



Neighborhood Stabilization Program Long-Term Rental Oversight Webinar Part I

Presented by the U.S. Department of Housing and Urban Development
Community Planning and Development

U.S. Department of Housing and Urban Development • Community Planning and Development



Today's Webinar Hosts...

HUD:

Sarah Ciampi, HUD Chicago Field Office

John Laswick, HUD HQ

Njeri Santana, HUD HQ

Lawrence Reyes, HUD HQ

Marilee Hansen, HUD HQ

TDA:

Jennifer Alpha

Sandy Patel

Agenda

TODAY'S FEATURE!

Administering Long-Term Rental Oversight:

- Basic Rental Requirements
- Rental Agreements and Records
- Defining Rent and Maintaining Affordability
- Marketing and Tenant Relations

PART II: COMING SOON!

Unit Quality, Inspections, and Monitoring

Troubled Projects and Other Real Scenarios:

- Establishing troubled projects
- Most common challenges



Basic Rental Requirements



U.S. Department of Housing and Urban Development • Community Planning and Development

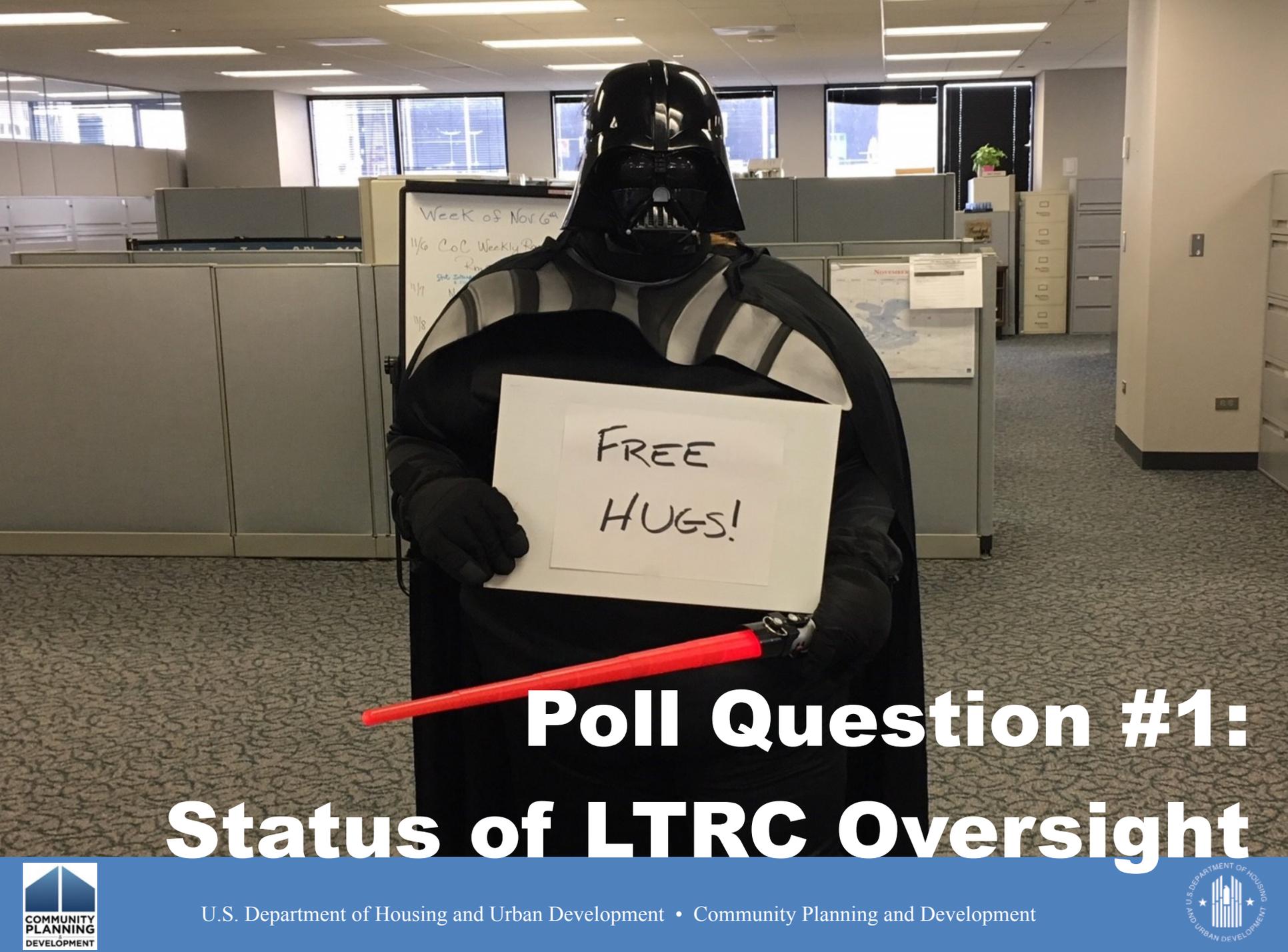


In This Module...

- This module will cover:
 - Basic NSP requirements for rental projects
 - Why Long-term Rental Compliance (LTRC) matters (besides being required!)
 - Key NSP rental requirements

Long-Term Rental Oversight

- NSP 1, 2, and 3 obligations for long-term compliance
 - Preparing for grant closeout
 - Post-closeout annual reporting
 - Portfolio investments – grants and loans
 - Asset Management
 - Financial Risk
 - Mixed-finance deals – NSP and other grant requirements
 - Policies and procedures, portfolio tracking tools
 - What is required?



Poll Question #1: Status of LTRC Oversight



Affordability & Compliance

Activity	NSP Investment Per Unit	Length of Compliance/Period of Affordability (PofA)
Rental housing acquisition and/or rehabilitation	Less than \$15,000	5 years
	\$15,000 - \$40,000	10 years
	More than \$40,000	15 years
New construction of rental housing	Any \$	20 years
Refinancing of rental housing	Any \$	15 years

- Deferment to HOME Program (HOME is minimum standard)
- Structure deals with more or less NSP units based on risk versus PofA
- Other lenders in rental deals – the PofA terms
- The driving element behind long-term rental compliance monitoring
- Enforcement – legally binding documents/recorded restrictions

NSP Rental Basics – Eligible Uses

- Activity only Eligible Under NSP Uses:
 - Eligible Use A – Financing Mechanisms
 - Eligible Use B – Purchase and Rehabilitation
 - Eligible Use E – Redevelopment
- Grantee rental strategy based on who needs housing, where, what can they afford, current housing supply, leverage other resources for the greatest impact
- NSP and other Financing sources

NSP Rental Basics – Projects

- Eligible project types:
 - 1-4 units (small-scale rental) 5 or more (large scale rental)
 - Scattered-site rental versus multi-family rental
 - Mixed Income projects
- LH 25% Set-aside Requirement
 - Addressing LTRC for LH25 projects

NSP Units and Affordability

- Number of NSP-assisted units described in the written agreement
 - All units NSP-assisted, or
 - Some units determined to be NSP-assisted through a cost allocation process; income restrictions and LH25 designation matter
- How are NSP units defined
- Action Plan NSP Substantial Amendment – applicability/definition of unit designations
- Project must maintain unit mix through affordability period

Death Star Project IA

HOT ITEMS:

- Stormtrooper AOC
- Get my \$\$ in order
- DS. Reserves
- Tenant Selection Planning

Rental Agreements and Records

In This Module...

- This module will cover:
 - Rental Agreements – with owners/developers/subrecipients
 - Agreement requirements – necessary for LTRC
 - Agreement amendments
 - Assuring compliance – agreements and deed restrictions
 - Recordkeeping requirements
 - Minimum versus “best-kept” records
 - Prepping for closeout
 - Using records for LTRC Oversight

Written Agreement and Compliance – Key Rental Elements

Basic Agreement Requirements from HUD Programs Apply:

*Note: In most cases, grantees may enter into developer or subrecipient agreements; standard subrecipient agreement requirements must apply to co-grantees, consortium members under NSP2, and public nonprofits such as housing authorities

Key elements for a rental agreement (critical to future LTRC):

- Applicable Financial Requirements
- Number and type of NSP assisted units
 - Bedroom designations – specific units if applicable
 - AMI targeting – critical for LH25 requirement
 - Initial rents and utilities – DEFINE THE RENT

Written Agreement and Compliance Elements cont'd...

- Affordability period – term of PofA and enforcement
- Affirmative marketing – ongoing requirements
- Definition of income and income certifications
 - Initial certification; Annual recertification is not required
 - Verification requirements
 - Income applicability
- Lease requirements
- Property standards
- Enforcement provisions
- Access to files & units: Grantee, HUD, IG
- Reports (annual) – The Annual Owner Certification (AOC) and other suggested reporting

Written Agreement and Compliance Elements cont'd...

- Recordkeeping
- Approval of (due on) sale or transfer
- Default provisions – noncompliance
- Ongoing budget review & financial reports
- Excess cash provisions – as applicable
- Optional monitoring & intervention rights:

NOTE: This is not a comprehensive list of agreement requirements or suggestions; other front end items such as work scope, compensation, etc. are applicable.

- Agreements amended as needed; prior to final project closeout ensure agreement is current.

Compliance Mechanisms:

- NSP rental affordability restrictions imposed through land covenant or deed restriction on the property that run with the title to the land for at least the minimum affordability period
 - Construction versus completion agreements and restrictions
 - Suggested content
 - Amending restrictions
 - Restrictions of other programs – NSP mixed finance deals

Compliance Mechanisms:

- Include parameters in written agreements - must apply without regard to any loan, repayment, or transfer; utilize rights of purchase and other methods may supplement
- **PROTECT YOUR INVESTMENT!**
 - *If project is sold or foreclosed prior to end of PofA, grantee repayment is required.

Documentation requirements...

Front-end project documentation:

▪ Eligibility Determination

- Underwriting documents, applications if applicable
- Budgets – development budget, CNA budgets, operating budgets
- Understanding construction versus permanent financing
- Sources and uses statements
- Other funding source commitments
- Review of cost reasonableness
- Cost allocation documentation

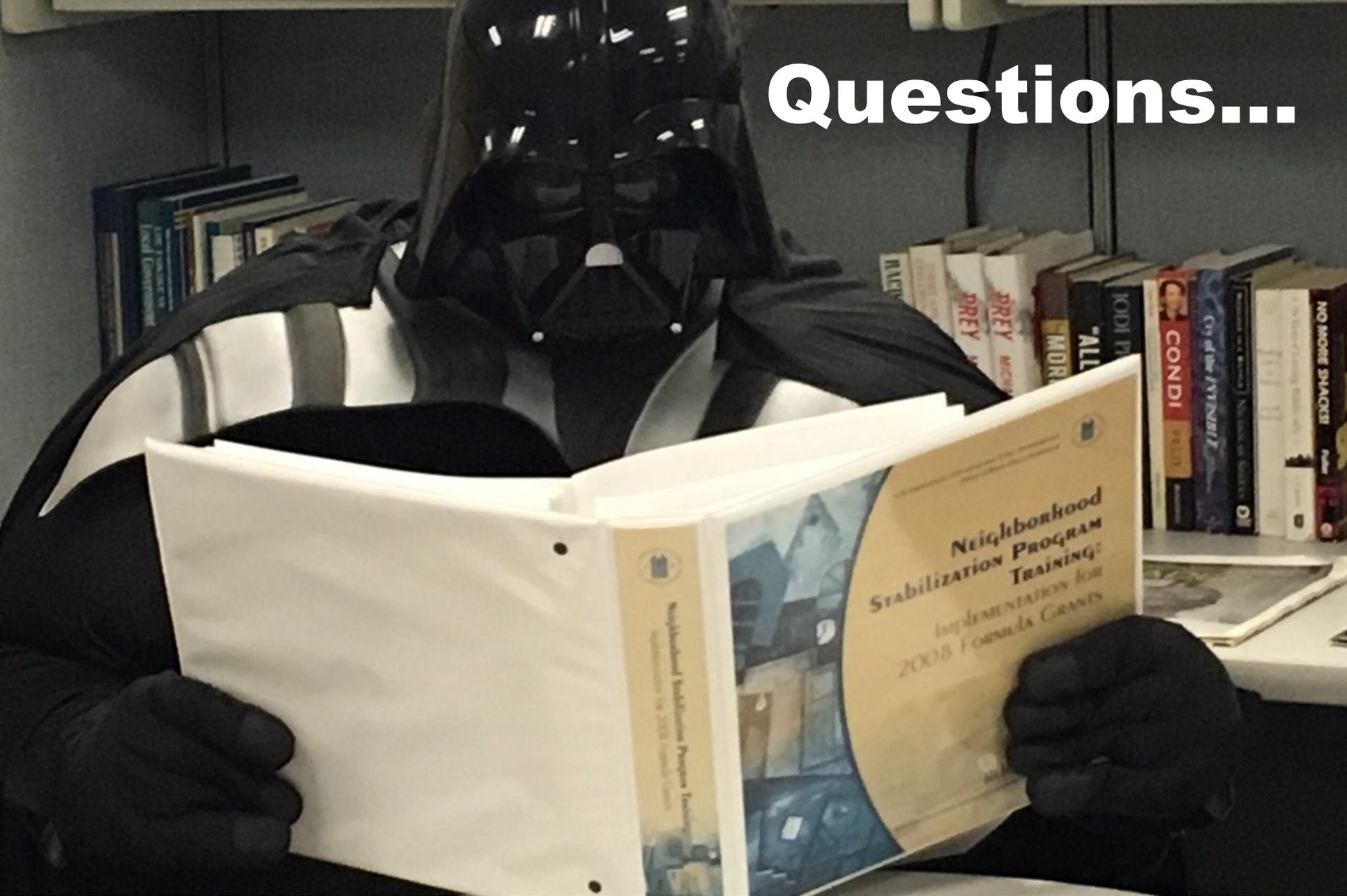
Documentation requirements...

Back-end project documentation:

- **Initial lease-up documents**
 - Marketing and Tenant Selection
 - Initial Lease-up units

- **Establishing LTRC Record: Items to document:**
 - Reporting documents – AOC submissions and reviews
 - Initial and ongoing inspection records (as applicable)
 - Project monitoring documents
 - Financial reviews – proformas
 - Cash transaction records

Questions...





Defining Rent and Maintaining

Affordability



U.S. Department of Housing and Urban Development • Community Planning and Development



In This Module...

- This module will cover:
 - How to determine rent for NSP units
 - Rent definitions and applicability
 - The LH25% Set-Aside requirement
 - Maintaining Affordability
 - Affordability requirements – required versus suggested
 - The LH25% Set-Aside

NSP Requirements for Rents:

- Implementation of “affordable rents” definition from substantial amendment
 - Amendment governs rent:
 - Defining rent using HOME safe harbor
 - Other rent definitions such as LIHTC
 - Applying rent definitions to different project types
 - Calculating LH25 rents
- *Rent definition must address reasonableness and ensure developer is not unduly enriched by upfront subsidies versus long-term cash flow and debt service



Poll Question #2: Definitions of Rent



NSP Requirements for Rents cont'd:

- Different Area Median Income (AMI) rent categories: Must provide project owner/developer with max rent on annual basis-use of rent schedules
 - CDBG nor HOME programs define units between 80%-120% of AMI – local definitions required if applicable:
 - 30% of income
 - Local market rents

NSP Requirements for Rents cont'd:

- The maximum rent is actually a maximum applicable rent in utilizing HOME safe harbor for NSP units
 - What are other financing sources that need to be considered in project?
 - Units that are NSP and HOME units – applicable rents
 - HOME “Low-HOME” rent applicability to LH25 units; no applicability of Low-HOME and High-HOME unit designations in NSP-only units – how is rent otherwise defined

NSP Requirements for Rents cont'd:

- Considerations for utility allowances:
 - Ensure project agreement defines utilities and how to determine applicable utility allowances
 - Part of LTRC – checking leases and rent calculations for utility allowances
 - HOME utility provisions not automatic/required; may utilize project-based utility model, local HA, other generally approved utility allowance calculations

Grantee Annual Action on Rents

- Grantee must:
 - Provide NSP max rents to owners/managers annually when available
 - Rent increases should be requested by project owners in writing and approved by grantee
 - Need to determine applicable rents and utility allowances as applicable
 - Suggest annual reporting of rental compliance requirement
 - Ensure rents are not being changed during lease periods

Maintaining Affordability – Unit Mix:

- Project should contain initial unit mix over course of PofA:
 - Amendments related to project status sometimes required
 - **MUST MAINTAIN LH25 mix** – units occupied by household at 50% of AMI, new tenant must also be 50%AMI
 - Tenants may go “over income” during PofA
 - Other funding sources in deals impact treatment of over-income tenants

Maintaining Affordability – cont'd:

- Based on income targeting – initial underwriting should reflect attainable unit mix over PofA
- Key considerations:
 - Total number of NSP units versus other units (if applicable)
 - Rights of existing tenants
 - Timing of rent changes
 - Quality of original written agreement/recorded restrictions over time
 - Rent adjustments relative to cash flow
 - Addressing temporary non-compliance – unit swaps

Maintaining Affordability – Income:

What counts as income?

Generally two definitions

- Section 8 (Part 5)
- IRS Adjusted Gross Income
- Must anticipate income for next 12 months
- Grantee selects one for a program
- Income definition remains same throughout affordability period

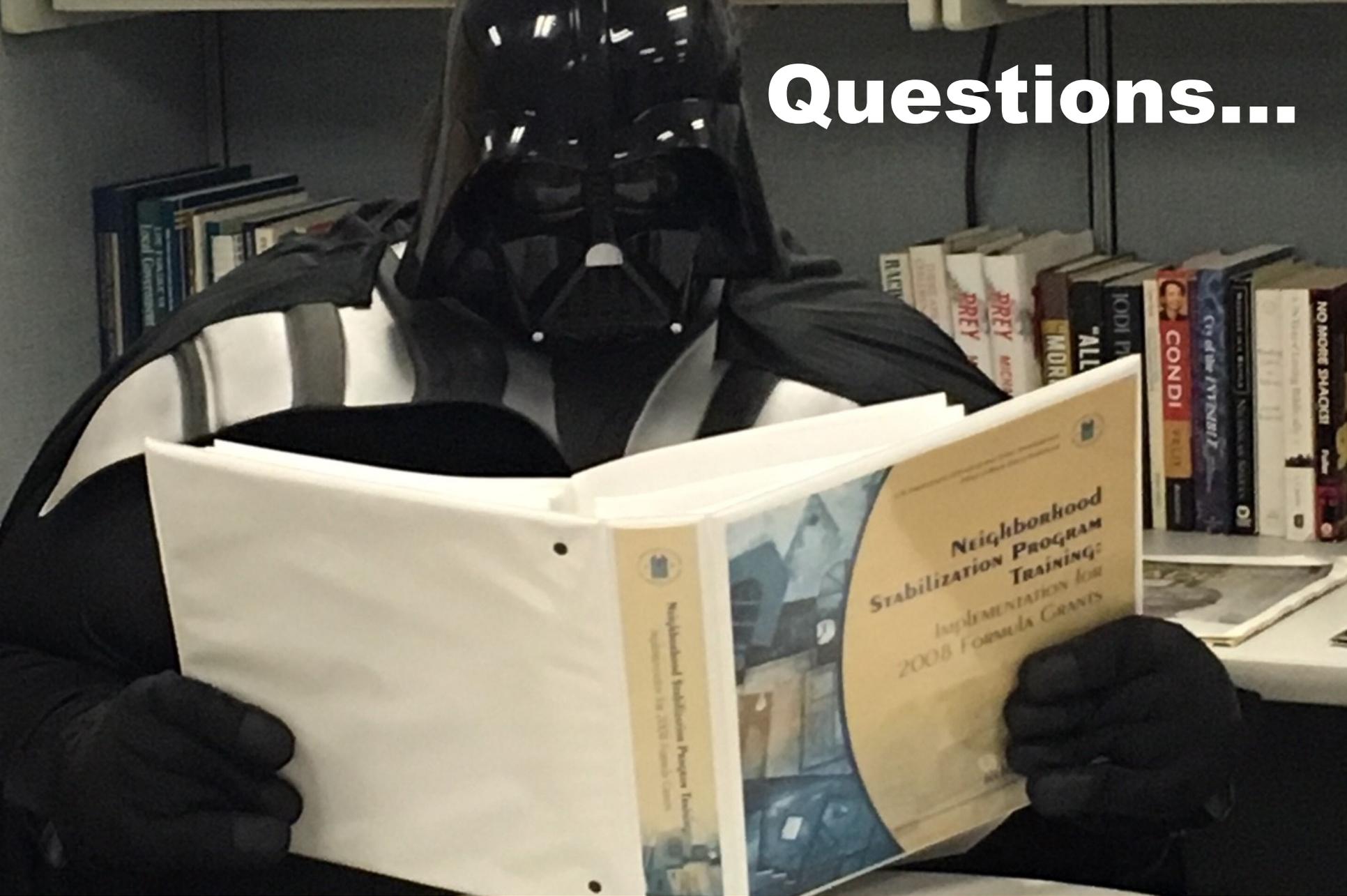
Income Targeting and Certification:

- Project specific income targeting – based on initial underwriting:
 - At initial occupancy (program rule)
 - Over life of the affordability period
- LH25 Set-Aside Requirements
 - Initial occupancy
 - New tenancy
- Some projects will have an extended use period of affordability after NSP PofA has been completed
- Must recertify rental income at initial occupancy only, though may be necessary on annual basis if other financing/local requirements:

Documenting Affordability

- Reporting and systems for maintaining unit mix and tenancy during PofA
 - Annual Owner Certification (AOC) report
 - Electronic reporting system utilized by grantee
 - Standardized reporting system/form from other funders that can be verified
- Required at initial occupancy and unit turnover
 - schedule/system for completing reviews

Questions...





Marketing and Tenant Relations

Research and Planning in Urban Development • Community Planning in Development



In This Module...

- This module will cover:

Expectations of NSP project owners/developers:

- Fair housing
- Affirmative marketing
- Marketing & selection practices
- Lease & tenant protections
- Marketing records

NSP Requirements:

- Grantee LTRC Oversight
Plan/Policy/Procedure must address long-term compliance with standard federal provisions for rental projects.
- Critical areas of high concern
 - Ongoing marketing
 - Leasing requirements – lease documents and lease enforcement

NSP Requirements: Marketing & Tenant Selection

- Project marketing procedures must address:
 - NSP unit occupancy requirements
 - Marketing plan for accessible units
 - Nondiscrimination policies & affirmative marketing procedures
 - Lease requirements
 - Filling vacant units
 - Maintaining tenant selection records

Fair Housing

- Laws prohibiting discrimination
- Applicable Federal laws:
 - Title VI of the Civil Rights Act
 - Fair Housing Act
 - Section 504
 - Americans with Disabilities Act
 - Age Discrimination

Affirmative Marketing

- Plan to conduct special outreach to those least likely to apply
- Outreach activities/procedure to be specified by Grantee
 - Tie to Grantee's activities to affirmatively further fair housing
 - Will vary by property/market
 - Outcome to be reported & assessed

Documenting Marketing & Tenant Selection

- Must keep records documenting efforts to:
 - Market affirmatively to eligible population
 - Market accessible units to disabled persons who need accessibility features
- Maintain records of operation of tenant selection procedures
 - Waiting list
 - Who selected from waiting list & why
 - Leases

Leases!

HOME Program Safe Harbor: Governed under 92.252 and 92.253

All tenants must have a written and executed lease...minimum period of lease is one year (exception, transitional housing projects, but both parties must agree); leases must be renewable except for good cause

Key Project Rule considerations:

- Prohibited lease terms are critical to lease enforcement – outlined in 92.253(b)
- Leases in multiple-source projects – may require additional language/riders – a standard HUD lease generally does not comply with requirements
- Complete annual review of leases
- Leases govern rent and utility allowance

Leases cont'd – Prohibited Terms

- Agreement to be sued
- Treatment of property
- Excusing owner from responsibility
- Waiver of notice
- Waiver of legal proceedings
- Waiver of a jury trial
- Waiver of right to appeal court decision
- Tenant chargeable with costs of legal actions regardless of outcome

Leases cont'd – Termination

- Termination or Refusal to renew lease requires good cause:
 - Violation of lease terms;
 - Violation of applicable laws;
 - Completion of tenancy period for transitional housing; or,
 - Other good cause
 - Lease should specify basis
 - Increase in income is not good cause

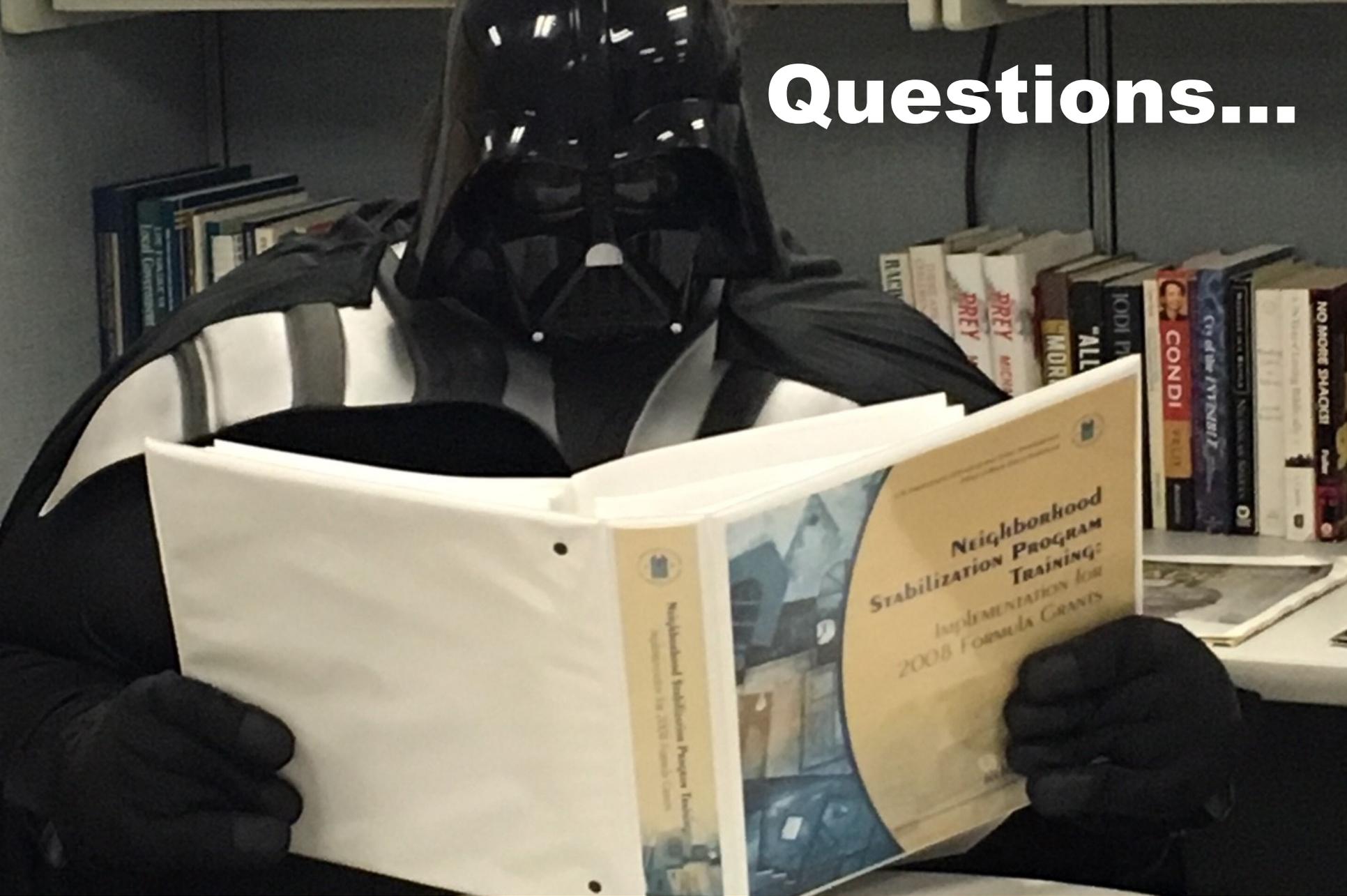
VAWA

- Violence Against Women Reauthorization Act of 2013 Final Rule applies to project committed on or after Dec. 16, 2016
- VAWA protects any person who is an applicant or tenant of a covered project: **AND**
 - A survivor of
 - Domestic violence,
 - Dating violence,
 - Sexual assault, or
 - Stalking

VAWA(cont)

- Had until June 14, 2017 to adopt emergency transfer plans
- Must allow tenants who qualify to transfer to another NSP unit in same project if considered safe or may assist to move out of project into another NSP (or grantee) project
- May utilize TBRA for emergency transfers if a part of TBRA program
- May bifurcate lease to evict abuser

Questions...



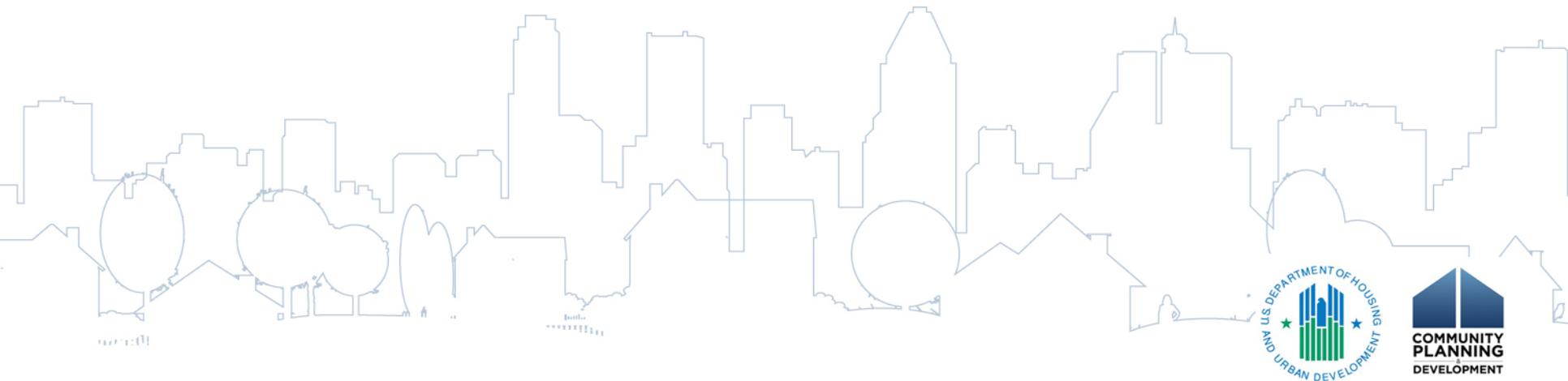
Resources

- HUD Exchange

<https://www.hudexchange.info/programs/nsp/>

- Ask A Question

<https://www.hudexchange.info/program-support/my-question/>



THANK YOU!
Please complete our survey!

