designated as a low HOME unit. Our first step is to try to replace and make sure that we have our low HOME units in place.

But keep in mind we are not going outside, we're not swapping outside of our designated HOME units in this example. So, let's look at an exercise. And first, I'm going to switch -- I want to show you the handout that I referenced. So, you may have printed this out. We'll be able to project it.

But essentially, this walks you through and gives you guidance at the point that you need to take action when you have a household that is over income. This is more of a narrative version of this particular handout. The other side is an alternative version of this. So, whichever works best for you.

But based on whether it's a low HOME or a high HOME unit, whether it's fixed or floating, this handout will guide you through the actions that would be taken.

So, as we already talked about when we have a household that is -- their income goes over 50, so, it's between 50 and 80, if they're in a low HOME unit, we're going to keep that as a low HOME unit until we're able to replace that. Once we've been able to replace it, we're going to then be able to adjust that noncompliant unit, that over income individual.

We're going to re-designate that as a high HOME unit and then be able to raise their rent to a high HOME level. So, I'm going to be switching back and forth here with this chart as we look at some of these exercises. So, we're given an example of a 10 one-bedroom units in a project. We have six of these units that are HOME, and this is a fixed unit situation.

In our first example, Ms. Smith, who occupies 104, which is down here, is currently in a low HOME unit and her income goes up to 64 of area median income. And so, she is over income. And in this case, we have a HOME unit that becomes vacant that's a high HOME unit.

So, when we look back at our chart, in this case, we're dealing with fixed. We've got a household -- so, we're looking at this part of the chart. We've got a household that has gone over the 50 percent rent, but they're still below 80 percent and it's a low HOME unit. So, we're keeping Mrs. Smith -- her rent the same until we're able to replace this.

So, in this example, we have another HOME unit that's become vacant. So, we are going to rent this as a low HOME unit. So, 202 will become our low HOME unit and once that action has

been taken -- so, once we've been able to replace this unit, that will become our low HOME unit and we can re-designate this unit as a high HOME unit.

I'm not as skilled with the pen as some of our -- my other colleagues are. So, in the case where we have -- wait a minute, I think we may have -- we need to do the second part of this. So, our example two on this, we have Mr. Ramirez, who is in 203 and he's gone to 92 percent of area median income and 204 becomes vacant.

So, 204 being vacant doesn't really help us, because this is a fixed unit and we're not going to add additional HOME units. And so, in this case, we're going to raise Mr. Ramirez's rent to 30 percent of his adjusted household income and allow Mr. Ramirez to reside there as long as he wishes.

At the point that he moves out of that unit, we, of course, will re-rent that to another income-eligible household. So, when the PJ is monitoring this project and they are looking through your records, their rent occupant reports, and they're looking at when you have re-verified income and adjusted leases, they would be making sure that you took the appropriate actions.

So, in the case of Ms. Smith, we would be looking to see that they re-rented 202 and designated that as a low HOME unit and we're then able to re-designate Ms. Smith's unit as a high HOME and adjusted her rent. We would also, be looking to see that the rent was adjusted appropriately for Mr. Ramirez.

And over time with Mr. Ramirez's unit, we would be watching to see if that unit became available and if so, we would make sure that we brought that project back into compliance by renting it to another income-eligible household.

When we have floating units, as I mentioned yesterday, the total number of HOME units is always going to be the same, but the specific unit that is going to be counted as our HOME units over time may change. So, essentially, they're able to float amongst comparable units.

When we look at how do we consider a comparable, and this really goes back to the cost allocation notice, which is CPD-16-15, that lays out that basically, we're looking at do they have comparable amenities and finishes, are they comparable square footage, and that does not mean that they have to be exactly the same in square footage.

And particularly, if we have rehabilitated existing units, we may have one-bedroom units that all have a slightly different footprint, that would be fine.

Generally, we're going to defer to the number of bedrooms unless we have what we might consider more significant changes in square footage and that would be a call that the PJ, as part of their designation, would need to make in designating comparable units and what was going to be allowed to float amongst unit types.

And then generally, configuration, we're looking for comparable bedroom sizes. So, generally, we're going to float a two-bedroom to another two-bedroom unit.

So, if all of the one-bedroom units are comparable and all the two-bedroom units are comparable within a project, then when the PJ designates the HOME-assisted units and designates them as floating, they'll be able to float amongst those specific units.

As I mentioned yesterday as an example, in some cases, we might have, let's say, two-bedroom garden style apartments and two-bedroom townhouses that perhaps had -- maybe the townhouses have a lower level. And so, even though they have the same number of bedrooms, have quite a bit more space.

In that case, the PJ might decide that these are not comparable. And so, designate -- within their written agreement when they designate HOME units, designate a certain number of the townhouses and a certain number of the garden style apartments and allow these to float amongst those specific types just to keep this accurate within our test for comparability.

For floating units, let's talk about rent increases. So, income increases also. So, if our incomes are very low-income tenants, so, a household at 50 percent or below when they moved in, has increased over that 50 percent level, but they are still under our 80 percent area median income under or equal to, then we're going to remain temporarily out of compliance until we're able to identify another comparable unit.

And so, this is where we may be able to do some swapping within that unit. And that -- this is whether it's fixed or floating that when we have a household that is in that 50 to 80 percent category in a low HOME unit, we can look to our unit mix to determine do we have another HOME unit that actually -- that household is at 50 percent of below?

And we could do our re-designation to bring us back into compliance and we'll see some examples of that. We're not going to be looking to our market rate units to do this swap-out, and that's for both fixed and floating, because we're not going to require that building owner to essentially add additional HOME-designated units.

They have the number that they're required under their agreement. And so, for this corrective action for households that are still at or under 80 percent, we will not be looking outside of our existing designated HOME units, but we're going to make this re-designation as we're able to base on looking at the existing HOME units and the income of existing tenants.

Also, again, if we have a vacancy occurs, then we can make those corrections on this. An example at the bottom here is just giving the example that if we had 20 HOME units, they were all occupied with eligible households, if we were to switch and change, take one of those market rate units to replace our out-of-compliance low HOME unit, we would essentially have been adding another HOME unit and that really goes beyond the requirements that we put in place for that owner's commitment.

So, with a floating unit, when we have an existing household that goes over that 80 percent area median income, we're going to do similar to what we did for the fixed unit, but we are going to be a little less aggressive here.

So, we're going to calculate what 30 percent of their adjusted gross income is, but in this case, we're going to cap that at the market rate for comparable units. So, we're going to essentially look generally within that same market area, what would that cap be.

So, for instance, if we have a household that 30 percent of their adjusted gross income goes to $1,200 a month, maybe they currently -- their high HOME rent was $800, we will look -- we will calculate that 30 percent of adjusted gross income, but we'll also, then figure out what a comparable market rent would be.

And let's say the comparable market rent is $1,000, then we're only going to raise that rent to that comparable market rent as opposed to taking it higher to what the adjusted gross income would've led us to for that property. So, we're going to continue to be in temporary noncompliance until we find that we have a way to be able to correct this shortfall.

And we'll go through some examples of how we might do that. When we have our floating units and we have over income tenants, we're going to look to a number of solutions that would include the next unit that becomes available that's deemed as comparable and we could then rent that to another income-eligible household and designate that as our HOME unit.

Particularly, if the unit that we are out of compliance is a low HOME unit, we could look at our existing tenants and be able to re-designate and essentially swap. Our goal is always to bring our low HOME unit back into compliance. That's our first priority overall.

We may be able to re-designate an existing market rate unit when we're dealing with over income over 80 percent and we're in a floating situation. So, here's where we have more flexibility.

We could rent an existing market rate unit to a low HOME household and then once we have essentially replaced our missing or out-of-compliance low HOME unit, be able to re-designate that unit that we had raised up to our market rate. We could re-designate that as no longer being a HOME unit and it would become a market rate unit.

So, let's go through some examples then, because that's always easier to be able to understand this information. So, in this case, we have a 10 one-bedroom unit project. So, we've got comparable units. And in this case, we have six units that are HOME. So, we've got four that are high HOME units and two that are low HOME units.

So, in this case, Ms. Chan [ph], who lives in unit 105, her income has gone up to 58 percent of area median income and we've got 102 that becomes vacant. So, in this case, because 102 is not one of our HOME-assisted units, we're not able to make a substitution and simply rent 102 as a HOME unit.

It's only when we go to our over 80 percent adjustments that we're able to do that. So, we would look, in this case, to all of our other existing units in this project. So, for instance, if we find that in 202 they actually have an income at 48 percent, so, in this case, they actually need that low HOME designation.

They need the more affordable rent. So, we could, at -- when their lease is being -- is up for update, we could re-designate this as a low HOME unit and once we had replaced our low HOME unit, be able to go back and change the designation on 105 and make that our high HOME unit. So, we simply just switched between the designation on 105 and 202.

And it keeps our six HOME units in place, but we now are back in compliance with two low HOME units that are in compliance with the requirements. Let's just see if I can clear what I've done here. Doesn't look like it.

Kris Richmond: If you click the eraser at the top, it should be clear all annotations. Usually that helps.

Les Warner: There we go. Very good. Kris is the master on the pen. So, in our second example, we have Mr. Preston, who lives in 203. And in this case, he's gone over the 80 percent area median income. So, we know that we're going to make an adjustment on his rent. So, that's our first step here.

And so, in this case, we're going to raise his rent to 30 percent of his adjusted household income or capped at that market rent. And so, we make our adjustment on his rent immediately, then we're looking for our way to be able to correct this situation. So, when 204 becomes vacant, we are going --

If our low HOME unit -- we're, of course, going to re-rent it as another low HOME unit. It does not really have an impact on being able to replace Mr. Preston's unit. But in this case, because we are floating, we can look at each of our other non-HOME units.

So, for instance, if we find that in 205 they actually have a household that's at, let's say, 75 percent area median income, then they're eligible for this to become a HOME unit. So, we could designate this as a HOME unit, which will allow us to bring ourselves back into compliance and we will essentially undesignated, 203 will no longer be one of our HOME-assisted units.

So, it brings us back into compliance. We've got six HOME units and we have two low HOME units as we were required to have. In this case, because it was floating, it allowed us, with our over 80 percent, to have more flexibility and look outside of these specific existing HOME units. So, it helps us get back into compliance just a little bit quicker.

So, in each of these, if you look at the handout chart, there are instructions that will walk you through what your next actions are. So, our first action on our floating unit, when they go over 80 percent, we're raising it to 30 percent or the comparable market rent versus under our fixed unit, we simply are raising it to 30 percent of their monthly income.

For our fixed unit in this case, we can only look at our HOME units whereas under our floating units, we're able to look also, at our non-HOME units to be able to make that correction and bring our project back into compliance. Kris, are there questions that we ought to address before we go further on this?

Kris Richmond: Yes. We have a number of questions and I think the most common question that has come in is all -- they have a project where all the projects are low HOME units. So, they know that everybody has to be at or below 50 that's living there, but when there's income recertification, they have some tenants that are coming in at 60 percent, 70 percent.

What do they do? Because they don't have any high HOME units designated, everything is low. So, they're not quite sure how to adjust the income --

Les Warner: And is this fixed or floating?

Kris Richmond: Both. But the whole project is considered all low HOME. Nothing has been designated as a mixed of low and high. All the units are designated low.

Les Warner: Okay. And are there market rate units or is it all HOME units?

Kris Richmond: All of the units are low HOME units.

Les Warner: Okay. So, if our entire project is HOME and we don't have any market rate or non-HOME units in that and we don't have any high units based on our written agreement, then we are going to be in temporary noncompliance until we have someone that moves out of that unit.

So, if all of my units are HOME, they're all low, I have a household whose income goes to 65 percent area median income, I don't have a way to be able to replace that unit by finding high HOME unit with an income-eligible client. I don't have a way to switch to another unit in that property.

And so, we're simply going to have what we would call temporary noncompliance. And so, the test really here is that when that property manager has a move-out on one of those units, then they will make sure that it is re-rented to an income-eligible household, because these are designated as low HOME units.

Then they have to be households with an income of 50 percent or below. So, they are not able to adjust the rent, they're not able to require someone to move out. So, they're simply going to be waiting until they have that opportunity to bring the project back into compliance.

Kris Richmond: So, just to repeat then, the rent would stay at the low HOME rent?

Les Warner: Yes, because they don't have any ability -- you can't make an adjustment on a low HOME unit until you've been able to replace it. And in this case, they don't have any non-low HOME units to begin with. So, they're not able to make some kind of a switch.

So, they have to continue to charge them the low HOME rent and they simply are out of compliance until they have an opportunity to correct that.

Kris Richmond: Great. Thank you. There were a lot of questions about that. And then the other question that has come up a lot is we have over income. And so, they know they need to charge 30 percent of the adjusted income to determine the rent. The question is do they -- once they determine what that 30 percent is, do they have to -- do they add utilities on top of that?

We're trying to figure out how to deal with utilities as part of that new monthly -- that new payment that has to be made.

Les Warner: I believe that you will be following the same -- so, you will be looking at -- since this is our gauge of what's affordable for the household, I believe that we would follow the same guidance we do with HOME and be backing out tenant paid utilities to determine what that maximum lease rent would be for that household.

Kris Richmond: Okay. And then we just wanted to clarify that when rent is raised for someone who's over income, is it when lease permits or is it when it's found out that they're over income?

Les Warner: These actions are really always at the point where their lease is up for renewal. I mean, that's part of the point of having a lease that you have an agreement in place of what the rent would be.

Now, it might be in cases where you have a household that would qualify for a low HOME unit who is renting a high HOME unit, because there weren't any low available. It might be that prior to that lease renewal that you could go back to that household and offer them the opportunity to be re-designated.

And at that point, you would reverify their income and execute a new lease with them, but the lease in place can't require anybody to have a change done on their rent until their lease comes up for renewal on that.

Kris Richmond: Okay. There's a lot of questions coming in about tax credits. Is that going to be covered or should -- is that something we could kind of go over tomorrow?

Les Warner: Yeah. So, we're going to be talking a little bit later here and we'll get to that on the different -- because there is a different rule when we have tax credits and HOME together. And so, I think if you hold on with that, we will work with that.

So, when we think from the PJ's perspective of what they're needing to monitor or watch as they're reviewing those annual reports that are coming through, we're trying to make sure that over the life of that project, we continue to have the correct number of HOME-assisted units.

So, it would be reviewing, looking at our written agreements to see what the required numbers were and looking at those annual reports to make sure that we continue to be in compliance. We would also, need to make sure that that correct breakdown between low HOME units to high HOME units is correct.

And of course, the property manager is going to need to be watching that over the life of the project to ensure that they are following those requirements, that they're renting units as per what was required in the written agreement. We also, need to be able to track are there tenants that are in low HOME units whose income has gone over the 50 percent?

Also, do we have tenants whose income has gone over 80 percent? And really, what we're looking for is to see that the actions that we've just been talking about of re-designation of units

or adjusting rents when they've gone over income that the property manager is correctly making those adjustments when they have opportunities to bring that project back into compliance, that they're taking that.

And that includes looking at unit swaps within that property. So, it might be when you're looking at that annual report and you have a low HOME unit that has a tenant whose income has gone over 50 percent, when you look at that report, you may see that you actually have a high HOME unit that is occupied by a household that has an income below -- at or below 50 percent area median income.

So, that swap should be happening for that property. And so, we may be watching to see that at the next point that those leases are reverified, that we see those swaps -- those corrective actions being made over time.

And that may be where PJ, in reviewing the report, will contact or reach out to the owner or the property manager and verify what they're seeing in the report and ask some questions about the next steps that are being taken on that.

When the PJ is doing its onsite monitoring, we'll be talking about that a little bit later, you're really verifying in person what you're seeing in the files, what you are seeing onsite versus what you can see in those annual reports and making sure that they line up.

Let's talk a little bit more about unit swaps, because this is frankly one of the ways that properties are able to bring themselves back into compliance and a step that that property manager and PJ should be watching for.

So, based on the existing tenants within that property, it may -- you may be able to make corrections and bring that designation of low and high HOME units and the incomes back into compliance by simply looking at your existing tenants.

And keep in mind that the fact that you have a household with an income at 50 percent or below, if they are coming to your property and wanting to rent a unit, HOME will not say, you actually need a low HOME rent and we only have highs available. We would not turn that household away.

We would allow them to rent that high HOME unit with a rent that's really -- we would consider to be higher than what would be affordable for that household. And so, within our property, we may well have folks who are renting a high HOME unit and actually need a low HOME unit and we see incomes change with changes in family or changes in employment.

And so, looking at that unit swap, looking at those existing tenants to be able to identify where we're able to make those corrections. And keep in mind when we're doing our reverification of income, when we're renewing leases is the perfect time to be able to do that. If we're dealing with a fixed unit project --

And keep in mind we're never able to look outside of our HOME-assisted units. For our floating projects, we have the ability for households that go over income to be able to look at those

market rate or non-HOME units and then be able to make adjustments, but that's one of the key differences between our fixed and floating units is essentially that flexibility you have on swapping out units from mixed.

So, here's where we're going to talk a little bit about when we have tax credits and HOME together. So, the low-income housing tax credit program has a different definition of over income tenants. In this case, they define an over income tenant as someone who has an income that is above 140 percent of our income limits.

And this is the tax credit income limits, not AMI. So, in this case, the project -- the tax credits would say that you're only able to increase the rent when they exceed that over income level and we're going to then try to replace another low-income unit in the project and of course, the priority is to keep that number of low-income units within the property.

So, where we have a combination of HOME and low-income housing tax units. So, that's a unit that's been designated as having both funding sources in that unit. In most other cases, we are always talking about we're going to defer to the more restrictive requirement.

In this case, the HOME program defers to the tax credit program and waits until that household meets the low-income housing tax credit definition of over income. So, that's at 140 percent of low-income housing tax credit income limits.

Now, we do know, and we've talked about having to follow the more restrictive, when we look at rent levels, we are looking at we would be comparing for that unit HOME and tax credits and keeping it to the more restrictive.

In the case where they've gone over the HOME income, but they have yet to trigger with tax credits having gone over the 140 percent we can raise the rent up to the tax credit rent if it is greater than the HOME rent.

So, that's one adjustment we would be making, but we would not be making any other adjustment as we would for a non-tax credit unit of calculating 30 percent of their household income and adjusting rent in that way. So, we can increase the rent up to the tax credit level.

Once they hit the 140 percent of low-income housing tax credit, then we can make adjustments in rent, but we're going to defer to the low-income housing tax credit project. And those rules are going to stay in place until we have changed that unit, if we're able to, to a market rate unit.

So, we're -- this is one of the few cases where we defer to the tax credit program for how we're going to handle that unit. So, here's an example of this. We have Mr. Martinelli [ph]. He's in a high HOME unit that also, has low-income housing tax credit assistance and this is why I was saying that having good information in that written agreement becomes really critical.

So, the property manager, the PJ knows, so, this unit, is it just HOME, does it have tax credits in it also? Because it determines what rules are going to apply and what action we would expect to see. So, in this case, when his income is recertified, he is over the high HOME income limit, but he's at 102 percent of the low-income housing tax credit income limit.

So, he's not considered over income for the tax credit program. So, in this case, we're not going to follow the HOME guidance that we would normally take, but we're going to defer to the low-income housing tax credit rules. In this case, if that tax credit rent is higher, we will raise his rent to the low-income housing tax credit level.

And we will not go further with that until there is the ability -- when they go over 140, we would follow the low-income housing tax credit guidance on this. If there's the ability to be able to swap this unit if we have a floating project, we might be able to get this out of temporary noncompliance for HOME by being able to swap that unit.

And so, it would no longer be a HOME-assisted unit at that point, but again, we're going to defer to the low-income housing tax credits. We can bump his rent up to the tax credit limits on this. Let's switch gears and go into a couple of other areas that I suspect be of some real interest to the group.

So, the HOME program has always said that student housing was not eligible. So, we know, when we're developing affordable housing, that we could not do dormitories or something that was specific for housing. But the HOME program has further defined, under the student rule, that we cannot essentially provide HOME-assisted housing to someone who is considered a student.

And there's some specific rules about this and we'll walk through those. So, the HOME program is deferring to the Section 8 program regulations at 24 CFR 5612 right here in the slide. And I believe there will be some forthcoming HOME-specific guidance on this, but it's based on the 5612 guidance.

Generally, we're going to assume that if we have a student -- and that's either full-time or part-time. If we have a student that's under the age of 24, we're going to assume that they are actually part of another household and generally would be considered to be ineligible for HOME assistance. We'll talk through how this works and all the exceptions that are related to that.

And essentially, the assumption is that -- for instance, when I went off to college a long time ago, I was still part of my parent's household. I still was a dependent member of that household. I could've been claimed, and I'm sure I was, on their tax forms. And so, I -- even though I was off school, at some part of that time, in an apartment, I still was part of my parent's household.

And so, I could not -- I would not be considered eligible for this program, except for the exceptions that we're going to walk through here. So, exceptions include if I'm a student that's a member of an income-eligible household. So, in this case, I'm off to school, I'm in this apartment, my family lives somewhere else.

If I take the income of not only myself, but also, my family, wherever they may reside, if we actually qualify as a household as being income-eligible, then I would be eligible to reside in this HOME-assisted unit.

If we have, in some cases, a student that's not a dependent member of another household, and the only example that we've really been given is a youth that's been emancipated from the foster care

system, so, they do not have any -- they're not part of another household and simply living independently, they are legally emancipated and recognized as being on their own.

Other exceptions that fall under this would be a veteran of the U.S. Military, someone that is married, someone that is a head of household and has a dependent child or if that student is disabled and was receiving Section 8 assistance in 2005 -- November 30, 2005.

So, when you're thinking about intake for someone who is asking to move in to a HOME-assisted unit, you're going to be having to ask, are you a full-time, are you a part-time student? And then further then walking through do you meet any of these exceptions? Are you a veteran or a married, dependent child with disability assistance?

The only other -- and if none of these exceptions meet those qualifications, we also, then would be looking to see are you part of an income-eligible household.

And so, we would have to identify -- if, let's say, your family lives in another state, we're going to need to be able to document that total household and what their total income would be to determine if this student was actually part of an income-eligible household. So, it adds quite a bit of logistics to being able to complete that determination of eligibility in this case.

So, that has an implication not only for when we have someone that is seeking residency in one of our HOME-assisted units, but as we're implementing this, thinking about what do I do when I reverify income, I need to be checking to see are they actually in violation of this policy.

So, first step we're going to be looking at are they under 24, are they a full-time or a part-time student and then determining the composition of that household. Are they part of another household that we could qualify them in that way? Do they qualify for one of these exemptions? If not, then we are going to treat them --

Because of the violation of the student rule and being part of another household, we're going to treat them as being over income and we're going to implement the over income provisions, which would mean that adjustment of their rent.

So, for instance, if I, as the student, was part of a household, and we would be then tracking back to my parents to their income and determining if I'm over 80 percent, then we know that we're going to be adjusting that rent to 30 percent of the adjusted household income and then depending on whether it's fixed or floating, we may be capping that at the market rent.

So, this has a real implication for a property manager as they are reverifying and determining eligibility to continue to occupy that unit and how they're going to deal with that. Kris, I have a feeling we may have some questions related to that.

Kris Richmond: Yeah. We've had a lot of questions come in about tax credits and the student rule. Since you have the student rule slide up, somebody is asking on units that are both tax credits and HOME units what student guidelines would apply.

Les Warner: I'm not aware of tax credits themselves having issued any specific guidance on this. So, I would recommend that you go back to your -- who provided the tax credits, whether that's a state housing finance agency or another provider, to check with them on their requirements. The HOME program itself is deferring to the regulations that I pointed out on the first slide here.

And there is some forthcoming additional guidance for the HOME program that I think will help a little bit that's really based on this 24 CFR that's referenced here. So, I would recommend looking back to that and then also, checking in with your tax credit provider on that.

Kris Richmond: Another student rule question is, if the student has a dependent child, they're asking, is the student's parent's income not counted?

Les Warner: So, that's one of our exceptions. So, we look to our exception list. If we have a student with a dependent child, that's one of our exceptions to the student rule going into place.

And so, we could simply look at that student and their dependent child, look at their income and be able to qualify them in that way even though they are a full or a part-time student, because they've met one of our exemptions.

Kris Richmond: Great. And so, they're asking, the student rule applies regardless if they're full or part-time; is that correct?

Les Warner: That's correct.

Kris Richmond: Okay. And then the tax credit question come in asking when we defer -- when you're over income and you defer to following the tax credit rules, is that for both below and high HOME units or just the high HOME units?

Les Warner: It's for both. So, we are deferring, in this case, to tax credits. We're not taking any action other than being able to -- well, in this case, we would not be able to adjust a low HOME unit until we're able to replace it.

And so, the only time we'd be able to, I believe, adjust to the tax credit rent when we have a high HOME unit that's in violation of the HOME requirements but has not yet triggered the 140 percent.

Kris Richmond: Okay. So, another quick question about student rule is if they -- if the student is income -- if they're part of an income-eligible household, which area do you count the household, where the student is living in that location or where their family lives?

Les Warner: And I'm not sure when they're asking which area. Is that to think about setting [inaudible]?

Kris Richmond: Determine the income limits. No. Determine the income limits, to determine if they're income-eligible or not.

Les Warner: I don't know if there's any guidance specific to that included. I would suggest looking at the CFR in the first slide here and see if, within the existing Section 8 guidance,

there's something specific to that. I've not seen that. You might also, request some assistance from your local field office to see if they can give you a ruling on that.

Kris Richmond: Okay. And then I just want to let people know there's a lot of questions coming in about income right now. And so, if we're not able to answer that today, hopefully we can get to that tomorrow during our office hours.

Les Warner: Well, and the other thing I would just mention here, as we mentioned yesterday, there was a separate HOME determining income training.

That was also, recorded and will be posted shortly on the HUD Exchange and I would defer most of those to the income training materials and for something that you need a ruling on, I would go to your HUD field office and request their assistance. All right. Since it's 1:57 and we're about to move into a different topic, I'm going to suggest that we take a 10-minute break.

And so, if we could be back at seven minutes after the hour, we'll then start with the second half of our materials for today.

[break]

Welcome back, everybody. We've got quite a bit of ground to cover. So, we're going to jump right in. In this section, we're going to be talking about some things related to the marketing and also, tenant relations for your projects.

So, this includes talking a little bit about their housing, affirmative marketing, some of your tenant selection and marketing requirements and we'll talk a little bit about the lease requirements and then also, some of the recordkeeping requirements on this. So, keep in mind you need to have --

The HOME program requires that you have some procedures that relate to the occupancy requirements. We're going to be talking specifically about the marketing on assessable units. Of course, our fair housing requirements are going to apply to our projects.

We're going to be talking about leases, how we're going to make that selection of when we have a vacant unit, who has the right to be able to occupy that. So, all of these things need to be in your marketing and tenant selection policies and procedures. That may be put in place by the PJ and then provided to their projects.

There may be some project-specific requirements that would be added to that. So, keep in mind that our HOME-funded projects fall under the fair housing requirements.

We're always going to try to make sure that we are affirmatively furthering for housing, that we are making sure that those who are least likely to know about their -- the option of some of our services or affordable housing units that we're going to try to make sure that we market those in a nondiscriminatory manner, then we make sure that we essentially get the word out to folks.

So, that also, includes things like 504, Americans with Disabilities Act, age discrimination requirements. So, we're being very careful about how we're marketing and how we are making

tenant selections, make sure that we're not going to be violating any of these requirements. So, each PJ is required to have an affirmative marketing plan.

And that would be adopted by the PJ and essentially would lay out the actions that would be taken for all of the marketing of not only their programs, but also, for availability with affordable housing units. And so, all projects will be following the PJ's affirmative marketing plan.

But projects that have five or more HOME-assisted units will have a property-specific affirmative marketing plan, which essentially will be based on the PJ's plan, but will have been adopted, adapted or amended to specifically meet the local market needs for that particular property.

So, as a property manager, as a PJ working with the rental program, you need to keep in mind that you have some requirements under your affirmative marketing plan. We need to see that those actions are being taken.

So, the PJ annually needs to assess the affirmative marketing success, if it's working and as part of oversight on projects over the life of the affordability period, making sure that that project continues to follow, continues to market that property in compliance with the affirmative marketing plan.

So, one of the issues that we oftentimes see, because under 504, we have a set-aside if we have 5 or more HOME-assisted units or we have 15 or more units with substantial rehabilitation, we're going to have set-aside units for both mobility and sensory disabled tenants. And so, we have units that are specifically set aside for folks that need these assessable units.

And so, we're going to be careful about how we're going to market those particular units. So, at initial rent-up, we're going to make sure that we have a person with disabilities that actually needs that assessable unit. Now, that decision about who needs an assessable unit would be based on the tenant's self-identification that they have a need.

So, as part of a tenant questionnaire, we would be asking them whether they need any accommodation and we could be asking whether it was sensory, whether it was mobility that was needed.

That would be part of our standard tenant information that's being provided, because that will also, be useful for later as we are re-renting these units and might be looking at existing tenants. So, we're not going to make that decisions ourselves, we're going to ask the tenant to be able to provide that information about the need for an accommodation.

When we are renting those units subsequently, we have a specific process to follow and you need to be able to document that that's what you're doing.

So, when we have an assessable unit in a project that becomes available after that initial rent-up, we're going to first look to the current occupants of that property to determine whether there are any current residents that actually need that assessible unit. And so, that would be from the tenant information that's been provided.

And that may need to be updated as you're reverifying income, because those needs may change over time for that applicant. If there's no one currently, as a resident, that needs the assessible unit, then we would look to the waiting list and following the same criteria look to see who the first person was on the waiting list that needed that assessible unit and they would have the next right for that.

If we find that we have no one on our existing -- amongst our existing tenants or on that waiting list, at that point, then we're going to market specifically those units for a disabled applicant.

So, we might be doing some general marketing on that, but we may also, be going to a mobility advocacy group within the area to see do they have any clients that they're serving that might have a need for an assessible affordable unit. And you'll be able to document that specific marketing that was being done to try to seek disabled applicants.

Only once you had completed those steps would you market or rent that unit to a non-disabled person that was on your waiting list. We're really trying to make sure that for those created units, that we actually have a person that needs those units.

Now, one thing I would suggest is in some cases where there are issues on renting those units, it's that they're not affordable for the target audience.

And so, it may be, as part of developing a project, that you -- as part of your market study, take a look at what an affordable rent would be for a likely occupant of one of our assessible units and see if there's a way to structure that to make it more affordable for that target individual.

So, as part of our efforts on marketing and tenant selection, you need to be able to have records that document these actions. So, we talked about our affirmative marketing plan and the requirements of following that. We just talked about marketing of those assessible units. And so, you need to be able to document those steps.

So, if your affirmative marketing plan is talking about specific actions that you will always take in letting those who would be least likely to know about your particular property, we're going to need to see those records if that continues to happen throughout that affordability period.

Same thing, we talked about these steps for marketing assessible units, we want to be able to see in that file and document that you first looked at existing tenants, then you went to your waiting list, then you did specific marketing so, that you have records of that.

As part of this, of course, we're looking also, at tenant selection on how did you decide when a unit became available who was eligible for that?

Now, part of that we've already talked about of when I have a unit that comes available and I have a temporary noncompliance, I may be targeting my high HOME unit that becomes vacant, I may be needing to target that to low HOME income-eligible tenant so, I can reconfigure or swap units to get back into compliance.

But we would have that documentation in our file to show how did I decide who was the person that was going to receive the right to occupy that unit and making sure that the lease is, of course, reflected all of the requirements that apply to that. Now, the HOME program itself does not have occupancy standards.

In some cases, PJs have established their own for the local area. In some cases, folks are also, using an existing public housing occupancy standard that's been put in place. We need to make sure that they're reasonable, that they're not discriminatory. So, they don't include something based on age, gender or relationship as far as that.

There is not a HOME requirement about minimum numbers of individuals per size of unit and we also, would not require a household to move if they became overcrowded. Now, we may, of course, work with that household and try to help them get into a unit that's going to be more appropriate for that household size, but we're not going to require them to move from their unit.

Here's our list that we mentioned yesterday with our lease provisions, that we need to make sure that the PJ is going to be reviewing and approving, making sure there are leases in place for all of our tenants. Normally or standardly there would be a one-year minimum term for our leases.

They can go to a month-to-month renewal after that completion of the first year. We can have different terms if it's mutually agreed upon by both the project and the occupant. Of course, the lease is going to lay out, include information about the rent, about the procedures for adjusting rents.

So, we're going to be talking, of course, for HOME about the fact that their income will be reverified annually.

And you're either going to be needing to use a standard lease of the PJ, how it's provided, use a lease that's been reviewed by the PJ to make sure none of the prohibited causes are in place or as I mentioned yesterday, the use of an addendum, which attaches to that property's lease and essentially says, if any of the prohibited causes are included, that they become null and void.

So, here are the prohibited causes and essentially, it's anything where they are giving up some of their rights. And so, these are things that cannot be included in a HOME lease.

And I will say we have, in recent years, actually seen some monitoring where we had -- there's actually an inspector general monitoring of one of our major city programs and they had some violations, including some where we had the same developer that was using an acceptable lease on some of their properties and a lease that violated these provisions in another.

So, it is something that the PJ needs to have a plan in place on how they're going to maintain compliance with this. Also, keep in mind about the tenant's rights. So, if we're going to either terminate a lease or we're going to refuse to renew that lease, we have to have cause for that. So, it could be a violation of those lease terms or applicable laws.

If we have the indicates of transitional housing where that term has been completed, but keep in mind that whatever that cause is it needs to be specified within that lease. And as we mentioned before, when incomes increase, we're never going to require someone to move.

That also, means that we're never going to say, I'm sorry, I'm not going to renew your lease simply because you now are over income. That would be a violation of the HOME program requirements. Switching gears a little bit let's talk about VAWA. So, this is the Violence Against Women Reauthorization Act.

And keep in mind this does not -- even though the name would make you think that, it does not apply only to women. What the act is doing is providing some protection for survivors of domestic violence, dating violent sexual assault and stalking.

And this would apply to both someone who was applying for occupancy in one of our HOME-assisted projects, but also, would be for an existing tenant would be covered under these protections. This applies not only to HOME, but also, to housing trust fund.

So, as part of the responsibility, and this is shared between the PJ and the property owner or manager, is this requirement that a notice of occupancy rights and certification form be provided to tenants that are applying and are rejected from occupancy. This also, would apply to tenant-based rental assistance, which is one of our other HOME-funded rental related projects.

VAWA also, requires you to adopt an emergency transfer plan. So, this is essentially how you would assist an existing tenant who needed different housing because of a -- they were a victim on this.

So, as part of this, you're required to assist those tenants in being able to move and that might be to another unit within your property, but in some cases, for that tenant to feel comfortable, to feel safe, it may be that they need to move to a different project.

And so, as part of your emergency transfer plan, you might be providing them assistance in identifying other HOME and trust fund projects that would be available, how to make contact with those properties and you would allow them then to exit their lease and move to another property.

One of the tools that the PJ could choose to incorporate to be able to meet this requirement, you could utilize a tenant-based rental assistance program, which would be set up for emergency transfers.

So, for instance, if there was not another affordable unit that could be provided that this tenant could be switched to, we could be using a tenant-based rental assistance to essentially subsidize the rent for that household, be able to move then to a non-subsidized unit and be able to make that affordable for them.

There is also, the allowance to be able to bifurcate or essentially split a lease. So, we might have a victim that was sharing that unit with an abuser. And so, we could essentially split that lease, allow the victim to be able to remain in that unit and evict the abuser from that unit.

There is some additional draft guidance that I'm hopeful will be coming out that would be HOME-specific, but I would suggest that you look at the actual act itself and there are some sample forms and I think the HOME program is trying to provide you a little bit more to help make that easier for you to be able to implement in VAWA.

And again, this is something that's shared between both the PJ and the specific properties. So, if you're a property manager, I would recommend that you go back to the PJ and specifically ask about their VAWA plans and their implementation on this. Kris, are there some things that we ought to revisit on this?

Kris Richmond: Yeah. There's a lot of questions coming in about the tenant selection policies and the marketing requirements. And they understand that affirmative marketing plan has to be in place if you have five or more HOME-assisted units, but what if you have a smaller project, one or two HOME-assisted units?

Les Warner: So, as I said, the PJ itself has an affirmative marketing plan in place overall for all of their programs, all of their projects. And so, that actually applies for all of their HOME-funded projects. It's only in the case that we have five or more HOME-assisted units that we have these property-specific marketing plans.

So, for those smaller projects, you should be looking to the PJ that funded your project for their affirmative marketing plan and I would assume that their written agreement is actually going to tie them to that and in some cases, I would think their written agreement may actually provide links to where that is, but I would route them back to the PJ that funded their project for the specifics.

Kris Richmond: Great. Somebody was asking about the bifurcation and does the remaining tenant have to qualify for the HOME income requirements?

Les Warner: I'm not sure with the -- we're not going to evict them based on this. So, I would presume, and I'm just trying to flip through to see if there's further guidance there, that we're going to defer to our HOME guidance about if we have someone, when we do our reverification, on that.

Let's do this. I will check this a little further tonight and we may also, check in with HUD and see if we can provide a little more detailed answer on that for tomorrow's session.

Kris Richmond: Sure. And then --

Les Warner: I'm going to suggest we move forward just so, that we make sure we get through the material that we have remaining and then we may come back for some additional questions, if that works. Okay. So, let's switch into talking a little bit about unit quality inspections.

We're going to be talking -- moving through our unit requirements, talking about monitoring and our ongoing oversight of our portfolio. So, we know that all of our HOME-assisted properties are going to have to meet property standards and of course, there's some inspection requirements that go along with this.

So, we essentially have a requirement that any HOME unit that has any units that has dollars spent on them has to be brought up to our applicable standards and that's going to depend on the type of project that's being done. So, for instance, if it's new construction, we have a new construction standard versus if we're doing rehabilitation.

And so, we have a number of different codes and requirements that are going to apply. We have our building codes and rehab standards that may be state, that may be local. In some cases, we're going to be deferring to the international codes. If we have a property that's being rehabilitated, each PJ is required to have written rehabilitation standards.

And so, those will also, apply along with the codes and standards that would be for local, state or international. And then over the life of the project itself, we have ongoing property standards that essentially set -- the minimum standard for a unit that's going to be considered safe and sanitary to be occupied.

And so, those would also, apply throughout that affordability period. So, we have sort of two tests on this.

We have once the project is completed, we're going to have to be able to sign up showing that it meets our codes and standards and in some cases, our rehab standards as a completed unit, but then also, over the life of the project, we will have ongoing property standards to make sure that it continues to be an appropriate unit for our households to occupy during that affordability period.

So, each of the PJs, as I mentioned, is required to have written rehabilitation standards. It's something that each PJ would be developing locally. There's a prescribed list of elements that needs to be included in that. Really, what we're doing here is setting sort of a standard, much of it, about the types of materials, the type of installation and workmanship.

It also, might be about performance. So, it might energy efficiency, it might be standards about the lifetime for particular materials on that. And so, that would specify for any property that we are completing the rehabilitation on. That needs to be part of our inspection, part of our sign-off as part of determining that that property has met its standards.

We have a slightly lower standard for ongoing property standards and essentially, we're trying to make sure that these units remain appropriate, they're decent, safe and sanitary for our folks to be able to occupy. And so, depending on what you have at the local level, if there's a state or local occupancy standard -- habitation standard in place, you will use those standards.

Under the 2013 HOME rule, in the absence of having the state or local occupancy standards, we will defer to the Uniform Physical Condition Standards, UPCS.

HUD has acknowledged that they need to provide some additional guidance on this and I think somewhat in the near future, you will see that guidance be provided, which will provide you essentially the checklist or the elements of UPCS that will be used as our standards.

Up until this point, the HOME program had been essentially deferring to or using public housing quality standards and it was deemed to really not be quite sufficient.

And so, in the updated HOME regulations, UPCS was set as the standard and we're simply waiting for some additional guidance to be provided on how you will implement that, what parts of UPCS will be what you need to use instead of that. For those of you that have state and local occupancy standards in place, that will be what you're using.

So, you're not really waiting for that additional guidance. Keep in mind that for properties that may include lead-based paint, that will be properties that were 1978 or more recent, then we may have some ongoing maintenance and oversight on that. So, we may have surfaces that include lead-based paint.

So, we'll be monitoring, including to make sure that any kind of stabilization that had been done is still holding up, looking for signs of chipping, peeling paint, those sorts of things that would be part of that.

And then keep in mind you may have accessibility standards in place and that may be, in many cases, PJs themselves have adopted additional standards, such as a visibility standard for your property. So, we need to be inspecting based on what the requirements are from HOME, but also, that overlay of state and local or PJ-adopted standards that would apply for each of our projects.

So, here's a notation on the lead-based paint. It's pre-'78 structures. And when we have a property that has not been -- that is pre-1978 that has not been fully abated, going through that lifetime of that project we're going to be providing tenants with that lead-based paint pamphlet and also, as I mentioned, doing our ongoing visual assessment to make sure that these projects remain safe.

As part of our rehabilitation, we would be addressing whatever the required lead hazard reduction would need to be done, any clearance that was done on that and of course, if we have an occupied property while we're undertaking that, we're going to be providing notification to the tenants all through that process.

So, not only the pamphlet, but notification about testing, testing results. All of that needs to be maintained in your compliance files.

And that would include if we had a property that had been fully abated, you would want to be able to maintain that documentation so, you could say, yeah, I'm not giving out the lead-based pamphlets and the reason I'm not is that I have a fully-abated property, here's my documentation on that.

So, for noncompliant properties, the PJ has an ongoing responsibility to make sure that the -- those deficiencies are corrected. So, they need to be holding the owner's responsible for making those corrections.

So, as part of their oversight, they would be specifying the terms on that and as part of our oversight, we're going to make sure that we are monitoring, we are issuing a monitoring letter and then overseeing to make sure that the repairs were actually made.

In that initial year for a property that's been placed in service, the PJ does have some flexibility of perhaps putting some additional dollars in, but after that first year, PJ does not have the ability to put additional HOME dollars in. So, very important the PJ is monitoring the condition of that property and holding the owner responsible and making sure that that action is completed.

And that's part of the reason you have a written agreement in place. We will need to use that as your enforcement document to make sure that those properties are maintained to be safe for habitation. So, as part of that, the PJ has a number of things they're going to be doing.

The PJ needs to be requiring each of their owners to annually provide a certification of the property condition. So, annually, that owner is going to be certifying that that property continues to meet the minimum standards, the PJ can specify, as part of that, what they want, too, along with that certification.

So, it might be you want some pictures, maintenance records, you want to know about tenant complaints, how they've been handled. That would be something that the PJ would think about, when am I going to get that information, what's the format that I'm going to require that be provided.

And as much as possible, the PJ wants to be able to compare that property to what they're seeing in the reporting and that's part of your function of when you're doing your required onsite monitoring to just confirm that what you're seeing in reports, what you're seeing in certifications actually lines up with real-life scenarios on that.

So, the frequency for your actual onsite visits with those properties, we have a couple of different steps on this. So, when we initially placed that property into service, the PJ needs to inspect that property within 12 months of completion. And we've got a property that's now been listed as being complete.

It should be meeting all of its property standards. We need to be able to verify that within that 12-month period. If that initial visit -- if that initial inspection that's going to be completed within 12 months -- if that turns out to be okay, you can go to an every three-year cycle on that property.

If you're seeing some issues with that property or over the life of that property seeing some additional concerns, you may then want to switch that and be more frequently on that property. Maybe you -- for some period of time until you kind of regain confidence that the property is being well maintained, you could have a more proactive schedule on that.

But once that initial inspection is completed, it is now every three years. Under the prior HOME rule, there was sort of a scale, depending on number of units, on how often it was one to three years. So, this is an additional flexibility that helps a little bit. So, because we have this overlay with the low-income housing tax credit program, in the past, all of the --

I believe all of the tax credit projects had required an annual inspection. I believe we actually have some -- a little more flexibility under tax credit, also, to be able to go to a three-year inspection period and that's looking -- they're required to look at least 20 percent of the units.

They're using UPCS that the HOME program has identified, but I think when we have the guidance, we'll find that if -- the HOME program would use it a little differently when low-income housing tax credits are being used. So, keep in mind the PJ itself, for the HOME program, needs to make sure that they meet the HOME requirement on the three-year frequency.

So, you're going to need to be able to track, for your portfolio, when those inspections were made, when the next inspection is due to be able to document that you're meeting those requirements.

And as you make those inspections, that as you're seeing deficiencies with that property, that you have a system in place, that you are requiring those corrections to be made, that you are receiving verification that that work has been completed. So, as part of that, you, as the PJ, need to have some policies and procedures about inspections.

And that would also, include that process for when you identify issues with properties, the process you will follow to inform that owner of the deficiencies, the type of requirements you'll have in place as far as how quickly you expect those corrective actions to be made, what evidence will be provided back to you and that you essentially have a system to be able to track that to make sure those are actually being completed.

Part of that, of course, is keeping in mind what's the impact on the tenants? On some of these things, with a health and safety issue, we need to be that -- have that action taken immediately. In other cases, it may be that we can be more flexible on how quickly some of those modifications need to be made, but you need to be able to show that you have appropriate oversight.

Let's switch gears and talk about our monitoring. So, compliance monitoring is really the way that you, as the PJ, are making sure that all of these requirements that we've been talking about are being met and that's not only at the point that they're being placed in service, but all through that affordability period.

So, we need to make sure they're charging the right rent, that we've got income-eligible individuals in those units, all of those adjustments in rents or designation on unit. We need to see that happen over time, ensure that our property managers can continue to understand what those requirements would be.

And sometimes when we have turnover, we can see some changes in that over time with our properties. That also, includes the property condition. So, we're going to get our annual certifications from our property owners, but of course, we're also, going to be verifying that with our onsite visits and ensuring that our inspections also, line up with what we're being told.

And we're, of course, concerned about making sure that those properties are going to make it through, they're going to be sustainable for that affordability period. So, we're also, looking at the financial status of each of those projects during the affordability period and we're going to talk a little bit more about some of those ways that we might collect some of that information on that.

So, a project's going to be considered to not be in compliance when we've got folks that are not eligible, they're not being charged the right rent or income and in most cases, we need to make

sure that the PJ then has actions that are being taken to make sure that all of these compliance issues are addressed, the property is quickly brought back into compliance.

And of course, failure to handle that may mean that we have a property that either ceases to function as affordable housing or maybe because needed repairs have not been made, we have high vacancy rates, we might have a property that financially fails simply because we're not getting enough cash flow coming through.

So, the PJ needs to be very aware and have some -- you know, a protocol of actions that they will take.

And the reason that we're so, concerned about this, of course, is that for the HOME program, if that property does not complete that affordability period, so, if it doesn't maintain compliance for up to 20 years on a minimum standard, then all of those HOME funds have to be repaid.

So, if we had a property that a 20-year affordability period and in year 18 no longer functioned as affordable housing, maybe they -- maybe it went into foreclosure because they became financially distressed, maybe they stopped renting units because they are not in occupiable condition, that project is no longer functioning as affordable housing and all of the funding would be required to be repaid, not just some prorated amount giving credit for the 18 years of success for that project.

So, as part of this, the PJ needs to be really concerned about is this project really continuing to be financially viable. On the front end, when the PJ funds that project, they're doing their best on underwriting and subsidy layering to make sure that they funded a project they believe will be stable and be stable throughout that affordability period.

And so, based on that, in your underwriting, you make some assumptions on how you felt that income would be, how rents would change over time, how expenses go up over time, the minimum vacancies that were to be experienced by that property. So, we're trying to make sure, with our financial oversight, that those properties continue to be stable and not be at risk.

So, the PJ itself is required, specifically when we have projects with 10 or more HOME units, to complete an annual review of the financial condition.

I would suggest, as the PJ, because you have this risk of repayment, you probably need some level of financial review for all of your assisted properties, but specifically, you would need a protocol for your annual review for all of your properties that have 10 or more HOME units.

So, the way it can be completed is by looking at the reporting and the results of monitoring, information that you're collecting.

It might be through doing some technical assistance and in the case where you have a project that is in some level of risk, that higher level of involvement and it may be that you're working with not only the HOME funds, but with the other funders to try to diagnose where the risk is coming from and how to stabilize that project.

But the PJ needs to be able to identify that there's an issue and step in to make sure that that project is going to continue to be stable and will be able to complete that affordability period. So, as part of this, you, as the PJ, are required to have a monitoring plan in place. So, it really lays out what am I looking for, what are my objectives?

It needs to include a risk assessment. And so, this helps you establish what your priorities are going to be as far as your level of oversight, maybe the order of when you choose to go to projects and that might be as simple as compiling a list of projects that you have collected some kind of information about changeover or financial issues or a past record of compliance issues, but it also, might be --

A risk assessment could be a rather complex process where you sort of rate and rank based on a whole number of risk factors. So, a risk assessment needs to be in place as part of your guidance on how you are going to implement your monitoring plan.

And that strategy can include desk monitoring where you're looking up those reports, you're looking at the information that's being received by the PJ and that might be that you implement asking for some additional things in some cases, but it's also, going to include that onsite monitoring that we talked about that would generally be on a three-year frequency.

And that strategy then would also, talk about your approaches to this, the tools that you're going to use to collect and evaluate information, it might also, include things like a strategy on when I see this particular type of thing, what my action will be, such as if I see health and safety issues, what will my standard be on when that house can be corrected, what evidence would be provided to me. It also, could include things like when you're doing an onsite monitoring and you're doing inspections, you're usually sampling units.

It might be that you have a standard that says, if my initial sample has a certain percentage of overall deficiencies, that I am going to sample more units or maybe I'm going to make a return visit and look at more units to teste whether this is a systemic sort of issue. Also, as part of that, being -- identifying who's actually going to do this?

Who are the staff that are responsible? When are they going to be doing this? And again, I think those actions of when, as a reviewer, I see certain things -- what's my protocol on who I notify, what actions will be taken in response to any issues that's been identified? So, the PJ needs to have that monitoring plan in place.

I wanted to mention a little bit about monitoring fees. So, for a PJ that has a sizable portfolio of affordable housing units, that ongoing compliance can be a bit of a burden on their admin budget. And so, one of the flexibilities that was provided in the 2013 rule was to allow for newly-funded projects.

So, these are projects that are funded on or after August 23, 2013, but they would be allowed to charge a monitoring fee to those projects. So, some key things here, this is only for those projects that are funded on or after the 2013 date. So, it does not allow you to go back to the rest of your portfolio and begin to charge those projects a monitoring fee.

There are also, quite a few sorts of stipulations about how this is going to work. I would particularly guide you to the HOME fire that came out in April 2018 for some additional guidance, but the key things here are that that monitoring fee that you're going to charge has to be based on actual cost.

And so, your first step on this would be thinking about how do I establish what a reasonable monitoring fee that would be based on average, actual costs that are going to be incurred? That monitoring fee needs to be included in your initial underwriting.

So, if you're going to charge that fee, you have to be able to determine will this project be able to afford to pay that over the life of the property. As the bullet says here, again, you can't go back on your portfolio. It would be really nice if you could, but that's not allowed.

And those monitoring fees, as they paid in, and this is probably the most frequent question we receive, is what do I call that? Is that program income? It's not program income, it's what we call an applicable credit. So, it's not going to be entered in IDIS, it's not triggering those rules that relate to program income.

But as an applicable credit, the expectation is that you would offset your administrative costs related to monitoring based on the funds that you're collecting. So, you would need a way to be able to track monitoring expenses are $100,000 per year, I've collected $50,000 in monitoring fees.

And so, I would not be charging HUD more than $50,000, which is that gap not covered by my monitoring fees. So, you can't essentially double-dip and collect the monitoring fee and charge your admin account on that. So, keep in mind that as you raise monitoring fees over time, so, you're escalating those costs over time, they're always going to have to be based on actual costs.

So, you're going to have to go back and reevaluate what your monitoring fee is going to be based on reevaluating annual costs on that. Let's talk a little bit about the annual reporting that's going to be provided to the PJ. PJ is going to require the rent and occupancy report, are going to be filed by the owners.

We already talked about some of the things that the PJ would look for on those reports to determine whether they appeared to be in compliance. And included in that, the PJ could also, add some non-financial narratives about property condition, market, those things, but also, some of the financial indicators that we're wanting to collect as part of our oversight. And that might be in terms of some narratives where we're asking them to tell us more about some of these particular areas.

So, some of the things that we might ask for as part of content might be looking at budget versus their actual operating statement, disbursements, account payable issues, but it also, might include reports like balance sheet audit, wanting to know about vacancies or units that were currently not rented and then of course, those reserves.

So, we will generally have an operating and a maintenance reserve. Those are going to be capitalized over time. If we have a property that begins to be in financial distress, oftentimes the

thing they will not be paying into would be those annual pay-ins to the reserves. So, we want to make sure that those reserves are building over time to be able to cover future financial issues.

So, that property report would also, talk about things related to the property, the condition of capital improvements, turnover in staff and then things that are affecting the marketability in that overall neighborhood crime rate, vacancy rates and those sorts of things. Could be things that the PJ could choose to incorporate within that report.

We're going to end with the new HOME rule -- 2013 HOME rule added a little bit of additional flexibility that we had not had previously for troubled projects. So, these are HOME projects that have some significant operating cost overruns.

So, they're not financially stable at that point and that could be based on changes in local market, could be based on the maintenance issues that had not been addressed and high vacancy rates. So, when we have a project that is essentially at risk, there is the ability for the PJ to go back to HUD and ask for the authority to be able to invest additional HOME dollars in that property.

Now, obviously, that's not going to be a first action the PJ is going to want to do. They're collecting financial information, they're keeping an eye on their projects over the life of that affordability period and trying to intercede early before they would get to this situation, but this does allow the PJ to go back and ask for additional subsidy.

If they are placing -- if they were allowed to put additional subsidy in, it's going to have to be within the current subsidy limits. So, they're going to have to look at the old and the new investment together and make sure that it's still going to comply with those current subsidy limits.

And as part of that, HUD's going to want to know how did you get into this situation, how can we be confident that with this additional investment that we're going to have a stable project? And this is something that HUD will have to review, and they will have to approve before you're able to do that.

In some cases, you might be able to reduce the number of HOME units, which would give you some additional market rate units and in some markets, would allow that property to be able to generate some additional revenue. So, I'm going to close and talk about some of the resources and then we can revisit a couple of questions in the time remaining.

So, as always, we would recommend that you work closely with your HUD field office staff. They want you to be in compliance as much as you do. For questions that they're unable to answer, they have a direct line to be able to seek clarification. We also, have mentioned a number of notices in HOME fires and HOME facts.

All of those are available on the HUD Exchange and I would recommend, for those that we mentioned in particular, that you go back to those if you're not familiar with them. In some cases, there also, are some posted webinars that will provide you some specific information. For instance, we've got a number of questions about determining income.

There is a new webinar that was completed and recorded that will, I think in the next week or so, be posted on the HUD Exchange, which will also, be available to you. I'll note that there are a couple of guidebooks that were done a number of years ago that I still think had some very good, useful information.

So, there's the compliance and HOME rental projects. One was written for the PJ, one was written for the owner. So, they go through in great detail things such as today when we talked about, so, if I have a tenant in a fixed unit that goes over 50, but they're under 80, they'll walk you through all of the requirements.

I think they can be very useful for both PJ and property owners. I -- and so, I would recommend -- those are posted on the HUD Exchange. I would recommend you use that. There also, is an existing guidebook. It's been around for quite a while, but I think it's still useful on promoting fair and assessable housing opportunities.

And then a couple of other guides here, the last bullet point here is the technical guide for determining income, which is the go-to guide. I will note on that it is out of date in that it still includes the census methodology or definition, which is no longer allowable, but it has some very good standard forms.

It has good guidance that would be useful for folks. I would also, recommend the use of that. Just a reminder for tomorrow, we have our office hour sessions. It's starting at 1:00 o'clock Eastern Time. We'll go for an hour. Kris and I will be sorting the questions that were asked today.

For some of those that we were unable to get to, we will try to make sure that we have answers for you tomorrow. And a couple of these we've got a little research we want to do on those. So, I would encourage you to participate in tomorrow's session for us to have a little more time to dive into some of the questions that have been raised.

Kris, we've got like one minute remaining. Anything that we particularly want to hit before we close for today?

Kris Richmond: Yeah. I think a quick question is they were asking about the every three years for inspection, is that for all their portfolio or just projects that are after the new rule?

Les Warner: I'd have to go back and look at -- there's an applicability chart that was provided by HUD and I will look at that before tomorrow and verify that.

But for any of the 2013 rule requirements, if you simply, on the HUD Exchange, search under HOME applicability chart, it will, line-by-line for all the requirements, tell you whether it applies specifically only to newly-funded projects or whether it applies to all of the portfolio. That brings us to 3:00 o'clock. I'm going to suggest that we end for the -- today and [inaudible].

Kris Richmond: Yeah. I just want to add, Les, that a lot of people were asking how do we find out about the office hours and just like the information for today, you'll be sent a link for joining and that'll be sent to you tomorrow. So, don't worry, that's coming. So, you will be able to get into office hours.

Les Warner: Great. Thank you for adding that. All right, folks, we'll look forward to your participation tomorrow. Thank you.

(END)