

Revisions, Extension, and Update of HOME COVID 19 Memos Statutory Suspensions and Regulatory Waiver

WEBINAR TRANSCRIPT, JANUARY 25, 2021

*In an effort to avoid future confusion, this transcript includes minor edits and/or notes added after the fact to provide context and clarifications. Those are {bracketed} either inline when clarifying a shorthand term or reference or included in **notes added in red italics**.*

0:02:38 Stephen Lathom: Thank you, Sandy. And good afternoon, everybody. Let me switch to the proper slide deck here and we will get started. I'm not going to repeat the webinar title in the interest of time, it's definitely a mouthful, and we let Sandy say that to us, so let's move right on to some introductions. So again, I'm Steve Lathom from TDA Consulting and I'm happy to be joined today by Monte Franke, who I've had the pleasure of working with on more HOME engagements than I can count. I'm going to pause for just a second and let Monte introduce himself and say hello.

0:03:14 Monte Franke: Yes, we have done a lot of things together, and it's always been a pleasure. But if you're losing count, I'm getting a bit worried because you're the numbers guy on our team, so hopefully you'll be able to keep track. Hi, everybody. Happy New Year. And I guess this year, it's more of a prayer than a greeting. I hope you and your families are safe through the pandemic, and that you'll find today's session useful. I wanted to share just a ray of hope to say that I received my first vaccine last week, not because I'm considered a front-line worker, certainly not, but... How do I say this tactfully? I'm an elder statesman, at least with regard to the HOME program, having worked with it since the beginning. So I hope the vaccine gets to all of you very, very soon. Steve, I see the numbers are growing and there's a lot of people on this webinar, which apparently means that everyone's running out of things to watch on Netflix, so maybe we better get started before they get bored.

0:04:14 Stephen Lathom: Sure. Thank you, Monte. Of course, it wouldn't be a HOME webinar if our session today wasn't sponsored by the Office of Affordable Housing Programs, the home of the HOME program. I will point out that there are several resources available to you today. The webinar PowerPoint slides, Sandy has put into the chat, and we'll probably periodically re-post that link. Those will be posted to the HUD Exchange shortly, but they just weren't up ahead of time today. And then additionally, there are two sets of memos, the original April memos as well as the December 4th memos that extended and revised the April memos. So those are both available to you. The one called "general memo," identifies a range of statutory suspensions and regulatory waivers across the program, while the second set of memos addresses suspensions and waivers that are specifically about providing PJs with flexibility to implement HOME-funded emergency tenant-based rental assistance programs, which of course in our program, we have to turn everything into an acronym, so we call that TBRA.

0:05:23 Stephen Lathom: Of course, those memos in particular, the December 4th memos that extended and revised the April memos, form the primary basis of our conversation today. We'll cover both of those as they each contain a range of revisions and clarifications. But let's not bury the lead here. We'll be talking about the extension of the waiver period through September 30th of this year, 2021. There are also two new or additional waivers that we'll be covering. We'll circle back to some income determination issues that have been firmed up in formal guidance since many of you were on the emergency TBRA webinars that Monte and I presented back in June, or the introductory webinar on this topic that HUD delivered in April shortly after the memos came out. And of course, we'll pause at a few points for questions along the way, which is a good time to remind everybody how to ask your questions.

0:06:18 Stephen Lathom: As Sandy covered in the lead-in, all questions today need to be submitted through the WebEx clients Q&A tool, which you should see on the right-hand side of your screen. It may be minimized. So if that's the case, click on the little triangle or the arrow next to the Q&A to expand that panel. You'll want to ask your question to all panelists. And of course, don't forget to click "Send". We've got Sandy monitoring and handling any IT or technical questions and troubleshooting. Monte will be monitoring the program and policy discussions while I present and vice versa during his segment, and we also have some HUD headquarters staff behind the scenes reviewing questions. So you may see a typed response here and there coming from a couple of other names as well.

0:07:04 Stephen Lathom: Before we go any further, however, we'd like to do a quick poll just to get a sense of who's on the line today and some information about where your heads might be at, so I'm going to ask Sandy to open the poll, which should show up on the right-hand side of your screen here. And we're going to ask the first question: who are you? Do you represent a PJ? Maybe you work for a state recipient or a sub-recipient. We know there's some HUD staff on the line, both from headquarters as well as from the field offices across the country. Maybe you're a TA provider or a consultant. Maybe you fall into some other category or are some other sort of interested party. And then the second question we're going to ask is whether your agency has used any of the suspensions or waivers within your program, or in one or more of your HOME projects. So, Sandy, is the poll up?

0:07:58 Sandy Patel: Some technical difficulties with the poll. Can we get back to the poll? Give me about...

0:08:04 Stephen Lathom: Sure. You know what? Here's what we can do. Let's do this. We'll just skip over this poll if we're having a technical difficulty, but everybody, you can do the little raise your hand thing or you can send an emoticon. If you are a PJ, raise your hand right now, and we'll just look and see how many people are raising their hands in the chat. So we've got a lot of folks raising their hands there. And then if you are a state recipient or a sub-recipient, so perhaps a local unit of government receiving HOME funds from the state or as a sub-recipient, most likely a non-profit administering a program on behalf of your PJ, why don't you do the little raise your hand thing and we'll just eyeball and get a sense of how many sub-recipients we might have. I'm going to be scrolling through the different names here.

0:09:02 Stephen Lathom: HUD staff, go ahead. Everybody else can drop their hands and HUD staff can raise their hands. Alrighty, and we'll just lump the next two together. Consultants, TA providers or other interested parties, go ahead and raise your hands. I'll just scroll through the names here, looking to see how many hands are up, just to get a sense. Okay, and this is one, I'm a little interested, really quick, everybody who has taken advantage in one way or another and used some of the flexibility that has been provided, can you do the raise your hand thing, or use one of the emoticons and give us a smiley-face, whatever. Okay, I'm scrolling through. It looks like a pretty large percentage of the folks, Monte, are using that.

0:10:13 Stephen Lathom: Okay. One thing really quick, I see some folks coming in with questions saying that they don't see how to raise their hand or use the emoticons, we'll be okay with that. Monte, one thing I did want to real quick mention and maybe you want to comment on... In a shorthand way, we often talk about these as the waiver memos, but really, they address both statutory suspensions and waivers, and that difference is actually important from an administrative standpoint, isn't it? Do you want to mention anything about that?

0:10:49 Monte Franke: A lot of people have heard the phrase suspensions and waivers and sort of assume it's just sort of redundant HUD speak or something, but it really isn't. It refers to two different authorities that HUD has to set aside program requirements to respond to the pandemic. A waiver authority runs to the regulations, and HUD has a general waiver authority for its regulations, but it only has limited authority to

suspend any statutory requirements. The Congress has given it that authority to suspend in the event of major disaster declarations by the President under the Stafford Act, which has been done for virtually the whole country with the COVID pandemic. So while a lot of times there would be a distinction between who has access to the suspensions and who has access to waivers, in this case, they come together and they generally apply to all PJs, even though HUD has to legally address the two separately under different authorities.

0:11:54 Stephen Lathom: Right, right. Thanks, Monte. Yeah, and I think the thing that's particularly unique here is that this is, I think, the first time ever that the entire country in effect has been declared a disaster area. So that just sort of shows how widespread the pandemic is in comparison to the types of things that we've dealt with and thought about as disasters before.

0:12:20 Monte Franke: Yeah. Usually, Steve, it's only where we work that they declare a disaster.

[laughter]

0:12:25 Stephen Lathom: Alrighty, well, I had mentioned the history before, but let's just detail it a little bit more. On April 10th last year, about a month really after the first widespread shutdowns started to roll across the country in barely a couple of days, more than a month after the passage of the CARES Act, {HUD's Office of Community Planning and Development} issued two memos announcing the availability of a series of {HOME} waivers and suspensions in response to the pandemic. As I already mentioned, the first of these we refer to as the general memo because it dealt with issues across the program, and the second, the TBRA memo, focused on waivers and suspensions to facilitate the creation of emergency TBRA programs. I will remind everybody that while we all look to the CARES Act as a significant moment in the federal government's response to the COVID-19 pandemic, unlike CDBG or ESG, HOME did not receive any supplemental funding. There's no such thing as HOME CV, as it were. So these memos really were HUD's effort to both make HOME responsive to the public health conditions that we're encountering, and also bring HOME's resources to bear on the economic fallout of the pandemic, both at a personal and project level.

0:13:39 Stephen Lathom: The April memos generally provided that the various waivers would extend through December 31st, 2020 and it seems like a lifetime ago in many respects. Last year lasted 20 years to many of us, it feels like. But in April, there was in fact widespread hope that by fall and certainly by year end, we'd have this thing largely under control. Of course, in hindsight, we know the pandemic is still raging, and while there's light at the end of the tunnel with vaccines starting to become available, we realize we have a way to go yet. So in December, more precisely on December 4th, HUD issued two additional memos revising and extending both the general and the TBRA memos.

0:14:23 Stephen Lathom: Within the general waiver memo, HUD also added two additional waivers that we'll be talking about shortly. And I'm hoping that everybody's actually read the memos for themselves. As much as we enjoy doing these webinars, just listening to us highlight them is no substitute for reading the full document. Presumably, everybody got a link to those from the listserv announcement, just like you got a listserv announcement that allowed you to register for this webinar. But just in case you need to go back and put your hands on those, you will go to the HOME program page on the HUD Exchange, which is [HUDexchange.info/home](https://hudexchange.info/home). Then under "Policy Guidance" in orange, you see where it says "HOME COVID-19 Guidance", you select that, click on that, and it's going to take you to another page. And on that page, the first two things listed will be the two different CPD memos. And so if you need to find out how to get there, that's how we're going to get you there online.

0:15:32 Stephen Lathom: So, what's the Cliff's Notes version? All of the suspensions or waivers that were otherwise due to expire on December 31st, 2020 have now been extended through September 30th of this year. HUD has issued two new waivers; one about income recertifications for in-place tenants in HOME rental

units, and one waving the maximum per unit subsidy limit for certain HOME rental projects. And while this isn't entirely new, we talked about it in the June webinar, the December memos also clarify and standardize the treatment of certain unemployment income across the entirety of HUD and, finally, throughout there are various clarifications about different waivers.

0:16:14 Stephen Lathom: So I'm going to walk through the general memo, and after I've done that, we'll pause for questions and Monte will be handling the TBRA memo. We're not going to go back through every element of the original memo. I will note that you can go back and listen to a recording of the April webinar that HUD did. But we have put together a quick reference chart here, and what you'll see for several items, there's no change, not even an extension, per se. It's not because those items have expired, it's just that for those no-change items the suspension or the waiver wasn't tied to a December 31st date intended to apply to specific HOME funding years. Those included allowing PJs to charge 20% admin *{Note, speaker mis-spoke, waiver allows up to 25% admin}* rather than the standard 10% cap, which applies to your FY 2019 and FY 2020 HOME allocations, allowing PJs to reduce or even eliminate their CHDO set aside for any open allocations up through and including your FY 2020 allocation, allowing PJs to increase the level of CHDO operating assistance that you provide from your FY 2019 and FY 2020 allocations, both as a percentage of your overall allocation and in terms of the limit on how much we can award to any given CHDO.

{Note, the suspension and waiver address the CHDO set-aside from 2017 through 2020 only. The CHDO set-aside from prior allocations (e.g., 2016) can in practice be reduced at this point under separate authority from the HOME appropriation statute. PJs with questions about this provision should contact their HUD Field Office.}

0:17:28 Stephen Lathom: I will note that the ability to fund a CHDO with additional operating support is limited to the CHDO's operating expenses through June 30th of this year. So that one issue was unchanged from the original memo and does not run through September. Also, no change to either the match waiver, which already applied to HOME funds expended during federal fiscal years 2020 and 2021. So that already was running through September 30th, the end of the federal fiscal year. Nor has anything changed about the citizen participation requirement, allowing expedited revisions to your action plan or for any action plan that remains in effect up through your FY 20 HOME allocation and, of course, prior action plans. The next couple of waivers, the nine-month sales deadline, and for HOME-funded, homebuyer or for-sale housing units, and the extension of time for a PJ to respond to HUD monitoring findings, those are unchanged except for the extension through September 30th. The rest, those items that you see in bold and italics, were both extended and revised or clarified in some way, with two of those being new waivers, so we'll dig into those in greater detail.

0:18:49 Stephen Lathom: So the existing waiver, the April memo, allowed applicants to self-certify their income in lieu of the standard requirement for at least two months of source documentation, and that has been extended through September 30th. Now, it's important to note that that waiver only applies to applicants seeking HOME rental units or HOME TBRA. This was not waived for households receiving homeownership assistance, whether that's homeowner rehab or down payment assistance of some sort. Standard source documentation requirements continue to apply in those circumstances.

0:19:27 Stephen Lathom: But there's also a new waiver here, and that is for in-place tenants of HOME rental units who were otherwise due for a recertification this year with full-source documents, and so I want to unpack that one a little bit. The HOME rule, absent the waivers we're talking about of course, requires source documentation: pay stubs, bank statements, things like that; for occupants of HOME units at move-in at the time of assistance. So in this case, we're talking about HOME rental units and TBRA units at the point that people move in. Then in the case of HOME rental units, at the PJ's option, the annual recertification that is required may be done by self-certification, except that every sixth year of a project's affordability period, and it's important to note that's the project's affordability period, not the length of time a given tenant has been in place, at least every sixth year the regulation requires that in-place tenants who are going to hold over need

to be recertified with source documents.

0:20:31 Stephen Lathom: Now, I know as a matter of policy, many PJs have not chosen that option in the regulation and require that tenants be recertified with source documents every year, and that's entirely acceptable, but the minimum requirement and the regulation is that happen every sixth year. So the 6th, the 12th, the 18th year of a project's affordability period, every existing tenant who plans to stay and is being recertified gets certified with source documents. In April, that provision of the rule was not waived. So projects that were in their 6th, 12 or 18th year of the affordability period were still required to get source documents for all in place tenants when doing the annual recertification.

0:21:14 Stephen Lathom: So the December 4th memo added a waiver to extend that same flexibility to projects that under the normal rule would otherwise be doing full source documents and allows them to go ahead and accept the self-certification for any income determination for a carry-over tenant through September 30th of this year. And the rationale for that here is the same as it was for the original waiver, including both the need for social distancing and the fact that a lot of folks may not have current source documentation available to them or it may not be particularly indicative of their circumstances due to job losses, reduction in hours, temporary layoffs, those sorts of things.

0:21:56 Stephen Lathom: Let me circle back really quick to what happens in other years, because I expect we may get some questions on this. Since the regulation only absolutely requires source documents every sixth year, that's what the waiver explicitly addresses. If you're a PJ whose local policy is that every annual recertification involves source documents and a project, for example, is only in its third year of the affordability period, HUD didn't waive that, but you can determine for yourself whether or not you want to waive your local policy in that regard. And obviously, if you're going to do it for projects in the 6th, 12th, 18th year, it doesn't make a lot of sense that you would still make people do source documents for a project in its third, fourth or fifth year, as an example. But that's why the waiver specifically talks about every sixth year.

0:22:47 Stephen Lathom: I'll note here really quick as well, that HUD has updated the sample HOME income certification form. And when we get to TBRA, for anybody that's using the TBRA toolkit documents that were posted, those are also in the process of being updated, and several of them should be back up in new versions with the new dates attached to them probably by the end of the week.

0:23:14 Stephen Lathom: Next, let's cover some issues about unemployment. The December general memo revises language from the original April memo about Federal Pandemic Unemployment Compensation or FPUC. We just didn't have enough acronyms, so we had to create a new one. That's the federally paid supplement to traditional unemployment benefits. This was originally funded by the CARES Act and boosted unemployment by \$600 a week through the end of July 2020. That did expire in July but was recently re-authorized at \$300 a week for 11 weeks ending March 14th. While the April memo originally suggested that this {i.e. the supplemental federal unemployment benefits} should be included in the income, the December memo aligns to subsequent department-wide policy at HUD that FPUC is considered temporary assistance and therefore, will not be included in income under the Part 5 definition, which of course, most PJs use for the rental projects.

0:24:10 Stephen Lathom: So, we were able to provide that clarification in the June webinars, but the December memos confirmed that guidance in writing that HUD had previously otherwise provided. Similarly, HUD clarified that FEMA assistance called Lost Wages Supplemental Payment Assistance, we didn't make that one into an acronym, doesn't need to be included, because it's disaster assistance that can be excluded under the Stafford Act. Now frankly, that's really in the rearview mirror now, but the point being that whether it was the original CARES Act, the FEMA money that looked a lot like the CARES Act, but wasn't statutorily the same thing, or now, the consolidated appropriations act of 2021, the federal supplement to unemployment, the

“boost” as it were, in response to the pandemic, is not included in income under the Part 5 definition.

0:25:00 Stephen Lathom: Just to throw out a couple of other acronyms, to be clear, we're not saying that all unemployment is excluded, just the FPUC. So other regular state unemployment income, as well as two other COVID unemployment programs, PUA and PEUC, those extended so-called regular unemployment to folks who may be self-employed, are independent contractors, gig economy workers, like all those Uber drivers that aren't driving people around right now, those are all still included. It's just the “boost,” the federal paid supplemental boost that gets excluded from income in this instance. And then, while we're on the topic, even though this isn't new, a reminder that the so-called stimulus payments, that was the \$1,200 per person back in the spring, and another \$600 per person, at the end of December, at least it was approved at the end of December, I believe those payments are still working their way through the system, so many of us may be waiting to see those, those aren't included either.

0:26:03 Stephen Lathom: And of course, technically, that second stimulus payment as well as the extension of FPUC on the last slide weren't actually referenced in the December memo, because that was before the law authorizing those benefits was passed, but we can clarify that the treatment there is the same. Okay, next up is the second new waiver. The first of those are the one that extended the use of self-certification to in-place tenants of HOME rental units. This one waives the HOME maximum per unit subsidy limit for two groups of HOME rental projects. First, the maximum subsidy limit is waived for existing HOME projects during their period of affordability, where a PJ is now awarding additional HOME to establish an operating deficit reserve. As folks might recall, and if you didn't, we're going to be talking more about this in a few minutes. The April memo provided flexibility for PJs to do workouts under Section 92.210 of the HOME rule without having to go to headquarters for approval.

0:27:11 Stephen Lathom: So this waiver allows PJs more flexibility in such a workout since you wouldn't have to look at the original HOME plus the additional HOME and make sure it fell within the current per unit subsidy limit. Nor is there any potential of having to sort of reassess the original cost allocation or anything like that, so this makes your life a little bit easier if you're doing that. The other group of projects that this applies to are HOME rental projects that are underway, that is, they have a commitment, but they've not yet reached the stage of project completion. *{Note, max. per unit subsidy waiver applies to all of HOME projects, not just rental.}* Or it also applies to those which we expect to make a binding commitment to prior to the end of the waiver period, prior to December 30th. *{Note, speaker misspoke, waiver runs through September 30, 2021}* So HUD is waiving the maximum per unit subsidy limit to allow PJs to boost their HOME investment to respond to increased costs that some projects are experiencing, that could be the result of construction costing more, because the contractor and all the subs have to provide PPE to their workers.

0:28:14 Stephen Lathom: We've seen increases in material cost as a result of various supply chain disruptions and other economic effects of the pandemic. So, the maximum per unit subsidy being waived allows us to respond to those. Okay, next up is inspections. The original waiver allowed us to forgo HQS inspections ahead of a TBRA move-in and annual TBRA inspections, or also allowed us to forgo what otherwise would have been in-person monitoring inspections of rental units, and that waiver extends through the waiver period. This was primarily done to accommodate social distancing, as well as to recognize the reality that a lot of leasing offices are shut down with staff working from home and a lot of your offices are still shut down with staff working from home. One important caveat to point out though, and I think Monte will be reiterating this later, is for any new TBRA, including emergency TBRA, if we're assisting a pre-1978 unit, it's still required to do a lead-based paint visual assessment. Now that is not waived.

0:29:24 Stephen Lathom: And so, in those limited cases for pre-78 units that aren't otherwise potentially exempt under one of the other exemptions, there will still need to be at least that lead-based paint visual inspection. And the good news at this point is that I think we figured out how to accommodate some of those

in-person things. The tenants could probably leave the unit, everybody mask up, etcetera, etcetera. For TBRA, the memo clarifies that you must inspect so, go ahead and do the inspection prior to entering into a new TBRA contract with any tenant after September 30th. I think Monte's going to repeat this again later, but the point being that if we have an emergency TBRA tenant who is not going to continue under a standard TBRA contract, then we don't have to go back in time and do inspections of units that are no longer being assisted.

0:30:25 Stephen Lathom: Let's see. HUD also clarified the waiver of the four-year project completion deadline. That waiver applies to any projects – the clarification here is that that waiver also applies to projects – that had previously received a one-year extension of the deadline and that extended deadline would have otherwise expired during the waiver period. So, as an example, let's say you had a project where the four-year deadline was originally February of 2020, you had sought and HUD had approved a one-year extension, making the project completion deadline February of 2021, so sometime next month. That project's deadline, assuming that you elect this waiver is also then extended through September 30th. Pretty straightforward, but I know HUD got some questions about it, so they made sure to clarify that in the memo.

0:31:14 Stephen Lathom: One thing I would say that isn't explicitly stated in the memo, but some of you may be wondering about. If you've got a project that's delayed and you don't believe it's going to be actually completed by the extended deadline, by September 30th, you'll still have the ability to ask for a one-year extension of HUD and you're going to want to do that ahead of what's now the extended deadline of September 30th. We don't have the time to go into all the ins and outs of how you request a one-year extension in today's session, that's not our point today. But if that does apply to you, I would remind you that there was a HUD issued CPD Notice 20-01 in January of last year. Of course, that was right before COVID exploded onto the scene, so it's understandable, we may not remember seeing that, but 20-01 CPD Notice walks through the process for requesting an extension from HUD. So, if that's something that you're going to need to do still, go back and read that.

0:32:18 Stephen Lathom: Okay. One more clarification to address, and then in a couple of minutes, we're going to pause for some questions, so I'm sure those are coming in hot and heavy, keep those coming. The final waiver that I want to talk about is the one allowing PJs to implement workouts of HOME rental projects under Section 92.210 without having to seek HUD approval and enter into an MOU with HUD. So specifically, HUD has made it easier for PJs to provide new HOME funds to distressed projects within the affordability period for the purpose of establishing short-term operating deficit reserves in response to the pandemic. This is not a new waiver, it was included in the April memo, but in December, HUD did clarify a few important issues. In particular, HUD clarified that we can't just fully fund a project's operating expenses – or let me be more precise, what HUD says – are the operating expenses associated with the HOME units in the project.

0:33:12 Stephen Lathom: We can't just fund those expenses and then still have the owner go back and try to collect back rent from the tenants on those units later. The logic for this comes from the general cost principles in 2 CFR 200, which says you can't charge a cost to a federal program if that cost is also being charged somewhere else, in this case to the tenant. To put it more bluntly, no one is allowed to double bill the same expense to two different places, fair enough. It's just a basic principle that we deal with. So the point that HUD is making is that the operating reserve needs to be sized to take into account the rent actually being collected. Yes, we're providing this to address the fact that a lot of HOME tenants have lost income and are having trouble paying their rent, but that doesn't mean that every tenant of every HOME unit is 100% behind on their rent either. So we have to offset the reserve funding with the rent actually collected.

0:34:09 Stephen Lathom: And it flows the other way too, if we're going to use HOME to make up for the deficit an owner is seeing because HOME tenants aren't paying their rent in full, the owner can't go back later to the tenant and try to collect the back rent that they missed. So in addition to having to waive residual receipts or what some of us prefer to use the term cashflow distributions or surplus cash during the waiver period and

for six months thereafter, owners have to forgive any rent that HOME tenants missed and not issue a negative credit reporting for the late or the missed payments. In effect, the deficit reserve is making up for the rent the tenant couldn't pay, so we don't want the owner to go try to collect it again, they're double-dipping as it were. And second, since the {rental} income is being made up, we don't want our tenants hurt further by the negative credit reporting that can have downstream ramifications for them.

0:35:03 Stephen Lathom: I know this is a little bent, so bear with me, but let's look at an example about how a PJ might set the operating reserve in this situation. First, note that the period of time over which this can be done goes as far back as April 1st of 2020, and extends through the end of the waiver period, which is now September 30th, 2021. So, keep that in mind, this isn't perfectly a calendar year thing, we can go back as far as April 1st and go forward, no farther than September 30th. So to calculate the maximum reserve that I could fund with HOME, first, we determine what percentage of the projects units are HOME units? We just divide the number of HOME units by the total unit count, which I'll call the HOME percentage. We then multiply that by the sum of the total operating cost, scheduled replacement reserve deposits, and any required debt service payments.

0:35:54 Stephen Lathom: In the current environment, we may have to adjust some of those to account for changes in operating expenses like increased cost being incurred for cleaning and sanitizing, and if debt service payments have been adjusted due to some sort of a forbearance by the senior mortgage lender, we would take that into account as well. That's the conceptual maximum, but as HUD has clarified, we have to offset that by other sources the project is actually collecting. In particular, we expect that there will still be some level of rent being paid, it's not like everybody in every HOME unit is unable to pay anything at all. So here, I'll also point back to the new waiver on the maximum pre-unit subsidy. In some cases, we might have found that the level of HOME investment that we could make was indirectly limited by the subsidy limit. Maybe the project (based on its original investment) was already very close to the maximum, and that ended up giving us an indirect cap on how much we could give as opposed to looking at the actual deficit on the HOME unit. So, the waiver solves that problem.

0:37:04 Stephen Lathom: Finally, it's just not an estimate of the size of the reserve funding on the front end, there's also a requirement that we reconcile the actual performance on the back end within six months of the end of the extended waiver period. And I know this is a lot, so let's try to break it down with an example. We've got a 50-unit project that was funded a few years ago, 10 of those units are designated as HOME-assisted units. So the HOME share, so to speak, is 20%, 10 HOME units divided by 50 total units. I can still do that math in my head. The budgeted expenditures for the project, including its operating expenses, reserve deposits and debt service over the period that we're trying to cover is \$250,000. Importantly, I validated that by reviewing recent accounting records of the project's actual performance. So the HOME share is \$50,000, 20% of the total, or you could look at that and say that the per unit average is \$5000, and I've got 10 units, which also equals \$50,000.

0:38:08 Stephen Lathom: So theoretically, as the PJ, I could fund an operating reserve of \$50,000 covering the operating cost associated with those HOME units. But as the December memo clarifies, I can't really do that. I have to offset that by other sources, including rent actually being collected. So, in reviewing the project's recent records and current performance, we're on track to collect \$30,000 in rent from the tenants of those HOME units. Obviously that's below breakeven. Some of the tenants are unemployed, maybe they can't work right now because schools are closed, and their kids are home, and they have no daycare options. Some of our tenants may have actually gotten COVID and are still recovering and unable to work. There's a whole lot of different reasons. So the actual deficit after accounting for the other sources is only projected to be \$20,000. That's the level of funding that I may provide.

0:39:00 Stephen Lathom: Remember at the end of the waiver, I have to reconcile and settle up within six

months of the end of that extended waiver period. So imagine later we find out that lo and behold, rent collections actually got better, maybe some of our tenants got back to work sooner than we thought, maybe the new stimulus check was enough to get them back on track or the supplemental unemployment allowed them to start paying their rent in full again, what have you. So the owner was actually able to collect \$40,000 in rent when it was all said and done. So what happens is the PJ has to require the owner to return the unexpended balance from that reserve. I'll record it as program income and we'll all live happily ever after. We got through the pandemic without the project going under, and we made sure that the HOME funds directly benefited tenants since the missed rent that got made up to the deficit reserve gets written off by the owner instead of the tenants being left with this huge overhang.

0:39:57 Stephen Lathom: Now, I don't have any illusions that this is always really going to be easy or work out perfectly. The deficit associated with the non-HOME units is not addressed through this waiver, for example, but the point is that in the right circumstances, this can be a really powerful tool to both preserve projects in our portfolio and to provide direct benefits to the low-income tenants of those HOME units who are in desperate need. Okay, really quick then, my last substantive presentation slide, before I hand things over to Monte for our first round of Q&A. For PJs on the webinar today, what do you have to do as a result of the extensions and the new waivers? So fortunately, it's not too hard. If you've already notified HUD of your intent to use some or all of the original waivers, and you want to stick with that, you don't have to do anything. Your election of the suspensions or the waivers is automatically extended to align to the waiver period that now runs through September 30th.

0:40:56 Stephen Lathom: You don't have to send a message to HUD that says "Yeah, those waivers I asked for, I want the extra nine months," so you don't have to do anything. On the other hand, maybe back in the spring, you didn't elect certain waivers that you now want to use, or maybe you didn't even elect any of the waivers, and so, if there's something that you did not elect to use, you do need to now notify HUD. There wasn't a specific deadline, so it's not like you lost the ability to use those waivers, you've still got the chance. You just need to provide notice of any new choices you're now making, so again, you don't have to say, "I'm going to keep using waivers A, B, and C, but I now want waivers X, Y, and Z." You just have to note the new waivers and suspensions that you're planning to take advantage of. Similarly, if you want to use either of the two new waivers, you do need to notify HUD.

0:41:47 Stephen Lathom: And how do I notify HUD? That's easy as well. All we have to do is send them a notice. Remember that what we're really doing is electing to use the waiver, this is not a request or an application for a waiver, the waiver has already been approved. So we do that by emailing both your field office and headquarters. Every field office has a special COVID email account set up, and at the end of the December general memo, there's a list of all of those, so you can find that for your field office, whether that's Portland or Atlanta or Honolulu, or what have you. And then you also need to copy headquarters on that email that you send, and the headquarters' email address is homecovid19@hud.gov. The reason we're doing this is HUD needs a record of who's using which waivers, so that they're in a position to know and they don't come out and do a monitoring and say, "Hey, you didn't do this," and you say, "Wait a minute, I had this waiver." They want to know that.

0:42:47 Stephen Lathom: And also importantly, in some cases, for example, where you're going to use more of your grant for admin than the standard 10%, HUD actually needs to go into IDIS and override some of the standard programming, because as the system is set up, you can't just go in any time and ask for more admin than the statute gives you, for example. So, that's how you would go about doing this. Okay. Sandy, were you able to figure out what's going on with the polling?

0:43:24 Sandy Patel: It seems to be grayed out.

0:43:28 Stephen Lathom: Okay. Well, we were...

0:43:28 Sandy Patel: Steve, can I just ask folks to submit their questions through the Q&A? I have a lot of folks submitting questions through the chat box.

0:43:39 Stephen Lathom: Sure.

0:43:40 Sandy Patel: Those questions will not be addressed unless they repost them through the Q&A tool.

0:43:45 Stephen Lathom: Okay, sure. Yeah, I know it's sometimes confusing, but yeah, instead of the chat, try to use the Q&A to do that. So, we were going to ask a question about whether or not your PJ is using the operating deficit reserve workouts or whether you're implementing an emergency TBRA program? So unfortunately with the polling not working, we won't necessarily be able to go through all of that, but you could certainly drop into the chat that you're doing that. Don't put those in the Q&A, but if you wanted to say, "Yeah, I'm Pittsburgh." I don't know if Pittsburgh's on the line or not, but Pittsburgh's using both of these, then that gives us some interesting information to know what types of TA products may continue to be available as we move forward. But what I'm going to do now then is, we're going to pause for questions. Monte, what stuff has been coming in?

0:44:38 Monte Franke: A lot of questions are coming in, Steve, and you covered a lot of ground very fast, so. And some of the questions were posed before you got to the slide that answered them, so we might repeat it. A few things as we go through, but I'm going to pick a few things from the long list of questions that has come in. First of all, two people were unsure what they heard in terms of the admin cap being raised from 10% to 25%. And I just want to confirm that it was raised to 25%. On the source, the income determinations and documentation we had a number of questions, Steve. One of the questions was, does this apply to rental and homebuyer? In other words, does it apply across the program or is this just one of those rental waivers?

0:45:33 Stephen Lathom: Yeah. Well... And the answer is a little bit of both. So the fact that I don't include somebody's stimulus payment in their income is true across the program. Because that's sort of what gets defined versus not being defined into the Part 5 definition. But the waiver in terms of relying on a self-certification from the applicant in lieu of source documents is specific to rental and TBRA situations and does not apply if I have an owner-occupied rehab or some sort of a homebuyer assistance program, so that's a subtle distinction that's worth making.

0:46:18 Monte Franke: So what's included in income is across the program, but the self-certification option is for rental and TBRA.

0:46:26 Stephen Lathom: Exactly, exactly.

0:46:30 Monte Franke: Okay, thank you. Another question that came up about source documents, Steve, was after the expiration of the extended waiver period, how quickly do they have to do things that were waived during that period? How do they handle it going forward after September 30th?

0:46:48 Stephen Lathom: Sure, and I think there's probably at least three buckets of scenarios there. First, I may have somebody that I've provided TBRA, particularly emergency TBRA, to during the waiver. And as I know you're going to cover, if I want to do new TBRA, we're being very careful not to even talk about that as a renewal because the emergency TBRA ends as of September 30th, given the way the waivers are now structured. And if I want to provide TBRA to a given household starting on October 1st, and that household is going to start my new normal TBRA program, then all of the standard rules are going to apply, including having to get source documents. And so in that instance, it's going to be new source documents.

0:47:36 Stephen Lathom: Now, for somebody who their assistance ends and we're not assisting them anymore, we don't have to go back in time. That's clearly done. For a HOME rental unit, somebody moves in, let's say, in July, and we relied on a self-certification, then the rule technically doesn't apply. Next year, we're going to do a recertification, and in part, it depends on the PJ's policy and what year that project is in the affordability period. And so let's say that next year, in 2022, that project is in a situation where it's now the sixth year of the affordability period, then all in-place tenants carrying over need to have source documents and that tenant would be recertified next year with source documents. If it's a project that next year is allowed to, and the local PJ has elected in a standard program design to let owners rely on self-certifications in those other years, then that person could continue in that sort of an instance.

0:48:41 Stephen Lathom: And then for a tenant who is in a project that normally this year would have been an everybody gets recertified with source documentation year, let's say this was the sixth year. Then that's been waived and the next time everybody has to be recertified with source documents is in the 12th year of the project's affordability period. So theoretically, somebody could be in for multiple years originally under a self-certification and then renewing under a self-certification, I don't think that that's statistically highly likely given turnover and those sorts of things, but it's possible.

0:49:22 Monte Franke: Okay, Steve, on the maximum subsidy waiver, the question that came in runs to whether this applies to, say, a new construction homebuyer, and I think there's some confusion over the two uses of that subsidy waiver, subsidy limit waiver, one running to the operating expenses of rental projects and the other to the maximum subsidy limit for projects in development under a commitment. Do you want to comment on that?

0:49:52 Stephen Lathom: Yeah. And let me just... I'm nearly certain, although I did fumble the 25% admin instead 20%, I said 20%, but you're right it is 25%. The maximum per unit subsidy waiver, I am 99% certain, is specific to HOME-assisted rental projects, so it does not, per se, apply to homebuyer projects. And again, there are two classes. It could be a project that is underway, it's under construction right now, it has its commitment, but it's not yet complete. Or, again, it also has some application to those projects in their affordability period where we're going back and doing a workout under 92.210.

0:50:38 Monte Franke: Steve, I think what we're running into is the wording in the memos says that it applies to completed HOME rental projects, but then the later sentence that refers to the suspension and waiver under applicability says, "... apply to HOME projects that are currently under way." It doesn't say HOME rental projects, and so it does raise a legitimate question.

0:51:02 Stephen Lathom: Yeah. I think we'll go back and try to clarify that with HUD, and we may get a behind-the-scenes chat. I was looking in the justification and thought I saw... You're right. You're right, Monte. It does seem to speak more broadly. So let's just get that clarified from HUD. Hopefully we can try to do that even during the webinar here. *{Note, maximum per unit subsidy waiver can be applied to all of HOME projects, not just rental.}*

0:51:30 Monte Franke: Okay. The next group that I want to bring up to talk with you about are the inspection waivers. And first, there were a few that we're wanting to confirm that they run to rental and TBRA, and I know I'm going to talk a little bit more about the inspections. But do you want to clarify that they are conducted, that the waiver applies to both rental and TBRA? And then we've had a few questions about the lead-based paint requirement, about how it should be conducted, people asking questions like remote photography and then methods such as that. And I don't know what we can say about those requirements since they are not HOME-specific, but do you want to comment on those?

0:52:18 Stephen Lathom: Yeah, I have not heard anything, or actually the only things I have heard in the discussion of the visual assessment for lead-based paint suggests that it continues to need to be done in person, that there's not an accepted sort of I'm going to do it virtually with some sort of a live stream thing. So I have not heard anything to suggest that that is acceptable. And so that hopefully clarifies that. In terms of the inspections, remember, this is the sort of ongoing, it's either a new move-in for TBRA, the annual inspection for TBRA, if somebody was coming up during the waiver period, or periodic monitoring inspections of HOME rental projects. The inspection that needs to be done at project completion to ensure that the project got built properly or rehabbed properly, that has not been waived. And interim construction inspections, that hasn't been waived, but this is really those prior to move-in for a given tenant in TBRA or those ongoing monitoring inspections. Those were the ones that have been waived.

0:53:35 Monte Franke: Okay. The next set of questions that I was going to raise to you now run to the operating expense waiver or the operating deficit waiver that you discussed at the end, and there were some questions about documentation, which I'm not sure we can answer. There was one about whether the limitation on cash flow distributions would include a deferred developers fee. Do you have any insights on that?

0:54:10 Stephen Lathom: I think that's one that we're going to need to go back and talk to HUD about. I do know that in most cases, deferred developer fees are payable only from surplus cash. And the reality is, in practice, I think this might be a little bit of an academic discussion, because if we're in a position that we're giving an operating deficit reserve to a project, it's probably true that project as a whole is in a deficit situation. So it's unlikely that there would be any actual cash flow, surplus cash, residual receipts, even available to pay towards the deferred developer fee in practice. So I think that in the real world, that question may not have as much import as it sounds like, but we'll definitely try to get that squared away with HUD.

0:55:05 Monte Franke: A few questions that have just come in on inspections. Again, it's the 120-day window after September 30th. A number of people wanting clarification on that, about confirming that they have to be conducted within that 120-day window by the end of the year. You want to comment on that?

0:55:26 Stephen Lathom: Sure. For rental projects, HOME rental projects, if we skip the in-person inspections this year, we have 120 days from the end of the waiver period to go ahead and go do that, so I think that works out to the end of January 2022. In the case of TBRA, if the recipient of that TBRA is not getting new assistance from us after September 30th, then that project is over, it's done, we're not going to go back. If they're going to be asking for new assistance beginning on October 1st, then that TBRA, that regular TBRA, as it were, is going to be subject to all requirements, including that there needs to have been an inspection of the unit prior to signing the rental assistance contract.

0:56:21 Monte Franke: Okay. There have been a couple of documentation questions coming in that if they have elected to utilize the waivers, do they have to document them within individual tenant files or project files?

0:56:36 Stephen Lathom: Oh, that's a great question. Clearly, you're going to need to keep records in your program files sort of showing that you've requested those waivers and those sorts of things, and I think that whether and how it makes it into tenant files is going to vary a little bit depending on what the waiver is. Obviously, there's no impact of electing the waiver about the nine-month sales deadline in a tenant file or even the homebuyer portion of the file, the sales portion of the file. But in general, what I would say with federal programs is it's almost impossible to over-document what's going on. So imagine that somebody five years from now is looking over the file, you're no longer there to explain what happened, you want to leave as many breadcrumbs as possible to sort of preemptively answer somebody sort of saying, "Hey, why didn't this happen in the normal way?"

0:57:37 Monte Franke: Related to the 120-day extension, a question just came in on income and source documentation, if they do not have to do source documentation during the waiver period and the waiver period expires, the 120-day extension that we're talking about runs to inspections, not to after the fact collection of source documentation. Correct?

0:58:00 Stephen Lathom: Right. Those are separate waivers. Obviously, they may sort of apply both to a given unit, but those are separate waivers and they have separate standards in terms of when the normal expectation kicks back in. And let me clarify, I just saw through the chat, I apologize, everybody, I kind of misstated that. The maximum per unit subsidy waiver actually can apply to any HOME project, it's not exclusive to rentals. So the material cost increases and things like that are not confined to rental appliances, for example, that have gone up and are, in some cases, just very hard to find. And so those types of cost increases have led HUD to waive that or allow you to waive that across the different types of projects. So that's not exclusive to rental. I apologize for misspeaking.

0:58:54 Monte Franke: It seems as though, Steve, one of the most popular sets of questions is that lead-based paint digital inspection, and we've already commented that the lead-based paint requirements are a different office of HUD and we've not got clarification on what alternative methods could be used for that inspection. I just wanted to respond again because they continue to crop up here in the set of questions. A lot of these run to things that I will be covering under TBRA. There was a question, I don't know the answer to this. For rental projects that trigger Davis-Bacon, are we still required to do on-site interviews? Do you happen to know?

0:59:42 Stephen Lathom: Well, I think probably the best answer here is that I've seen nothing to suggest that that's been waived. So unless there's a specific waiver, anything that's a standard requirement still applies. And so I'm not aware, unless you've heard something, that there's been any sort of a waiver relative to those standard Davis-Bacon monitoring things. And again, remember, HUD specifically said that the waiver of inspections is more about those ongoing inspections, not the completion inspection or the progress inspections during construction. Those still have to happen. So I think if they meant to waive those on-site interviews for Davis-Bacon, they would have said so.

1:00:33 Monte Franke: Yeah, and the section of NAHA, that under which HUD could suspend requirements for disasters, declared disasters, it excluded certain things from HUD being able to waive, including Davis-Bacon prevailing wage standards. So I think that's probably a good answer, Steve. There's one here that came up that said, "Can you make the October rent payment in September, since the waivers expire September 30th?"

1:01:04 Stephen Lathom: That's an interesting question, but as a general rule, we don't pre-pay expenses, so I would be skeptical of that. But to echo, Dr. Fauci, I don't want to hazard too many guesses.

1:01:23 Monte Franke: Yeah, I would agree. We've tended to talk about this about rent and utility payments due during the extended waiver period and not pre-payment, so I would be skeptical of that, but I'm sure we'll hear from HUD staff on that one after the session. Let's see, there is a question in here about the Match waiver. As they said, "Does it apply to all projects?" Again, Match, as you explained, Match is incurred when funds are drawn during a particular federal fiscal year, and so the waiver applies to those two federal fiscal years covered by the waiver. And it would be for any HOME funds that are drawn during that time period that the Match waiver would apply.

1:02:31 Stephen Lathom: Yeah, and Match is one of those things, again, not a topic that we're going to be able to cover in depth today, but is a little bit... Remember back, I think it was, maybe it was Electric Company when I was a kid or Sesame Street, that one of these things is not like the other, one of these things is not the

same. And while many of our things, many of our program-wide issues are affected by what program or fiscal year, what year of the allocation the money is coming from, Match is actually measured on what federal fiscal year we spent the money in regardless of which program year that money came from. And understanding that nuance helps understand the specific answer to that question.

1:03:11 Monte Franke: Yeah, as I admitted at the beginning of the presentation, Steve, I'm far beyond the Sesame years, and don't remember that particular song, but I will count on you since I know you still have younger kids. We should probably go to the next part of the presentation. I think I'll hit a lot of these other questions as we go into the TBRA slides.

1:03:40 Stephen Lathom: Yeah, let me pass the ball over to you and I will take over monitoring the Q&A, and you can start to advance the slides. Did that take, Monte? Do you have it?

1:03:57 Monte Franke: I don't have it yet, Steve.

1:04:00 Stephen Lathom: Let's see here. There we go.

1:04:07 Monte Franke: Okay, now I have it. Thank you.

1:04:09 Stephen Lathom: No worries.

1:04:20 Monte Franke: There we go. Okay. Okay, everybody, I know we didn't answer all of your questions, some of them are things that'll have to go back to HUD, and I appreciate that you've asked them. And HUD is listening in and watching these, and I'm sure we'll have some clarifications, especially for things that we weren't able to answer. So we welcome the questions. Please post them even if you stump us. What I'm going to do is shift the focus from the general suspensions and waivers memo on December 4th to the December 4th memo on emergency TBRA, which provided some revisions and extensions to the April 10 emergency TBRA memo.

1:05:11 Monte Franke: The April 10 memo on emergency TBRA created a set of suspensions and waivers that allowed PJs to create short-term emergency TBRA programs to respond to households in need as a result of the pandemic, and it was originally permitted through December 31st, 2020. The December 4th memo extends those original suspensions and waivers to September 30th, 2021, just as Steve said with the other one. And they provide some clarifying guidance in several of them, and that's what I'm going to talk about. There are no new suspensions or waivers related to this memo. Steve talked about two in the general memo, but not in this one. For this webinar, we'll only be reviewing the revisions and not the original set of suspensions and waivers.

1:06:02 Monte Franke: Now, we know that some of you have created and are running emergency HOME TBRA programs, but many of you did not. Those of you who did create the emergency programs are probably listening in to consider extending the assistance into 2021. For those of you that have not yet created a HOME emergency TBRA program, you may be thinking about it now or you might be listening in just wanting to compare the HOME alternative or opportunity against the emergency assistance that you can provide with the allocation you received from the treasury's \$25 billion Emergency Rental Assistance Program that was created by the Consolidated Appropriations Act of 2021.

1:06:50 Monte Franke: As Steve mentioned earlier, HOME received no additional emergency allocations, so it's prudent to make decisions about whether to allocate a portion of your HOME funds to emergency TBRA, and in consideration of the allocation you may receive from the treasury's Emergency Rental Assistance Program. Nevertheless, if you are thinking about designing and implementing an emergency assistance

program with HOME or even with the treasury funding, we urge you to go back and review the webinar series that we delivered last June, as it addressed a number of program design decisions in addition to the original set of suspensions and waivers, and we're not going to cover those design decisions today.

1:07:37 Monte Franke: Please bear in mind, though, that the treasury program is not identical to HOME. There may be some similarities, but these resources that I'm mentioning to you are HOME-focused, and they might help you as you plan one or the other program. Steve had pointed out how to link to the COVID memos on the HOME program landing page of the HUD Exchange, the orange HOME COVID-19 Guidance link. If you wanted to review those previous webinars, you just have to go a few more pages. You click on that HOME COVID-19 Guidance link, and then click on "Emergency TBRA", a green button will come up that says, "Access the Emergency HOME TBRA Toolkit." And if you click on that, it'll take you to another page and you can click on "Program Planning and Design", and it has there the June webinar series, as well as some other program planning tools that we developed back then. So those are for you who might be considering creating a program now. Obviously, the PJs that have already created their programs have utilized those and are beyond the program planning stage.

1:08:51 Monte Franke: I also want to mention as I go into this that I might use the acronym E-TBRA, which stands for HOME Emergency TBRA program. And I'll probably use the phrase regular TBRA to refer to the standard program requirements that are in the rule. It's just sort of shorthand to get through this presentation. Now, as a reminder, the April 10 memo included 10 suspensions and waivers, as you see them on the screen. All of these have been extended to September 30th, but the last five that are in the list, they're in bold italics and they have notes in the right-hand column, also included some additional language to clarify HUD requirements. It is those five that I'm going to address in this presentation, not all 10 of them. The others are merely extended without additional language or guidance. You should refer back to the April 10 memo, which remains available to you, as Steve had pointed out, by clicking the orange HOME COVID-19 Guidance link on the HOME landing page. And let me also add or re-emphasize this disclaimer that Steve mentioned earlier, we're summarizing only the changes in this webinar, but urge you to read the full set of memos for the complete language and guidance from HUD. Don't take our shorthand as the complete answer and guidance.

1:10:28 Monte Franke: Now, I also wanted to give you a general reminder here that the HOME Emergency TBRA program or set of suspensions and waivers was created to help you set up a temporary or term-limited program that may only be administered through September 30th, 2021. And at that time, the waivers and suspensions expire and this E-TBRA activity doesn't really exist anymore. For any regular TBRA assistance that you intend to provide after the expiration of the extended waiver period, the full TBRA provisions of the HOME rule apply, including eligibility and contract and lease and inspections and so on, even if you are designing your program to continue to provide assistance to the households that received emergency assistance. Effectively, emergency TBRA and the waivers on which it is based terminate on September 30th, and you will have to initiate a new rental assistance commitment under regular HOME TBRA rules to provide assistance beyond September 30th. Therefore, if you want to consider how to continue to assist households after the waiver period expires, you should begin planning now for a TBRA program. Remember that you will have to follow the standard consolidated planning requirements for TBRA that were only temporarily suspended and waived for this emergency program.

1:12:11 Monte Franke: That's why we're suggesting that you begin that process now. It's not something you'll be able to do overnight. In several of the slides earlier, Steve covered this, so I'm not going to repeat it, but rather just simply remind you that HUD has confirmed that the listed special forms of temporary emergency assistance can be excluded from income in determining a household's eligibility, and that is included for TBRA households, and emergency TBRA households, I should say. And also that during this extended waiver period, the self-certification of income is permitted in lieu of the standard two-month source documentation that is normally required. I'm not going to repeat them because what Steve said in the earlier slides holds for TBRA

as well, and you can and should read about these waivers in both of the December 4th memos.

1:13:20 Monte Franke: One waiver in the original April memo allowed PJs doing E-TBRA to pay up to the full amount of rent and utilities, including some past due rent. In addition to extending this waiver to September 30th, 2021, the December 4th memo provides a few important clarifications or expansions of what's permitted regarding the eligibility of past due rent and utilities and associated late fees. First, the payment of past due rent. The payment of past due rent can be done for any rent that's due on or after January 27, 2020. Now, you may see that date and not recall if that was in the original notice. This goes back to the Public Health Emergency Declaration by the Secretary of HHS. And so you're permitted to go back to anything due on or after January 27, 2020.

1:14:29 Monte Franke: And late fees that are provided in the lease related to those eligible past due amounts can also be paid with E-TBRA funds. Notice that I said late fees as provided in the lease. It's important that they not be charging something that was not previously inserted into the lease and legally required by the lease. In addition, although the period has passed, I need to remind you that the CARES Act prohibited rent late fees for the period from March 27th to July 24th, 2020. And also that your state or city may have enacted a local limitation or prohibition against what late fees could be charged during this period, and you'll need to adhere to that in making your determination of eligible costs.

1:15:24 Monte Franke: Second, HUD has clarified in the December 4th memo that past due utilities also due on or after, again, January 27th, 2020 may be paid with HOME funds along with the associated late fees as well as service restoration fees. So there has been an expansion or a clarification of what can be paid in terms of utilities during that same period from January 27, 2020 to now September 2021. You will note as you read this waiver that HUD is stressing that you need to make sure you document the eligibility of any late fees and other costs that you're paying, and that's true of all things, but they're reminding you specifically about late fees.

1:16:14 Monte Franke: Let me also emphasize one other overarching limitation on any form of HOME assistance. The HOME funds may not be used to pay costs when other state, federal or local assistance has been provided to pay the same costs. No double payment for, say, back rent or utilities. And this is based on the Uniform Federal Grant Administration rules that are in 2 CFR Part 200. So you need to make certain that you're not paying for something that's being paid for with another source, because there are other sources out there.

1:16:53 Monte Franke: Next is the waiver regarding the TBRA lease requirements. I'm sure you're aware that HOME requires leases for all assisted tenants that meet the requirements of the HOME rule. The original April 10th memo waived the 92.253(b) requirements for leases, which generally are the prohibited lease terms. This was provided to allow tenants under existing leases to receive emergency assistance without having to execute a new lease. However, HUD clarified in the December 4th memo that a lease is still required, and the rule requires it to be for at least a 12-month term, unless the owner and tenant have mutually agreed to a shorter term. Also, HUD clarified in the December memo that the VAWA provisions still apply and that the VAWA lease addendum must be added to the lease as required by 92.359. It's not so much a revision of the original waiver as a clarification of that original waiver, the way I look at it. To summarize, there must be a lease with the VAWA lease addendum, but it can be an existing lease. It doesn't have to be a newly created lease meeting all the requirements of 92.253(b).

1:18:20 Monte Franke: Inspections. Steve has already addressed this, and we took up a few of these things in relation to the questions that you posed during our Q&A session. Steve already addressed that the waiver of the general HOME requirements for initial and ongoing inspections of rental and TBRA units during the extended waiver period, has been extended to September 30th. He also reminded you that the lead-based

paint visual assessment requirements for pre-1978 units continue to apply and are not waived. I know you've posted a number of questions in that regard as to what's acceptable during this period, but the assessment requirement is not waived. We'll have to get back to you on methods. He also mentioned, and I need to emphasize here specifically with regard to TBRA inspections, that the standard inspection requirements will apply after the expiration of the extended waiver period.

1:19:19 Monte Franke: As I noted a few moments ago, E-TBRA contracts expire on September 30th, 2021, and any assistance that's provided after that date must be done as regular TBRA assistance following the regular TBRA rules. That includes inspections. So if you're planning to provide assistance to your E-TBRA households after September 30th, an HQS inspection will need to be conducted prior to executing the new TBRA contract. And, of course, the annual re-inspection requirement during a TBRA contract will also apply. I stress this so you don't confuse this with the rental requirement for the 120-day window provided for ongoing rental inspections after September 30th. Regular TBRA assistance requires inspections and the unit passing HQS prior to entering into a new contract, and that would apply to any assistance that goes beyond September 30th. I guess, Steve, though, we are still not able to do the poll? Is that correct? And if that is the case...

1:20:56 Stephen Lathom: Monte, I'm sorry, I'm sorry, I was speaking while I was on mute. If you transfer the ball to Sandy, who's showing as ICF Event Four, as the host, I think if you give her the presenter ball, she can turn on the poll. I think we've discovered that. So we'll give that just a second. Sandy, if you can try to try to push the poll out and see if that works for us.

[pause]

1:21:34 Stephen Lathom: Are you able to do that, Sandy? Can you just let me know?

[pause]

1:22:00 Stephen Lathom: Okay, Sandy, can you go ahead and give the ball back to me? And we'll just go ahead and skip the poll. We were going to ask again, obviously, as you can see on your screen, do you expect to continue TBRA after the waiver period? Maybe you already have a standing program, you don't have a standing program, but you're going to start one now, a regular program. Nope, we're going to do it through the waiver period and be done, or we're not doing it at all either way, were the things that we were going to try to find out. If you really want to let us know what you think, then feel free to do that. So Sandy, if you could give me back the presenter ball, I will go ahead and advance the slides. Oh, there's the poll.

1:22:49 Monte Franke: Oh wow, okay.

1:22:56 Stephen Lathom: So again, on the right-hand side of your screen, you should see the polling now. You can go ahead and answer that in terms of what you've got. And while we give you a second to answer, again, I'm going to go back to something that Monte said originally. While we know it's clear there's not connected in any way from a regulatory or statutory standpoint to HOME at all, we are aware that there's all this treasury money now hitting the street from the Consolidated Appropriations Act that has very tight time frames and can do a lot of the same things that HOME Emergency TBRA is able to do. So we imagine that there's a fair number of folks thinking about how to do that. And we know that in practice, that's going to come to mind in some of the decisions that you make about whether or not you're even going to do this at all, or whether you're going to try to integrate those two programs. Sandy, if you can go ahead, I think, and end the poll and publish the results.

[pause]

1:24:15 Stephen Lathom: I think it takes just a second for the results to come through. There we go. So our most popular answer was no answer, but yeah, we've got a fair number of folks, a pretty decent group of folks who already have a standing program, so you would expect that to continue. A handful of folks that probably have dipped their toes in the water with emergency TBRA and will be moving into that. And then some other folks along the way. And then also folks that don't plan to operate TBRA after the waiver period, and a fair number of folks, this is just not in your overall program either way, and that's fine too.

1:25:09 Stephen Lathom: So one of the questions we had, and I honestly don't know how to answer this, Monte, is we've got a fair number of questions that point out that the CDBG-CV program essentially requires consecutive months of assistance, and want to know does HOME require that or could a PJ, for example, help somebody with their rent in February and March, not help them in April, and help them again in May? Do you have any insight on that?

1:25:47 Monte Franke: I don't have any insight, but I don't know, because the HOME TBRA can be done just, for example, with deposits and things like that. I'm not aware of any continuation of assistance requirement, and so I assume they could choose to pay back rent that's due and not going forward or whatever for a period of time, do you think?

{Note, if a PJ provides assistance limited to past due rent/utilities without ongoing monthly assistance, a written agreement with the assisted household is still required.}

1:26:15 Stephen Lathom: Yeah, I know certainly, we may have situations where a given household, for example, has an arrearage, and their problem is they have not been able to cover the arrearage, but maybe they worked for a place that was on shutdown and now they're back to work. And I know that we've definitely talked that you could have a program where, as a part of the emergency TBRA, you essentially only covered the back rent and somebody didn't need the assistance moving forward, or somebody who only recently lost their job and doesn't have any back rent and you could provide only assistance moving forward. That's certainly permissible. I don't think we've specifically talked about the notion of, could I help somebody for two months and then in the third month, they don't need the help, but in the fourth month, they do need the help again.

1:27:03 Stephen Lathom: I would say that, obviously, if you were going to do that, that it would have to be in your policies and procedures. And also I think you need to think very carefully, this was a point we made in the webinars you and I did back in June, think very carefully about the administrative burden you're setting up for yourself. Because in effect, that means you're rechecking the "need for assistance" on a monthly basis, and that could be very administratively burdensome. So the program was not set-up to require any sort of every couple of months check-in with folks. And so I don't think it's required, per se, but I also think that in practice it would be very challenging to set your program up in that manner.

1:27:55 Monte Franke: Yeah, and I just want to pull out and re-emphasize one nugget of what you said there, the notion of policies and procedures have to say what approach they're taking. It is essential that PJs operate their programs following a standard set of procedures and policies and not treat different recipients differently. And that's a really important tenet of the HOME program as a whole, and it would certainly apply to something like this.

1:28:27 Stephen Lathom: So here's a question, I think, that maybe allows us to go back and clarify a couple of things. And so it says unpaid rent and utilities including fees, I presume they mean late fees, from March of 2020 through present cannot be paid. And I think that's exactly not what we were saying. Right, Monte? We're allowed to go back... And I think the clarification is back in June, we were talking about March 13th, but now HUD has actually determined we can go back as far as that date in January. The one thing to note is that the

CARES Act uniformly stopped late fees during that period in time. So an owner would not be able to charge a late fee from that one segment of that period, which again, I believe ran from March through sometime in July, if I remember properly. They wouldn't be able to charge those late fees because those were prohibited by law. But other late fees that were in the lease, say, for somebody who missed their October and November payments could be charged. Is that fair, Monte?

1:29:43 Monte Franke: Yeah, that's fair. And that's what I intended to say. I apologize that I wasn't clear about it. The only thing that changed was the ability to go back further to January 27th. And then, of course, the expansion of the guidance on the utility side of things. So I did not intend to imply that they could not pay those fees.

1:30:07 Stephen Lathom: Okay, let's see if there are other questions. I'm looking at one here. Okay. So here's a question. A tenant who has other rent assistance and has lost their income, can we use the HOME TBRA to help them pay their contribution portion? So imagine somebody has, for example, a Section 8 voucher, but now has lost all of their income, can we help make their payment with the HOME TBRA? That's an interesting question. Do you have any thoughts on that?

1:31:03 Monte Franke: No, because that will involve another program's rules as well as ours, so I'd refer to HUD on that.

1:31:11 Stephen Lathom: Yeah, I think that's the challenge, is that...

1:31:14 Monte Franke: Our program by itself is complicated enough without adding in the other program rules, so we should ask HUD.

1:31:26 Stephen Lathom: Yeah, okay. Alrighty. Yeah, and again, the other thing I would point out, without trying to definitively answer that, is that at least early on the CARES Act did provide specific funding to public housing authorities and the like to deal with the fact that many of their tenants were seeing reductions in their income and therefore, their tenant contribution would be smaller. So it does at least go back to the 2 CFR 200 issue of not charging the same expense to two different programs. We would not be stepping in and contributing where somebody already has another program or another funding stream that is contributing to help that tenant cover the expense that otherwise they can't go and ask both of us for the extra money in effect.

1:32:19 Monte Franke: Agreed.

1:32:22 Stephen Lathom: And then, let's see here. A lot of our other questions... A lot of our other questions, I think, go back to some of the other general issues and not necessarily to TBRA, so why don't I cover a couple of those, Monte, really quick and then if you want to scroll through and look.

1:32:48 Monte Franke: I will.

1:32:50 Stephen Lathom: So I see a couple of questions here around the citizen participation requirements and whether or not those will be extended. And so first, as I pointed out, that waiver was not extended in any fashion, per se, but it also wasn't originally tied to a December 31st date. It applied to year 2020 and prior action plans. So if you're moving into your 2021 cycle, frankly, I don't think there's a practical reason right now that we need to be able to do that with a five-day notice instead of the more standard 30-day notice. And that's really what the waiver addressed. Now, I also see some questions here about the fact that a lot of those citizen participation and outreach efforts have moved online, and I think that's really more of an issue of state and local requirements. So whether or not my city council can do a public hearing on Zoom versus continuing

to do it in person is really a function of the Local Open Meetings Act laws, not necessarily driven by the citizen participation requirements, per se.

1:34:11 Stephen Lathom: I also saw a question here about down payment assistance programs funded with HOME; do we have to do an inspection once these waivers are lifted? And so again, that gives me an opportunity to go back. But the inspection waivers do not apply to down payment assistance, they do not apply to owner-occupied rehab. They're specific on the HOME rental, on the TBRA side. So if I'm giving down payment assistance to somebody, even now in the midst of the pandemic, I still need to as the PJ or perhaps as the sub-recipient managing the program on their behalf, that inspection needs to have been done. I can't skip it and rely on some sort of certification from the owner of that. Now, of course, in most of those cases, we're able to accommodate an inspection like that in a way that's safe because we're not necessarily going into a unit that has a household living in it right now. It may be vacant on the market, or it may be one of those circumstances where because if the house is listed, the family in it is used to having to sort of get out for a showing. But to be clear, that waiver does not apply on the homeownership side of our larger program.

1:35:31 Monte Franke: Steve, I can jump in. I do see one that asks the question of if they're running TBRA in 2020, is it automatically emergency TBRA? And I just want to clarify that PJs can have regular TBRA programs running all the time. The waivers that HUD provided were to allow the creation of an expedited processing for households that are experiencing financial distress as a result of the pandemic. And so some PJs have a regular TBRA program that's running and a separate emergency TBRA program, and not all TBRA falls under that emergency set of waivers. What I was trying to emphasize was that after September 30th, 2021, after the waivers expire, there can only be the regular TBRA programs.

1:36:37 Stephen Lathom: Right, no, I think that's a good clarification. I'm looking through some of the questions that have come in just in the last few minutes. So I see a question here about, do I foresee an extension? Do we foresee an extension of the 120 days to catch up inspections? So I don't personally foresee any HUD extensions, not because I don't anticipate or imagine a situation, but it's not my role to anticipate those further extensions. Obviously, if they had meant to change the 120 days, I think they would have changed it in the December 4th memo. I would also point out that, again, compared to where we were back in the spring, I think we've all learned how on a day-to-day basis to live with and manage the virus to a certain degree. Not at all to suggest that this is not a serious issue, but we definitely have learned how to, between masking and social distancing and those sorts of things, do some things that maybe early on we didn't realize could be done safely. And so just because you have elected that, may not necessarily mean that you're going to want to continue... Maybe by summer, you're in a position to do these inspections, and so definitely I would start planning now about what's my backlog going to be, and how am I going to get through that within the allotted timeframe?

1:38:13 Stephen Lathom: But we can't authorize anything longer than what HUD has done in the memo. And obviously, they're listening behind the scenes and will see the transcript, so understanding that some folks think that that's problematic is feedback that they're getting, but we can't really address that right now. And then I see a question about, can the waivers be applied to the regular TBRA program? And I think the answer to that, Monte, I would say is yes, and it may vary from waiver to waiver as to whether or not you want to do that. So in your regular, as it were, TBRA program, you may go ahead and forgo the inspection, but you may decide that you still want to get source documents or vice versa. So none of these waivers technically is not a "I have to select and use all of them, or I can't use any of them." And so it may be that some of these waivers make more or less sense for your given program or your given PJ at this point.

1:39:25 Monte Franke: Steve, that's the reason that some of the TBRA things are referenced in the general memo, even though there's a separate emergency TBRA memo. The income documentation issues, the inspections, those cover TBRA, regular TBRA as well. The emergency TBRA memo was a collection of waivers

available to somebody who wants to serve those who have been affected by the pandemic. And so to go ahead and implement that in a regular TBRA program would create, I think, some concerns in terms of the policies that would have to be adjusted. And I'd be reluctant to recommend that somebody think they can easily modify a regular TBRA program to do this without violating the policies and procedures that they've set up for the regular program, since there are some aspects here that wouldn't fit. So I think they need to be very careful. I think they're much safer thinking of it as a separate activity or program, a temporary program.

1:40:41 Stephen Lathom: Yeah, I agree. I think we can never emphasize that enough. There's a lot of things that may technically be permissible, but in order to really make them entirely copacetic, the entirety of how your program works in terms of your policies and procedures, your documents and in fact, your day-to-day practice needs to be aligned. And so you've got to always go back and do that. Here's a question about how the eviction moratorium affects TBRA. My initial approach to that, Monte, would be that the eviction moratorium that is being re-established under, or at least has, I think, has been re-established, or is soon to be re-established under the auspices of the CDC, is sort of universally applied. It's not something that only applies to federally affordable projects or only applies outside of that portfolio. It's a blanket requirement, and there's nothing about receiving HOME or receiving HOME TBRA that gets an owner out of having to comply with other legal requirements that apply uniformly to everybody in their situation. So I don't think there's any direct effect in that way. Would you agree?

1:41:57 Monte Franke: Agreed. There was a question here about first come first serve versus weighted lottery and so forth. I'm assuming that it's being posed with regard to creating an emergency TBRA activity. You have to have the selection criteria that you're going to use as a part of your policies, and even though HUD waives some things with regard to the tenant selection requirements that go into the consolidated planning process, you still have to know who you're selecting and what's the best way to do it. Obviously, running a long open window doesn't make sense when emergency assistance is needed. At the same time, I think every PJ wants to think about who is most in need of these limited funds and how best to direct it to it. So first come, first serve doesn't get you anything except the person that can get to your door the fastest, and probably doesn't necessarily address the greatest need. So the PJs need to think about what process is fair to get to their priorities and also any fair housing implications of that process.

1:43:17 Stephen Lathom: Yeah, I would definitely sort of use that as a jumping off point, Monte. I had a local client that I did some direct work for that decided to do basically a sort of maybe a week-long window, which people could submit almost like a pre-application and then a lottery from that after, which it became for everybody else in the order received. But what they were really thinking about was those fair housing issues and those access issues for who was able to apply. And also, frankly, not wanting to set up a situation like we've seen in the news in some states where they sort of said, "Hey, show up here for your vaccine," and they had frail, elderly people camping out overnight trying to be first in line. We need to think through the implications of that. So I just encourage people to think through the practical status there.

1:44:16 Monte Franke: And just to be clear, I didn't camp out overnight to get my vaccine.

[laughter]

1:44:25 Stephen Lathom: Okay, let me just look and see if there's any more questions. I know we're coming up on the end of our time. I saw that there were some questions here and there about IDIS. I always disclose that I know enough to know what the acronym stands for; I know enough to know that I should not be answering those detailed systems questions. There is an IDIS ask a question pool in the HUD Exchange. I know some of those IDIS questions, I think, got answered behind the scenes by some of the HUD staff that are more familiar with that. But if you need IDIS assistance sometimes it's just a quick call and a coordination, obviously, with your CPD representative, but there is another way to get that through the Ask-a-Question portal.

1:45:19 Monte Franke: Steve, there are just a lot of questions on inspections in the post-September 30th period. And I think it's important to emphasize, again, that the HUD rule that was waived addresses those initial inspections and the sixth-year inspections in rental housing, because the rule...

1:45:46 Stephen Lathom: Well, the physical inspections are no less than every third year.

1:45:53 Monte Franke: Yeah. I see there is one there on the PJ's annual inspection cycle, but I was looking at the one above that, that was 100% inspections of all projects, that they required it. And just what I wanted to come to the point in terms of the inspections that they conduct. I'm sorry, I got off onto the sixth-year thing. The inspections that they conduct, the rule requires, as you said, the initial the first year and every three years, if they require 100% inspections every year, that's something that they've decided locally, and they can adjust that policy based upon the safety of their inspectors and the residents, as long as they meet the minimum HUD requirements, which have been waived during a certain period through September 30, but not after. So some of these questions seem to run to those PJs that do more than what is minimally required by the rule. That's the point I wanted to make.

1:47:05 Stephen Lathom: Yeah, yeah, and that's the challenge with those questions in a webinar obviously is sometimes to get at them, you have to go back and re-lay out what the minimum starting normal regulation is, which unfortunately is just not something we've got all the time for. I will say that one of the things we're continuing to talk to HUD about is whether there are additional TA products or interventions that may be needed. And so we do combine the Q&A and the chat from these webinars to get a sense about where those centers of gravity are, and so that's useful information for us and it may be something that HUD will be able to follow up on. For example, we've done some little video FAQs and HUD has released some other FAQs along the way. And so even for those things that may not sort of merit a full national webinar with several hundred people on it, we may be able to get some additional resources out there. So these questions that we didn't get to are not in vain.

1:48:25 Stephen Lathom: And then I see, maybe this can be our last question, we're coming right up on the 3 o'clock hour, but we've got a question that says, "Do these policies apply to group homes as well?" And I saw an earlier question. So group homes are just sort of one type of HOME rental, and all of these waivers we've talked about relative to HOME rental properties would apply to group homes. It doesn't matter whether it's a group home, an SRO, multi-family project or a single-family home that is a HOME rental. If it's one of the waivers applicable to HOME rental projects, it's applicable regardless of the kind of physical type of unit that it is.

1:49:00 Monte Franke: Right.

1:49:03 Stephen Lathom: Monte, I think you have the ball, if you want to advance to our last slide?

1:49:07 Monte Franke: Oh, I do? Okay. I'm sorry, I closed that because I was trying to read all the questions.

1:49:22 Stephen Lathom: No worries, no worries. So this is just a quick reminder for everybody in terms of where you can go. The memos and the other guidance are all available on that HUD Exchange page. Just start from the HOME program page, go to that COVID Resources, and there's all kinds of links there. We'll call attention to the Emergency HOME TBRA Toolkit. Again, many of those resources are in the process of being updated to reflect these additional dates, and so those are going to be going out. And then that updated HOME sample certification of annual income may be helpful as well. So keep using the website to find those resources and I'll let Monte have the last word here in just one second.

1:50:11 Stephen Lathom: But thank you again, everybody. I like to say this in every training that we do, we so much appreciate your time and your attention and, more importantly, the work that you do on the state and local level to make this program work. It's an important program. It can do a lot of things. Yes, it comes with red tape and it comes with requirements and all of that kind of stuff, but at the end of the day, particularly with some of the things that we can do under these waivers, it can provide a very valuable resource that can help people who are at, frankly, very desperate situations in their lives. And so you're much closer to the people doing that, and so thank you for the work that you do on behalf of that. And I'll let Monte have the last word and then we'll wrap up for today.

1:50:54 Monte Franke: I'm not used to getting the last word, Steve. As I said at the beginning, I really hope the vaccine gets to all of you soon, and I pray that someday we can be together again in person. Until then, stay safe and stay warm. I hope you have a good pair of mittens. Take care.

1:51:14 Stephen Lathom: Yeah, thank you everybody. Have a great day.