

PUBLIC NOTICE

Special Attention: HOME Investment Partnerships Program Participants

Date: May 12, 2020

Reason: Louisiana Housing Corporation (LHC) provided notice to the HUD Local Field Office pursuant to U.S. Department of Housing and Urban Development (HUD) Office of Affordable Housing Programs/ Community Planning and Development (CPD) Division regarding CPD Memorandum 2020-04-10:

Subject: Availability of Waivers and Suspensions of the HOME Program Requirements in Response to COVID-19 Pandemic (CPD Memorandum 2020-04-10)

Background: On April 10, 2020, HUD's Office of Community Planning and Development issued a memorandum to announce the availability of waivers and suspensions of the HOME Program Requirements in response to COVID-19 Pandemic. These suspensions and waivers are intended to provide maximum administrative flexibility to participating jurisdictions (PJs) and better assist low and very low-income households as they deal the effects of the COVID-19 pandemic. A PJ that intends to implement the HOME statutory suspensions and/ or regulatory waivers identified in the memorandum must send written notification to the CPD Division in its local HUD Field Office before it implements the waivers or suspensions. The attached notice of intent was sent to the HUD Local Field Office in New Orleans, LA on May 6, 2020.

Housing Development Division: Public Notice

HOME PJ (State of Louisiana) Notice of Intent to Implement the Following HUD Issued HOME Program Regulation Suspensions and COVID19 Related Waivers:

Suspensions and Waivers to Facilitate Use of HOME-Assisted TBRA for Emergency and Short-term Assistance in Response to COVID-19 Pandemic

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

Summary of Requirement Waived	Citations (States)	Description of Waived Applicability and Requirement
Consolidated Plan – HOME Certification, Analysis of Local Market Conditions, and Citizen Participation	Section 212(a)(3)(A)(i) of NAHA and 24 CFR 92.209(b)	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. 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	Section 212(a)(3)(A)(ii) of NAHA, 24 CFR 92.209(c)	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) 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. Suspending Section 212(a)(3)(A)(ii) of NAHA and waiving 24 CFR 92.209(c) eliminates the requirement for PJs to establish new or revise existing tenant selection criteria for the HOME TBRA program. The suspension and waiver are in effect through December 31, 2020, for TBRA provided in response to the pandemic. However, a PJ must document its criteria for selecting individuals and families to be assisted by the TBRA program.

Waiver Group II. -Regulatory Waivers Available to All Participating Jurisdictions

Summary of Requirement Waived	Citations (States)	Description of Waived Applicability and Requirement
Citizen Participation Reasonable Notice and Opportunity to Comment	24 CFR 91.115(c)(2) and (i)	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. 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	24 CFR 92.209(f)	Given the need for TBRA, requiring PJs to conduct a rent comparison prior to providing rental assistance presents an undue administrative burden. Without this waiver, those households could not be assisted with HOME TBRA. 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	24 CFR 92.209(a) and (h)	This waiver 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	24 CFR 209(e)	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.

		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	24 CFR 92.209(g)	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	24 CFR 92.209(i)	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	24 CFR 92.504(d)(1)(iii); 24 CFR 92.209(i)	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. 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	24 CFR 92.203(a)(2)	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. 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.

Waivers and Suspensions of the HOME Program Requirements in Response to COVID -19 Pandemic

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

Summary of Requirement Waived	Citations (States)	Description of Waived Applicability and Requirement
1. 10% Administration and Planning Cap	Section 212(c) of NAHA and 24 CFR 92.207	This suspension is required to provide the PJ adequate funds to pay for the increased cost of administering HOME-related activities to address the effects of COVID-19, including attempts to prevent the spread of the virus. The suspension is also intended to relieve the PJ of the burden of identifying other general funds to pay HOME administrative and planning costs at a time when the State and local tax revenues that provide general operating revenue are decreasing. This suspension and waiver allows for up to 25% and applies to the FY2019 and FY2020 HOME allocations of PJs that are covered by a major disaster declaration.
2. CHDO Set-aside Requirement	Section 231 of NAHA and 24 CFR 92.300(a)(1)	The suspension and waiver are required to relieve the PJ of requirements that may impede the obligation and use of funds to expeditiously assist families affected by the COVID-19 pandemic. Suspension of the CHDO set-aside will immediately make additional HOME funds available for activities such as tenant-based rental assistance for which CHDO set-aside funds cannot be used. The CHDO set-aside requirement is reduced to zero percent for the fiscal year 2017, 2018, 2019, and 2020 allocations of State and local PJs.
3. Limits and Conditions on CHDO Operating Expense Assistance	Section 212(g) and 234(b) of NAHA; 24 CFR 92.208 and 24 CFR 92.300(e) and (f)	The suspension and waiver of these requirements is required to ensure that CHDOs are able to maintain operations and retain staff capacity to own, develop and sponsor housing with CHDO set-aside funds to serve communities impacted by the COVID-19 pandemic. PJs in areas covered by a major disaster declaration may use up to 10% of their FY 2019 and FY 2020 allocations for CHDO operating assistance. A CHDO receiving increased operating assistance must use the assistance to maintain organizational capacity during the COVID-19 pandemic. CHDOs may receive increased operating assistance under these suspensions and waivers through June 30, 2021.
4. Matching Contribution Requirements	24 CFR 92.218 and 92.222(b)	Given the urgent housing and economic needs created by COVID-19, and the substantial financial impact the PJ will face in addressing those needs, waiver of these regulations will relieve the PJ from the need to identify and provide matching contributions to HOME projects. This match reduction applies to funds expended by a PJ located in Presidentially declared-disaster area between October 1, 2019 and September 30, 2021.

Waiver Group II. - Regulatory Waivers Available to All Participating Jurisdictions

Summary of Requirement Waived	Citations (States)	Description of Waived Applicability and Requirement
1. Citizen Participation Reasonable Notice and Opportunity to Comment	24 CFR 91.115(c)(2) and (i)	Given the unprecedented economic disruptions caused by the COVID-19 pandemic, PJs may need to expeditiously reprogram HOME funds to activities that more directly meet their immediate housing needs, including reprogramming funds to cover increased administrative costs or away from other development activities. PJs must have the ability to respond immediately to the unprecedented housing need caused by the COVID-19 pandemic. This waiver is in effect for any necessary substantial amendments to FY2020 and earlier consolidated plans or action plans.
2. Income Documentation	24 CFR 92.203(a)(1)	This waiver permits the PJ to use self-certification of income, as provided at §92.203(a)(1)(ii), in lieu of source documentation to determine eligibility for HOME assistance of persons requiring emergency assistance related to COVID-19. The waiver applies to individuals and families that have lost employment or income either permanently or temporarily due to the COVID-19 pandemic and who are applying for admission to a HOME rental unit or a HOME tenant-based rental assistance program. This waiver also applies to homeless individuals and families who are applying for admission to a HOME rental unit or a HOME tenant-based rental assistance program. If a PJ chooses to use this waiver availability, the PJ must ensure that self-certified income takes into consideration all income, including any unemployment and emergency benefits the applicant will receive. However, for purposes of an applicant's self-certification, emergency tax relief (commonly referred to as stimulus payments) is not to be included as an emergency benefit. Also, the PJ must arrange to conduct on-site rent and income reviews within 90 days after the waiver period. The PJ must include tenant income certifications in each project file. This waiver remains in effect through December 31, 2020.

3. On-Site Inspections of HOME-assisted Rental Housing	24 CFR 92.504(d)(1)(ii)	<p>Waiving the requirement to perform ongoing on-site inspections will help protect PJ staff and limit the spread of COVID-19. The waiver is applicable to ongoing periodic inspections and does not waive the requirement to perform initial inspections of rental properties upon completion of construction or rehabilitation. Within 120 days of the end of this waiver period, PJs must physically inspect units that would have been subject to on-going inspections during the waiver period. The waiver is also applicable to on-site reviews to determine a HOME rental project’s compliance with rent and income requirements if the project owner is unable to make documentation available electronically. The waiver is in effect through December 31, 2020.</p>
4. Annual Inspection of Units Occupied by Recipients of HOME Tenant-Based Rental Assistance (TBRA)	24 CFR 92.504(d)(1)(iii); 24 CFR 92.209(i) requirement for annual re-inspections	<p>Waiving the requirement that these annual inspections be performed according to schedule will protect the health of both inspectors and TBRA tenants by observing physical distancing recommendations to limit the spread of COVID-19. The waiver is applicable to annual HQS inspections required to occur from the date of this memorandum through December 31, 2020. At the end of this waiver period, PJs must inspect units that would have been subject to HQS inspections during the waiver period within 120 days of the expiration of the waiver. In addition, PJs shall make reasonable efforts to address any tenant-reported health and safety issues during the waiver period.</p>
5. Four-Year Project Completion Requirement	24 CFR 92.205(e)(2)	<p>This waiver is necessary to provide additional time to permit completion of HOME-assisted projects that may be delayed as a result of the impact of COVID-19 on project timelines. These delays may occur as a result of worker illnesses or efforts to reduce the spread of COVID-19, such as smaller construction crews or delays in local permitting or inspections due to government office closures. This waiver applies to projects for which the 4-year project completion deadline will occur on or after the date of this memorandum. The completion deadlines for covered projects are extended to December 31, 2020.</p>
6. Nine-Month Deadline for Sale of Homebuyer Units	24 CFR 92.254(a)(3)	<p>Many PJs will not be able to meet this deadline due to the effect the COVID-19 pandemic will have on the ability of eligible households to qualify for mortgages as a result of income losses or the inability to schedule inspections, titles searches, or closings during periods of business closures. The waiver is necessary to prevent the loss of homeownership opportunities for HOME-eligible families and temporarily suspend the required corrective action of repayment of HOME funds or conversion of the homebuyer units to rental housing. The waiver applies to projects for which the 9-month homebuyer sale deadline occurs on or after the date of this memorandum and extends the deadline for those projects to December 31, 2020. This waiver does not apply to the remaining requirements of the regulation, including that a homebuyer must receive housing counseling, and that a PJ must determine eligibility of a family by including the income of all persons living in the housing.</p>
7. Use of HOME Funds for Operating Reserves for Troubled HOME Projects	24 CFR 92.210(a) and (b)	<p>The waiver is necessary to enable PJs to take rapid action to preserve the financial viability of HOME-assisted affordable rental projects currently under a HOME period of affordability. Because existing tenants in HOME units may be unable to meet their rent obligations due to the economic impact of the COVID-19 pandemic, HOME rental projects may experience operating deficits due to the sudden decrease in rental revenue. The waiver applies to HOME-assisted rental projects currently within the period of affordability established in the HOME written agreement. PJs will not be required to obtain HUD approval or execute a memorandum of agreement with HUD before providing this assistance. PJs may only exercise this waiver authority when the project owner agrees to forego: 1) any distributions of residual receipts resulting from the project throughout the waiver period and for a period of 6 months thereafter; 2) any right under the existing lease agreement or State or local law to pursue legal action against tenants of HOME-assisted units for non-payment of rent and the collection of any fees associated with late payments without prior approval of the PJ; and 3) any adverse credit reporting against tenants of HOME-assisted units for nonpayment of rent or fees without prior approval of the PJ. The PJ may provide additional HOME funds to recapitalize operating deficit reserves for HOME-assisted rental projects if the PJ determines that the project is experiencing operating deficits related to the economic effects of the COVID-19 pandemic during the waiver period. The PJ may only provide this assistance to projects experiencing operating deficits that will not be covered by insurance or other sources (e.g., other private, local, state, or federal funds).</p>

		<p>The maximum amount of HOME assistance that may be provided is equal to the total of the project’s operating expenses, previously scheduled payments to a replacement reserve, and actual debt service (excluding debt service of loans in forbearance) multiplied by the proportionate share of HOME-assisted units to the total number of units in the project for the period beginning on April 1, 2020 and ending on December 31, 2020. Project operating expenses may be demonstrated by one of the following:</p> <ul style="list-style-type: none"> • The Owner’s most recent year to date financials for the project; • Certified project-level accounting records covering the most recent 3 months; and • Copies of project-level bank statements covering the most recent 3 months. • <p>Project operating expenses may also be adjusted due to COVID-19-related expenditures and foregone expenses due to social distancing measures and other COVID-19-related impacts. An owner may demonstrate these expenses with recent receipts, copies of work orders, revised budgets that have been certified by the project owner as true, accurate representations of current expenditures.</p> <p>In order to take advantage of this waiver, PJs must amend the HOME written agreement with the project owner to include the amount of HOME funds that will be provided to an operating reserve (i.e., the proportion of total costs attributable to HOME units as described in the paragraph above), the costs eligible to be paid with HOME funds in the operating reserve (i.e., operating expenses, scheduled payments to a replacement reserve, and qualifying debt service), and the documentation the PJ is required to maintain to demonstrate the allowable amounts and eligibility of costs paid with the HOME funds in the operating reserve.</p> <p>The written agreement must specify that the owner must forego:</p> <ol style="list-style-type: none"> 1) any distributions of residual receipts during the period this waiver is in effect and for a period of 6 months thereafter; 2) any right under the existing lease agreement or State or local law to pursue legal action against tenants of HOME-assisted units for non-payment of rent and the collection of any fees associated with late payments without prior approval of the PJ; and 3) any adverse credit reporting against tenants of HOME-assisted units for nonpayment of rent or fees without prior approval of the PJ. <p>Within 6 months following the waiver period, the PJ must review the project’s records of actual revenue and operating expenses, total amount of HOME funds expended from the operating reserve, and the eligibility of expenses by examining invoices and receipts. The written agreement must require the project owner to repay any expenditures for costs determined to be ineligible and any balance of HOME funds remaining in the reserve after December 31, 2020. Any HOME funds repaid to the PJ must be deposited in the local HOME account and reported as program income in IDIS. The waiver is effective through December 31, 2020.</p>
<p>8. Timeframe for a Participating Jurisdiction’s Response to Findings of Noncompliance</p>	<p>24 CFR 92.551(b)(1)</p>	<p>The waiver will permit HUD to provide PJs with an extended period to respond to findings of noncompliance in recognition of the unanticipated circumstances created by the COVID-19 pandemic. Requiring PJs to respond to all findings of noncompliance within 30 days may interfere with a PJ’s ability to address the unprecedented housing needs caused by the COVID-19 pandemic.</p> <p>The waiver applies to all findings of HOME regulatory noncompliance issued from the date of this memorandum through December 31, 2020. In the notice of findings, HUD will specify a time period for the PJ’s response based on the nature of the noncompliance and required corrective action(s). HUD may also, upon request by the PJ, extend time periods imposed before the date of this memorandum.</p> <p><i>* 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.</i></p>