

**To:** Gatekeepers  
**From:** Homeless Services Section Staff  
**Date:** 5/21/2020

**Please distribute to:**  Executive Directors  Fiscal Staff  Homeless Services Program Staff  
 Rental Assistance Program Staff

**Category:** Program Informational

**Message:** HTBA Waivers and HUD FAQ

### **IMPORTANT INFORMATION. PLEASE READ.**

This program notice has two purposes. The first is to provide you with the attached HUD FAQ about how the federal eviction moratorium intersects with HOME TBA assistance. This is good information for your use. HUD has also asked HOME TBA providers to communicate with their landlords. (See Question 7 in the attached document). HUD has suggested providers give a copy of the attached FAQ, or something similar, to each HOME TBA landlord.

The second purpose of this notice is to provide a correction to the HOME TBA waivers program update the gatekeeper sent out on May 6, 2020. Please see the changes below in red print.

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#### Program Update sent May 6, 2020:

We've received additional guidance from HUD for using HOME TBA during the COVID-19 pandemic. HUD has provided HOME recipients (OHCS) with a number of regulation and rule waivers. HUD is making every effort to provide immediate rental assistance to households seeking housing and assisting households that have housing but face reduced or lost wages, and assisting existing TBRA families that need additional assistance due to reduced or lost wages.

Below are descriptions of the waivers. All waivers are in effect as of May 1, 2020. They all end December 31, 2020. After that date you can continue working with your customers, but the waivers will have ended and you'll need to follow standard HOME TBA procedures.

Your agency can determine which waivers you want to use. They are all available. Any waiver your agency chooses to use must be applied to all qualifying HOME TBA applicants. In the near future, we'll send your agency a check-off list so you can tell us the waivers your agency will use.

The waivers apply only to households affected financially by COVID-19. The exception is that the waivers of HQS inspections are for all housing units.

Households' anticipated income must meet or be under the 50% AMI income threshold.

**The waivers are:**

### Income Qualification

- Waives the requirement for source documentation of income for households that have lost employment or income either permanently or temporarily due to COVID-19. The tenant must provide a self-certification of HH size and include a statement of how their HH financial estimation of the HH's annual income. Self-certifications must be signed and must include a statement that the information is complete and accurate. Income includes unemployment compensation and emergency benefits but does not include stimulus payments.
- The waiver also applies to all homeless individuals and families who are applying for HTBA rental assistance.
- Self-certification documentation must be kept in the client file.
- The subgrantee must conduct on-site rent and income reviews within 90 days after the waiver period ends.

### Initial HQS Inspection

- Waives the requirement that units pass an HQS inspection before HOME TBA assistance can be used.
- Subgrantee must establish a procedure describing steps the subgrantee will take to minimize any risks to the tenant.
- Subgrantee must prepare a procedure for conducting physical inspections. All waived initial inspections must be completed within 120 days after December 31, 2020.
- All lead-based paint activities must be completed as required.

### Annual HQS Inspections

- Waives the requirement that unit HQS inspections will be performed annually. After the waiver period, subgrantees must inspect units that would have been subject to HQS inspections during the waiver period. Inspections must be completed within 120 days after the waiver period ends.
- Subgrantees must make reasonable efforts to address any health and safety issues during the waiver period.

### Tenant Selection and Targeted Assistance

- Waives the requirement that subgrantees adhere to their written tenant selection criteria for the purpose of assisting households requiring immediate help with housing as a result of the COVID-19 pandemic.
- Subgrantees must develop written guidelines describing the criteria they will use to determine the households to be served and the services they will provide.

### Rent Reasonableness

- Waives the requirement of comparing the proposed unit's gross rent to unassisted unit rents to determine if the applicant's unit's rent is reasonable. The waiver will permit

subgrantees to provide immediate rental assistance to households experiencing reduced or lost wages due to COVID-19.

- ~~The requirement to use the FMR to determine the amount of the tenant payment does not change. A unit's gross rent can be greater than the FMR but the tenant will be required to pay any overage.~~

### Utilities

- If a subgrantee is providing HOME TBA deposit and/or rent assistance to a household affected by COVID-19, (new or existing participant), the subgrantee may pay actual utility costs instead of using a utility allowance.
- If the subgrantee issues checks for payment of utility costs, the checks must be made payable to the utility company but can be either given to the tenant or mailed directly to the utility company. If payments are made electronically, they must be sent to the utility company.

### Rent Subsidy / Rent Standard / FMR

- If a subgrantee is providing HOME TBA deposit and/or rent assistance to a household affected by COVID-19, (new or existing participant), the subgrantee may pay 100% of the cost of the deposit, rent, and **actual utility bills for costs incurred during the rent assistance period. A signed and dated rent contract must in place for the utility bills to be eligible for payment. Utility payment can be made to either the tenant or the utility company.**
- **Waives the requirement for a rent standard. For OHCS' HOME TBA program, the rent standard is the lesser of the gross rent or the FMR. This waiver means the rent standard is only the amount of the unit's rent. The FMR is not considered.**

### Term of Contract

- Waives the requirement that the HOME TBA Contract and the landlord's lease begin on the same day. Persons affected by COVID-19 who are already in housing will have an existing lease. This waiver allows the existing lease to remain in effect during the time the household receives HOME TBA assistance. The term of the HOME TBA Contract must end on or before December 31, 2020.
- The requirement that landlord leases and HOME TBA contracts are executed before any assistance can be provided is not waived.

### Tenant Protections in the Lease

- Waives the requirement that a tenant assisted with HOME TBA have a lease in which any prohibited lease terms have been stricken. This waiver applies only to tenants who were housed prior to receiving HOME TBA assistance and have been affected economically by COVID-19.
- VAWA requirements are not waived. Subgrantees must continue requiring a VAWA lease addendum.

## **FAQ – CARES Act Eviction Restrictions for HOME TBA Units**

This FAQ has been prepared by HUD to help HOME grantees understand how the federal CARES Act Eviction Restrictions affect HOME and HOME TBA occupancy regulations.

On March 27, 2020, the president signed the CARES Act (P.L. 116-136) into law. Section 4024 of that legislation imposes a temporary moratorium on evictions. This moratorium went into effect immediately upon the enactment of the CARES Act on March 27, 2020 for 120 days.

**1.Q:** Is HOME a “covered housing program” in the CARES Act (as defined in section 41411(a) of the Violence Against Women Act of 1994 (VAWA) (34 USC 12491(a)))?

**A:** Yes, HOME is a covered housing program in the CARES Act as defined by Section 34 USC 12491(a)(3)(E) of VAWA.

**2.Q:** Does the CARES Act moratorium apply to covered dwelling units in HOME-assisted projects and units occupied by recipients of Tenant-Based Rental Assistance (TBRA)?

**A:** Yes, the CARES Act eviction moratorium applies to HOME-assisted projects as well as dwelling units occupied by recipients of HOME TBRA.

**3.Q:** How does the CARES Act eviction moratorium affect covered dwelling units in HOME assisted projects or units with TBRA?

**A:** For a period of 120 days, beginning on March 27, 2020 and continuing through July 24, 2020, an owner cannot:

- Make, or cause to be made, any filing with the court of jurisdiction to initiate an eviction (e.g., an unlawful detainer action, complaint) for nonpayment of rent or other fees or charges; or
- Charge fees, penalties, or other charges to the tenant related to nonpayment of rent. If an owner did not provide the tenant with an eviction notice, including but not limited to a notice to vacate, quit, or terminate tenancy, for nonpayment of rent or other fees or charges before March 27, 2020, the owner may not issue such notice until after the 120-day period.

**4.Q:** During the CARES Act 120-day eviction moratorium period, can fees related to nonpayment of rent accumulate and be charged to the tenant after the moratorium?

**A:** No. Per Section 4024(b)(2) of the CARES Act, fees, penalties, or charges in relation to nonpayment of rent cannot be charged. Therefore, there should be no charges, penalties, or fees assessed for nonpayment of rent during the 120-day period.

**5.Q:** During the CARES Act 120-day eviction moratorium period, can monthly rent and fees and other charges (except those related to nonpayment of rent) accrue and be charged to the tenant after the CARES Act moratorium ends?

**A:** Yes, unpaid monthly rent and fees and other charges (except fees and charges related to nonpayment of rent) may accrue during the 120-day period and be charged to the tenant after the CARES Act 120-day moratorium period ends on July 24, 2020.

**6.Q:** During the moratorium period, may owners evict tenants for lease violations that are not related to nonpayment of rent, fees, or charges?

**A:** Yes, the CARES Act moratorium does not apply to evictions based on violations of permitted lease terms other than nonpayment of rent or other fees, penalties, and charges. However, the HOME regulations at 24 CFR 92.253 still apply to HOME-assisted units and TBRA units. [Subgrantees] should also review their state and local laws, as many are also enacting their own moratoriums on evictions. [24 CFR 92.253 is the HOME Rule section that describes the lease terms prohibited in the regular HOME TBA program.]

**7.Q:** How should a [subgrantee] notify owners of the CARES Act eviction moratorium?

**A:** A [subgrantee] should provide written notification to owners of ... TBRA units that the CARES Act prohibits the actions described above. In addition, [subgrantees] should direct project owners to provide tenants with information about their due process rights under the HOME Program and state/local laws and should encourage project owners to provide as much flexibility as possible to tenants with respect to repayment of delinquent rent payments after expiration of the moratorium.

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