NSP Webinar – Long-Term Rental I
Tuesday, November 14, 2017
2:00-4:00pm EST

Jennifer: Welcome everybody to today's webinar on long-term rental oversight for Neighborhood Stabilization Program projects. And this webinar is for all NSP grantees and their affiliates and is the first in a series of webinars that are designed to provide programmatic guidance to grantees, particularly as they work towards closing their NSP grants.

Before we get started with today's lesson, we wanted to let you know that we have a little bit of a plot twist. This is going to be just part one of our presentation on rental oversight. As we were preparing these slides, we realized that there's just too much to say in one session. And so, this topic will be continued on December 5th, same time, 2:00 p.m. Eastern time. And we'll talk a little bit more in a bit about what we'll talk about today and then what we'll save for next time.

I also wanted to remind everyone that today's webinar is being recorded and an archive will be created on the HUD Exchange. The archive will include the audiovisual recording, a PDF of the presentation slides, and a written transcript.

So, joining us today for our webinar, we have Sarah Ciampi from the HUD Chicago Field Office as our premier presenter today. We also have from headquarters, John Laswick, Njeri Santana, and Larry Reyes. Marilee's unable to join us today, but I know she's here with us in spirit. So, I'm going to turn it over to John for a few minutes to give you a special warm welcome, and then we'll get started with our presentation.

John Laswick: Thanks, Jennifer. So, wanted to welcome you all to this seminar and to say that these names on the page in front of you are really mostly superfluous because Sarah did almost all the work on this. And we really appreciate that. She conceived it, realized that we needed this, and developed the entire program. And it was so powerful really that we didn't want to try to cram it into two hours. So, I hope you can make it back for the second part because that's going to be sort of the thorny-problem section, and I think you'll find it really fascinating.

Just want to clarify, Sarah's put together quite a few suggestions about how you can go about meeting these requirements and, particularly, documenting them. These aren't HUD forms or NSP forms, per se, but these are just good ideas about how you can go forward with this. We don't have our own forms, but we do have people that come out and monitor and audit you. And really this is the kind of documentation you want to have to make that a bulletproof set of records.

And then one last note is that I think we're going to have a big year for closeouts this year. We, I think, are working through some of the kinks and realizing that we need to provide more problem-solving in our TA approach. So, we're going to be doing that, kind of getting these problems out of the way which are preventing most people from closing. It's not that you can't close; it's that you can't get ready to close. So, we're going to be doing that and shooting for about 150 closeouts this year. We've got 123 NSP One grants with less than ten thousand dollars in their account, so I think we can push those through. So, without further delay, I would like to introduce you to Sarah Ciampi and let her take it from here.

Jennifer: Sarah, if you're...

Sarah Ciampi: Can you guys hear me now?

Jennifer: Okay, there you go. Now we can hear you.

Sarah Ciampi: Hi. Good afternoon everyone, and thank you so much for joining us today to discuss long-term compliance. As John mentioned, we have split this topic up into two parts. So, today we're going to focus more in on some of the requirements that are basics to your programs as far as rental developments and projects and compliance. And then our part two will really dig more into how you can go about monitoring your projects for compliance, your oversight plans for policies and procedures, and then also some really good discussion on troubled projects that you may have already out there. So, I hope you can join us, in fact, in December. That will be a great part two session.

We developed this presentation with a lot of content that you can keep for reference. So, don't worry, we won't be reading every single thing that's on these slides. But we wanted to make sure that you had something available to use in the future. And we will be doing some interaction with you folks today to kind of gauge where you're at as far as your rental oversight and compliance. And we'll also be doing some exercises in the future so we can really put a lot of what we discuss into practice.

As John mentioned, we do have basic HUD requirements, but today's webinar will also be full of a lot of suggestions that we have gained from experience out in the field working with all of you as grantees and then also myself, because I used to be on your side as a NSP grantee and developing NSP rental projects. So, I really look forward to helping you all out today. And with that, we're going to take a look at our agenda.

So, today we'll be talking through the basic rental requirements. We'll also be really taking a look at rental agreements and records. So, looking at what should be in your agreements, what should be in your restrictions, and then how you maintain documentation. We'll also be taking a look at how you should be defining rent under NSP and then maintaining affordability and what those requirements look like. And then finally, we'll discuss the marketing and tenant relations aspects. We'll get into leasing and some of the tenant protections that we really need to pay attention to under the NSP program.

And then part two, as I mentioned, we'll be digging a little bit more into monitoring and your long-term oversight, and looking at troubled projects and what are some real-time scenarios that we have out there right now with our rental portfolios and how we can work through those challenges and make sure that we're maintaining really good-quality affordable housing stock that was produced using the funds under the NSP program.

I also had a little fun flavor for the afternoon, so we hope you folks enjoy. So, today we kind of want to talk through first what are your basic NSP requirements and really why long-term rental compliance is important. Everyone hears about it; everybody thinks about it. But it's not something that a lot of folks have had time or experience to really work on. So, we'll talk through that, and then what are the key NSP rental requirements that you need to pay attention to.

So, under all three versions of NSP, you are required to have long-term compliance. And basically, that's so you have some sort of mechanism to secure the period affordability for each project. But it's also for the benefit of your investment in affordable housing in your community. A lot of this oversight will actually help you prepare for closing out your grants. And as John mentioned, we're really hoping for a big grant closeout push this year. Certainly, many of you are close to hitting that goal of closeout or you've already started your pre-closeout work. And this piece will help you develop that rental piece as you prepare to close out your grant.

We also need to really pay attention to what your annual reporting will look like beyond closeout. So, you'll be required to report to HUD on an annual basis through our DRGR system. And part of that will indicate what the status of your portfolio looks like. So, are your rental projects still in compliance with their period affordability, are you still charging the applicable rents, and are you still having the unit mix and the income targeting that you had with those projects when they first started. Or perhaps if you've had some work-outs, what do those projects look like now.

We also really need to make sure that this idea of rental oversight is capturing how we maintain our portfolio investments. So, whether you've decided to set up your project as grants or whether you have loan terms and how these terms are applied with your agreements, it's how you're monitoring that asset and that housing stock for the period affordability and those restrictions that you've developed and beyond.

So, the two key aspects of that would be asset management and then your financial risk. So, it's the actual property and looking at maintaining that unit mix, the rents that are applicable, but also the conditions of that project, and then your financial risk. Because, as we know, if this project fails to fulfill the period affordability terms, the grantee then is on the hook for that investment.

So, you would be making that repayment minus any programmatic income. But more so, that means that's a loss of affordable units to your community that you don't want to have. So, we want to make sure that we have a strong oversight program to protect those investments.

Also under this oversight piece, the reason we do this is to make sure that we're adhering to terms of other grant requirements. So, while NSP is certainly a financing source, and it may be your sole financing source, we have other financing often in these NSP deals, namely, the HOME program for those of you that are participating jurisdictions and have HOME funds. Or maybe you've applied to your local participating jurisdiction for HOME funds. So, how do those development deals look and what are the more stringent applicable requirements to each of the grants. So, each financing source has its own requirements and obligations that need to be understood. So, a good long-term rental oversight program can help you capture all of those requirements.

And finally, under our requirements for the NSP program, we don't necessarily dictate what you have to have in place. But we do say that you need to have a plan, policy, and system in place for effective enforcement and monitoring of your period affordability and the applicable rent. So, all of that in a nutshell is, what is your oversight program going to look like?

We want to make sure that—there's three main topics that we're trying to address with oversight. It's what that period affordability is that's supposed to be sustained, what are the project rents that need to be maintained. We'll talk a little bit later about the low-income set-aside or the 25 percent set-aside and how we need to adhere to that. And then the income targeting that we start with.

We also, during this webinar today, we'll also talk about your systems and policies and procedures that we would suggest. So, while NSP says you need to have something in place to maintain your period affordability, what exactly will that look like. In part two we'll dig into that a little bit more as far as monitoring, but it's really critical that you do have policies and procedures that actually identify specific duties, roles and responsibilities, or schedules of when you would achieve long-term oversight as far as how your community goes about monitoring.

So, right now we're going to actually start off with a poll question to understand the status of your long-term rental compliance oversight.

Jennifer: Okay. Great. I also wanted to remind everyone before we jump into the poll question that if you do have specific questions that you'd like to ask, we will be taking a break throughout the presentation to take questions that have been written in through the Q&A feature that Sandy described at the beginning of the webinar. So, feel free to send those questions in as you have them, and then when we get to our breaking point for answering questions, we'll be sure to read them off and get those answers to you.

So, for our poll question, we want to understand, how prepared are you for long-term rental compliance oversight? And you see the poll here up on your screen. A, you have established a written plan and/or policy and procedure and are currently completing compliance reviews to ensure compliance with affordability requirements. You've established a draft written plan or policy. Or you have not established a plan or a policy procedure. Or you plan on outsourcing long-term rental compliance oversight to another entity.

So, folks, you can go ahead and choose your answers and submit them. And it looks like we have our results generated here. And it looks like most folks have established a written plan or policy and procedure and are currently completing compliance reviews to ensure compliance with affordability requirements. That was the most popular response. But it looks like there are still a few folks out there who have not established their written plans and procedures. And so, I think Sarah's going to have some good tips for you guys. Anything else you wanted to talk about on the poll, Sarah?

Sarah Ciampi: Well, this is great, because we're hoping that most of you are at the point where you have established some plan and policy and procedure. And those will keep being refined as you go through either closing out your grant or as your project needs change or your staffing-capacity needs change. We understand a lot of your grantees out there have, in fact, had a lot of staff turnover with the NSP program and you may not have access to other natural resources. Such as, if you're not a HOME participating jurisdiction, you don't have HOME rental oversight, this really is sort of a new topic for you because CVG and long-term rental aren't really two things that we're used to associating with each other. So, this is great. And we hope today that this webinar will help your self-check yourself but also help make sure that your plan establishes some other items that you might want to incorporate.

All right. So, real quick reminder about affordability and compliance requirements. The NSP program, the first two, the HOME programs. So, you'll hear me use the term a lot that "HOME is a safe harbor." In some instances, grantees have established that. In other instances, the NSP program has actually established that HOME is the minimum standard. So, a quick reminder of what that looks like.

But what I also wanted to mention is that if you do have mixed financing deals—in particular, if you have other federal funds such as the HOME program or NSP together, the period affordability would actually be defined in one of two ways. And you have a choice as a grantee. But it must be noted in your actual substantial amendment. So, you can either consider what the full federal investment is per each unit, and then that would define the period affordability, or you can have periods of affordability that run concurrently. So, there would be an NSP period affordability that runs separate from a HOME period affordability. So, something to keep in mind.

Another note we want to mention for those of you that are still developing your rental projects or using program incomes to develop more rental projects is that you might want to consider your risk and your reward for the number of units that maybe you designated NSP versus the total amount of investment. So, in some cases, folks will put in less NSP investment in each unit to gain more affordable units in a particular project versus putting more investment in for less units.

So, these are items to consider relative to your length of period affordability and something that you want to take a look at especially when you're mixing your funds with other sources. You also need to make sure that you're paying attention to what other lenders require in rental deals. And particularly, NSP may not be in those primary positions. And what we mean by positions, if you have a multi-financed deal, that means that you have different lenders with different authorities. So, they're in different positions, and they have different rights.

So, you may fall down the ladder as a "stuck in third or fourth tier" funder, and you need to be careful that you're still maintaining your financial stake in the specific project. So, keep that in mind when you're putting how much risk you have into a particular project for the length of your period of compliance. So, it might be worth it to put less investment in per unit to get out of a project compliance period for five to 10 years if you know that project will successfully become affordable housing and continue to be affordable housing for years beyond your initial period affordability.

So, those are some quick little tips to consider when looking at your period affordability requirements. Later on, we'll be discussing your documentation and your recorded restrictions, so I don't want to spend too much time on that now. But just a reminder that the baseline requirement for NSP long-term compliance is this period affordability, and you need to make sure that you have restrictions and recorded instruments in place that will help enforce that.

So, another quick reminder. We have three eligible use types under NSP where we see our rental projects. You need to make sure that your action plans reflect these use categories and as applicable, that it reflects where you utilize the 25 percent set-aside. As a reminder, the NSP program requires that grantees spend a minimum of 25 percent of their NSP funds plus program income, to assist households with housing—and this can be through home buy or rental—that are at or below 50 percent of area median income.

A lot of folks use the rental projects to achieve this because, generally, rental projects are targeted at some of those deeper incomes, such as 50 percent of area median income or 30 percent of area median income or less. So, a reminder that you need to have that stated in your action plan and your substantial amendment. And as you make changes to your rental project, you should be updating those amendments on a regular basis as applicable. You also need to consider having a core rental strategy for your particular community on where you're going to put specific types of rental housing and what that income targeting would look like.

Another quick reminder here about the eligible project types for rentals. I won't go into too much detail on this. But just also know that we do have a lot of folks in different parts of the country that rely on a scattered-site rental development method. So, while it may seem that everyone thinks rental and mixed financing are your typical larger multi-family buildings, this can also apply to a scattered-site scenario, whether you've developed a series of homes that are rental or townhomes that are rental. And they don't necessarily need to be all in the—your units are not all in the same building. They could be in the same block areas.

So, it's important to remember that you're going to have rental requirements across a various scale of different project types. And then again, incorporating what that 25 percent set-aside. In some cases, we also have a lot of scattered site rentals that have become 25 percent set-aside requirements. Sometimes you might have projects in your community that may have started as homebuyer and could not become a homebuyer project for whatever reason. So, you've decided to transition them into a rental project to meet your set-aside. Or, maybe you were a little bit short on your set-aside because of an influx of program income.

So, all of these considerations will then change how you're looking at your rental portfolio and your rental project. Again, please make sure that you're updating your action plans accordingly to reflect that and that your projects are reported as such in the DRGR system so that when you're ready to complete and close out projects and then close out your grants, you're all set.

So, in our NSP rental portfolios, you may have different scenarios where all of the units in particular projects that are rental are NSP assisted. Or some of your units may be NSP assisted and some may be otherwise assisted. Those of you that are participating jurisdictions are probably familiar with this process known as cost allocation. But for any of you that have developed mixed-financing rental projects, you should have gone through a cost allocation scenario in order to determine the amount of NSP funds for each unit's investment and then the number of NSP funds per units you would have to determine your period affordability and ultimately number of NSP units that you have in your deals.

We won't go into the cost allocation methods today, but I encourage you to go onto the HUD Exchange, because we do have a few resources on how to do cost allocation under the NSP program with mixed-financing sources, particularly with the HOME program. And then we also have a few NSP frequently asked questions that you can review as well. And of course, if you have a question on that, please go ahead and submit it. And we can either answer that today or we can get back to you in the future. Or you may contact your HUD field office for assistance with cost allocation as well.

The NSP unit needs to be defined in your particular rental project, not just because that's how we're determining the basis of your rental project as an NSP rental project, but you also need to be determining what that unit looks like. So, you need to make sure that all of your projects define a number of NSP units, but also the size of those units. Are they studios, one, two, three-bedroom units? What are the amenities of those NSP units? And are they comparable to other units? These are key considerations when defining what your NSP units are, under a particular project.

You're also defining the income targeting mix in that particular project. So, for example, if you're going to have—let's say you have a 10-unit development and five of the units are going to be NSP assisted, so NSP designated units. How many of those are going to be LH25 or the 25 percent set-aside unit based on your investments and based on how you decide to calculate your LH25 investment? Then you need to determine which of those units, based on your cost allocation method, would in fact be NSP one-bedroom, two-bedroom, etc.

Your substantial amendment would also define how you've decided to undertake particular rental projects, what your methods of cost allocation would be, and then how you would, in particular, define affordability under your rental project and how those would be enforced. So, the critical items again, for this NSP compliance means you're looking at a period affordability, you're looking at the NSP applicable rent, and then you're looking at what those targeted incomes are.

Okay. Jennifer, before I move on, do we have any quick questions that have come up, or should we keep going? Okay. I'm not hearing any, so I'm going to continue. All right. So, now let's take a look at talking about rental agreements and records.

So, today we'll be looking at your agreement requirements. And we're not going to spell out every single agreement requirement. Please note that there's a lot of up-front and then, what we call, back-end requirements to agreements, but also your projects. But then also we need to make sure that your agreements have you set up so that you are ready for success for your long-term rental compliance. So, we'll talk through some of those suggested items.

In particular, also when to amend your agreements and then how you assure you're compliant. So, your agreements and then ultimately your deed restrictions or land covenants that are used with particular projects. We'll also discuss record keeping. I know it's everybody's favorite topic. It was certainly one of mine. But we need to make sure that your records are in fact meeting HUD requirements but also the best-kept records you possibly can have. So, what are some record items that you would want to keep so you can make sure that you keep tabs on the project for its period affordability but also make sure that you're maintaining a good housing asset in your community. What records will assist you with closeout and then ultimately those records that you will need for your oversight.

I wanted to make a quick note here just as a reminder. We do have a few different relationships when it comes to our rental development. So, some of you as grantees have undertaken your own rental development. Some of you have contracted that rental development out to developers. And then some of you work with what we know as sub-recipient relationships. And those are either co-grantees or if you're in a consortium, those consortium members, particularly under NSP Two. And then public nonprofits such as housing authorities, these sub-recipient requirements also apply. So, under the CDBG program there are particular sub-recipient agreement requirements that you should take a look at.

But now we're going to focus in on what we believe are some key rental agreement items that you should have. So, there are some required items which I will highlight, but also some very highly, highly, highly suggested items. This particular list has sort of been developed through the process of monitoring or being where projects get troubled and what agreement outlets either benefited helping a troubled project work out or where perhaps the grantee maybe needed a little bit more teeth in their agreements in order to get the developer to do what they needed to do.

So, in particular, you always have to have your applicable financial requirements, and financial reporting as is applicable. But right here is a critical note I want to make: the number and type of NSP units. The field offices, when we've gone out to monitor some folks under the NSP program, we've actually seen some agreements that don't have some of the basic NSP information, or they reflect an application as an attachment. We would really like to encourage that, in your actual agreement document, you state these particular items: the number and type of NSP units and then these categorizations I've given you. So, the bedroom designation, what is the area median income targeting that you're utilizing, and then, very critical, what are those initial rents and utilities.

Some jurisdictions that have done this really successfully even included initial rent schedule or proposed rent schedule. And all of this should really be determined as part of your up-front process, because under the underwriting of a rental project, you're taking a look at what your rent would be coming in as because you need to determine cash flow for the project's success. So, please keep that in mind during your up-front process when you're coming up with your agreement, that you're putting these critical items in there and they're stated. And try not to back-reference other documents that may or may not be amended and updated accordingly.

But the written agreement is your most important tool for the success of your projects and your long-term compliance in ensuring that you have your assets of affordable housing stock for the community. The agreement is also going to detail what may include recorded restrictions on the property and cross-reference that. That certainly would be a good cross-reference. And then you want to make sure that your agreements give you some sort of mechanism in order to enforce what is in that agreement.

So, if we go to those next couple slides, I'm not going to hit on all of these, but some of the more critical ones. Again, you need to make sure you're stating what your period affordability will be in the agreement and how you plan to enforce that period affordability. So, whether you're going to require a developer or an owner, sponsor to enter into either a land covenant or a separate agreement restriction that will be recorded, however you choose to do that. Your substantial amendment, your action plan, will actually define your mechanism for achieving and enforcing your period affordability. So, you may want to refer back to that, or you may need to update that.

You also want to make sure that you are, in your agreements, providing a definition of income and how income certifications are to be carried out. Now, as a reminder, the NSP program is a little bit different than several other HUD programs in that we only require an initial income certification for each of the rental's tenants. The annual recertification beyond, that you see in most other HUD programs, is not applicable. But do remember that when combining NSP funds with other resources, you would have to use the most strict and stringent requirements. So, generally speaking, you may be devising an annual income scenario.

But your agreement should spell out how you define income, how your income is calculated for those tenants, how income is recertified and how often, if that is applicable. And we would certainly encourage it. Just because it's not required, you may need to in certain instances. And then how you would prescribe that's done. So, do you have particular forms that you wish your property owners or managers utilized if this isn't a self-managed project? Or do you have different record-keeping items or systems that you would prescribe that they use? All of that should be spelled out in your agreement or, at minimum, in an addendum to an agreement. And, again, that's a suggested item. A definition of income is required, but these other pieces are certainly a highly suggested addition to your agreement.

We'll also be talking a little bit later about lease requirements. But I want to make sure that you also understand property standards. Under the NSP program, we have initial property standards requirements. And then there's no requirement for ongoing inspections. This is an area where we highly suggest, in order that you maintain your assets for your affordable housing and protect your investment, that you would put more strict written agreement requirements as far as property standard. And, again, those enforcement provisions, they're definitely critical in what your mechanisms are, your sur periods, maybe you have a right of first refusal that you write in there.

And then reports. There's a topic here called the annual owner certification. This is not necessarily a HUD written agreement requirement. And this is a topic that we will go into more detail in the part two of this webinar on long-term compliance. But what it is to say is that you have some sort of annual reporting that you're requiring property managers or project owners to utilize in order to report to you what rents are being charged at the properties and what incomes are being targeted at the property and what folks' actual income is.

The reason we do this is because, as I mentioned previously, HUD requires you to have some sort of system and policy in place that you're maintaining your period affordability and that you are maintaining those proper rents and that you are maintaining your income targeting as applicable. So, this is sort of a tool for a report mechanism that you can utilize in order to easily achieve those three requirements.

On this last slide here of some highlights, I wanted to highlight the record-keeping piece. You are required as grantees to maintain records that effectively demonstrate compliance with our baseline NSP requirements. And I'll keep repeating the main three again, but it's that period affordability, both rents and those income targeting as applicable. So, your records that you pass on to your developers or your sub-recipients, it's critical that you are able to get the records that you need from them or that you make sure that there is records available for you to review at any time that you require.

There's a lot of ways that you can achieve sound record keeping, but first and foremost, it starts with what you put in the written agreement. Because then it's there, it's in front of everybody as a requirement, and then you have something that you can have them adhere to and set them up for success as much as you would be successful from the start of the project.

Two other quick items I want to highlight on this list: the budget review and financial report. It's really important with our rental investments, whether they're only a few units in size or maybe 20, 30, 50 units in size, that you're looking at the financial health of those projects. So, perhaps you develop a requirement in your written agreement for certain financial reporting documents, whether it's your own template or something you request. Maybe it's an audit. But at minimum, you should probably try and make sure that you're requesting cash flow statements or operating budgets, just so you can make sure that projects are being maintained on a healthy basis. We'll talk about in the next webinar how to incorporate that into your regular long-term oversight process, but this is something that you should consider putting into your written agreement up front so they're aware of those requirements.

And then finally some other optional monitoring and interventions. You want to make sure that you have some rights as a grantee in approvals in their projects. In particular, if a project changes in ownership or in management, you would want to have some stake and understanding why those changes are being made, how they're being made, and does the new owner or manager have capacity in order to effectively run and manage the project or maintain ownership of the project so that it not only fulfills your compliance terms, but again, continues to be a really strong asset for your community.

Another quick note I want to mention is that you need to be able to define tasks in the project and particularly your use of program income and then also your operating and other replacement reserves in projects. Those generally affect larger projects as far as multi-family developments, but also will developed scattered-site rental developments that use these same mechanisms. It's important to note that under NSP, the project's net operating income, or sometimes referred to in developments as NOI, that is received specifically by grantees and sub-recipients, that is considered program income. However, if it is received by developers, it is not program income. But there may be cash returns that the grantee would require or impose, either back to the grantee, which then could be utilized otherwise, or could be put into reserve. So, it's important that your agreement spells out up front how that excess cash or net operating income would be utilized, whether to be put back into the project or for other affordable housing development.

Real quickly, we're going to take a look at compliance mechanisms. Again, as I mentioned sort of at the top of the webinar, we really need to make sure that not only do we have a solid written agreement in place but that you have a way and means of enforcing your long-term compliance. And how we do that is through either land covenants or deed restrictions most often on our rental properties. One thing to understand, and we see this a lot as we've been going out in the field, that folks will start off with maybe sort of a construction restriction. Or as soon as the project goes under construction, you record something that's running with the land in order to protect that investment.

But then sometimes we forget to go back and change that original construction. Either they call it a construction LURA or a construction agreement when the project's complete. And then we don't have necessarily all the correct terms defined. Once a project goes from start to completion, things may have changed. Such as a change in financing or a change in the number of NSP units, and the change in targeting. There's a lot of things that happen over the life and development of a project that would need to be updated. So, it's always a good idea to consider updating your actual written agreement if there were changes to the project, but more importantly, make sure that you are updating and having those final restrictions imposed on the project that reflect what the project actually looks like at the time of completion.

As far as what you should have in those restrictions, you should have a lot of the same core requirements that you have in your original rental development agreement. But more so, you need to really make sure that you have some critical enforcement mechanisms to ensure that you're able to enforce your period of affordability requirements and also the rent structure and income targeting that you have set up.

You also need to make sure that you have methods for how you would go about achieving compliance. So, maybe you mentioned some of your requirements, and you can have that in your restriction. But you should also have your rights of first refusal, your cure period, how you go about protecting that investment. And as I mentioned before, you really need to pay attention to amending those restrictions. So, who does the amendment of the restriction, how often should you be amending it—these are some items to consider.

And in particular, if this is a mixed-finance deal, you need to see where you're at in relation to other lenders. Sometimes you need to approve restrictions that need to be amended based on parameters that come from other lenders. Or maybe other lenders might need to improve additional restrictions that you're choosing to impose.

So, you should try and make sure that you have a regular understanding of what the other financing requirements are in a deal. And maybe you have some of those conversations with the other financiers. In particular, if they're other local jurisdictions, or perhaps if there's tax credits, you might have some discussions with your state that puts out the tax credits. Or maybe if you have some large-scale financing such as Federal Home Loan Bank or other sources like that, you would have discussions with those folks that do that financing, in order to make sure that you're all securing good restrictions on the project.

And then, we talked about this, but finally, the point we want to make here is really, all of this is to say that you need to make sure that your investment is protected. You're protecting this investment because, of course, we want to maintain a good-quality asset for the community, but more so, you need to make sure that this project is fulfilling the terms of your NSP agreement. And that means you're fulfilling your requirements through at least the end of your period affordability; otherwise, you're going to have to repay those funds.

Okay. Real quickly before we head to questions, we have a couple more slides here. As I mentioned before, documentation is really critical in order to—setting yourself up for success and making sure that you maintain long-term rental compliance under the NSP program. It's highlighted here some of what your front-end project documentation should look like. A couple that I do want to highlight that some folks tend to think aren't as critical to their projects, but they really are: that initial underwriting and then any sort of budgeting that you do.

That's going to perhaps change over the life of the development, and then once we're in that final phase of the project, we're looking back at that underwriting to see, did we secure enough NSP units for our investment, because we never want to unduly enrich the developers because we need to make sure our NSP investment is the minimum that was needed in order to secure the amount of NSP units that we will have in that particular project.

So, it's critical that we perhaps revisit that underwriting and then we have that underwriting available, not only to demonstrate why initial determinations were made for our particular unit designation, but then also as we go through the life of the project, once it's started its period affordability and it's been leased up, that we can follow the trend of its cash flow and other considerations that were made at initial underwriting. Initial underwriting is also very helpful and useful when it comes to looking at those unfortunate troubled projects, because then we can see maybe where some differences in cash and debt service can be made.

The other key critical up-front-end documentation besides your eligibility determination, which was underlined in both, would be your cost allocation, because that also is determining your eligibility of the project. So, how those

NSP units—and this applies to multi-finance when NSP is not the full finance in the deal. But how did you determine the number of NSP units based on that NSP investment.

On the back end, which is more a critical focus for long-term rental compliance, you're going to have a couple different sections I think. One would be your initial lease-up documents. So, how are you leasing that project up? What are those marketing and tenant selection plans looking like? But then also what does your initial lease-up look like? Your initial lease-up scenario—so, when those units are being occupied—is what you're reporting to us. This is particularly important when it comes to the LH25 set-aside, because we are seeing that you've secured the number of LH25 units that you said you would, based on the LH25 investment. And then of course this is important for then maintaining the unit mix that you've decided to designate over the life of the project.

And then in order to establish a compliance record, we recommend, again, that you have some really basic reporting documents. So, in the next webinar, we'll be talking through some of what those sample documents would look like, but you want to make sure that you have something the developers are perhaps giving to you on an annual basis that they're reporting. Again, this is not a HUD requirement, but this is a highly, strongly suggested requirement in order to make sure that every year you can satisfy our requirement that the particular project is maintaining the period affordability, the rent, and the income targeting.

You should always maintain your inspection record. Again, as a reminder, NSP requires an initial inspection. We don't have an ongoing inspection requirement. It is highly suggested though that if you do have other funding sources in the project, you would mirror your inspection schedule to match those funds, as those funds generally do have ongoing inspection requirements, particularly if this is an NSP and HOME combined deal. But also it's just good, sound practice in order to maintain a quality investment for your community. You want to make sure that the property itself is meeting the requirements for safe and decent housing and it's a good asset for everyone.

You should also maintain your monitoring documents, which we'll talk about in the second webinar. And then those financial reviews. So those financial documents I talked about a few minutes ago maybe wanting to secure from the developer, that's the type of items that you get on an annual basis, you review, you document for yourself what the project financial situation is like. And then this will be especially beneficial if on down the road in your period affordability you start having issues with a particular project. Hopefully, through an annual review, which is suggested, of financial documents, you're able to make sure that projects don't enter that troubled project status.

And then finally, cash transaction record. So, if you do have excess net operating income as we spoke of earlier, you have records of how that's handled. Okay. So, now we're going to go to questions.

Jennifer: Yes. We have a few questions that have come in. And so, somebody asked, "I understand that there are no HUD-approved forms to use, but is there a way we could be provided with a sample or template from someone who is handling oversight presently?"

Sarah Ciampi: Yes. So, please come December 5th. We will be going through a template form that has been created here in the Chicago area through a few of our jurisdictions, and somewhat modified to assist folks with NSP requirements. And then we will make that form available. So, we'll be reviewing it together as a group, but certainly we can help provide that form to those that are interested.

I also would like to mention that there are some good HOME resources that would assist in some of this NSP oversight, because HOME has always required compliance in long-term rental. And I would turn all of you to an old but good guide. It's the *Compliance in HOME Rental Projects: A Guide for PJs* book. We can also try and make that available to everyone as well. But in that book, there is a really basic certification form for that type of reporting. I believe it's also available on the HUD Exchange as well.

And under our NSP toolkit, we do have some suggested NSP templates for annual reporting. But in the next webinar, we will be going through in-depth a couple sample ways to do annual reporting and forms.

Jennifer: Great. I'm looking forward to that for sure. Okay. Someone asked, "Is the HOME program the minimum standard for the NSP program generally, or just the term of affordability?"

Sarah Ciampi: Great question. So, there are pieces of NSP that defer to HOME, but the largest requirement is that period affordability. Otherwise, NSP generally follows CDBG and then it follows the notices in each particular funding notice and then the bridge notice that was applied for NSP One, Two, and Three. Headquarters, is there anything that you would wish to add to that?

John Laswick: I think that's true. It's a safe harbor as you said earlier, Sarah, so people can look to it. I think that the HOME forms and so forth are probably a little more detailed than you might need, but I think that's a good way to go. And you could sort of judge for yourself, but I think that's a good path to follow.

Sarah Ciampi: In the next section we'll talk a little bit about how HOMES and NSP rents pull together, because that's the other section where the NSP requirements sometimes get deferred to HOME. Grantees are responsible for defining their own rents, but a lot have used HOME as the safe harbor. So, we'll talk about that link as well.

Jennifer: Great. Lots of reasons to come back for the sequel. All right. Our next question asks, "Does the long-term rental compliance agreement need to be a separate document or can the language be wrapped into a HOME agreement or low-income housing tax credit LURA or regulatory agreement?"

Sarah Ciampi: So, you really should have two separate documents. You should have a rental agreement that is governing the project, and then you have a recorded restriction. What you need to be careful is that you don't just rely on a tax credit agreement or a tax credit covenant, as those types of agreements and covenants generally don't contain required language. You need to make sure that your agreement is, in particular, calling out the NSP grant, the NSP regulation and requirements, particularly if it's NSP One, Two, Three, or a combination thereof. So, you really should have two separate required agreements.

That's also to say that if you're using an agreement for the development of the project and you've gone through a lot of changes and amendments, ultimately, you're still going to be recording a final restriction. Some folks like to record a restriction and in that restriction, cross-reference an agreement that was executed and identify that agreement by name and then date of signature or even as an attachment to the restriction. That's also perfectly fine practice. But really you should have two separate agreements. You should have your agreement that's governing the project as it's being developed and then you have that restriction agreement.

Jennifer: And this is a similar question, but just to reiterate and so folks feel like they've gotten their specific answers, somebody said, "We have a loan agreement, a deed of trust and note, but we did not record covenants on NSP-funded projects. Do we need to record these separate land covenants or deed restrictions?"

Sarah Ciampi: Yes, you should record a deed restriction for the land. I can give you a—I don't want to go too in detail into stories because we'll be doing that next time. But a grantee didn't have any particular land covenant registered for a particular project and didn't know that the owner had sold the project in the middle of a reporting year. And there went that investment. They were able to negotiate with the new owners through actually some other items that they had in place in other prior relationships. But it's really critical, just because of the nature of real estate, that you have something that's tied to that particular piece of land. A mortgage does not necessarily always protect you in the way that you need it to.

Jennifer: Great question. Okay. Another question says, "All right. So, we said annual recertifications are not required. Does that mean one certification only until that household moves out?"

Sarah Ciampi: Yes. So, you do not need to recertify tenants. And it's also important to note—we'll be talking about this in the next section—that once you've certified a tenant household at a particular income, they of course don't need to stay at that particular income. Under NSP development, there really is no such thing as an over-income tenant; whereas, under the HOME program, they are.

Our targeting goes up to 120 percent of area median income. So, only then would you be really looking at an over-income tenant if they were to reach beyond that threshold. But we don't require annual income certifications or even the six-year certification as far as a recertification you see with the HOME program. The only requirement we do have, which we will discuss in more detail, is for the low-income housing 25 percent set-aside unit.

Jennifer: Okay. Great. So, more on that again on the 5th. All right. Someone asks, "What kind of written agreement do you require with relationships between a city and its land bank who is performing the development?"

Sarah Ciampi: I will defer to headquarters on that one.

Jennifer: I know we planned to possibly have a whole webinar...

Sarah Ciampi: Yeah, because we're having a land bank webinar.

Jennifer: But I don't know if anyone at headquarters wants to speak to that a little bit. The question again was, "What kind of written agreements are required for the relationship between a city and its land bank who is performing development?"

John Laswick: So, I would just kind of have to turn it back and say, what are you doing? And what needs to be in an agreement that would cover those sorts of activities? But let's say they own the property and they're going to try to develop it or renovate the buildings and sell them. You would want to have enough coverage of your activities through the agreement that you can control it and that you can take it back if problems arise and that sort of thing. I don't have a—sort of a quick answer. I think we're going to be answering this for the next 10 years. But maybe next time at the second portion of this program you'll get some more ideas.

Jennifer: Okay. Thank you. Okay. Someone asks—This is a general program question. Somebody asks, "Does the 25 percent requirement at 50 percent of AMI require [audio gap] projects funded with program income?"

Sarah Ciampi: Yes. So, as a—well, let's—actually, let me back up and rephrase that. As a reminder, the 25 percent requirement is applicable to the grant itself. We're not looking at, specifically, projects. But if you have designated a project as NSP funds are expended in that project in order to count towards your 25 percent set-aside, then you are required to have a determined number of NSP units that meet that income targeting at 50 percent of area median income or less.

John Laswick: But it does apply to program income generally unless you transfer it to the CDBG program. So, it's just not required. You don't have to complete those units before you close out, but you do have to meet that requirement throughout the program.

Jennifer: Great. So, someone is liking the suggestions you're giving here but is wondering what about completed and occupied units? "Are you recommending that we go back and attempt to revise or initiate these additional agreements?"

Sarah Ciampi: Okay. So, if you don't feel that you're secure in being able to maintain an investment, meaning that you don't necessarily have the ability to get the reporting documents and data that you need, you may want to consider doing an amendment either to your agreement or an amendment to the restrictions that you have in place. I think certainly it's worth a discussion with your project partner. Hopefully you've established a good relationship with that partner. And really make sure that you inform them that this is just as much for their protection in maintaining the investment in your community as much it is for your benefit.

So, I think a lot of these suggestions actually help property owners and managers keep themselves and their house in order, but also are generally a lot of documents that they already have or should have. It's just a matter of you saying, "Hey, partner, this is what we really would like to have from you on this sort of basis." So, it's certainly worth considering going back and amending. I'm not suggesting that you have to. But it depends on the relationship that you have with that particular entity. But there certainly are some items that you may want to consider.

Now, if you're missing some of the required elements to your particular agreement, such as defining the number of NSP units and defining the rent and defining your initial income charting, then, yes, you do need to really go back and try and amend, at very minimum, that restriction that's recorded against the project, to make sure that that's protected.

John Laswick: You might be able to do that through a letter amendment or sort of a side—additional agreement rather than tearing the original one apart, trying to put things back into it.

Sarah Ciampi: Yep.

Jennifer: Okay. We have one more question. And the questions asks, "When you do your annual financial reviews and you find that the developer is not funding their replacement reserve, do you have some avenue other than default or just notifying the developer that they are jeopardizing their project's long-term liability?"

Sarah Ciampi: Well, you have whatever remedy you put into that initial agreement. So, it's important that your original agreements set yourself up to give yourself some parameters. And maybe you don't necessarily always say you're just going to trigger a default. There's other scenarios where if you're not the only funder in the deal, maybe it's a discussion that you have with other funders. Particularly if there's tax credits in a deal, generally speaking, tax credit entities being the states and the two cities, Chicago and New York City that have their own tax credit allocation, they will have requirements for reserves and how often those reserves are supposed to be funded, and can assist with putting some pressure on that development partner in order to put those reserves together the way that they're supposed to.

Jennifer: Great. Okay. That was our last question for now. Again, folks, if you have questions that come up during the presentation, feel free to write them in, and then we'll answer them when we get to the next question break.

Sarah Ciampi: Great. All right. Let's keep going. All right. So, this next section, we're going to take a look at rent and affordability, which has kind of been the theme throughout the afternoon so far. So, we'll talk about those rent definitions and applicability, the 25 percent set-aside, and then what our affordability requirements need to look like.

So, affordable rent is actually defined by you all. When you first develop your NSP substantial amendment, or as you've continued to revise it and done your action plans and DRGR and whatnot, you actually are responsible for defining those affordable rents. So, there's a few ways of going about this. Most folks, particularly if you do have HOME funds or if you're a participating jurisdiction or you have a lot of rental projects that are in fact going to be combined with HOME, you utilize the HOME program rent requirements as a safe harbor.

The other rent definitions you could use sometimes, come from the tax credit definitions or what we refer to as Y tax. Generally, you're looking at those 50 percent of area median incomes, 50 percent of area mean incomes, those sorts of targeting. You can also have different rent definitions based on local rent studies or rent requirements, as long as you've documented how you've made those rent determinations. And then in particular, you always have to make sure that you're defining how you're going to establish your LH25 rent. This is again where a lot of folks decide to defer to the HOME program definition that is spelled out in the HOME program rule.

But no matter what rent definition you use, you need to make sure that the rent will achieve reasonableness, meaning that there's a particular rent for that area, but also rent reasonableness when constructing the projects. So, remember when I talked about before, how underwriting has this great impact through the development of a project but then also long term? So, however those rents are conceived from the beginning of a project is going to determine the cash flow of that particular project. And you want to make sure that the rent definitions you're using are going to have a good, secure base for cash flow for the project in order to generate enough income for it to maintain the investment but that we're not having a huge amount of excess cash flow.

You also need to be looking at, in particular, when you're using rent. And if you use the HOME safe harbor, there's not necessarily all the same parameters. So, if this is just an NSP-only project and you don't have any HOME funds in it but you've decided to use HOME as a safe harbor, you can't just say, "Oh, we're going to use the HOME definition, call it a day." NSP doesn't really have high and low home units, which are terms we often hear under the HOME program. So, the high home units, those are our 60 percent of area median income targeted units, and our low home units, those are our 50 percent of area median income units.

That's not generally how NSP works. And we don't have those definitions under the NSP program. So, if you're looking at setting up sort of an income targeting scenario like that, you need to make sure that that's explicitly defined in your substantial amendment. Another way we would recommend doing this is that you actually have a rent schedule. So, you would put together a rent schedule that defines what your rents are going to be. And if you do use HOME definitions, what particular parts of those HOME definitions are you utilizing, and spell those out.

You also need to make sure that you're specifically speaking to, in your substantial amendment, how other subsidies apply. So, for example, under the HOME program, if there's project-based subsidies in a particular unit, then our definition of rent changes. Generally, under HOME, we use the lesser rent, but, for example, if you have a project-based subsidy, then it becomes the project rent. And then we have to take a look at how that subsidy impacts the cash that's going to be in that project, because, again, if a unit is further subsidized, then we need to take a look at the underwriting and cash flow to determine if the debt service was adequate or if there was too much excess cash that may be generated.

All right. Before we go a little bit deeper into that, we want to do another poll, because we'd like to understand how you all are defining rent.

Jennifer: So, our second poll question, we are asking, "How is rent defined in your substantial amendment?" And you can see the poll question there up on your screen. You can go ahead and answer. A, HOME as a safe harbor, no other provisions. B, low-income housing tax credit rent. C, locally approved rent definition relative to fair market rent. D, Our plan is missing this information or the definition is not consistently applied. Or, E, I'm not sure. We'll give you a few seconds to complete your answers.

And again, if other folks have specific questions related to the topics we're discussing, you can go ahead and put your questions into the Q&A box and submit them. And then we'll answer them when we get to the question break. Just a couple seconds left to get your answers in. And with that, we'll be able to see the results in just a second. Let's see. Results has not popped up. Sandy, can you see the results on this poll? There they are.

Sandy: Yes, I can see them.

Jennifer: Yeah. I see it now. Thanks. Okay. So, it says that most folks are using the HOME safe harbor for defining their rent. And that's overwhelmingly the top choice. Others—second place, locally approved rent definitions, but interestingly, a good handful of folks aren't quite sure what rent definitions they're using. And so, I think...

Sarah Ciampi: That's okay.

Jennifer: ...that it's going to be—yeah—an interesting topic for some.

Sarah Ciampi: Yeah. So, I expected to see that we would have a lot of folks that would be utilizing the HOME program. And certainly that's a sound way of going about, because either you're mixing your projects with HOME, so it just makes compliance and rent determinations that much easier. But also it's a standard that's there. But also is not—Don't be alarmed. But if you don't know what you're utilizing or maybe you need to recheck your original definition, maybe in some communities—and we have observed this with some grantees—in particular you've defined maybe how you want to go about rent or you've utilized local market. And then as the NSP program has changed over time, that rent structure hasn't necessarily worked out for you.

So, while you really shouldn't be going back and changing rent structures of projects that are already leased up and occupied, if you have the opportunity to change rent structures or you still need to develop it, then you may want to consider some of these other strategies. And for those of you that are also new to the programs, maybe you just don't know what's being utilized. Then part of that little homework assignment perhaps then is that you're going through your rental portfolio and you're taking a look at your original project underwriting and project agreement and then of course your substantial amendment, to see how you've defined rent.

So, another quick note we want to make is that the CDBG or HOME programs don't necessarily define this area of 80 percent to 120 percent. Typically, HOME is—well, HOME is capped at 80 percent of area median income. That's as far as we go as far as a HOME-eligible tenant. Then we have over-income ways of calculating. Under NSP we go all the way up to 120 percent of area median income. And that's, again, why a lot of folks utilize NSP for rental development is because of this flexibility of area median income for tenant targeting.

So, you are required to define how you would go about defining what those AMI targeted rents would then be. So, typically what we see a lot of grantees utilizing is either a baseline 30 percent of that 120 percent area median income. But sometimes that doesn't give you the flexibility you need in your particular market. So, you may need to look at what your fair market rents are in that area and then consider utilizing 30 percent of what those fair market rents are. So, there's several ways that you can go about doing this. As long as you've documented it, then we're okay with that. But you should certainly check in with your local field office as far as how your assessment of the market conditions has been conducted and how you would document it. And then maybe you have that discussion prior to submitting either an amendment or updates to your action plan, if you don't have that information in there already.

So, what you'll hear me talk about in this section now is this idea of applicability. You want to make sure that when you have rents, particularly projects that use mixed financing, that you're applying what the applicable rent would be. So, if you have a HOME and NSP project that's combined—so, let's say that both units are HOME and NSP—you're applying the stricter rent requirement. So, generally that's going to be that HOME program rent. And most folks have already defined HOME as a safe harbor, which we've discussed anyway. But if it's a combined project, of course HOME would be the prevailing rent requirement. So, then you need to be charging the lesser rent restriction.

Applicable rents under the HOME program also mean that you're looking at if there's any other types of financing resources in a project, how that particular rent is applied and defined. So, again, I just want to remind everyone, that while you can say that HOME is your safe harbor, you really need to make sure that your substantial amendment is defining these key points of what exactly is rent and how you would be determining applicable rent. If you have questions on that, I would really encourage you to look at the HOME rent section, which is 24 CFR 92 252. Particularly that section of the HOME regulation spells out our regulatory requirements for defining rent.

And then again a note about this low home and high home. Generally speaking, if you're utilizing the HOME safe harbor, you're utilizing what we call our low home rent restriction or that units are 50 percent of area median income or less, or that LH25 targeting. But again, the NSP programs as a stand-alone, doesn't really call a unit a high home unit or a low home unit. So, if you're going to be utilizing those same types of rent targeting scenarios, then you would want to define that, but our LH25 units are defined as 50 percent of area median income units.

Another part of rent determination is of course the utility allowance. Under NSP, you need to still make sure that utility allowances are consistently and correctly applied to units. So, you need to define how you would be defining utility allowances in your particular jurisdiction. Some folks under the NSP program have chosen to defer to the HOME program requirements, which under the new rule as of 2013 has become a little bit more strict in how we determine utility allowances. Others are deferring to the local public housing authority jurisdiction or the jurisdiction in that area. And then other grantees are utilizing and approving specific project utility studies.

All of those mechanisms are fine. You just need to make sure that you have documented appropriately how defined utility allowances are and then how you're going to go about enforcing those and making sure that property owners are, in fact, applying utility allowances to the rent consideration. And as a quick reminder, the utility allowance isn't tacked on to the rent; it's subtracted from the rent.

Under the period affordability requirements, we need to make sure that we are charging the correct NSP rent. That's our long-term compliance in a nutshell right there. And what we're really trying to make sure is that those max rents that you have spelled out on an annual basis are what's being charged. Again, we gave you the suggestion earlier that you should provide your owners with a rent schedule. You should do that initial lease-up, maybe even during the initial course of the project. Obviously, that could change, but at initial lease-up, if you give them a rent schedule of what the applicable rent is and then the corresponding utility allowance, there should be no question of what that rent that would charge would be.

Going forward, if you provide an annual rent schedule, then you've set yourself up for success, because, again, they're seeing your expectation for what the rent should look like, plus applying the utility allowance. You should do this type of process in writing. We don't have specific requirements on how this process looks like. Under the HOME program, you are required to approve in writing, specific rent increases or changes in utility allowances on an annual basis. Under NSP, this is something that we would suggest that you do. However, it's important to remember NSP does require you annually to make sure that your rents that are being charged at projects are, in fact, correct.

You also need to make sure that just because a new rent schedule comes out at a certain time of the year, that you're not allowing your property owners to start changing rent on tenants that are under an active lease period. Some property owners try and time their lease renewals at the same time that generally your rent schedules would come out. Some like to do that when HUD releases different rent schedules. But as a reminder, you should not be having changes during a particular lease period because that's the lease terms that have been defined and should be adhered to.

So, when we start off with an NSP project, you have an initial unit mix. And all of that came from the project's original underwriting and it's looking at what those rents are that will be charged and then what that tenant population will be in. However, over the course of an NSP project—let's just say it's NSP alone—you do not necessarily always have to have that same tenant scenario, but you must maintain compliance with 120 percent of area median income.

The exception to that, though, is that in any rental project that has an LH25 set-aside of units, you must maintain that LH25 mix, meaning that if an LH25 unit is designated as such, each secession of renewal, so from household to household, that initial household income certification must be for a household at 50 percent of area median income or less. There is no exception to that. The LH25 requirement will stand for the entire period of affordability.

As I mentioned earlier today, that we don't really necessarily have what we call an over-income scenario under NSP, but during the life of a project, tenants may increase income. And that's a good thing. Remember, you're providing affordable housing and secure housing, which enables tenants to maybe go secure other forms of employment or whatnot. And they're getting extra income. That's expected. That comes with housing security.

So, as they grow their income, we don't—we're not in the business of making others homeless, certainly. So, what we want to make sure we do is that you have your LH25 targeted units, and then you have your other income targeted units. But again, we don't require that annual re-income certification under NSP. So, we're not looking at other over-income scenarios. However, if your multi-finance fields have other restrictive requirements, such as the HOME program has its own requirements on income and how you charge over-income tenants during the lifetime of a project, those must be adhered to.

We talked a little bit about this already, but I just wanted to highlight a couple considerations as you're trying to maintain your affordability of the project. You're always maintaining that exact total number of NSP units. So, if a project starts out with 10 NSP units, you will continue to have 10 NSP units over the life of a project. Now, sometimes we get into troubled project scenarios, which we'll talk about in part two, that may alter some of those initial considerations. But, again, it's really critical that you're maintaining your NSP designated number of units for the lifetime of the period affordability.

You're looking at your existing tenants. And in the next section we'll talk a little bit more in depth about that. But also, as I mentioned in the previous couple slides, your rent and your rent changes and when that happens. And then finally, when adjusting rent in projects, whether you're allowing owners to raise and increase rent over time, you're making sure that those increases, or even decreases, are relative to the cash flow that's being reported at the project. You don't want to necessarily allow a developer to keep increasing rent over time just because it looks like your local ability to increase rent over time has, if it doesn't make sense for either the income targeting that you've desired at the project, but also the cash flow at the project. But conversely, if the project and the tenant mix can support an increase in rent, then you can certainly take a look at that.

It's really critical that as grantees, you understand, although it's just the initial requirement, we do have an income certification requirement for all NSP tenants and for NSP designated units. Generally, you have the two definitions that you can select from. I would say 99 percent of our NSP grantees have selected the section 8 known as part five, definition of income. And our HUD online income calculator that can be found on the HUD Exchange will assist you in utilizing that income.

You'll remember earlier today we talked about items to put in your written agreement. And one of those that I keyed in on was defining income and how income is to be reported. So, it's really critical again that you make sure your written agreement spells out what's your definition you're using for determining income, how it will be determined, and then what will be reported to you.

You also don't get to change your definition of income once you've determined it for that project. So, that's important to remember, because sometimes, unfortunately, we've seen grantees that have property owners that determine one method of income, and then a new perhaps property management company or even just new staff come in and start calculating income in a different manner. Or perhaps if you have a multi-finance project and they're reporting income scenarios under two different types of financing sources, the income requirements might be different. So, you need to make sure that there's a consistent income definition and that yours is being adhered to, at minimum, with those other financing source income requirements.

And as I mentioned previously, we do require under the NSP program that your income targeting certification does in fact occur at initial occupancy. Over the life of the affordability period, you are required to certify each of those tenants that come in at initial occupancy. But you're not required to then recertify on an annual basis. This is something though that we do recommend you do if—well, and that you have to do if there's other financing sources that require it. But, in particular, if you're trying to maintain compliance with your LH25 requirement, you need to do that at initial occupancy and then each new tenancy.

Some of your projects that have use periods beyond your period affordability may require additional considerations for the NSP targeting and certification. Maybe it doesn't necessarily follow your rules, but maybe you had an NSP period affordability that ran 10 years and maybe you have a HOME period affordability that was running concurrent but it ran for 15 years. So, then that project would just enter into a state of complying with the HOME requirements, not necessarily what we would call separate NSP requirements. But generally, you'd be deferring back to those HOME requirements anyway. And then again, as a final reminder, NSP is requiring that you only do your certification at initial occupancy. So, unless you have other financing sources in the deal, you're only certifying those tenants once.

And then before we get into questions, one last note on documenting. We'll talk about in the next webinar, different ways to track and forms and whatnot for how you can document your compliance with affordability. We've listed some of those here, but suggested examples include perhaps an annual owner certification, sometimes also known as a rent roll. Maybe you've developed an electronic reporting system. Some folks have online systems where property owners can enter their information, and then it's a report that's generated to the grantee. A lot of our states have systems that they use with their tax credits, they've also started utilizing with their NSP project.

But then you also may have just a simple standardized reporting system or form that other funders use that perhaps meets your needs for NSP compliance that you can then adopt or allow the property manager to adopt. So, whatever mechanism you're going to choose as far as reporting, we would suggest that you come up with something that's adhered to by all of your projects as much as you can on a consistent basis to allow for really good-quality, consistent oversight on your part and that you provide as much of that detail either in your written agreement or that you regularly update and train your property owners as you make changes to your own requirements.

All right. With that, we're going to go into another set of questions.

Jennifer: Yes. We've got a few here. Someone asks, "Please clarify the NOI requirements for projects owned by sub-grantees. Could the NOI be retained by the project as a replacement reserve instead of being recorded as program income?"

Sarah Ciampi: Yes. As long as your written agreement spells out that that's what's to happen, and how that is to be documented, you absolutely can do that.

Jennifer: Great. Thank you. All right. Next question, "If we have"—Hold on a second. "If we have defined rent for a project that cannot exceed low home rent as determined by HUD annually, would that be sufficient for an NSP 50 percent AMI rental property?"

Sarah Ciampi: Could you repeat that again please, Jennifer? You broke up.

Jennifer: Yeah. Sure. Yeah. So, if this grantee has defined rent for a project as not exceeding the low home rent, would that be sufficient for meeting the LH25 requirement for households below 50 percent AMI?

Sarah Ciampi: I will answer and then I will let headquarters answer, because I may be too strict. But generally, no. The language under the HOME program relative to low home rent—As I mentioned before, NSP doesn't really have a low home rent designation because it is not HOME regardless of deferring to HOME as safe harbor or not. That particular part of the HOME rule, there's several definitions that encompass what may define a low home unit.

There's also different applicabilities based on other funding that may or may not be in a project that would also define what a low home unit looks like. So, really what this grantee, I would suggest you do, is that you more clearly define what low home is, based on the regulations that we have for a low home unit. But also in particular, if these are mixed-finance developments that have other financing sources, we need to have those considerations in place as well.

But just to say that it meets a low home unit requirement is really not sufficient for what we would consider a definition of rent. I don't know if headquarters, you wish to add anything to that.

John Laswick: No, I think that's a good answer. I think a lot of times it will be enough, but I think you need to do the calculation and figure out what that rent is. Shouldn't be that hard to figure it out, but I don't think that it's just automatically going to qualify.

Jennifer: Thank you. Somebody—while we're on the topic of HOME, somebody asked that, we've been talking about these HOME rent regulations. Is there a PDF that can be downloaded or something that gives them additional information on home rent requirements?

Sarah Ciampi: Sure. So, the HOME program itself, for those of you that are not too familiar with HOME, is governed under 24 CFR, part 92. So, you would want to look that up. The HUD Exchange has that under our HOME program resources as the regulations. There's also a number of resources on the HUD Exchange for understanding HOME rent and HOME rent determinations. And as I mentioned, if you search the HUD Exchange for the *Compliance in HOME Rental Projects: A Guide for PJs*, though it is a resource that predates changes to the HOME rule, the section on how to determine HOME rent and the HOME rent applicability is not changed as far as the content of that guide and many of our HOME resources on the HUD Exchange. So, hopefully you would find that those items would be beneficial in understanding more the HOME rent and then HOME as a safe harbor.

Jennifer: Okay. Great. And another HOME-type question. Someone asks, "If we have a project that uses HOME and NSP and we've done a combined agreement, will the HOME annual recertification requirement which is most restrictive, also apply to the NSP unit?"

Sarah Ciampi: If the units are designated as HOME NSP units, which it sounds like it would be if you did one agreement, and you're running one period of affordability, then yes, it would apply to both units. Now, if you have an NSP unit separately designated from a HOME unit, then it would not apply. However, if you've done one agreement undertaking, it sounds as if you've already combined your period affordability and these units are considered both HOME and NSP assisted. If that's not the case, really you should've had two separate, distinct agreements.

Jennifer: Yeah. Great. Thank you. Another question asks, "We currently require annual recertifications and I'm wondering if there is no penalty or rent increase even when a household exceeds 120 percent of AMI."

Sarah Ciampi: Okay. When they do exceed 120 percent of AMI, and I believe—John, have we—is there guidance yet on the HUD Exchange on exceeding the 120 percent? We generally treat this as we would then the HOME over-income, over the 80 percent tenant. So, then it becomes a calculation at 30 percent of adjusted gross income.

John Laswick: Right.

Sarah Ciampi: But I don't know if we have an official policy piece on that yet.

John Laswick: I don't think we do. I mean, I think that makes sense, but—so, you are required to maintain—you are required to look at the rents every year and make sure they're at the level that you specified, even though the family may be earning more. But we don't have a procedure for when they go over, how to adjust the rents as a result of that. I don't know that I would do it the same as the HOME program. I think you can kind of develop your own procedure at that stage.

Sarah Ciampi: Yeah, agreed.

John Laswick: I would also point out—somebody asked about where do you find out about these rents and so forth. So, as Sarah said, the HOME program runs out of 92, and it's 252 for—92 252 for rental and 92 254 for ownership. We kind of—we defer to pretty much all the ownership as a safe harbor. On the rental, we only defer—we only require that grantees comply with sections A, C, E, and F, which is why you don't have annual income recertifications, because I think that's H. But those sections—A, C, E, and F—contain all the high rents, low rents, and all these sort of calculations right in the regulations. And then as Sarah pointed out, there are guidance materials on the HUD Exchange.

Jennifer: Okay. Thank you for that. Another question asks, "On a non-LH25 assisted project, are you automatically entitled to rent to AMIs between 80 and 120?" So, if it's not an LH25 property, can they go into the 80-to-120 category?

Sarah Ciampi: You can. There's a particular guidance on the HUD Exchange on suggestions for calculating and determining NSP rent in particular projects, not necessarily LH25. The LH25 is really critical when it comes to cost allocation, but otherwise, if you designed the project and you underwrote the project at those higher project rents, then that's the rent targeting that you've determined you're going to utilize.

Generally, though, what we see with NSP rental is that you're utilizing the funds in order to do those other income targeting that we have. Now, John, I think there's—do you maybe want to go into some other discussion on that as far as how we calculate the LMMI requirements?

John Laswick: Well, I don't know if calculating...

Sarah Ciampi: Or maybe we can do that in the exercise next time.

John Laswick: Yeah. I'm not sure. I mean, it's your option. I think that we see that grantees will do—will set some of the units aside for 80 percent and some for 120. You have that option. You can have them all go up to 120. So, there isn't a requirement as far as the NSP program is concerned. There isn't a limitation.

I also wanted to point out a couple of things that I know Sarah's not—didn't say, but I think some of these slides might confuse you or some of what we're saying. But with—so with the LH25, it's a dollar requirement. So, you have to spend 25 percent of your grant funds and program income for LH25 units. So, that's going to translate to a number of units. But we don't calculate it by units; we calculate it by dollars.

The other one is that you don't have to have 25 percent of the units in any given development as LH25. It could be 50 percent. It could be 10 percent. It could be zero percent. So, I just wanted to point those out just because I know there's some newer listeners in the audience. Thanks.

Jennifer: Great. We have a couple more questions here. "If a grantee would like to sell an NSP house to an NSP tenant during the affordability period, can we, if we fulfill the remaining years of affordability? And would program income from the sale of that unit be returned to the NSP program?" So, I'm assuming...

Sarah Ciampi: Yeah. Go ahead.

Jennifer: Oh, no, I was just going to try to clarify the question. I'm assuming that this is a rental property that they're thinking of possibly selling to the tenants.

Sarah Ciampi: Yeah, I guess we—I think maybe, Jennifer, you should go back to that question and ask them for a little bit more information and clarification. And then maybe we can answer that separately, because depending on if it's a homebuyer conversion or if it's a scattered—it's—yeah, if it's a scattered-type rental unit, which is what it sounds like the context is and then they want to sell to the tenant, you know, how we would work that out. So, if we could get a little more information.

Jennifer: Okay. Sure.

Sarah Ciampi: And then any other questions?

Jennifer: Okay. So, she says, "Yes, we have a tenant in an NSP property that wants to purchase the home."

Sarah Ciampi: Okay. So, you can sell to the tenant. We have guidance for that. And I believe we utilize the guidance under the HOME program. John, I'm not sure which, right off the top of my head, that is. I think under 251 maybe, or that might be wrong. But you can sell the unit. What I would encourage you to do at this point—this is more of an in-depth, complicated matter. We can answer that on the side, but also perhaps you can get with your HUD field office rep on that and how we would look at documenting that.

Jennifer: That makes sense.

John Laswick: Yes, and the proceeds would be program income. But you could use them, let's say, if you wanted to fix up the house as a part of the sale or something like that.

Jennifer: And our last question from the segment, "Do you recommend a particular electronic reporting system?"

Sarah Ciampi: No. We can't make such recommendations. I've seen a lot of different ones that different states utilize. So, I would encourage you if you are not a state, but if you are in fact a local grantee, either a participating jurisdiction or another private or nonprofit developer, housing authority, that you speak to your state tax credit agency, as most of them have developed already some online—or they utilize different online services that are pretty sufficient for your needs.

Jennifer: Okay. And that was the last of the questions.

Sarah Ciampi: Okay. Let's continue. All right. So, the last section that we'll be going through this afternoon, we'll be discussing marketing and tenant relations. So, we'll be talking about some of our basic requirements, such as your housing, affirmative marketing, your marketing and selection practices. A key one we will be really, kind of dig in a little bit more into, will be leases and then tenant protections, because this is a critical area, not just for why we do this but for ensuring that our grantees are in compliance with these requirements and then also our project owners and managers. And then what those marketing records should look like.

So, under your long-term rental compliance oversight requirements, we make sure that your policy and plan or procedure, whatever you put in place, making sure that you're adhering to your period affordability, the rent, and income targeting. We've established those are the big three. But that also you're making sure that over the course of a project, the project is adhering to some of our very specific standard federal provisions that we have in place.

So, I've highlighted for you here over the next couple slides, some of our critical areas. But really that marketing of the project. So, you're affirmatively furthering fair housing when you're looking at those components of what your affirmative marketing plans are looking like, how often are you requiring your property owners to submit those items to you, what those particular marketing procedures are addressing, and how you're documenting those particular marketing plans. So, what in particular is the owner putting out there. You want to make sure that you have a policy and procedure for how you're going to look at that but how—what you're requiring, and making sure that that developer or the owner or manager of the particular project understands what those marketing procedures are and what those requirements are.

So, some folks have standard forms that they put together. They have standard procedures that they share with their NSPs, property managers, and owners. Others kind of just go through and see maybe if there's other financing sources in the project, what those other financiers are requiring and seeing if those satisfy their obligation. But it's really critical that we make sure that all of the project marketing is in fact conforming to our fair housing requirements and our affirmative marketing requirement.

And then here I've just kind of outlined for you a quick reminder about the other applicable federal laws that we have. And then, again, a little bit more to talk about that affirmative marketing point. It may vary based on the type of project. Your scattered-site developments for example, may have very different affirmative marketing plans than your larger multi-family units would. Part of that may be just considering your local market area and your means of marketing for that particular property owner and how they would be targeting different populations based on the income targeting that your project has defined.

But it's really important that you're having some sort of means for them to document and inform you and record how they're going about their particular affirmative marketing so that you can ensure that it's in compliance with our fair housing requirement.

We're also required to make sure that our tenant selection plans, that are proposed too and then sort of the final one, because as most of you have probably noticed that have projects in place, that original tenant selection plan that came through as part of the initial proposal may have changed over the course of the development, either because the terms and conditions and number of units and income targeting changed or just because local marketing conditions have revealed changes that may have been necessitated as well.

So, it's important that your records are going to reflect that and that if you had specific targeting of incomes or specific targeted populations, that your marketing plans and your tenant selection plan then is adhering to what those original determinations were or as they have been amended.

It's also important that as grantees, you take a look at those waiting lists. And the reason I say that, is that's where we kind of get a lot of times in the weeds. And if you have housing authorities that are working with you, they're particularly refined at the waiting list requirement because they're used to this because of their Housing Choice Voucher waiting list or their waiting list for other programs.

But property owners sometimes don't necessarily know how to maintain a waiting list. So, maybe you assist them or you have a policy on how their waiting list should be maintained, how often the waiting list is opened, or how the waiting list is gone through, how notifications are sent out. I know that sounds like a lot of in-the-weeds items to consider, but these are things that you should be taking a look at to make sure that they're continuing a fair selection of tenants as they go through their waiting list.

And then also these tenant selection procedures sort of correlate then to defining leases and lease terms. In particular, there are certain requirements you need to remember under the NSP program and then also under our other federal programs. We don't require services, for example. But maybe some particular populations that are assisted with our projects are having service components. But again, that's not a requirement under our leases and can't be a requirement under our project leases. So, just some one-off considerations to think about.

And then this is my favorite topic, the Chicago grantees will tell you. But leases are really, really, really important. And the NSP program does defer to HOME as the safe harbor for our lease provision. I've given you the two important regulations to look at: 24 CFR 92 252 and then 92 253. 253 is really important because that contains our prohibited lease terms, which I've kind of gone through a little bit in these next couple slides. But leases serve as the protection for three parties, I like to say. They serve as the protection for the tenants, which is who we're ultimately trying to serve. They serve as the protection for the property owners and managers, because it spells out the terms and expectations for that tenant for leasing that unit. And then they're also protecting the grantee. They're making sure that we have the correct means and mechanisms in place for tenants that are supposed to be in our project to be able to live in our safe decent housing in our NSP project.

So, we need to make sure that our leases have particular language in them defining rent, defining rent terms, when rent can be adjusted, the terms of the lease as far as when leases are renewed, those types of processes. But you also need to make sure that we're not putting in lease terms that would be necessarily hurting that tenant/property owner relationship. And I gave you that regulation there. And we also talk about that on this next slide here.

I'm not going to read through all of this to you because you do have this as a resource. And it is very clearly laid out in the HOME program regulation. But I want to make sure that you understand how important leases are, because this is really where the success of your project, as far as maintaining those tenants in your project, lies. You are not required to review leases in a certain manner under the NSP program; however, we do highly recommend that you have a mechanism under your long-term compliance that you are reviewing leases.

Next webinar session I'll talk about some strategies about how to review leases, but a simple means is just through like a desk audit. Let's say you annually request to see the current lease form that's in use. But certainly before a project goes to lease-up, you want to take a look at that lease and make sure that it doesn't have prohibited provisions and it has some key critical requirements in it for you. But that also it's going to be a lease that will work for that particular project and that targeted community.

So, when you have mixed-finance projects, they may have leases that will govern certain provisions and requirements. You need to take a look at those as well. A word of caution, just because a lease says that it's a HUD lease doesn't necessarily mean that it's going to be a lease that applies to everything that you would need as far as a lease for the NSP project. Some of these HUD leases have also been out since the age of time and have not necessarily been updated, though they may look fancier because they've been typed and put into a PDF now or something. But they don't necessarily have all the required terms or they, in fact, have some prohibited lease terms that have been added and changed over time, or at least since the inception of the HOME program.

So, it's important that you don't just generalize a lease as a HUD document and consider that it's a safe document to use. You really should take a look at each lease for every specific project that you have at initial occupancy and then on an ongoing basis.

So, leases, final point, is that's where you're really governing the rent and utility allowances for our properties. And you want to make sure that the leases have specific and sufficient language in order to understand rent and then how a utility allowance is applied and what the utility allowance specifically covers.

Okay. That's not clicking. There we go. And then finally under leases, you want to make sure that we're taking a look at termination requirements. So, making sure that it's for good cause or—and what that good cause definition is. So, you really should make sure that your property owners and managers have a strong understanding of what constitutes the means for termination of a lease versus what doesn't.

And then finally we wanted to mention, because this is a new requirement, although we won't really go into depth with it, but the Violence Against Women Reauthorization Act is applicable to our NSP project. Not all grantees are aware of that. So, we would encourage you to make sure you go on the HUD Exchange to research the VAWA applicability and then requirements. But most of you that are either states or grantees that receive other HUD entitlement funds, you've already gone through this process with you HOME program or HOME and CDBG, so—but it's just important that everyone understands these requirements. And then with that, we're going to take final questions for the day.

Jennifer: Yeah. Absolutely. We don't have any questions pending at the moment. Oh, proving me wrong, one just flew in. Okay. The question asks, "As a sub-grantee that has been leasing units for the last five years, we have consistently worked off of a waiting list, first-come, first-serve. Do you have best practice suggestions for waiting lists?"

Sarah Ciampi: Sure. So, you should make sure that that waiting list and the first-come, first-serve policy is actually identified in your tenant selection plan. And if the tenant selection plan had any specific tenant selection priorities, that those are either being adhered to or not necessarily ignored. But beyond that, a best practice that we've seen observed is in how you're documenting that first-come, first-serve.

So, is it a complete application, is there a timeframe for when the waiting list is open and closed, is there a notification period and means for how to notify that particular tenant that's next up on the waiting list that a unit is available, and how long do they have a right of refusal for that unit. So, those are all considerations that should be part of your waiting list, not just necessarily a first-come, first-serve policy. But more so how are you making sure that tenants have access to the units and what is the process behind that?

Jennifer: Great. Thank you. This is a more general question, but somebody's asking, if they wanted to inform a nonprofit how to go about following the process to become an NSP grantee, where would they direct them to first?

Sarah Ciampi: I'm going to let headquarters answer that because I think that speaks to—we've already—all funds have already gone out. It may be that they're applying to maybe their local state or another entity that has NSP funds.

Jennifer: That's what I was thinking, yeah. You'd want to look locally.

John Laswick: That's what I would—Yeah, so, you want to talk to your city or county or state that you're in. Quite a few of them have funds still available or program income. Or some of them have line of credit funds. So, while there is no new money, we are trying to get the old money spent, so, help us out.

Jennifer: Great. Okay. And I think that's it for our questions. Sarah, can you answer— Go ahead, John.

John Laswick: Jennifer, I just noticed we had a question about NOI being retained as replacement reserves and not program income. I wanted to point out that we have a policy alert that came out in July of 2011 that you can get on the Exchange on program income, and it addresses replacement reserves and NOI in rental projects.

Sarah Ciampi: Great. Thank you for that.

Jennifer: Thank you. So, no more questions pending here. Sarah, can you advance the slide?

Sarah Ciampi: Sure.

Jennifer: I just wanted to let folks know that we have some resources listed here. There is a whole page of NSP information on the HUD Exchange. Everything from those policy alerts that John was just talking about, regulations that Sarah's mentioned, different guides related to the program that Sarah recommended. There's also lots and lots of information on closeouts there. So, we all know that closeout is at the front of our minds, and a lot of times people aren't even sure where to get started. And the HUD Exchange is a great place to start.

There's even a little quiz you can take to figure out if you are in a good position for closeout. There's also all the closeout forms. There are videos on how to complete the forms. There are webinars. There's so much information. There's a beautiful closeout guide, right, John? So, there's lots of information on the HUD Exchange that will be useful to you in running your program but also as you think about closeout.

If you have any additional questions on the topics we talked about here today or on anything related to NSP or even DRGR for those of you who are thinking about your DRGR data cleanup for NSP, you can submit an ask a question through the HUD Exchange as well. So, there's the web link for the "ask a question" page on the HUD Exchange. And there are question pools for NSP specifically, so that's where you'd direct your policy questions. And then there's also a DRGR question pool as well.

And on the HUD Exchange, you can also sign up for the mailing list. So, there will be additional webinars upcoming. As we talked about here today, part two of this rental oversight topic will be covered on December 5th. And so, to get information and alerts about all the webinars that will be coming out over the coming months, I would recommend that you sign up for the listserv announcements for NSP. And you can do that at the HUD Exchange. The plan is to have about a webinar a month on different topics. You've heard us mention that land banks may be a topic in the upcoming months, as well as using the rest of your line of credit and program income, different ideas for that. Ideas for meeting national objectives and things like that. So, lots of good topics coming up in this series. So, keep an eye out for those webinars.

At the end of this webinar, when we close out, you're going to be prompted to complete a survey. We really appreciate everybody's participation in those surveys. It helps us make better webinars for you in the future. If you do have things to put in writing, that's always helpful, but just remember that this is not the best place for your policy or programmatic questions. You want to ask those over at the "ask a question" link that I talked about just a minute ago.

So, is there anything else anybody would like to add from headquarters, or Sarah, before we wrap up for today?

Sarah Ciampi: Well, I just want to thank everyone for joining us today. And I really hope that this was some useful information for you to consider as you enter into your long-term compliance considerations going forward for the NSP program. And I really hope you can join us again on December 5th for part two. We'll really be discussing in more depth applying a lot of the requirements that we discussed today, but also what a good long-term compliance system looks like, monitoring, and of course if you have any current troubled projects, some solutions and tips for handling those.

John Laswick: Thanks, everybody. Good job, Sarah.

Sarah Ciampi: Thank you.

Jennifer: Great. Thank you all. We'll see you on a future webinar.

Sarah Ciampi: Thank you.

Jennifer: Bye-bye.