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Moderator: Marsha Tonkovich
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Operator: Good day, ladies and gentlemen, and welcome to today's Long Term Affordability Using NSP and HOME conference call. Please note today's conference is being recorded.

At this time, all participants are in a listen-only mode. We'll take questions at the end of today's presentation. If you would like to ask a question, you may press star 1 at any time.

I would now turn the conference over to Ms. Marsha Tonkovich. Please go ahead, ma'am.

Marsha Tonkovich: Thanks Holly. Good afternoon everybody. This is Marsha Tonkovich and it's good to be with all of you again for another in a series of NSP webinars.

I'm joined by a number of HUD colleagues who I'll ask to introduce themselves in just a moment but let me just say word about myself.

I am from ICF. And I've met many of you on webinars and clinics and doing TA. And I am glad to be here with you today. So let me start with our HUD colleagues.

And I'll start with you, Hunter; maybe you can introduce the folks who are in the room with you?

Hunter Kurtz: Sure. My name is Hunter Kurtz. I'm with the NSP team here. And joining us is David Noguera, one of the co-leads of the NSP team and Ginny Sardone from the HOME office.

Marsha Tonkovich: Great. And I know John's going to rejoin you shortly.

Hunter Kurtz: Yes.

Marsha Tonkovich: And many of you know about your HUD colleagues you probably hear them at other webinars or met them at clinics. So we're glad to have everybody join us today.

So let me start with just a little bit of information again about how to ask your questions and then we'll jump into the meat of the presentation.

So obviously we want to make sure that we know how many folks are in the queue to ask a question. So if you look at the top right-hand corner of your screen you'll see a section that says feedback.

And right now your button should be green. And if you click on that button you will see that there are other colors. And purple excuse me is that you have a question.

So if you do have a question if you could just go ahead and change your dot to purple. Now that doesn't get you in the queue but it lets us know how many folks are waiting to ask a question.

Then what we need you to do is press star 1 on your phone and that will put you into the queue to ask a question. We'll just take them in date or time order so that we do the earliest first.

If your question is asked by somebody else and so you don't need to ask it anymore go ahead and press star 2 and that will take your phone out of the queue. And be sure to change your status back to green on your little dot there.

We will also be able to take questions via the Q&A box here at the top. And you will see that on and you can type in a question and you can send it.

And so if you're not able to do it via audio you can write it in and we'll attempt to answer it. In some cases we don't quite get the context of the question or we need more information so we may ask you to call and as a follow-up to the - when you write in.

That's our basic process. In terms of our agenda and our purpose for our call we're going to talk today about how the HOME rules apply in certain instances and in the instances when they do particularly around the affordability period but a few other instances as well, how you can use those HOME rules if you're an NSP recipient as safe harbor and so we'll talk about those HOME rules and how they're used in the context of NSP.

And then we'll talk very briefly about some ideas and some reasons why you might want to combine HOME and NSP in a particular activity or a particular project. And then we can also brainstorm more around that if we have time.

We are going to start with going through the entire presentation which my guess it will take between an hour and 75 minutes and then we'll leave the balance of the time for questions.

So feel free to go ahead and get in the queue if you want to if you hear something or if you want to write in a question. But we'll take them at the end.

That way folks who don't want to stay for the questions and I'll leave the webinar after that first hour.

So that's our plan. Our goal is to give you a decent grounding in how those HOME roles apply to NSP. And myself in the HUD staff will obviously be able to answer questions related to both.

So as I mentioned earlier the HOME rules in many cases provide a safe harbor, a general framework for doing some of the NSP requirements for addressing some of the things you have to do in NSP.

Grantees were allowed in their action plan whether it was for NSP1, 2, or 3 to adopt the HOME rule as the basis in these instances. And we'll talk about which cases we’re talking about or they could've come up with a more stringent approach if they were so inclined.

For the most part what we see as we go across the country across all three programs is that folks adopted the HOME rules as is for these areas where the HOME rules are referenced in NSP.

So do we don't see a lot of more stringent although there are a couple of areas where there are some examples. And we’ll share those as we go.

So the areas where the NSP rules and if you look at the NSP notices explicitly defer to HOME or offer HOME as a safe harbor are as follows.

First there is this concept of an NSP assisted unit in other words a unit that has all of the NSP rules and requirements attached to it.

And that's very different than what you would have under CDBG. It's a different concept than under CDBG. And it really is a concept borrowed from HOME.

And so we'll talk about how you figure out how many of those units you have and how that helps you to meet the national objective under NSP but that concept is an important one.

Related to that then is a concept of cost allocations borrowed again from HOME which is the idea of either how many units or how much money can you put into a project depending upon your proportion of the benefit of your proportion of the money. And I'll show you a mathematical calculation.

The third area where NSP refers to HOME has to do with how we deal with low-income units and very low income units. And NSP has a different rule than HOME has but the concept is similar and so we'll talk about that.

The timing of the investment in terms of what costs you pay for and how you can count those costs as eligible, in other words pain free development as opposed to paying construction. That's a concept borrowed from HOME and we'll come back and talk about that.

And then finally most importantly the affordability period. And here we have resell recapture borrowed from HOME and the concept of ongoing affordability for rental projects -- things like rents and income verifications and the unit mix and so forth.

And so we’re going to get in each of these sections and we’ll come back to sort of general agenda but these are the basic areas we’re going to hit and talk about what are the HOME rules and then how do they apply in an NSP context.

So before I move on David or John do you guys want to give some - any insight? I know you were both involved in helping to write the NSP rules that came out. Anything - any data on this context?

David Noguera: Well I think for the most part it continues to be an evolving document. There've been a number of lessons that have been learned since the first draft was written oh gosh I guess a couple of years ago now.

There's still a couple of components to it that we need to get ironed out in consultation with Ginny and her HOME staff.

But for the most part we think of all the CPD programs that we have HOME is probably the closest to NSP. And there's a lot of good lessons to be learned from HOME as you are executing NSP programs.

Marsha Tonkovich: Right, good point David. Okay so let's move into this the first issue which is this concept of an assisted unit and then we'll hit all the other key areas.

So under HOME the concept of an assisted unit is the unit which benefited from the HOME investment. In other words it got rehabilitation, it got acquisition, it was constructed partially or in whole with HOME funds. And so because you spent HOME funds on that unit the HOME rules are attached to that unit.

This same concept was carried over to NSP. So unlike CDBG which sort of has a national objective threshold that says you have to hit that threshold and then the project is - meets the national objective NSP allows for more flexibility.

It allows for you to think about mixed income projects in a different way which is that you can target your level of investments and get a proportionate level of benefit or assisted units out the backside.

So conceptually -- and we'll get into how to actually calculate this in a minute -- what we're saying is you could pay for 20% of the cost and only have 20% of the units and again you could have more but at a minimum 20% of the units be considered NSP assisted and therefore have the NSP rules including the income verification of the occupants and the rent for the occupants or if it's home buyers the income for the home buyer, the property standards, the unit requirements -- all the things that go with being an NSP unit.

So you can have units in the project which are under the NSP rules and you could have units in the project that are not that are unassisted that are not under the NSP rules.

And so this enables you to kind of scale your level of investment depending on your plan for mixed income and the demand in your community and the market and so forth.

So that's the concept of NSP assisted units. It's the unit which has been acquired, rehabilitated, constructed in part or in whole with NSP funds and therefore it carries with it the NSP requirements in that unit although not necessarily in the entire project.

So the kind of areas we're talking about here where you - where the unit would need to follow the NSP rules are things like the property type. In other words is it foreclosed, abandoned, or vacant?

Does it - are you paying for eligible costs for that unit, the kinds of things that are allowed under NSP and conversely not paying for things that are unallowed?

So you're not paying for a swimming pool. You're not paying for granite countertops if that's not reasonable, you know, whatever it is you're not paying for with NSP isn't happening in that ((inaudible)).

Are you complying with the quality standards for that unit or the green construction standards that come along with certainly with NSP2 an NSP3?

Is the tenant, have you verified the tenant's income and is the tenant of the proper income that we'll talk about later?

A benefits rent and it's a rental project, you know, are you charging the proper rent for that unit?

So all those things that are about the come with NSP dollars happen in those assisted units specifically.

The other units in the project could be market rate units with no constraints on them. They could be taxed credit units with the tax credit constraints but not necessarily the NSP constraints.

So you could have a mix of NSP and non-NSP units in the exact same project. And that could be true by the way for not only rental products. It's easy to envision how that could be true in a rental building.

But if you think about doing subdivision development, you know, home buyer development it could be true in a home buyer scenario as well.

Okay so as I mentioned the concept of assisted units is really the concept of where the NSP rules are applied, which units have to comply with the NSP rules?

And that then ties back to the national objective. So that brings HOME and CDBG together here. Under CDBG we have the concept of a unit being or a project, excuse me, a project being both eligible and meeting a national objective.

And when HUD looked at how the national objective could be met under NSP they came up with three methodologies. It's really boiled down to two methodologies about how you could do that. And so this is a HOME ties in here.

If you're showing - if you're trying to show that the project, your NSP project meets the national objective you can either use a CDBG approach which is that 51% of multi-family units or if you doing single family units every single single-family unit is low mod middle income or if you're hitting the low mod income targeting is low income depending on how you're doing that.

Or the other option that's called out in the regs again to allow this flexibility for mixed income is to use a HOME approach.

And we'll get in - we're going to drive into the HOME approach in detail. Basically what HOME does is look at sort of a proportional approach that again as I mentioned earlier if you're paying 30% of the units, you know, you have 30% of the money and so forth.

So in terms of meeting the national objective you can either meet the CDBG rules or you can do a proportional approach guided by the way HOME does it. And we'll get into more details about how that works in just a moment.

I will give you a heads up that if you look at the October 2010 notice, the consolidated notice that came out that sort of reiterated the rules for all three NSP programs it gives a third approach. It says CDBG and then it says HOME and then it says proportional.

And it turns out the proportional approach really is just like HOME. And so we consolidated it down to just the two real choices that you have here in terms of meeting the national ((inaudible)).

So I'm going to move on and David anything or John anything to add on that before I jump into showing how the HOME approach works?

David Noguera: Yes.

Marsha Tonkovich: Good okay. So HOME as I mentioned has really two different ways of dealing with cost allocation and there's two subsets of the HOME approach.

Subset number one is this proportional idea that we've mentioned earlier. And that's used any time the units are comparable.

In other words, they have similar amenities; similar size and you can use sort of a mathematical approach to figuring out your eligible number of units or your eligible amount of investment.

They also have an approach called an actual cost approach. That approach is used when the units are not comparable and so you need to look at the actual amount you're investing in individual units to come up with your max investment for how much you can put into this program, this project.

So because HOME has these two options your NSP grantees can also pick among these two options again the backend, how many units you have to have which are low, mod, middle income.

So let's get into the cost allocation approach under HOME as this option. And we'll spend some time kind of practicing it and seeing how it works.

So the basic idea here as I mentioned earlier is that NSP funds again borrowed concept from HOME are not going to pay more than the proportionate eligible cost based upon the number of units which are NSP. It's just getting back to that concept of NSP assisted.

So in general the equation is the NSP dollars over the total eligible development cost is equal to the proportion of NSP units over total units.

In other words my example of if NSP is 30% of the cost of the project, is paying 30% of the bill and at a minimum you have to have 30% of the units be NSP assisted.

Now you could decide to have more. You could say okay well I'm only going to pay 30% of the cost but I want 80% of the units. And that's totally fine. That certainly is something you could negotiate with the developer.

But in my example at a minimum you would've had to have 30. So the idea is that it’s proportional, that you're not paying more than you're getting in benefits.

And you - as you can see from this equation you can solve it either way. If you know that you want to have, you know, 10 out of 100 units be NSP assisted then you can back into how much money you have to have by solving the other side of the equation.

Or if you know how much NSP money the deal needs then that'll tell you at a minimum how many NSP assisted units you have to have so you can solve either side.

As I mentioned earlier, your choice about how you’re going to do this is going to vary depending on whether the units are comparable or whether the units are not comparable. So let's talk about that.

So comparable units are units which have similar size, you know, same number of bedrooms, same basic square footage. We’re not talking down to the inch but generally speaking the same square footage and generally the same kind of amenities.

So we don't have some units that have an extra bathroom or some units that have a dining room where none of the others do. So they have this general same kind of layout by bedroom size.

So we're not saying that the project is entirely two bedroom units. What we're saying is that all the one-bedroom units are similar and all the two bedroom units are similar and so forth. So you have similarity among similar bedroom types. So those are comparable units.

Non-comparable units are ones where, you know, you might have different square footages within the bedroom types.

So some two bedroom units are 1000 square feet and some are 800 square feet or different amenity levels. Some units have granite countertops and Jacuzzis and some have linoleum and a shower stall.

So you have to figure out whether your units are comparable in order to decide which methodology you get to use in order to figure out how to decide NSP assisted units and how to deal with this issue of how many units do I have to have.

So if you're units are comparable meaning similar in amenities, similar in size then you can use sort of a mathematical equation to figure out how many units you have to have because you can do a proportional calculation because everything is pretty much the same.

If however your units are not comparable and they have different square footages within bedroom sizes and different amenities and so forth then you're going to have to use the actual cost approach of looking at how much those units actually did cost.

So we’re going to start with the easy one which is the proportional share and then what - we can talk about the actual cost one next.

So assuming that your units are in fact comparable we have a couple of different options. Again as I mentioned we can solve for units or we can solve for dollars.

In other words if units are 30% of the total then our investment is 30% of the total. Or if dollars are 30% of the total then units are 30% of the total so it's solving either side of the equation.

Now one - an important bullet at the bottom and this is really I think a - really a fair housing issue as well as sort of a fairness issue which is that if you're going to do this mathematical approach to figuring out how many NSP units - assisted units you’re going to have, then you have to distribute the bedrooms the units across bedroom sizes.

But what we mean by that is let's say you decide that you have to have ten NSP assisted units. That's what the math dictates to you.

And this particular project has two bedroom units and three bedroom units. So you have twos and threes in the project and you're going to have to have ten total NSP units.

You can't take those ten total NSP units and put them all into bedrooms because when you did your mathematical calculation you would've sort of overrepresented your expenditure right, because this - theoretically the three bedroom units cost more.

So if you're doing this mathematical approach you would need to evenly distribute the NSP assisted units within each of those bedroom sizes so in my example five twos and five threes.

Now obviously that'll have to be more precise depending on how many twos in the project and how many threes in the project but you get the basic concept that you're going to distribute your unit sizes across bedrooms.

Now the other reason why you want to do this in addition to sort of fairness of the mathematical calculation is, you know, you don't want to have any fair housing issues.

If you only fund small units you could set yourself up for a case where larger size families come to apply and there are no assisted units for them to apply to live in and that might be a problem. So you do want to make sure you're taking that into account as well.

So before I move onto sort of a math of the calculations HUD folks anything to add at this point?

David Noguera: No.

Marsha Tonkovich: Okay. All right so let's do the steps and then we'll do some sample math. So let's assume we're going to solve for units right now and then again we'll practice solving for dollar side of the equation.

So if we're solving for units then we need to know how much NSP money am I putting in this deal, right?

So I decide. I the city council or HCD agency or a sub recipient decide how much NSP money I'm putting in this deal.

And then I figure out or as concurrent with that I figure out what is the total eligible development cost, right, what's the total cost of this project?

I'm then going to create a ratio of my investment, the NSP investment to that total eligible cost and that'll give me a percent of the budget that I am paying.

I then multiply that percent by the total number of units or in order to tell me what is my NSP share of the units, in other words in order to meet the national objective at a minimum how many units do I have to have?

And again this is going to happen in projects where you've got NSP and non-NSP units in the exact same project.

So here's an example are we have a project where we have $900,000 of total eligible costs and the grantee has decided that the budget gap and the amount they need to fund is - of that 900,000 is 400,000.

There are ten comparable units in the project so we can figure out how many of those ten units has to be NSP assisted following the NSP rule.

So we take now 400,000 over 900,000 which is 44%. We then multiply 44% times the ten units and that gives us 4.4. And since we can’t have .4 of a unit we have to round it up to five.

So we'll have five of the total ten units will be NSP assisted following the NSP rules. And the other five units could be anything, could be tax credits, could be market, could be HOME units could be whatever.

Now again we can do more than five but at a minimum in order to meet the national objective -- again in these mixed income sort of situations, mixed project situations we would at least have to have five units.

So it's pretty straightforward calculation. I think most folks; particularly folks who work in HOME are used to doing this.

Now instead of solving for units we could actually back into how much money I could give.

So in order to meet the national objective what - how much money can I give and still have the right proportion is the question you're answering?

So in this case what you have is, you know, an owner who's come to you and he said I'm willing to give you X, you know, three of the ten units in this project. How much money would you give me? So you're - it's the same side - same sort of question but it's answering the other side of the equation.

So in this case you're going to solve for - you're going to figure out how many NSP units are going to be - do I want to have in this project, how many NSP assisted?

So that's a known. We're going to choose that. And you're going to create a ratio of those NSP units, assisted units through all units in the project and that will create a percentage for us.

And then we'll multiply that percentage times the total eligible cost to tell us if I want to have this number of assisted units how much money can I give them at the most? What's the maximum amount of money I can give them?

So here's an example of that. Your total eligible cost is $2 million. We have 20 units of which two we've decided are going to be NSP. So how much NSP money can I give them and still meet the national objective?

So we take 2 over 20 which gives us 10%; 10% times the $2 million of eligible cost says that we could pay $200,000 in NSP funds towards this project and still meet the national objective by having the 10% of the units be NSP assisted.

So that's the other side following the other side of the equation. So that's all comparable units. And I think that was pretty straightforward. Most folks as I said are probably pretty comfortable with that.

And that's the way you would look at it if all the units again were similar ones and twos, threes and fours, whatever, similar amenities, you know, that you can do that kind of a mathematical approach.

If it turns out that you're dealing with older properties -- and this is where this will commonly be true -- that have different unit types within the development and different unit configurations within the development then you're looking at a non-comparable approach.

If you're using a non-comparable approach then you're going to have to decide, you can’t really back into how many units to units am I going to have because you can't - you have to be able to figure out the cost of those units.

So in a non-comparable situation you're going to choose how many NSP assisted units do I want to have and then back into or how much money can I give them if that's my choice?

So you’re going to determine which units are NSP assisted units 1A, 1B, 2A, 2C -- whatever it is.

And then you're going to figure out okay if those - if that's the number of NSP units I'm going to have and the specific units I'm going to have is NSP assisted then how much am I going to be able to pay for those units?

And so I'm going to pay for the actual cost or my - any portion of that actual cost of those NSP assisted units.

And then I can pay a fair share of common cost, so things like acquisition, the roof, the driveway, the external building, you know, the siding, the windows. Those sorts of things that are not unit specific I can pay a share of those as well.

But the idea here is that if you know that you're only going to have four units in the project that are NSP assisted we shouldn't be paying more than the cost of those four units plus our share of those common costs.

That's the basics of cost allocation before I jump into low income set aside units and how that ties into this, anything HUD folks, anything to add? Ginny I know you guys have been through this with HOME. Any tips or anything you want to share?

David Noguera: Nothing specific Marsha.

Marsha Tonkovich: Okay. All right I'll keep going and you guys just jump in if you need to.

David Noguera: All right.

Marsha Tonkovich: Okay so the next concept and its related really to this idea of cost allocation and the number of NSP assisted units is this idea of NSP low income set aside units or LH25 units.

And for those of you who work in NSP you know that you have to have 25% - I'm sorry 25% of your funds have to go to benefiting people at 50% of AMI or below.

So 25% of your money going to benefit people who are very low income or low income. We sometimes interchange those terms, but people at 0% to 50% of AMI.

Now we have some options for how we can do that. But the key thing is trying to figure out and this is based upon dollars and this is a place for NSP differs from HOME.

HOME has a similar concept but HOME bases it on households, NSP bases it on dollars. And so we need to figure out of my total investment in a project how many of those dollars get to count towards the LH25 minimum threshold, the minimum of the 25% of your funds going to 50% of AMI?

So let's take a simple example and then we'll take a more complicated example. So in the simple example the total development cost is $2500 and the NSP investment -- and we've just done that calculation to figure out that -- is $1 million.

And we decided that all ten units in the project that are getting NSP assistance are going to be housing people at zero to 50 AMI. They're all housing very low income people.

Then I can count every dollar of that $1 million investment towards LH25 because I have benefited ten households. I've gone through the calculation we just did to figure out that that was the proper ratio or at least it was a minimum ratio.

And now I can count all million because I actually have my sort of share of the units and I can count all million dollars towards LH25, so that's a fairly simple example because they're all rendered at zero to 50.

Let's take a more complicated example.

What about the situation where we have a mix of LH25 and other income units? And we're going to have people who are very low income and low income, maybe even moderate income up to 120 in our NSP units. And we're trying to figure out of our expenditure, our NSP expenditure how much are we allowed to count towards LH25?

And it's going to come back to the same concept of proportionality. So my - in the more complicated example we have 50 units in the project and we're going to count all of them as NSP assisted, just making ((inaudible)).

So the total development cost is $5 million. NSP is going to pay $2 million of the $5 million or 40% of the total development cost.

And don't forget that all the units are - we decided to have all the units be NSP assisted. So of the 50 units 25 are going to be very low income and 25 are going to be more moderate income up to 80%.

So we've got 50% of the units being occupied by people at 0% to 50% of AMI and we've got 50% of the units being occupied by people at up to 80% AMI.

So so far we're all eligible under NSP. And the question is how much of the $2 million do I get to count toward LH25?

And the answer here is -- this is a very good policy clarification. The answer here is that you can count all $2 million towards your LH25 even though you're going to have some units that are occupied by people between 50 and 80 because your NSP investment is only 40% of the total development cost but you've got 50% of the units which are going to be occupied by LH25.

So you can make the case that all $2 million in this case is benefiting people at 0% to 50% of AMI. And so what you're going to look at is the proportion of 25, LH25 units to the proportion of the investment that you funded.

So in this case we paid 40% of the investment but we got 50% of the units. Therefore all $2 million can be counted.

So that's it. It's a good clarification. And I think for folks who are struggling with the LH25 and struggling with kind of trying to figure this out it's an important way of thinking about this.

All right now one other important thing and this does come back to the timing of expenditures and I think - and again another very important policy clarification and it really does come from a HOME sort of thought process.

It's important to remember that the calculations we just did about how much NSP money you can put in a deal and what's eligible and your proportion and all of that doesn't dictate what eligible line item you can pay for.

So imagine that you have a total development cost budget, a development budget. And that development budget has acquisition and it has predevelopment costs like environmental or legal. And it's also got construction hard costs. It's got the roof and the siding and everything else and it.

The calculation we just did just tells us the most that we can invest. It doesn't tell us what line item we have to pay for.

So as long as that line item is eligible we could pay 100% of any one of those line items up to the maximum of our cap.

So what we're saying here is what people have been confused about is they think that they don't - that they have to sort of proportionately invest their NSP funds in each of the elements of the development.

In other words part of the acquisition, part of the predevelopment cost, part of the construction costs so that it all adds up to the maximum investment.

You don't have to do it that way. If you're worried about expenditures and you want to, you know, particularly if you're an NSP2 grantee and you're worried about that February deadline you are perfectly eligible and perfectly allowed to spend, to pay for 100% of those up front quicker costs as long as that line item is eligible with NSP funds, again up to the max that we just calculated and let somebody else pay for the back end cost, the construction cost of the closing costs or whatever it might be.

So for example you could pay for the acquisition and you could pay for the predevelopment costs and maybe, you know, the site cleanup or the site, you know, infrastructure all which happens early. You'd want to make sure you had a firm commitment by whoever's going to do the construction financing so that you're sure this deal is going to get done.

But if that is the case your money goes in first and other people's money goes in at the end because you're paying for 100% of that eligible cost.

Male: Marsha?

Marsha Tonkovich: Yes go ahead.

Male: I think you're making a good point and we certainly encourage the NSP grantees to do this. You know, you mentioned having a commitment for the rest of the funding.

I would caution people hopefully they don't need this caution but that you have performance requirements so that you don't spend your NSP portion of the money on the first 40% of the project and then the rest of 60% of the project doesn't get ((inaudible)). I don't think I have to remind people of that but I felt obliged.

Marsha Tonkovich: Yes I think it's very important. And I will, you know, as an underwriter I do a lot of my time doing underwriting.

I will say that it's a risky thing to do because, you know, if the backend part, the construction part falls apart then you have no way of, you know, you have ineligible project and you would probably have to pay that money back you had funded. So you want to be absolutely sure that this is a deal that's going to go forward.

So it's a really important point. So I think, you know, people should be thinking about the timing of how and when they invest their funds.

So here's an example. We have $2.5 million the total eligible costs. There are 25 units in the project of which NSP is ten. And so we figured out through our calculation that our maximum investment is $1 million.

But we could take that $1 million and we could spend that million dollars on all the acquisition, all the apartment predevelopment and on some portion of the construction rather than paying all the construction or some backend of the construction or the permanent take-out financing or something like that which would again all help you to be more timely in your expenditures.

So I'm wondering John and Hunter, we've been going for a little while. Do you want to keep going through the slides or should we take some questions now?

Hunter Kurtz: Okay let's take some questions.

Marsha Tonkovich: Okay. Let's see if we have any questions now and then we'll get into affordability period.

That was a lot of sort of detailed and heavy stuff that we often take, you know, half a day to teach. So let's take some questions from folks and then we can come back and do affordability period.

So do we - Holly do we have anybody on the phone or anybody in the queue?

Operator: We do not have any questions in the queue but as a reminder that is star 1 to ask a question at this time.

Marsha Tonkovich: Okay. And I don't see any written in questions yet either so why don't we go ahead and keep going and then we’ll take questions at the end of the affordability period.

So, that - those are some overarching concepts from HOME that are borrowed in NSP. Now let's get to the affordability part which is a really strong tie between the HOME program and the NSP program.

So like HOME, NSP is going to have an affordability period for both its homebuyer unit and its rental units. And it's going to dictate a minimum affordability period. And at the minimum you can always go longer based upon the per unit amount of NSP investment.

And you'll see the chart here this is borrowed from HOME in terms of these thresholds and the first three categories, the less than 15, 15 to 40 and the greater than 40 apply to home buyer projects.

And then the very last category, the new construction is really rental, so its rental new construction or acquisition of new rental units is 20 years. And that's regardless of how much money you put in.

So it's the minimum affordability period per - based on per unit investment. Now you can obviously make it longer. And if you've combined NSP with tax credits or bond financing or some of the other sorts of financing the might be out there you may well have a longer period than this.

These rules are going to be different rental versus ownership in terms of how we apply them but the concept is the same.

So let's start with home buyer and then we'll jump into rental. So for home buyer the HOME rules are going to be the safe harbor in terms of how you're going to do affordability period for home buyer units.

And HUD has allowed folks to use an alternate approach as long as that approach is at least as stringent as HOME.

And so for most grantees - and I know and I think across the country virtually everybody is using the HOME rules to do home buyer affordability.

And so generally speaking the HOME models of resell recapture is the approach that most of us are using for this.

It's already existing, many of us already have forms and procedures and agreements and so forth that enable us to enact this. So again as I mentioned these are minimums but it's generally what most folks are doing.

So what you need to do as a grantee and you should have already done it is in your action plan when you described it to HUD you should have described how you're going to do affordability for home buyer.

And you should have decided up front in that action plan whether you're doing resale or recapture or what are the instances in which you're doing either one.

So for example maybe your acquisition rehab program is doing resale but your new construction program is doing recapture or, you know, whatever it might be.

Or maybe it's - this kind of a target neighborhood is resell but that kind of a neighborhood is recapture.

So you're allowed to use both approaches in your overall big program but there has to be some logic and some description of when are you going to use resale and when are you going to use recapture. And it needs to be by program type or neighborhood or geography or something, not household by household.

So you can't say okay Mrs. Jones gets resale but Mr. Smith gets recapture if they're both in the same program because obviously that would not be fair.

You also can't do both. So you can't say that Mrs. Jones is subject to both resale and recapture. Again it's not fair to her.

So we had to pick one or the other for our program type, you know, acquisition with rehab or whatever it is and one or the other for the individual household whom we are helping. And households and similar programs should be treated similarly.

Now key thing about recapture is that it's about the home buyer. It's about what we're - how we're benefiting the home buyer, how we're assisting the home buyer.

If we don't have any direct subsidy to that home buyer, we're not doing anything to help the home buyer but rather we're helping the developer and then we don't have any choice. We have nothing that we can recapture because we haven't given any benefit to that home buyer and thus we have to use resale.

So sometimes you have a choice about whether the program's going to use resale or recapture and sometimes just depending on how you've designed your program if your program is just a development subsidy program you're going to be stuck with using recapture or excuse me, resale.

So let me get into the two options. We're going to start with recapture then move into resale.

So recapture, the idea behind recapture is we're going to give direct assistance to an individual home buyer.

And if they were to sell the unit during the affordability period then we the grantee or the sub recipient are going to take back or we're going to get back a repayment that is based upon a formula and we'll show you how that works. We're going to recapture some of those funds from the individual home buyer.

So in order to be able to do recapture there has to be an amount, a dollar amount subject to recapture, in other words an amount that can be paid back.

But if you were doing a grant so you're granting the down payment of the closing costs assistance, you know, you have no note, no mortgage, no requirement for repayment, it's a straight true grant, then you can't do recapture because there's nothing that is subject to being paid back.

And that same concept is true if you give development assistance to your nonprofit developer or other developer and there's no benefit the flows down to the home buyer but again there's nothing you can recapture and therefore you can't use the recapture approach.

So has to be something that the home buyer is getting a direct benefit.

Now if we do recapture then we're going to impose that rule on the home buyer at the time that they initially by the house.

And then when they go to sell the house during the affordability period once we've recaptured our funds and we've gotten our money back and the unit has been sold to a secondary buyer everything is done.

There is no sales price limitation to that secondary buyer. There is no affordability restriction on that secondary buyer unless we happen to also assist them. But there's nothing else on that unit once we have recaptured the funds because of that sale.

Now I do want to do one heads up that people tend to get confused about here. And this is an issue for both HOME and NSP which is note that I'm talking about a sale during the affordability period.

We're not here talking here about a repayment of the NSP fund. So if we had someone who got an NSP loan, they had a ten year affordability period and they got a great new job at year three

and they said you know what, I don't want to pay NSP anymore. I'm going to pay off the NSP note no, you know, I'm done. I'm paying off, I'm paying back my mortgage.

That doesn't change the fact that they had a ten year affordability period. And if they don't sell the house to somebody else but they are still living there then that affordability period still exists and it still has to be their principle residence and all of that.

So in that case they would have their seven years remaining on their affordability period even though they had paid back their mortgage. So it's not about the financing.

It's about the affordability period that's established up front and it gets completed at the point at which they sell the house during the affordability period.

So when it's - when title transfers from my initial home buyer to some other home buyer that they have sold it to.

So how - what is the affordability period calculation for recapture is different than the way you calculated under resale? And people do get confused about that.

So the way the you figure it - and I'm going to go back to the chart on affordability for just a second.

The way that you figure out whether the period is 5, 10, 15 years for recapture, the numeric, these numbers here, how you figure out this number is different depending on whether you're doing resale or recapture. Let's do recapture first.

So if it's recapture you're going to look at the total amount subject to recapture, in other words the total amount of benefits to the direct home buyer, the direct home buyer subsidy.

And that has several components to it. It could include any down payment or closing cost assistance paid with NSP to the buyer.

It could include any mortgage financing provided to the buyer whether it's a soft second or a third or a fourth or even if it’s a first mortgage loan. It’s any kind of lending to the buyer.

Plus if you used NSP funds to develop the unit, to construct it, to rehab it, to acquire it whatever and you used that through a developer and because you gave them assistance they were able to sell this unit at below market.

So in other words the house is worth 200 but because you paid for all the construction and you gave subsidies to the developer they sold it for 180. So it's worth 200 at the end of the day but they sell it for 180. There's a market write-down there.

If you capture that amount that in my example the $20,000 of a market write-down with a note right, with an agreement with the buyer that that is a soft second it's, you know, held against the property then that is also home buyer assistance.

So they got down payment, closing costs, any kind of subsidized loan and then note for this mortgage write-down, this value write-down.

It's again, it’s the difference between the property value when they go to sell it or when they buy it and the actual sale price. And we'll go through an example of it in just a moment.

Now what it does not include is what we call the development subsidy which is amounts of money that are needed to help construct the HOME or rehab the HOME but that are greater than the value of the property.

So we know in a lot of the markets that we work in it costs $150,000 to build the HOME. But even after construction and after all of our hard work it's only worth $120,000.

So that $30,000, that's the difference between the cost of the house and the value of the house is simply a sunk cost. We don't - it's not a part, it's not a benefit to the home buyer. It's not something we try to recapture.

In the recapture model that $30,000 of what we call development subsidy is simply left in the unit and is not part of this equation at all.

So here's an example. We're going to lend a buyer $15,000. We're going to give him a down payment of $5000 and we're going to give a developer $50,000 to do the construction.

At the end of the day the value of the HOME is $160,000 and the sale price of the HOME is $155,000.

So the amount that the individual family got was a $15,000 in the loan, the $5000 in the down payment assistance and the $5000 in the market write-down between the $160,000 and the $155,000 for a total of $25,000 of direct home buyer subsidy or a ten year affordability period.

Notice that the $50,000 that we put into the developer assistance isn't really into this equation.

It - a little bit of it is and that it probably created this market write-down we were able to do. But beyond that it's sort of a sunk cost in this deal.

Now that's how we figure out the affordability period for recapture. And we're going to do that at the very beginning of the project when we first fund that home buyer.

And we’re going to put that amount in the agreement with the home buyer so that they understand, you know, what the affordability period is and what they're expected to do during that affordability period. And that's what you’ll record in the land covenant or deed restriction or mortgage -- however you record it.

Now that helps us again, the affordability part but it doesn't tell us how much we’re going to recapture when the family goes to sell the house during that affordability period.

So now we've established a 5, 10, or 15 year affordability period and Mrs. Jones goes to sell the house during that period and she gets whatever she gets for that house how much actually gets recaptured? How much comes back to we, the NSP grantee?

The way we figure that out is based upon something called net proceeds. And so net proceeds says to us - and we'll come to the specifics in just a second. But it is how much money is left over when the family sells the house during the affordability period after they have paid off the costs that they have to pay?

So the definition of net proceeds is the sale price during the affordability period combine it any superior debts, so paying off the first mortgage lender minus any closing costs.

And so what's left over, that amount that’s left over is the amount that could be recaptured. And we’ll talk about how gets divided up. So that's the basic amount that we’re looking at in terms of whether we’re going to recapture it or not.

Now before we leave that I do want to give everybody a heads up. And one of the issues that's been coming up in the HOME program that folks in NSP are going to have to decide as a policy as well is notice the way this calculation is written.

It is superior debt, so superior debt to the NSP debt that gets taken out of this calculation.

And so the policy question is are you going to allow the home buyer to take out home equity loans during the affordability period which get a - which are in lean position higher than your NSP debt?

In other words if you have the first mortgage lender, the primary mortgage and if you the NSP lender are in second position are you going to allow them to put you down to third position and a home equity loan coming in above you?

You could decide as a policy that we're not going to allow that. We don't want that to come into play because we want to get some of our money back at the time of the sale.

But it's important to have a policy about that and to let home buyers know what they can and can't do.

So the reason why this is important and the reason why it came up in the HOME problem in the last several years is because sometimes what happens is houses actually depreciate.

And we know this been happening over the last, you know, several years. And so it's not, you know, not surprising that what could happen is we sell it, we rehab it, it's in good shape and they go to sell it three years from now and it's actually worth less than it is today. And again we hope that doesn't happen but it could happen.

In that case it might be true that the net proceeds that come back out of that sale are higher - or I'm sorry, or excuse me are insufficient in order to pay us back.

In other words because the sale price has come down and because the house is worth less the amount that we get out of the net proceeds is less than what is owed to us.

So in my example the original NSP investment was $20,000 but the house has declined in value. And so when we go through the net proceeds calculation so if I minus the superior debt minus the closing costs there's only $7000 left at that sale.

And so the most they could possibly pay back to me is $7000, not the $20,000 that was originally owed to me.

And so the beauty of net proceeds is that it says to the home buyer well you don't have to sell your car or take your kid out of school or something in order to pay us back.

And we the grantee do not owe to HUD the amount that doesn't get paid back to us because net proceeds half the amount that the home buyer owes to us and thus we have to recapture. So in my example here the most you get back is $7000.

So there are four different approaches. So what you have to figure out under the net proceeds is well how are we going to divvy them up, right?

So in my previous example we had $7000 of net proceeds. And the question as well does the owner get to keep some of that because that would be their profit on the sale? Does it all come back to the grantee? Are we going to divide it up? So what's going to happen with it?

So in the NSP grantees policies and procedures and again in the agreement with the home buyer, you need to spell out one of four options for how you're going to divvy up those net proceeds after you've calculated them.

And so let me go through the four options and then we'll talk about something called share appreciation.

So the four options our first pay back the full amount of the subsidy. So in other words this - I would call this first one grantee gets paid first.

And if you're following along I think that's the easier way to think about this first one. The grantee gets paid the full amount of their investment first.

The second option - and I'm going to do these out of order because I think this is a little easy to understand.

The second option is the buyer gets paid first. So the buyer gets paid everything they put in and we get what's left over.

So they've put their initial down payment in, perhaps even some -you know, some upgrades on the property during the affordability period.

But we let them get their money recovered first and we get what's left over. So option one was grantee gets paid first, option two was buyer gets paid first.

The next option is to forgive the subsidy over the affordability period on a pro rata basis. In other words if I have a ten year affordability period and I have $20,000 of NSP direct subsidy I forgive it at $2000 a year.

So if they've been there for two years we're going to forgive $4000 and they owe us back depending on the net proceeds $16,000. So we forgive the subsidy pro rata over the affordability curve. So that's the third option.

The fourth option is to share in the net proceeds. And what we mean by that is if NSP put in 20% of the initial sort of benefit to the home buyer, the initial subsidy in the deal and the home buyer put in 80%, so the down payment was 20% NSP and 80% home buyer then when we get the net proceeds back NSP gets 20% of the net proceeds and the HOME buyer gets 80% of the net proceeds.

So we share the net proceeds in proportion to our investment in the deal. And typically it actually would be higher on NSP side than the home buyer side but we proportionately share.

So those are the four options. And again to recap it's TJ or grantee gets paid first. In other words you pay the public agency back and the home buyer gets what's left or conversely owner gets paid first, grantee gets what's left over.

Forgive it proportionally over time based upon the total investment and the number of years or share the proceeds in proportion to our investment between the grantee and the home buyer.

So you need to pick one of those options and you have to write out whichever one of those you're going to pick in that agreement with the home buyer at the beginning of the deal so that they know what's expected when they go to sell it during the affordability period. And you should have this also described in your local policies and procedures.

Now on top of all of this there's a concept called shared appreciation. And what share appreciation says is when your property is in a situation where it's really appreciating and maybe you're doing NSP at the very bottom of the market and you expect this market to really come back strong and maybe housing prices are going to, you know, go up by 30% or 40% because your market is now coming back strong, if that is the case and you might want to look at your

appreciation which says we're going to pick one of those four options that we just went through to look at sort of our initial investment.

But then for any amount of money where the property has appreciated above what the original deal was and that then results in excess net proceeds, right?

We get a lot of money back because the property has appreciated. We're going to share in that access net proceeds, that extra money that came back in proportion to our investment.

In other words we each get paid however we get paid through - under those for options that we just talked about, the grantee and the HOME buyer.

And then we say okay well the amount that's left, the appreciation that was due to the market the grantee gets 40% because they put 40% into this unit and the home buyer gets 60% because they put 60% of their money, 60% of the investment was the home buyer's.

So we can share that appreciation. And the reason to do that and the reason to consider doing that particularly in markets where we have a lot of growth is because we don't want folks to get a really big windfall by having participated in NSP and having bought a property at the bottom of the market where several years later it has significantly appreciated and so it lets the grantee share in that and it lets the grantee get more money to come back to use for other eligible activities.

So that's recapture. Let's jump into resale next. The resale is the other option for home buyers and it's used typically in a situation where you have other very appreciating market or real lack of affordable housing in your community.

And so what you're trying to do is say it's not about the money. It's about we want to have a sufficient number of affordable units that are available for people to buy in my community.

And I've got to keep these units available for low and moderate income people to buy. And so it's about the supply of housing, keeping that supply of housing.

And so resellers use often as I said in some of those neighborhoods where, you know, you're trying to invest in those neighborhoods, there's lots of over income or upper income units and only a few affordable units.

Now what we’re saying when we do resale is that we’re going to constrain who we can sell the unit to during the affordability period.

So is not just a matter of getting money back. It's about during the affordability period when Mrs. Smith goes to sell the house she can only sell that house to another income qualified person at a fair price and we’ll go through all those criteria.

So we’re going, rather than just dealing with the money we’re going to deal with what happens to this unit.

Now that's said this approach does not preclude you from having a mortgage on the unit. People think that because it's a resale I can’t have any debt on the property, I can't lend to the property, I have to do it all as a grant. That is not the case.

You can do resale and use NSP funds for a whatever kind a mortgage on that unit. And that could be amortizing. It could be deferred. It could be forgivable. It could be, you know, any kind of financing you think of.

But that's the financing. And it's about they pay that back according to whatever the terms of that financing deal are.

It doesn't affect how the resale works. So they're sort of happening on parallel tracks. So just know that resale does not mean you can't also have financing on the project.

So how do we figure out the affordability period under resale? And as I mentioned it's different than under recapture.

Under resale the affordability period is based upon the total amount of NSP funds in the project. So the development subsidy, the home buyer subsidy -- everything all dollars added together.

Even if it was just construction financing and it was taken out by a permanent loan at the end you still put that money in the deal and it still counts.

So we've had a number of situations where people have said well I put my NSP money in for construction financing and I put let's say $50,000 of NSP money in the construction financing.

And then we got to closing and I got that $50,000 paid back because the permanent loan took out my $50,000 construction loan.

Well that's great and that's good. That's program income but you still put $50,000 in this deal and you still have to count that toward the affordability period.

So you would count the total amount of NSP investment assistance to the buyer plus assistance to the developer. And that total amount -- and I'm going to go back to our chart here for a minute -- that total amount is what you would then compare per unit in order to figure out the affordability period.

So you'd use the total amount of subsidy home buyer and developer per unit to figure out the 5, 10, 15 years.

Now...

John Laswick: Marsha can I make a point here?

Marsha Tonkovich: Sure.

John Laswick: We were just talking about I guess maybe not into adding the HOME and the NSP assistance together, going to get into that or...

Marsha Tonkovich: I was just going to do it right now.

John Laswick: Okay. Then I'll hold my comment for a second.

Marsha Tonkovich: Okay. So there's been a good discussion between the HOME office and the CDBG folks about when you put HOME and NSP money together in the same exact unit how do you deal with this affordability period?

You know, do you add the two subsidies together? Do you run them concurrently? And there was a lot of discussion back and forth.

And at the end of the day the decision was that the minimum requirement is that you calculate each separately.

So you take the total NSP investment and you do it per unit and you compare that to the chart and that's the NSP affordability period.

And then you take the total HOME investment do that per unit and that creates the HOME affordability period and those two periods would run concurrently.

They may be the same, they may be different depending on how much money you put under each program. Now that's the minimum requirement.

However you're putting an awful lot of federal money in this project in this unit. And so you might choose as a policy -- and it’s not a requirement but as a policy -- you might say well I want to add them together.

I want -- I'm going to look at total federal subsidy or total HOME and NSP subsidy and I'm going to base the affordability period on the sum of the two.

That's a policy you could enact, not a requirement but, you know, it's one that you could set out in your policies and procedures and then of course you would share with the home buyer.

So minimum requirement to calculate them separately and have concurrent affordability periods. You might choose to put them together if, you know, that's your perspective.

So John, did you want to add to that?

John Laswick: Well you’ve anticipated my comment as usual Marsha. But yes I would just say that we would certainly encourage that particularly when the amounts of money are large.

You know, and it's not required as you said but you got to think about the headline test and, you know, if you got $75,000 in a unit and it’s split, you know, 38,000 and 37,000 and you end up with

15 years or, you know, ten years instead of 15 years then, you know, it's a little tough to explain that to your city council or whatever. So we would just ask you to keep that in mind.

And would you mind going back to Slide 27 just for a second?

Marsha Tonkovich: Sure.

John Laswick: Ginny and I were talking. So when you say that - one more.

Marsha Tonkovich: More?

Ginny Sardone: One more forward, yes.

John Laswick: It's the other way. All right. Okay there we go.

So the HOME regs say, you know, there's four options. But for those of you who haven't worked with HOME or figured this out I mean these aren't sort of exclusively, you know, if you pick one then that's the way you've got to go forever and ever.

You can mix and match to a certain extent. And Ginny's been helpful in helping me understand this.

But so for example you can say we're going to require 100% repayment for the first five years and then we're going to prorate or we're going to have a soft second that's forgiven or that comes back to the buyer. But then we're going to share appreciation on top of that.

So they have a lot of flexibility in how you work these things so that given different market conditions you can structure it in a way that's, you know, not going to penalize your buyers because you want them to, you know, to increase their net worth as well.

But also, you know, pulls the public funds back and particularly if you're seeing appreciation in your market gives you something decent down the road whereas with a soft section you might not see very much.

Marsha Tonkovich: Absolutely. And you're right you could use, you could mix and match these to create. You know, if you want the home buyer's to stay in the units for a while you could say PJ gets paid first up to year five and then owner gets paid first year five to ten or whatever.

John Laswick: Yes.

Marsha Tonkovich: Good point. Okay so back on results so that's the affordability period under resale. So here's an example. It gives you the same numbers as we had in the last one but you'll see how it's different for resales versus recapture.

So again we have a $15,000 loan to the buyer $5000 down, developer assistance of $50,000 and we sell it for $5000 below market.

So now we're looking at for resale for cash in the deal right. So we've got $15,000 to the buyer, $5000 in down payment and $50,000 to the developer for a total of $70,000 in this deal for 15 years. And notice that that is a different number than we had for recapture.

Now the question is why didn't we add in the 5000 that was the market write-down? And the answer is because that really was generated because we invested the $50,000 of developer subsidies.

And so to count the $5000 of market write-down and the full $50,000 of developer subsidy would be a double count and so we don't.

What we’re counting here is total cash in the deal. And so this example here is $70,000 in total cash.

Okay so what happens under our resale provision when the home buyer goes to sell during the affordability period?

First the new buyer has to be low income. And for NSP we know we have two different income limits. We have the 50% income limit if we counted that unit toward LH25 toward our 25% set aside and we have a 120% limit for all the other NSP assisted units.

So on resale as opposed to recapture, on resale if the unit originally counted toward the 50% targeting then when we go to sell it during the affordability period it has to again be sold to another home buyer at 0% to 50% of AMI.

So if counted towards LH25 it has to continue to count for LH25 as it sells during the affordability period.

If it originally counted towards 120% at or below 120% then again, they can sell it to another buyer who's at or below 120 %.

So it keeps its same income targeting whatever you originally designate that unit to be -- however you originally counted that unit.

Now in addition the home has to be affordable to that new buyer so the person who comes in and buys. We have to as a policy as a grantee we have a policy that says how are we going to establish that sale price to this - to the new buyer?

And we have to decide what it means to be affordable. And we can use lots of different methodologies.

The most common one that people use is a principal interest and taxes test, you know, a PITI test to see whether under common standards, common underwriting criteria that that sale price would typically be affordable to either a very low income household in this 0% to 50% units or a moderate income household in those 120% units.

So we can define affordability based upon traditional kind of standard underwriting criteria and we would have to adopt those in our policies and sort of how we're going to define what is affordable for the next buyer.

The new buyer of course does have to move into the house as central residence so it's not a, you know, rental or something like that.

The original buyer has to get a fair return. So I'm your original owner of the property. I'm going to sell it during the affordability period. I have to get a fair return.

Now fair return is in the context of the market. So one of the things that we've had people talk about -- and I asked the HUD folks to jump in here -- is well what about those markets that are not appreciating or that are still depreciating?

And so they buy the house and in fact the value of that house goes down. And whatever investment they've put in has been lost because of course the value has gone down when they go to sell it. What's the fair return in that instance?

I - and my perspective on it and again I'd ask the HUD folks to jump in is that fair return in that kind of a market might be zero. It might be that everybody else in town is getting zero when they go to sell.

And so fair return I think is a - it's everybody gets $2000. It's relative to the market. And Ginny or folks at HUD would you jump in?

Virginia Sardone: Yes that's accurate. You know, fair return on your investment could be zero or it could even be a loss depending on what the market is.

John Laswick: Right so I think the idea is, you know, is the return that you've actually made a gain. And when there's no gain then there's nothing to get a share of.

Marsha Tonkovich: Right.

Virginia Sardone: But, you know, one of the ways that you can define fair return, you can define it based upon some kind of a housing price index.

In the HOME program some PJs have defined it using indices that are not related to housing prices like increases in the Consumer Price Index or even in some cases increases in area median income.

And that makes it - that makes this very difficult because that disconnects, you know, that disconnects what you owe back to that buyer from the actual proceeds of the sale.

Marsha Tonkovich: Right.

Virginia Sardone: You know, and I think given what's gone on in the market in the last several years while those were very commonly used indices for fair return in the HOME program in the past I'm not so sure that they make sense at the moment.

Marsha Tonkovich: Yes I really do think that fair return ought to be indexed to the market somehow, you know, so that whether it's based upon the proceeds of the sale or whether it's based upon the increases in value, in typical property values or similar property values but something tied to the market.

Male: Right I mean...

Virginia Sardone: Right.

Male: ...I think that, you know, it seems to me -- and I don't know the HOME program -- but it's seems implicit that there’s a net proceeds, you know, to be talking about in the first place.

Otherwise you're committing yourself to a payment for, you know, for which you have no source of funds.

Marsha Tonkovich: Exactly. So be careful guys as you define fair return that it’s not about the buyer gets their investment back or something or the owner gets their investment back because that may not be possible.

And then the final one is that the remaining term of the resale restrictions, so that however many years are left on the resale restriction continues with the new buyer.

So unlike recapture where the agreements get - the stuff gets wiped out at the time of the sale, under resale if you have let's say you are three years into a ten year affordability period you have seven years left to go with the new buyer.

Now as an aside -- and then we can share some examples for where to go find some more information about this -- if the grantee elects to assist that secondary buyer, the one who buys the unit from the original owner during the affordability period then you can reset all of these terms because you're going to base that new affordability period and those new conditions on the subsidy to that new buyer. And I won't get into it in more detail than that but just know that that's the case.

Okay so how do we enforce all the stuff that we just talked about? Well certainly for resale where you're trying to tie up a unit and keep the unit affordable you're going to have a deed restriction or a land covenant which will restrict what can happen to that property during the affordability period.

For recapture we strongly recommend still doing a deed restriction or a land covenant because it is - it has a stronger hold on the property.

You can use a lien which is recorded against the property. The only issue is that if they pay back the mortgage and that wipes out the lien then you're going to have a problem with ongoing compliance after that point so strong recommendation for a deed restriction or land covenant in all of these situations.

And we talked about the fact that there should be an agreement with the buyer and that agreement should settle all these compliance issues as well.

So that's home buyer. Let's jump into rental and then we'll take questions. It shouldn't take us too much longer then we'll jump into questions.

So like HOME -- and NSP again borrows from HOME here -- there is an ongoing affordability period for rental.

And that ongoing affordability period for rental is based upon the amount of money that you put in the rental deal.

So going back again to our chart, the affordability period for rental will be anywhere from five to 20 years depending on whether it's a rehab deal or a new construction deal and again depending on how much NSP money you put per assisted ((inaudible)).

Okay and so during the affordability period for NSP what we're going to worry about is the rent to the units during the affordability period, we're going to have some issues about them being affordable.

The income of the tenants, how many units are NSP assisted, again back to our earlier concept about how many units are NSP versus other, and then what happens when we sell the property during an affordability period to some other rental owner?

Now what's missing here and what's different HOME versus NSP, HOME has all of this or HOME also has a requirement related to unit quality and having to do periodic inspections during the affordability period for unit quality.

NSP did not adapt - adopt that part of the HOME reg. And so there is not a requirement that during the affordability period for NSP that you have to go out and do periodic housing quality inspections and look at the quality of the units during the affordability period.

However you've put a lot of money probably in this deal and there's probably other public money in this deal.

We strongly recommend that you impose such a policy, that you set a property standard or a minimum occupancy standard or quality standard during the affordability period.

And on some periodic basis however frequently you think it's necessary that you do inspections to make sure those units are sound and safe and all of that. Again not a requirement but, you know, you put public money in so it’s probably good idea.

So let's get into the rents first. So in the rent you - the grantee is required to define what is an affordable rent upfront in its action plan. It should have already been done.

Most folks use the home rents, typically the high home rents for the up to 120% units and the low home rents for the LH25 or low-income units.

But most folks chose to use the home rents as the safe harbor. Now some folks have used another used other rents. So there are other rents that are possible, things like tax credit rents or the HUD published to FMRs, or, you know, some other rent from, you know, some state rent or something.

You could do that as long as you put that in your action plan and that was reviewed and approved by HUD.

Once you've established what that rent level is then you need to make sure that those NSP rents that are at that level or no more than that level throughout the balance of your affordability period.

So for example if you have said, you the NSP grantee has said we're going to defer to home rent and we're going to use high home rents then throughout the affordability period for your NSP project you want to make sure that your property owners know when the new home rents have come out and that they are not charging on an annual basis more than the current home rent.

Now it doesn't mention. HOME uses a high and a low home rent, high home rent in NSP situation would typically go to people up to 120.

Low home rent or lower rent would go to folks who are in the LH25 units. Those rents are published every year by HUD and they are done, you can see them by bedroom size, or two bedroom rents, three bedroom rent, so forth.

Tenants obviously do need to be given notice of when their rent's going to go up and what it's going to go up to. And you're going to do that according to whatever their lease allows.

So, you know, if there lease says they have to have 80 days of notice or 100 days of notice or whatever it is you're going to follow state and local law and the lease under HOME, the minimum notice is 30 days.

I don't think NSP has exactly adopted that part of the HOME rule so that seems like a reasonable standard.

The real rent can be less than the published rent but can never be more than the published rent. So if the published rent is 500 and the owner is a nonprofit can they do it 400 so they want to help affordability, they could charge 400 but they can't charge more than the 500.

Virginia Sardone: Marsha, can I make a comment?

Marsha Tonkovich: Sure.

Virginia Sardone: And this is something that you have certainly spent a lot of time on behalf of the HOME program.

I just want to make a comment about these rents and I think it's really true regardless of whether you're using the home rents or the tax credit rents or something else that we strongly advise our HOME PJs not to permit the maximum rent to be charged up, know, beginning in year one and to, you know, to underwrite to a lower rent to begin with.

Because I think some of our participating jurisdictions have been surprised at the relatively modest increases from year to year in the home rents.

And it hasn't necessarily matched the reality of what the increases are annually and the HOME rents has not really matched, you know, the reality - what they have in their underwriting.

Marsha Tonkovich: Right.

Virginia Sardone: And I would imagine with the income-based rents in tax credits it's probably much the same, so...

Marsha Tonkovich: Yes. So what we're saying here...

Virginia Sardone: ...sustainability of their underwriting.

Marsha Tonkovich: Yes it ties back to the underwriting. And it's not a matter of just what you charged the first year of their rent but rather what you underwrite to.

And so we're recommending that you don't underwrite the max rent because historically we found under HOME and if you tie yourself back to HOME rents this will be true, that the HOME rents have gained between 1/2% and a 1% per year which is not keeping pace with inflation.

And so if you underwrite to a rent that is lower than the home rent then it gives you some room to raise the rents again what the families can afford obviously in the market, you know, if in fact you have to do that later.

If you underwrite to the max, assuming you're getting the max rent and then pretended that that rent's going to escalate at 5% per year you'll end up finding yourself in trouble down the road when that doesn't really happen.

Okay good. So the rents are inclusive of utilities. So you do you need to have some sort utility allowance schedule.

Most people use the Housing Authority Schedule if you're Housing Authority's up-to-date. You could develop your own utility schedule but you need to subtract those utilities from the max rent limit.

Now tenant income, NSP as I mentioned earlier you have to have the NSP assisted unit occupied either by people at up to 120% or if you're going to count it toward the 50% you have to have people who are going to - who are household incomes that are up to 50% of AMI.

Now here's a major difference between HOME and NSP. HOME re-verifies income on an annual basis using a variety of techniques that I won't get into.

NSP however only verifies income at time of unit turnover, at the time that someone moves out and someone new moves in.

So the initial tenants get verified and then let's say that Ginny lives in a unit and she doesn't move out for three years.

We don't check Ginny's income again until Ginny moves out and John moves in and we check John's income when he moves in.

So income verification under NSP is only required at unit turnover.

Now if you want to do an annually and you, you know, that was just part of your program design that's great, more power to you. But the minimum requirement is that you do it at unit turnover.

Now if the unit was originally counted towards the 120% right, so that's who the original occupant was then you can do anybody up to 120% back in that unit.

If the unit was originally occupied by people at up to 50% you have to keep that same proportion of units for people at 50% of AMI.

So we talked about assisted units earlier. If you have ten NSP assisted units and you had four of them which were going to people at 50% of AMI and six of them were going up to 120% of AMI you have to keep that same proportion throughout the balance of the affordability period.

Okay so in terms of determining income HOME and NSP are similar in the sense that they use the same definitions IRS census in Part 5 or Section 8.

But NSP is a little softer on the documentation. Because CDBG allows for either third-party verification meaning paystubs and employment and all of that or a self-certification you could follow CDBG rule and do a self-certification of income.

However the problem with doing a self-certification is what if people lie to you? And so if you don't have any backup of what their income actually is and an auditor or a monitor comes back and finds out that in fact they were really never eligible you've now got an ineligible unit so you don't want to do that.

So even though it's technically legal we’re recommending to folks strongly that you do third-party documentation just to be sure that you’ve got the right income level of people in them.

In terms of doing the income verification there is some really good guidance. There’s a - I think we’re currently in the purple version of the guide. It's been many colors over time.

The purple version of the guide is up on the HUD Web site on the HOME Web site. And it gives you sample forms and inclusions and exclusions and assets and all of that -- very good guide that's available on the HUD Web site.

So that's the income. Now let's talk about the unit mix. And I think I mentioned this earlier. You need to keep the same number of LH25 units the very low income units and the regular NSP assisted units over the life of the project.

Now in some ways it doesn't matter whether they're fixed or floating because you still have to keep the same number of NSP units.

But if you were in a tax credit deal where those units are going to move around, you know, the first available unit where the next unit’s going to become the assisted unit, you could make the NSP units floating.

But the key thing is that you need to have the same number of LH25 units and the same number of 120% units NSP assisted throughout the balance of your affordability period.

Okay finally sales during the affordability period. So if a rental owner wants to go sell a property during the affordability period they of course can.

But that new buyer of the rental property has to agree to comply with the affordability restrictions throughout the balance of the affordability period.

So there's some confusion. People think that once the rental property is sold it somehow wipes out the affordability restriction. That is not the case.

And it doesn't matter whether it’s sold because of a foreclosure or sold because of just a voluntary sale of the rental property. The property has to remain affordable.

And if it doesn't remain affordable then the grantee is going to end up owing money back to HUD for not having maintained the affordability period.

Okay so quickly and then I'll jump into some questions, why would you bother to combine a HOME and NSP together?

Well obviously they each do different things and it's a way to kind of stretch resources and to think strategically about those resources.

And when you do that however you need to make sure that you comply with both sets of rules. So whichever set of rule is most stringent when you comply them together make sure you follow that most stringent rule.

I think with that I will go ahead and start taking questions and then we can jump back into some of this if folks want to have some greater discussion of opportunities for how to combine them.

So let's start with the phones. So Holly will you go ahead and take phone questions?

Operator: Absolutely. Once again ladies and gentlemen it is star 1 to ask a question at this time.

Marsha Tonkovich: And do we have anybody in the queue?

Operator: We do have two questions. We'll take our first question from Ayako Utsumi with Mary Erickson Community Housing.

Marsha Tonkovich: Hi. How are you?

Ayako Utsumi: Hello, fine thank you. Thank you for this webinar. I just wanted to ask for additional clarification on mixing recapture and resale within one NSP grant for one PJ, one grant. Can you talk a little bit more about mixing recapture and resale methodology?

Marsha Tonkovich: Sure. So you can’t mix them in anyone homebuyer. So you as an individual homebuyer can't have both impose upon you under NSP.

Now you could have HOME and NSP - you could have both in the unit. They could be different but for now you can't have the same resale and recapture concurrently imposed upon the individual homebuyer.

Ayako Utsumi: Okay.

Marsha Tonkovich: However you could say for your program that maybe you have a couple different program types under NSP.

So we have some folks who are out there and they have a program type which is acquisition rehab. And maybe they're working throughout all of their target areas doing acquisition rehab and sort of scattered site, you know, where they're doing scattered site homeownership.

And so for that situation they might decide to do a recapture provision because it's not like it's neighborhood targeted and, you know, it's kind of all over the place.

And so in their action plan you could write up that for my acquisition rehab program everybody in that program is going to get recapture let's say.

And then maybe on your NSP action plan you also we’re doing some targeted neighborhood revitalization where you’re going to do some demolition and some new construction and you’re really pouring a lot of money into this neighborhood and you want to make sure that it stays affordable. And that's what you decide.

And so you can say that for my demolition new construction program I'm going to use a resale provision.

And so everybody under my demolition new construction program gets a resale provision. So you’d do have to sort of delineate your programs and your action plan.

And then anybody who comes under, you know, who applies homebuyer, under either those programs follows the rules for that program. Does that make sense?

Ayako Utsumi: Yes. And so for the example of straight scattered (Act) Rehab Program you cannot mix recapture resale within that program, is that correct?

Marsha Tonkovich: That's correct unless you could make some geographic, you know, people - there are people under HOME for example would have said we have this really high cost neighborhood.

So anybody who's in this high cost neighborhood under my (Act) Rehab Program is resale. But anybody who's under any other neighborhood is going to get recaptured.

I mean as long as you can make a justification and you treat everybody similarly I think...

Ayako Utsumi: Sure.

Marsha Tonkovich: ...that kind of thing would be okay. I don't think it would be okay to do it person by person. And Ginny and John would you guys agree?

Virginia Sardone: Yes we agree.

Marsha Tonkovich: Okay.

Ayako Utsumi: Thank you. That's very helpful.

Marsha Tonkovich: Great. Okay our next caller please.

Operator: Absolutely. Next will hear from Tonja West from Hennepin County.

Marsha Tonkovich: Hi Tonja.

Tonja West: Hi. I'm just trying to wrap my head around if NSP only requires initial and at turnover for income determinations.

How do we show that they've kept compliance over time?

Marsha Tonkovich: So they...

Tonja West: Do you understand where I'm going with this? If they're - you know, if we do - I mean obviously I'm thinking we'd do fixed units and so they would just always be the same.

Marsha Tonkovich: Right.

Tonja West: And so in HOME somebody going over 50% during that period of time would be what, temporarily out of compliance.

Marsha Tonkovich: Right.

Tonja West: But if we're not happen to recertify income do they just keep counting and then really the only compliance they have is to make sure the next person that moves into that unit is eligible?

Marsha Tonkovich: Yes you're exactly right. I'm sorry ((inaudible)) my line. That's a total ah ha moment. Let me just hang up on that.

It's a total ah ha moment that - and then under NSP yes, it doesn't - you don't sort of worry about it in the interim.

But what you have to worry about is what the owner does at the time that the unit turns over.

Tonja West: Okay.

Marsha Tonkovich: And so it sort of the sixth component becomes somewhat moot because you say okay these five units are NSP assisted units and these two are going to be LH25 and these three are going to be up to 120.

And I as long as they're income eligible at the beginning and they're income eligible each time they turn over that's pretty much it on the income side.

Tonja West: So on the reports it'd really be just looking to see what turned over in those units at the time and then making sure they did them for those - not necessarily checking for that compliance during...

Marsha Tonkovich: That's right.

Tonja West: ...that period of time? Okay.

Male: Right.

Marsha Tonkovich: That's exactly right.

Male: Yes so you're monitoring will show that. And you're only really going to be concerned about the turnovers. And there's no responsibility to monitor rents in-between or I mean incomes in-between. You know, we like it when people's incomes go up.

Tonja West: Yes.

Marsha Tonkovich: And the only thing I would...

Tonja West: Me too.

Marsha Tonkovich: ...say is that rents are different. Now remember...

Tonja West: Yes rents are different yes.

Marsha Tonkovich: ...the rents are - so don't use the same philosophy for rents, but yes.

Tonja West: Right. Okay. I just wanted to make sure I was understanding that correctly.

Marsha Tonkovich: Yes you got it.

Tonja West: Because I didn't...

Marsha Tonkovich: Yes.

Tonja West: Okay super.

Marsha Tonkovich: You got it.

Tonja West: Thank you.

Marsha Tonkovich: Okay, anybody else on the phone? Holly we have a bunch of written in questions too.

Tonja West: We actually have two questions in the queue at this time. You want to take those questions?

Marsha Tonkovich: We'll do those and then we'll do the written in ones.

Operator: Okay perfect. Next we'll hear from Jose Dorado with City of Chula Vista.

Marsha Tonkovich: Hi Jose.

Jose Dorado: Hi. Can you hear me?

Marsha Tonkovich: Yes we can.

Jose Dorado: Okay my question is regarding the resale recapture. We have a unique opportunity where we're working with a local utility company and another entity that provides energy efficiency upgrades.

So we're going to be doing a property with NSP funds (regard). And they're going to be a zero on the energy home with solar panels. I mean it's going to be...

Marsha Tonkovich: How cool.

Jose Dorado: ...pretty much the homebuyer will have no utility costs.

Marsha Tonkovich: That's great.

Jose Dorado: So what we're trying to do on this particular property is to do resale instead of doing recapture like our other homebuyers.

Marsha Tonkovich: Okay. So you...

Jose Dorado: So how do we go about doing that?

Marsha Tonkovich: You can do that.

Jose Dorado: If it's not on our plan how are we - I guess...

Marsha Tonkovich: Well you would have to amend your plan. So what you...

Jose Dorado: Assuming our plan to say for anything but significant energy efficiency improvements whether it be donated or...

Marsha Tonkovich: Right.

Jose Dorado: ...at the cost of the city we would do - we'll consider...

Marsha Tonkovich: Right.

Jose Dorado: ...resale?

Marsha Tonkovich: Right.

Jose Dorado: Okay.

Marsha Tonkovich: So I would write it as any homebuyer participating in our, you know, whatever...

Jose Dorado: Demonstration program.

Marsha Tonkovich: ...you call your main program whatever that is program we shall use the resale provision as follows.

Jose Dorado: And can you refresh my memory regarding what's the timeframe of the (Tumeta) plan, how many days is that?

Marsha Tonkovich: How many days...

Jose Dorado: Is that 30 days for a public comment?

Marsha Tonkovich: I think it’s 15 isn't it John?

Jose Dorado: Fifteen.

John Laswick: Fifteen for NSP1 I think it's ten for NSP2?

Male: Yes.

Jose Dorado: Okay.

John Laswick: Yes so and that's a publication Jose. So you want to submit that - you're talking about NSP1 money or...

Jose Dorado: One, yes.

John Laswick: Yes. Submit that to the - to our LA field office as well as a way to, you know, document the change in this. But I don't see why there’d be any problem with that.

Jose Dorado: Okay great. Thank you.

Marsha Tonkovich: Sure. Let's take one more phone and then we'll the questions that were written in.

Operator: Absolutely. And we'll take our next question from Laurie Benner with Healthy Neighborhoods.

Marsha Tonkovich: Hi Laurie.

Laurie Benner: Hi. How are you?

Marsha Tonkovich: Great.

Laurie Benner: I have a question in relation to calculating recapture amounts. It was a line on your Slide Number 25.

Marsha Tonkovich: Let me go back to that. Go ahead and keep going and I'll get back to it.

Laurie Benner: Okay. It has to do with there was several layers of money recaptured. It's that last $5000 which is the gap between the market value of the home and the sales price of the home.

By market value is that actually appraised value?

Marsha Tonkovich: Yes.

Laurie Benner: Okay. And then is taking that chunk of money into account, that gap, is that a requirement to recapture that money?

Marsha Tonkovich: We've had this discussion and Ginny and John I'll let you guys jump in.

I believe that where we last landed on this is that yes in fact if you have put development subsidy in the field -- and in my example here we have -- that is what enables you to be able to write it down below the market, in our example here the $5000, that you are required to incorporate that. Is that right Ginny and John?

John Laswick: Yes we - you can - I mean, you know, I think the - my simple way of thinking of this is anything below market value is a direct subsidy and so that's really what you're concerned with.

And, you know, how you get there I mean you're getting, you know, you're giving some money directly to the homebuyer but indirectly you're lowering the price of the unit below market value. So that creates a benefit for them.

So any time that they are beneficiaries of some financial advantage then, you know, that's the amount that you want to think about - that you need to think about recapturing.

Marsha Tonkovich: And the way that you do that is you need to take a note or in this example the $5000 that was written down. It could be more but you would need to have - you need to create that as debt.

Now that debt could be, you know, forgivable, only payable upon sale, deferred. I mean it doesn't have to be advertising.

Laurie Benner: Sure.

Marsha Tonkovich: But you do have to create a mechanism for recapturing it.

Laurie Benner: What - so that means in markets where you're having trouble selling and you reduce the sales price and after you have a sales price and its agreed upon the lender gets an appraisal and

the appraisal shows a higher amount you would then have to do - put a lean on that amount between the appraised value and the sales price?

Marsha Tonkovich: Well again this is only really going to happen when you're doing a development subsidy. It's not just because the market happens to be changing.

And the second thing is I don't - you know, if you at the beginning when it's time to sell this price - this property to this homebuyer and you're figuring, you know, you're ready to sign the agreement with them, I think you would base this on whatever the facts were at that point, whatever appraisal you had done at that point, whatever the sale price anticipated at that, you know, the true sale price.

I, you know, if the market later changed I'm not sure you'd have to go back and recalculate this.

Laurie Benner: Well we weren't doing it after rehab sales - I mean after rehab appraisal but rather simply as they - as the homebuyer applies for a loan using that appraisal that is required by the lender.

Marsha Tonkovich: I think - yes but I think that would be okay.

John Laswick: Yes that's fine. I mean that's after rehab, you know, but...

Laurie Benner: Yes but then we still - you've sold it and then now you're going to tell the borrower oh by the way because it came back with an appraised value of 10 grand more we're going to put another lien on your house?

John Laswick: Well I mean if they're benefiting from that ten grand then yes. I mean I guess the trick is to explain to the buyers that they're going to be susceptible to some sort of a second mortgage for anything below the market value.

And, you know, today the market value is $160,000 but if it goes up to $170,000 you know, then there $10,000 better off.

But, you know, you might want - you might not want to...

Laurie Benner: That can be another deterrent to sales in this rather crushing market.

John Laswick: Well then your market - then your prices aren't going up.

Marsha Tonkovich: Right. And that - what I would say guys is that remember, that this is the true, the real value here. So, you know, if in fact you're having a hard time selling at the price you're pricing the houses for it probably says that that's not really the real value of the property and that you know, that the true, you know, that the true value is actually lower because it wouldn't, you know, they wouldn’t equalize.

John Laswick: Yes you could get another appraisal or another lender.

Laurie Benner: Right. Okay.

Marsha Tonkovich: And again you can make this debt totally forgivable, deferred. I mean it doesn't have to be...

Laurie Benner: No we realize...

(Crosstalk)

Marsha Tonkovich: ((inaudible)).

Laurie Benner: ...with any right now I mean you're still - yes it's just one more thing. And it is very hard right now anyway to get people in to start with.

Okay.

John Laswick: Yes.

Laurie Benner: Thank you very much.

Marsha Tonkovich: Okay. Holly anybody else on the phone?

Operator: We actually have one further question in the queue.

Marsha Tonkovich: Okay. And then I would like to get to the ones written in because we have a bunch. So let's go to our last question and then we're going to go ahead and do the written in ones so we come back to the phones.

Operator: Perfect. I'm sorry you did say you're going to do the written ones now?

Marsha Tonkovich: No. Let's go ahead and take the last caller and then we'll do the written ones.

Operator: Okay sorry, my apology. Next we'll hear from Valerie Fontaine with city of Atlanta.

Marsha Tonkovich: Hi Valerie.

Valerie Fontaine: Hi. How are you? I'm not sure if you're going to get to this yet, but my question is actually in regards to CHDO proceeds and how that relates to profit in an NSP deal?

Marsha Tonkovich: Ah, okay it's interesting you asked this because we've all been talking about this the last week or two.

Valerie Fontaine: I've submitted a question online about a week ago so...

Marsha Tonkovich: You may have been the spur of the question then.

Valerie Fontaine: Yes.

Marsha Tonkovich: Yes it's not related to this per se but, you know, CHDOs don't really, just under NSP there isn't like a category of CHDOs and therefore there isn't really a category of CHDO proceeds.

Valerie Fontaine: Right.

Marsha Tonkovich: What there is under NSP is that we have developers, often nonprofit developers who are getting NSP assistance to do construction.

And then they go out and they sell the property and the get the money that comes back to them at the sale.

If they get to keep those proceeds -- and we'll come back and talk about what we do with it -- then that isn't program income. It's proceeds and we can talk about what happens to it.

Valerie Fontaine: Well that's not - my question really is this. The project has HOME and NSP in it.

Marsha Tonkovich: Okay. And so we have...

Valerie Fontaine: CHDO HOME set-aside funds to redevelop the property and they received NSP funds to acquire it.

Virginia Sardone: Are you talking about CHDO proceeds part of the 15 - or part of the CHDO set-aside because it's going to affect the answer?

Valerie Fontaine: What I'm talking about is the CHDO set-asides of HOME funds that they received. And my question is when it goes to the selling of the house we - our understanding was that on an NSP house there's no profit to be earned. They can only earn the developer fee.

So the question has come up when they're using their CHDO set-aside funds as a part of the rehab and then NSP funds for the acquisition when it gets time to sell that house can they keep the proceeds from the sale after they pay NSP back or does that - those funds have to be returned back to the HOME program?

Marsha Tonkovich: Well first they don't have to pay NSP back. That's kind of where I was going.

John Laswick: Yes.

Valerie Fontaine: Well our funds are structured as a loan. So we...

Marsha Tonkovich: Okay. Well that's - okay and so then that's a policy call. And yes you can definitely pay the NSP funds back.

And so what's left that they get - after they pay back NSP what you're saying is that what's left can they count it as CHDO proceeds?

Valerie Fontaine: And can they just walk away with it?

Marsha Tonkovich: Okay. So I think it would depend upon you'd have to look at the proportion of the investments that both HOME and NSP originally put in.

And let's say that, you know, HOME was 50% and CHDO was 50%. HOME was 50% and NSP was 50%.

If you wanted to pay back the full 50% that was NSP with the 50% that was HOME, then yes that would be CHDO proceeds and it would follow assuming, you know, CHDO set-aside activity it would follow all the normal CHDO proceeds rules.

So it - they can't just walk away with it. They have to use it for an affordable use for that first iteration and all the other CHDO proceeds rules.

But the first thing you'd have to do is figure out of the amount of revenue that comes back to the developer to the CHDO what part is NSP and what part is HOME?

And then you can handle the NSP however you want to handle it if you want to let them keep it or want to make them pay it back.

And if they keep it of course there will have to be some constraints about how they can - what they can do with it.

Valerie Fontaine: All right.

Marsha Tonkovich: Or and then for the HOME part, you know, again, the pro rata share that's HOME you could count it as proceeds.

Valerie Fontaine: So they can retain those funds as CHDO proceeds? It's not looked at as profit? Because early on in the program I had asked this question and we were told that that's considered profit and so no, they're not allowed to retain that money.

Marsha Tonkovich: I mean Ginny would you disagree with what I said?

Virginia Sardone: I wouldn't disagree with what you say from the HOME perspective. I can't comment on whether the NSP program would call it profit or not.

John Laswick: Yes I was going to say we - I mean you - developers can earn profits. It's sub recipients that can't. So when you say that your project's structured as a loan, I mean if you're CHDO is an effect a sub recipient as far as NSP is concerned then they can earn a profit.

But if they are truly a developer and you've underwritten it as a developer they can get a fee which typically is going to cover their costs and their overhead and so forth but they can also earn a reasonable profit.

Now a lot of times that's rolled into the developer fee but I mean there's no prohibition per se on profit.

Marsha Tonkovich: Right. So that's where I was first going with it is you guys can decide as a city that you don't want to handle it this way.

But you could allow the CHDO to keep the NSP proceeds, the part of the proceeds that are attributable to NSP and just dictate that they have to reuse it in a certain way. You don't have to make them pay it back to the city although you could.

Valerie Fontaine: Okay. So...

Female: Would you mind also...

(Crosstalk)

Valerie Fontaine: Challenging to me is that it's the part that I just heard on that they can earn a profit because everything that we've always been told was they can earn a developer fee but developers cannot earn an additional profit.

You have to sell it at cost and they can only earn the developer fee. And that developer fee has to be reasonable. Even if you call that profit that, you know, they can't earn the developer fee and then also profit on the house.

John Laswick: That's right.

Valerie Fontaine: I feel like I'm hearing something different right now.

John Laswick: Yes a developer fee does include profit and overhead but...

Valerie Fontaine: Right.

John Laswick: ...you know, it's they're not - you know, it depends on how you calculate it so...

Marsha Tonkovich: And...

David Noguera: Yes I mean...

Marsha Tonkovich: Okay.

David Noguera: ...every grantee is going to take a different approach. Some may squeeze the fee and allow them to keep more if they - of the excess revenue at the end of the deal. Others may inflate the fee and take any revenues that remain at the end of the deal.

Valerie Fontaine: And that's the way we go. That's...

David Noguera: Okay.

Valerie Fontaine: ...not our way.

David Noguera: The main thing that we're going to be looking for is compliance with the OMB circulars which are reasonable costs.

So at the end of the day whatever it is you're letting the developer keep right, is that reasonable?

John Laswick: And are they unduly being enriched?

David Noguera: Right.

Marsha Tonkovich: And so keep in mind that in the deal that you're talking about which has HOME and NSP money in it you're triggering the subsidy layering requirement of the HOME statue.

Valerie Fontaine: Right.

Marsha Tonkovich: And so you have to make a determination about the level of return that you are providing to the CHDO based upon their investment which a lot of cases is none and, you know, the risk which with other people's money is also none.

So, you know, the CHDO proceeds, the amount of CHDO proceeds that you're permitting them to take is part of that return to the developer.

So, you know, I would say that if you're allowing the CHDO to retain the proceeds of the sale then, you know, that affects or that certainly affects whether or not they should be getting a developer fee.

John Laswick: Yes it's really the whole package. You know, you're underwriting the entire deal so, you know, all the way through. And so there's going to be operating revenues and, you know, there may be some operating profits.

And then there's going to be repayments of various things. So the underwriting on a project like that really has to be looking at the entire deal for the entire lifetime of the project.

David Noguera: The other thing I was going to add is that to the extent that you're allowing them to keep revenues that exceed costs in the deal.

You may also choose to put some strings attached to that, right? So they may have to be used...

Valerie Fontaine: Okay.

David Noguera: ...for other NSP eligible activities rather than just profit, right?

So there's different ways you can structure the deal to both compensate the developer for their services and ensure that the federal funding that went into the deal are being used reasonably.

Marsha Tonkovich: Okay. So we'll move on to a couple of the written in questions since we only have about 15 minutes left or so.

So we have a question from Mike which is under the recapture method when a voluntary sale occurs during the affordability period and net proceeds clause is in use is there a requirement that the property be sold at fair market value i.e., can I sell the home to my cousin for $50,000 less than its value?

What about a short sale scenario? Can it be sold whenever the - for whatever the principal lender agrees to?

So the answer is there is no sale price cap or minimum on a recapture situation. They can sell it to anybody at any price.

I think you would want to be a little careful about this selling to my cousin to kind of game the system I - perhaps that's a conflict of interest. I don't know how HUD would feel about that one.

But, you know, I can sell it to anybody for any price. So what do you guys think about this idea of selling to the cousin for below market value?

Virginia Sardone: I think you should put into your agreement with the home buyer that they can sell to any willing buyer for, you know, the price that the market will bear.

Marsha Tonkovich: Right.

Virginia Sardone: Prevent a fire sale to grandma.

Marsha Tonkovich: Okay. And then the question about short sale guys, how do you feel about if they get into trouble during the affordability period and they and a lender agree to a short so price are we okay with that?

John Laswick: I'm not sure I understand how that works. We're - how - where do we come in on that?

Marsha Tonkovich: Well you have an NSP units that is under an affordability restriction and they get in trouble during the affordability period.

John Laswick: They're doing a short sale?

Marsha Tonkovich: They're going to do a short sale of that unit which would obviously be a lower - it would be lower than market value. So there would be a reduced price it was being sold for.

(Crosstalk)

Virginia Sardone: If it's lower than market value why are they doing a short sale?

Marsha Tonkovich: I think just to, you know, to get out of the deal, to get - to be done.

John Laswick: To get on the road.

Virginia Sardone: I know but what I'm saying is if I - you know, if - I mean you do a short sale if you're behind on your mortgage and you owe more on your mortgage than the property is worth.

So I don't understand - so I don't really think that's a scenario that we would face. But from the HOME perspective, you know, if you're, you know, if you've limited your recapture to net proceeds which is what the HOME regulations require and what you've picked up in - what's been picked up in NSP then if the proceeds are zero than that's what is due back.

But I think in a short sale situation I mean I suppose it’s possible but not very common that you would have a short sale where the unit was worth more than you were selling it for.

Marsha Tonkovich: Yes and I don't think that's the situation. I think it's more that it is - it’s worth less than what your debt is.

Virginia Sardone: Right.

Marsha Tonkovich: But you and the lender, you know, the lender and in the interest of expediency or, you know, negotiation, the lender’s pushing you, you agree to a sale price that's less than what it might go for on the open market.

And you’re right it’s probably not likely to...

John Laswick: Right.

Marsha Tonkovich: ...happen but I suppose it could happen.

John Laswick: Yes I don't think our conflict rules would cover something like that. I mean this is one of those headline test cases, you know, where I mean if you're in the second position for example with your NSP funds you're going to have to agree to the short sale too just like the first lender.

And I guess you could have some control at that point over, you know, the appropriateness of the price or something like that. But I don't - I guess you have to kind of write that in. And I'm not sure how many of those cases we're really going to have so I don't know.

Marsha Tonkovich: All right well in the interest of time I'll keep going to the other questions we have.

John Laswick: NSP 4 question so...

Marsha Tonkovich: Okay. So the next question comes from Valerie. Can you discuss how program income is calculated on a home buyer new construction house that has development subsidy over the market value?

Can the development subsidy be deducted from sales proceeds? So I'm not sure I totally understand. Do you guys understand the question?

John Laswick: Well the development subsidy is by definition above market value. So you're never going to see that.

The only thing you're going to see is anything that's below - any subsidy that's left below the market value. So I don't think you're going to encounter that situation.

Marsha Tonkovich: Okay. Yes it doesn't - if it doesn't - if it's a development subsidy think of it as this sunk cost in the deal. I don't think you're going to want to somehow subtract the development subsidy from the proceeds of sale because you're not going to get it - you're not - the value of the property isn't going to account for the development subsidy. It's already in the deal. It's just gone.

John Laswick: Yes. And Marsha let me make another comment because we've seen any number of situations where the agency, the NSP agency is putting money in and they may have - they may cover 100% of the costs, let's say it's a new construction project.

And then they have - so let's say they have $150,000 in it and the market value's $150,000, and they sell it for $150,000, or let's say the market value's - they sell it for $100,000 which is the market value.

So it costs them $150,000 they sell it for $100,000, it's appraised for $100,000 that all goes away and the buyer is getting $100,000 house for $100,000.

And you say to yourself well now I've got to count $50,000 as the development subsidy or $150,000 as a development subsidy is that fair?

And then in many cases it won't seem fair. And it is possible to make a modest direct subsidy investment and turn that into a recapture situation.

Because I mean that's a difficult deal to sell to people, you know, wherein in effect they're not really benefiting at all from the - I mean they're indirectly benefiting from that development subsidy but they're paying full price for unit.

So, you know, we don't encourage you to, you know, to game the system that way but there's there are some times when it's going to be more appropriate to have a recapture, a modest level recapture than to attach an artificially high resale restriction on a property.

Yes that's something we've learned under the HOME program and it's been true there as well.

So in that example you gave John you'd have a 15 year affordability period on a unit that the home buyer bought for the market price.

John Laswick: Right.

Marsha Tonkovich: Whereas if what you did on top of that is take back out of the development financing, take back, you know, $5000 of down payment subsidy let's say so that the family got $5000 of direct benefit, you know, the note to them for the down payment of the closing costs or whatever.

Now you have the option of choosing recapture. And if that's the case then they're going to have a five year affordability period based on that $5000 which is probably a lot more reasonable for somebody who bought the house at market.

John: Right.

Marsha Tonkovich: So good point. Okay on next question. To what extent does a literal reading of 92252 which is the HOME rules that relate to rentals apply to NSP?

For example 92252 limits renter to no more than 80% AMI and requires low rents on 20% of the units.

Again for the purposes of 92252 are mobile properties under common ownership and financing a single project?

So I think that the way that NSP has interpreted the HOME rules is as we have described them here. It's not every single subsection of 92252 which is the HOME rule that applies directly to NSP.

So for...

John Laswick: Right.

Marsha Tonkovich: ...example the 80% limit doesn't apply.

John Laswick: Yes it's only Sections A, C E and F which is one of the reasons that we don't - that we can track tenant income at turnover instead of annually because the annual requirement is in one of those letters that we're not required to follow.

Marsha Tonkovich: Right. Okay follow-on question from this person. In a situation where have a single family rental that is non - I think it's non-low income - oh I see, a single-family rental that's non-low income that is later rented to a tenant that is at or below 50.

So it's originally up to 120 and then later on the tenant is below 50 of AMI. May you use either the low home rent or the high home rent?

And so I would think the answer - and John jump in here -- is it depends on what you put in your action plan.

So, you know, if this is a regular unit, it's not an LH25 unit, it's a regular old unit and you said that in our regular old NSP units we're going to charge the high home rents than yes you can charge the high home rents.

If you said we're going to base the rent of the income - I'm sorry the rent of the unit based on the income of the tenant then you would follow that rule.

So I think it depends on how you set up - what you defined as affordable rent in your action.

John Laswick: I mean if you if you're using a low home rents for the people below 50% of median, you know, those people can't afford the 120% rent. You know, they're - I mean they're not going to - you're not going to rent that unit at that original rent. So you're going to have to adjust down to whatever rate you charge for that income band.

Marsha Tonkovich: But I think you're not required, you know, if it was not originally an LH25 unit it wasn't originally a very low-income unit and that happens to be the next person who comes to apply you're not required to turn it into an LH25 unit.

John Laswick: No you're not. But you - but you're not - you're also not going to rent to somebody for the previous rent so...

Jessie Handforth Kome: But Marsha this is Jessie Handforth Kome. The other way to answer this is to say that neither the low home rent or the high home rent unless the grantee applies them to itself apply.

Marsha Tonkovich: Right.

Jessie Handforth Kome: They can define affordable rent completely differently. So you really, really have to look at the action plan.

Marsha Tonkovich: Right. Yes they don't view Jessie that's what I said earlier. It's the same thing.

John Laswick: We'll amend it if it's not working for you.

Marsha Tonkovich: Yes. So I think - what I think what the person's getting at is do I have to adjust my rent schedule depending on the individual household who presents themselves to rent this unit?

And the answer is no. If they can't afford the rent they won't choose to rent the unit. So you decide what your rent schedule is in your action plan.

John Laswick: Right.

Marsha Tonkovich: Okay the next question. Can you overlap HOME and NSP in units or must you only designate the number of units proportional to the funding assistant?

So could you have a unit which is both HOME and NSP or do you have to have NSP units over here and HOME units over there?

And the answer is you could overlap them. So you can have a unit, home buyer unit or a rental unit which is both - which complies with both sets of rules.

However if you do that then you do have to comply with both sets of rules and so you'd have to look at from the various components of compliance which rule is more stringent.

John Laswick: Right. And, you know, I know - I know that's just from watching Ginny and I know she's been reviewing the last two questions that we had.

We'll have a rather extensive handbook coming out hopefully very soon that'll get into some of these details for people because it's a little bit more complex than you can always get through on a webinar so hang in there.

Marsha Tonkovich: There's just a couple more and we'll call it good for today. The next one is assume a five unit building that the PJ is funding two NSP units and a sub recipient providing HOME for three units.

I assume it's a combined IDIS and DRGR reporting equals five units, two within DRGR and three within IDIS versus ten.

That I have to defer. Jessie are you still there?

John Laswick: Yes it's - she was looking the other way. So it's a cumulative how do you count two units of HOME and three units of NSP? Is it five total units or is it ten total units?

Marsha Tonkovich: So is it five in DRGR and it's five in IDIS or is it three in DRGR and two in IDIS?

Jessie Handforth Kome: In IDIS I believe it's the HOME unit. I think they're looking for the total units if it's in a single project. But HOME counts benefit based on per unit and the unit subsidized right. So I'm not quite as up to speed on how they handle the reporting.

I know that Peter does seem to know - that the HOME ((inaudible)) does seem to know the total units in the building even though they also know the numbers they assisted.

In DRGR we want the total units in the structure in the project. If you're using the regular CDBG rules without the waiver that we provided as an alternative then we need the total units in the structure and the NSP assisted units.

If you are taking advantage of the ability to use the HOME, the waiver where we allow you to use the HOME count then you would just count the units that you subsidized with NSP.

Marsha Tonkovich: Okay so you would just count the assist - the NSP assisted units?

Jessie Handforth Kome: It depends on which path you've decided to meet the national objective whether you're taking advantage - I forget which notice we publish that waiver in.

It's in the - we actually - we went over earlier in the webinar. It's the ten. It's the October...

Jessie Handforth Kome: Oh it's October. It's the October 2010 one?

Marsha Tonkovich: Yes.

Jessie Handforth Kome: Okay. So that's relatively late in the day. And if you use the 51% rule which is the structure rule for regular CDBG and you combined with the NSP requirement you end up with a rule that all of the units have to be at or under 120% of median just because of the way, (Hara) works.

And that's why the waiver is there so you can do the proration.

Marsha Tonkovich: Okay. So in DRGR you'd report and on the prorated units?

Jessie Handforth Kome: Yes.

Marsha Tonkovich: Okay. All right good. Good okay.

Jessie Handforth Kome: In a multifamily structure or I mean single family's easiest of course.

Marsha Tonkovich: Right, right. Okay great. Thank you Jessie. Okay so the next question from Anne Chaney is for a lease purchase unit may we begin the affordability period principal occupancy at the time of the occupancy rather than at the time of the sale?

The sub grantee operating lease purchase program would be the unit owner during the lease phase but the unit would be occupied by income eligible tenants.

So under HOME we would income qualify them at the beginning of the lease purchase period. And if it took them three years or whatever it was to buy the unit we wouldn't have to re-qualify them three years from now as long as they were initially qualified.

John Laswick: I don't know about the getting the affordability period however. I think the affordability period would happen at the time of transfer of title. Ginny would you - how would you handle that under HOME?

Ginny had to leave so we're not sure. I thought that it started at the time of occupancy but I'm not - I don't have my HOME regs here so but ((inaudible)) desk. Let me look it up.

Marsha Tonkovich: Okay. Anne and if you don't mind Anne you might also want to put that into the Ask a Question box and so we can get out an official answer on that.

John Laswick: And I grabbed the wrong book.

Marsha Tonkovich: Anne they're looking it up. So while they're looking it up I'll keep going.

John Laswick: We have the wrong book.

Marsha Tonkovich: Okay. Well we can - Anne, just put the question into the Ask a Question and we can get an answer out.

Okay the next one is from Lynn Smith. If you have to recapture the difference between the total development cost and our higher appraised amount does it not conflict with the requirement that the sale price cannot exceed the total development cost?

Okay so in this case what she's saying is if the total development cost is 120 but you happen to be one in those few markets where the value is actually greater than 120, where the value is 150 so it's worth one - you know, it costs you 120 to build it but it's actually worth 150 when you go to sell it, then does having that extra debt would mean you'd have more debt on the property then it was actually worth which is not what we're supposed to be doing under NSP.

And so again Ginny had to go but I would think and I'd let John and David jump in here, I would think that in that instance where the TDC is actually less than the market value and so you're going to cap the sell price at the TDC, it's - your development subsidy is not what caused that market write-down because your development subsidy is - there isn't any excess subsidy. It's below the value.

And so in that instance I don't think you do have to recapture the difference because you didn't cause the write-down to occur.

The write-down occurred because of the market. So I - in that instance I don't think you would apply it. John and David what you think?

John Laswick: Yes I think that's true. That situation creates a lot of problems. But I mean in effect that's a - that's kind of a development subsidy too.

And it, you know, you - but it might be helpful if you wrote that in with a few more details and let us chew over it.

Marsha Tonkovich: Okay. So Lynn if you could write it in we could give a more official answer but you - in the rest of your question you note that there's another webinar where it says that the sale price has to be the lower of the TDC or the value which is true. That is correct.

The question is whether not you have to - whenever you have to just sort of take a note for that extra amount, the value and the...

John Laswick: Let me back up Marsha. That - no you don't have to. In fact we - you're prohibited from taking a note from that because in effect you'd be charging the family for...

Marsha Tonkovich: Right.

John Laswick: ...more than they paid for the house.

So you'd be putting them - I mean even though the market value might be there you'd be creating a situation where - well I don't know, no, I'm sorry my brain is kind of fried right...

Marsha Tonkovich: Right, and that's what I was saying earlier that I don't think in this instance where the value is higher is - I'm sorry is higher than the TDC which again doesn't happen very often in our program.

But if the value is higher than the TDC I think it would be problematic to take a note for the difference because you didn't cause that write-down to occur.

John Laswick: Right. I'm pretty sure that's what we've been saying. And, you know, at the same time I'm thinking to myself well I mean then how do you prevent a windfall in the sense that they can go out and sell that for, you know, so in that kind of situation may be what you want to do is a shared appreciation kind of arrangement where you're not putting a lien on anything that exists now but

you're taking a share of future appreciation as a way to, you know, recognize that there is some value that’s being left in here and also to prevent windfalls.

We see this with Habitat a lot too because, you know, they build a house really cheap and then, you know, it appraises for quite a bit more and it creates this sort of zone of uncertainty between the market value and what they could sell it for under our program.

So it sounds like we don't really have a clear answer for you Lynn. So I would say Lynn if you could write in some specifics, like give us a specific example with some numbers, write it into an ask the question desk and you can see that the link is - if you could write it in I think we could get you a more clearer answer.

So and then for everybody else's who’s listening who might be in that same kind of market -- and again it doesn't happen to us very often -- but if you are I think you can get added to the FAQs so watch for that.

So I would say Lynn we don't really have an answer for you quite yet.

Okay so Maureen is the last one. So Maureen’s question is a previous caller had a question about selling to anyone for any price during the affordability period. I thought they could only sell to another income qualified person during the affordability period?

So the answer Maureen is it depends on whether it's resell or recapture. The person’s question before was about recapture. And under recapture you can sell to anybody at any price so any income, any price. It's about the money coming back.

Under resale however you are restricted. You have to - you do have to sell it at an affordable price to another income qualified person. So the answer depends on which methodology you're using.

So I think that's all the questions that we have. We may have a few more queued up but I think given that we’re at 4:08 I'm going to call it a day.

But I - this was a really great webinar, lots of good content. And I appreciate all the really good questions you guys had. John and David anything else you want to add?

John Laswick: No. I just want to give a thumbs-up to the NSP2 grantees who spent close to 4% of their funding, total funding last month.

The curve is going up so we know people are paying attention. And we feel it’s still going to be a challenge but let us know if there's anything that you need to help you meet that 50% expenditure requirement in by February 11th?

Marsha Tonkovich: Yes. Thank you, John, very much. And yes, remember that there is the ability to request technical assistant on the Web site as well if you do you need help or to send in questions.

And we’d like to hear from you about what you thought about this if this was helpful, not helpful, too much detail, too little detail.

So please feel free, fill out the survey otherwise we can email that you. Let us know other courses you want, what you like, what you didn't.

We read every single one of these so we really appreciate the honest feedback. So please do let us know.

And then lastly in closing there is a guidebook that's been written that covers the content that I just covered.

It's being finalized. It should be out fairly soon so watch for it on both the HOME and the NSP Web site. And it will give you a lot more detail than we were able to cover here. So I encourage you to look at that.

So thanks everybody for joining us. Have a great afternoon. And talk to you on the next webinar.

Operator: Thank you. And again, ladies and gentlemen, that does conclude our conference for today. We thank you for your participation. You may now disconnect.

END