



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF THE ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

April 10, 2020

MEMORANDUM FOR: All CPD Field Division Directors, Deputy Directors, and Program Managers

FROM: John Gibbs, Acting Assistant Secretary for Community Planning and Development (D)

SUBJECT: Suspensions and Waivers to Facilitate Use of HOME-Assisted Tenant-Based Rental Assistance (TBRA) for Emergency and Short-term Assistance in Response to COVID-19 Pandemic

This memorandum provides guidance and the necessary statutory suspensions and regulatory waivers to enable HOME participating jurisdictions (PJs) affected by the Coronavirus Disease 2019 (COVID-19) pandemic to use HOME tenant-based rental assistance (TBRA) funds to facilitate urgent housing assistance to the communities and families experiencing financial hardship. The memorandum is divided into two sections. Section I addresses PJs located in the areas covered by a major disaster declaration made under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). Section II describes regulatory waivers available to all HOME PJs not just those PJs included in a major disaster declaration. Provisions that are not specifically suspended or waived remain in full effect.

While HOME program funds are primarily a resource for the physical development of affordable housing, the Department recognizes that the COVID-19 pandemic has caused widespread economic damage and created an unprecedented need for housing assistance among individuals and families directly affected by these unanticipated economic changes. The suspensions and waivers provided in this memorandum will allow PJs to use HOME funds for TBRA to individuals and families experiencing financial hardship as a result of the COVID-19 pandemic, including 1) providing immediate rental assistance to individuals and families seeking housing, 2) assisting households that have housing but face reduced or lost wages, and 3) assisting existing TBRA families that need additional assistance due to reduced or lost wages.

CPD Field Offices shall inform PJs of the availability of these suspensions and waivers. A PJ that intends to implement the HOME statutory suspensions and/or regulatory waivers identified below must send written notification via e-mail to the CPD Division in its local HUD Field Office before it implements the waiver and/or suspension. This written notification must identify which suspensions and/or waivers the PJ plans to use.

Waiver and Suspension Authority

Section 290 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA), as amended, authorizes HUD to suspend, respectively, HOME statutory requirements to assist PJs in addressing the damage in an area for which the President has issued a major disaster declaration under Title IV of the Stafford Act and to assist them in disaster recovery.

Upon determination of good cause, in accordance with 24 CFR 5.110, HUD may waive regulatory provisions subject to statutory limitations. These provisions provide HUD the authority to make waiver determinations for the HOME program.

I. Statutory Suspensions and Regulatory Waivers Available Only to Major Disaster Areas

Pursuant to the authority provided in Section 290 of NAHA and 24 CFR 5.110, I hereby find good cause, as stated in the justifications that follow, to suspend HOME statutory requirements and waive related regulatory requirements specified below for PJs covered by a major disaster declaration under the Title IV of the Stafford Act as a result of the COVID-19 pandemic.

Consolidated Plan – HOME Certification, Analysis of Local Market Conditions, and Citizen Participation

Citations: Section 212(a)(3)(A)(i) of NAHA and 24 CFR 92.209(b)
24 CFR 91.105(c)(2) and (k), 24 CFR 91.215(b)(1) and (e) and 24 CFR 91.225(d)(1) (Local governments),
24 CFR 91.115(c)(2) and (i), 24 CFR 91.315(b)(1) and (e) and 24 CFR 91.325(d)(1) (States),
24 CFR 91.401, 24 CFR 91.415 and 24 CFR 91.425(2)(i) (Consortia), and
24 CFR 91.235(e) and 24 CFR 92.61 (Insular Areas)

Explanation: Section 212(a)(3)(A)(i) of NAHA requires that a PJ that intends to use HOME funds for TBRA certify that the provision of such assistance is an essential part of its Consolidated Plan based on an analysis of local market conditions. This requirement is codified in 24 CFR 92.209(b) and for Insular Areas 24 CFR 92.61, as well as in the Consolidated Submissions for Community Planning and Development Programs regulations at 24 CFR 91.215(b)(1) and (e) and 91.225(d)(1) (for local governments), 24 CFR 91.315(b)(1) and (e) and 91.325(d)(1) (for States), and 24 CFR 91.415 and 91.425(2)(i) (for Consortia). When amending its Consolidated Plan, a PJ must follow the citizen participation plan it developed and adopted in accordance with 24 CFR 91.105(c)(2) and (k) (for local governments), 24 CFR 91.115(c)(2) and (i) (for States), 24 CFR 91.235(e) (Insular Areas), and 24 CFR 91.401 (for Consortia). The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given and provide a period of not less than 30 calendar days to allow citizens to submit comments.

This suspension will eliminate: 1) the requirement for PJs to amend their Consolidated Plans to include or revise an analysis of local market conditions before implementing a TBRA program; and 2) the requirement that PJs certify that the use of HOME funds for TBRA is an essential element of the Consolidated Plan and that it has conducted an analysis of local needs. PJs that choose to use HOME TBRA to

address the urgent housing needs resulting from the COVID-19 pandemic may do so by amending their Annual Action Plan to reflect the use of HOME funds for TBRA without meeting these requirements.

Justification: Given the unprecedented economic disruptions and associated job losses caused by the COVID-19 pandemic, there is an urgent need for TBRA assistance in communities across the country. Requiring PJs to conduct an analysis of local market conditions, amend their Consolidated Plan, and complete the required public comment period would cause undue delays in commencing TBRA programs to address the urgent and growing need. PJs must have the ability to respond immediately to the unprecedented housing needs created by the COVID-19 pandemic.

Applicability: This suspension and regulatory waiver is applicable to a PJ's current 5-year Consolidated Plan and any Consolidated/Action Plans being amended to reprogram funds to TBRA to address housing needs related to the COVID-19 pandemic.

Tenant Selection and Targeted Assistance

Citation: Section 212(a)(3)(A)(ii) of NAHA, 24 CFR 92.209(c) and 24 CFR 92.64(a) (Insular Areas)

Explanation: Section 212(a)(3)(A)(ii) of NAHA requires a PJ to establish written tenant selection criteria for its TBRA program. In accordance with 24 CFR 92.209(c), or 24 CFR 92.64(a) for Insular Areas, those criteria must be consistent with the local housing needs and priorities established in the PJ's Consolidated Plan. This suspension will eliminate the need for PJs to develop or revise written tenant selection criteria and will allow PJs to assist individuals requiring immediate housing assistance as a result of the COVID-19 pandemic.

Justification: Given the sudden onset and severe effects of the COVID-19 pandemic, PJs could not anticipate the urgent, widespread housing needs created by the pandemic or reflect those needs and priorities in the Consolidated Plan. Suspending this provision will provide PJs with greater flexibility to expeditiously use TBRA as a resource to assist individuals and families affected by the COVID-19 pandemic.

Applicability: Suspending Section 212(a)(3)(A)(ii) of NAHA and waiving 24 CFR 92.209(c) and 24 CFR 92.64(a) for Insular Areas eliminates the requirement for PJs to establish new or revise existing tenant selection criteria for the HOME TBRA program. The statutory suspension and regulatory waiver are in effect through December 31, 2020, for TBRA provided in response to the COVID-19 pandemic. However, a PJ must document its criteria for selecting individuals and families to be assisted by the TBRA program.

II. Regulatory Waivers Available to All Participating Jurisdictions

The following regulatory waivers are available to all PJs, not just those PJs covered by a major disaster declaration under Title IV of the Stafford Act. Pursuant to the authority provided in 24 CFR 5.110, I hereby waive the HOME regulatory requirements specified below for all HOME PJs.

Citizen Participation Reasonable Notice and Opportunity to Comment

Citation: 24 CFR 91.105(c)(2) and (k) (Local governments), 24 CFR 91.115(c)(2) and (i) (States), 24 CFR 91.235(e) (Insular Areas), and 24 CFR 91.401 (Consortia)

Explanation: The regulations at 24 CFR 91.105(c)(2) and (k) (Local governments), 24 CFR 91.115(c)(2) and (i) (States), 24 CFR 91.235(e) (Insular Areas), and 24 CFR 91.401 (Consortia) set forth the citizen participation requirements for PJs. For substantial amendments to the Consolidated Plan, the regulations require the PJ to follow its citizen participation plan to provide citizens with reasonable notice and opportunity to comment. The citizen participation plan must state how reasonable notice and opportunity to comment will be given. This waiver will permit PJs amending their plans as a result of the COVID-19 pandemic to reduce the comment period to 5 days.

Justification: Given the unprecedented economic disruptions caused by the COVID-19 pandemic, the need for this type of assistance in communities across the country is clear. Requiring these PJs to complete the required public comment period would cause undue delays in commencing TBRA programs to address an urgent and growing need. PJs must have the ability to respond immediately to the unprecedented housing need caused by the COVID-19 pandemic.

Applicability: This waiver applies to any approved Annual Action Plan being amended to reprogram funds to TBRA to address housing needs related to the COVID-19 pandemic.

Rent Reasonableness

Citations: 24 CFR 92.209(f) and 24 CFR 92.64(a) (Insular Areas)

Explanation: In accordance with the HOME regulations at 24 CFR 92.209(f), a PJ must disapprove a lease if the rent is not reasonable, based on an assessment of rents charged for comparable unassisted rental units. The HOME regulations at 24 CFR 92.64(a) applies this requirement to Insular Areas. This waiver will permit PJs to provide immediate rental assistance to individuals and families seeking housing and assist individuals and families that have housing but are experiencing reduced or lost wages, without requiring an assessment of rents charged for comparable unassisted rental units.

Justification: Given the unprecedented need for rental assistance for individuals facing financial hardship during the pandemic, requiring PJs to conduct a rent comparison prior to providing rental assistance presents an undue administrative burden. PJs must focus on providing immediate housing for income-eligible individuals currently not in stable housing, as well as assistance to income-eligible individuals that currently have housing, but are unable to pay rent and/or utilities due to lost or reduced wages. In the latter case, some households affected by sudden economic disruptions may be occupying housing with rents that would exceed a PJ's established rent reasonableness standard. Without this waiver, those households could not be assisted with HOME TBRA.

Applicability: This waiver is applicable to TBRA provided to individuals and tenant households experiencing financial hardship because of a reduction or loss of income. This requirement is waived through December 31, 2020, for TBRA provided in response to the COVID-19 pandemic. PJs using this waiver authority must execute a rental assistance contract with the owner or tenant.

Eligible Tenant-based Rental Assistance Costs and Maximum TBRA Subsidy

Citation: 24 CFR 92.209(a) and (h) and 24 CFR 92.64(a) (Insular Areas)

Explanation: The HOME regulations at 24 CFR 92.209(a) state that eligible TBRA costs include rental assistance and security deposit payments made to income-eligible households. PJs can also use HOME funds to provide utility deposit assistance if such assistance is provided in conjunction with TBRA or a security deposit payment. The amount of monthly utility costs included in HOME TBRA is limited by the utility allowance established by the PJ for its TBRA program, irrespective of whether those utilities are paid by the landlord or the tenant.

In accordance with 24 CFR 92.209(h), the maximum amount of monthly assistance a PJ may pay to, or on behalf of, a tenant, may not exceed the difference between the PJ's rent standard and 30 percent of the tenant's monthly adjusted income. The PJ must establish a minimum tenant contribution to rent, and a rent standard that is based on local market conditions or the subsidy standards under the Section 8 Housing Choice Voucher Program. The HOME regulations at 24 CFR 92.64(a) apply these requirements to Insular Areas.

This waiver will allow PJs to pay the full cost of monthly utilities in addition to rental assistance and security deposit payments for new and existing TBRA families affected by the COVID-19 pandemic. PJs may provide up to 100 percent subsidy for rent, security deposit payments, and utility bills paid by tenants affected by a reduction or loss of income from the COVID-19 pandemic. The waiver also eliminates the need for the PJ to establish utility allowances for different types and sizes of units for its TBRA program, which eliminates a significant administrative burden.

Justification: The COVID-19 pandemic has caused widespread loss or reduction of income, significantly affecting the financial stability of households, including existing TBRA families, and rendering many unable to pay rent and/or utilities. Households must be able to maintain the basic utilities required to ensure housing remains safe and sanitary. Permitting PJs to use HOME funds to pay for utilities will enable affected households to maintain decent, safe and sanitary housing, which necessarily requires electricity, water, and/or gas service during the pandemic.

As individuals experience financial hardship, the amount of assistance required to ensure they remain housed will often exceed the PJ's payment standard. In addition, individuals may be unable to pay the PJ's minimum required tenant contribution toward rent. Requiring PJ's to establish or revise payment standards and the minimum tenant contribution to rent policies in the current emergency would be burdensome and delay the provision of TBRA in response to the pandemic.

Applicability: This waiver is applicable to TBRA provided to individuals or families experiencing financial hardship, including existing TBRA families that have experienced a loss or reduction in income due to the COVID-19 pandemic. This requirement is waived through December 31, 2020, for rental assistance provided in response to the COVID-19 pandemic. PJs using this waiver authority must execute a rental assistance contract with the owner or tenant for a term mutually agreed upon by all parties, but not to exceed the December 31, 2020, waiver period. The PJ may make utility payments directly to the tenant or utility company based on utility bills submitted for the assisted unit, either by mail or electronically.

Term of Rental Assistance Contract

Citation: 24 CFR 209(e) and 24 CFR 92.64(a) (Insular Areas)

Explanation: The HOME regulations at 24 CFR 209(e) state that the term of the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a PJ and an owner, the term of the contract must terminate upon termination of the lease. For a rental assistance contract between a PJ and a family, the term of the contract is not required to terminate upon the termination of the lease, but no payments may be made after lease termination until the family executes a new lease. The HOME regulations at 24 CFR 92.64(a) apply these requirements to Insular Areas. This waiver eliminates the requirement that the rental assistance contract must begin on the first day of the term of lease.

Justification: This waiver is necessary to enable PJs to assist tenants that are currently housed, including existing TBRA households, but have experienced sudden financial hardship as a result of the COVID-19 pandemic. Because affected households already have an executed lease, it is impossible for the TBRA contract to begin on the first day of the term of the lease

Applicability: This requirement is waived through December 31, 2020, for TBRA provided in

response to the COVID-19 pandemic. The PJ's requirement to execute a rental assistance contract with the owner or tenant is not waived. PJs using this waiver authority must execute a rental assistance contract with the owner or tenant for a term mutually agreed upon by all parties, but not to exceed the December 31, 2020, waiver period.

Tenant Protections – Lease

Citation: 24 CFR 92.209(g) and 24 CFR 92.64(a) (Insular Areas)

Explanation: The HOME regulations at 24 CFR 92.209(g) require that each HOME-assisted tenant have a lease that complies with the tenant protection requirements of 24 CFR 92.253(a) and (b). In accordance with 24 CFR 92.253(a), there must be a lease between the tenant and the owner of rental housing assisted with HOME TBRA. The lease must have a term of not less than one year, unless both parties mutually agree to a shorter period. The lease cannot contain any of the prohibited lease terms defined in 24 CFR 92.253(b). The HOME regulations at 24 CFR 92.64(a) apply these requirements to Insular Areas. This waiver will permit PJs to assist individuals currently housed but facing financial hardship, where an executed lease is already in place.

Justification: During the COVID-19 pandemic, PJs may assist individuals that are already in rental units but are unable to pay rent and/or utilities due to job loss or reduced wages. These individuals already have an executed lease that may include one or more of the prohibited lease terms included in 24 CFR 92.253(b). Requiring PJs to immediately execute or amend leases creates an undue administrative burden and may disqualify some in-place tenants from receiving TBRA.

Applicability: In response to the COVID-19 pandemic, the requirement that a tenant assisted by TBRA have a lease that complies with the requirements of 24 CFR 92.253(a) and (b) is waived through December 31, 2020, for rental assistance provided to tenants already housed who have an executed lease. PJs using this waiver authority are required to execute a rental assistance contract with the tenant for a term mutually agreed upon by all parties, but not to exceed the waiver period ending on December 31, 2020. PJs must still comply with all VAWA requirements contained in 24 CFR 92.359 by including, at a minimum, a lease addendum that addresses all VAWA requirements.

Housing Quality Standards

Citation: 24 CFR 92.209(i) and 24 CFR 92.64(a) (Insular Areas)

Explanation: The HOME regulations at 24 CFR 92.209(i) require that all housing occupied by households receiving HOME TBRA must meet the housing quality standards (HQS) at 24 CFR 982.401. The PJ is required to inspect the unit for compliance prior to occupancy and annually thereafter. The HOME regulations at 24 CFR 92.64(a)

apply these requirements to Insular Areas. This waiver will permit the PJ to rapidly house or assist individuals affected by the COVID-19 pandemic without requiring an initial HQS inspection.

Justification: The COVID-19 pandemic has created an unprecedented need for rental assistance for tenant households facing financial hardship. PJs must act quickly to address these needs and requiring HQS inspections of all units where HOME TBRA assistance is provided would create an administrative burden and reduce PJs' ability to respond timely to the housing needs created by the pandemic. In addition, requiring initial HQS inspections would increase housing inspectors' risk of contracting or spreading the COVID-19 virus.

Applicability: This waiver is applicable to TBRA provided to tenant households experiencing financial hardship. This requirement is waived through December 31, 2020, for rental assistance provided in response to the COVID-19 pandemic. The lead-safe housing requirements of 24 CFR part 35, subpart M, made applicable to units leased by recipients of HOME TBRA by the HOME regulation at 24 CFR 92.355, cannot be waived. Consequently, units built before 1978 must undergo visual evaluation and paint repair in accordance with 24 CFR Part 35, subpart M. PJs using this waiver authority must establish procedures to minimize the risk that tenants are in housing that does not meet HQS, as well as procedures for conducting physical inspections within 120 days following the end of the December 31, 2020, waiver period.

Annual Inspection of Units Occupied by Recipients of HOME TBRA

Citation: 24 CFR 92.504(d)(1)(iii); 24 CFR 92.209(i) and 24 CFR 92.64(a) (Insular Areas)

Explanation: Provisions require PJs to annually inspect each unit occupied by a recipient of HOME TBRA.

Justification: Waiving the requirement that these annual inspections be performed according to schedule will protect the health of both inspectors and tenants by observing physical distancing recommendations to limit the spread of COVID-19.

Applicability: The waiver is applicable to annual HQS re-inspections required to occur from the date of this memorandum through December 31, 2020. Within 120 days of the end of this waiver period, PJs must physically inspect units that would have been subject to HQS inspections during the waiver period.

Income Determinations

Citations: 24 CFR 92.203(a)(2) and 24 CFR 92.64(a) (Insular Areas)

Explanation: The HOME regulations at 24 CFR 92.203(a)(2) require the PJ to determine a TBRA tenant's annual income by examining at least 2 months of source

documentation evidencing income and projecting anticipated income forward for the next 12 months. The HOME regulations at 24 CFR 92.64(a) apply these requirements to Insular Areas. This waiver will permit PJs to follow the regulations at 24 CFR 92.203(a)(1)(ii) in lieu of requiring a review of source documentation. The HOME regulations at 24 CFR 92.203(a)(1)(ii) allow the PJ to obtain a written statement of the amount of the family's anticipated annual income and household size, along with a certification that the information is complete and accurate.

Justification: Given the rapid and unanticipated economic disruptions caused by the COVID-19 pandemic, source documentation from the past two months may not reflect the current financial circumstances of many households. Requiring PJs to determine an individual's annual income using source documentation would be administratively burdensome, may not reflect current or anticipated income, and may result in individuals or families being incorrectly disqualified from receiving TBRA.

Applicability: This waiver is applicable to TBRA provided to individuals or families experiencing financial hardship. This requirement is waived through December 31, 2020, for rental assistance provided in response to the COVID-19 pandemic. The PJ must ensure that the tenant's self-certification indicates how the tenant's financial situation has changed, (i.e., job loss or reduced wages), and includes all income, including any unemployment or emergency benefits received by the tenant as a result of the pandemic. However, for purposes of a tenant's self-certification, emergency tax relief (commonly referred to as stimulus payments) should not be included as an emergency benefit. The PJ must include tenant income certifications in each project file.

Questions regarding this waiver should be directed to Virginia Sardone, Director, Office of Affordable Housing Programs (OAHP), or your OAHP desk officer. Participating jurisdictions and other HOME Program participants should contact the CPD Division of their local HUD Field Office.