



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

OFFICE OF THE ASSISTANT SECRETARY FOR  
COMMUNITY PLANNING AND DEVELOPMENT

MEMORANDUM FOR: All CPD Field Office Directors and Program Managers

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

SUBJECT: Revision and Extension of April 10, 2020 Tenant-Based Rental Assistance  
Memorandum - *Suspensions and Waivers to Facilitate Use of HOME-  
Assisted Tenant-Based Rental Assistance for Emergency and Short-term  
Assistance in Response to COVID -19 Pandemic*

This memorandum revises and extends the memorandum *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* issued on April 10, 2020, (the “April 2020 TBRA Memo”). The April 2020 TBRA Memo announced the availability of certain 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) to facilitate urgent housing assistance to communities and families experiencing financial hardship. This memorandum *extends all statutory suspensions and regulatory waivers outlined in the April 2020 TBRA Memo through September 30, 2021 (the “extended waiver period”)*, and revises or clarifies the following waivers:

- Eligible Tenant-based Rental Assistance Costs and Maximum TBRA Subsidy – 24 CFR 92.209(a) and (h) and 24 CFR 92.64(a) (Insular Areas)
- Tenant Protections – Lease - 24 CFR 92.209(g) and 24 CFR 92.64(a) (Insular Areas)
- Housing Quality Standards - 24 CFR 92.209(i) and 24 CFR 92.64(a) (Insular Areas)
- Annual Inspection of Units Occupied by Recipients of HOME TBRA - 24 CFR 92.504(d)(1)(iii), 24 CFR 92.209(i) and 24 CFR 92.64(a) (Insular Areas)
- Income Determination - 24 CFR 92.203(a)(2), and 24 CFR 92.64(a) (Insular Areas)

### Waiver and Suspension Authority

Section 290 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA), as amended, authorizes HUD to suspend 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.

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 extend the suspension of the statutory

provisions and the waivers for the related regulatory provisions described in the April 2020 TBRA Memo until September 30, 2021, for PJs covered by a major disaster declaration under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) as a result of the COVID-19 pandemic and to revise the following waivers as described below.

### **Revision to Eligible Tenant-based Rental Assistance Costs and Maximum TBRA Subsidy**

The waiver of 24 CFR 92.209(a) and (h) and CFR 92.64(a), (Insular Areas) in the April 2020 TBRA Memo is revised to permit the payment of past-due rent and fees, including late fees, in accordance with a tenant's lease. In addition, the waiver is revised to permit the payment of past-due utilities, late fees associated with overdue utility payments, as well as any necessary costs required to restore utility service. A PJ may pay past-due utilities and rent and associated late fees due on or after January 27, 2020. The waiver in the April 2020 TBRA Memo is superseded by the following with revisions noted in italics:

### **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 utilities for tenants affected by a reduction or loss of income from the COVID-19 pandemic. *In addition, this waiver will allow PJs to pay past-due rent and fees, including any late fees, as defined in the tenant's lease. This waiver also permits the payment of utility costs, late fees associated with overdue utilities, as well as necessary costs to restore utility service. All costs must still comply with 2 CFR part 200, subpart E, including the requirement that HOME assistance not be used to pay costs when other sources, including federal, state, or local assistance have already been provided to pay the same costs.* 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 the extended waiver period*, 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 extended waiver period*.

*The PJ may pay past-due rent and fees, including late fees, in accordance with the tenant's lease and federal requirements, due on or after January 27, 2020, the effective date of the public health emergency declared by the Secretary of Health and Human Services for the COVID-19 pandemic until the end of the extended waiver period. PJs should establish a timeframe for TBRA assistance during the extended waiver period based on the circumstances in their jurisdiction. In accordance with the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, Pub. L. 116–136) moratorium on fees, after the effective date of the rental assistance contract, the PJ may not pay and an owner may not charge, any fees associated with nonpayment of rent from March 27, 2020 until after July 24, 2020. The PJ must document the amount(s) and payment date(s) of any past-due rent and fees in the TBRA tenant file. The file should also include evidence that the fees comply with federal requirements, including the CARES Act, 2 CFR part 200, subpart E, and tenant's lease.*

*The PJ may make utility payments, including any past-due payments, late fees and utility restoration costs due on or after January 27, 2020, directly to the tenant or utility company based on utility bills submitted for the assisted unit, either by mail or electronically. The PJ must document the amount(s) and payment date(s) of any*

*utility payments and fees in the TBRA tenant file.*

### **Revision to Tenant Protections – Lease Waiver**

The waiver of 24 CFR 92.209(g) and 24 CFR 92.64(a), (Insular Areas) in the April 2020 TBRA Memo is clarified to state that 24 CFR 92.209(g) and 24 CFR 92.64(a) are waived to the extent necessary that the lease protections at 24 CFR 92.253(b) do not apply. However, the lease provisions at 24 CFR 92.253(a) are still required. Consequently, a tenant already housed in a rental unit who requires HOME TBRA during the pandemic must have an executed lease that meets the requirements of 24 CFR 92.253(a) with the project owner for a term mutually agreed upon by both parties. PJs are not required to make owners amend leases that contain one or more of the prohibited lease terms in 24 CFR 92.253(b). The waiver in the April 2020 TBRA Memo is superseded by the following with revisions noted in italics:

#### 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 may already have executed leases 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 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(b) is waived through September 30, 2021, for rental assistance provided to tenants already housed who have an executed lease. The 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 *extended* waiver period. *The lease provisions at 24 CFR 92.253(a) are not waived. A household receiving TBRA must have an executed lease with the project owner for a term of not less than one year, unless both parties agree to a shorter term.* In addition, the PJ 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.

## Revision to Housing Quality Standards Waiver

The April 2020 TBRA Memo waiver of the requirement that PJs must inspect a unit for compliance with the housing quality standards (HQS) at 24 CFR 982.401 prior to occupancy is clarified to state that the PJ is not required to conduct a physical inspection of the unit during the waiver period but must establish procedures to minimize the risk that tenants are in housing that does not meet HQS. However, if TBRA to the household continues beyond the extended September 30, 2021, waiver period, the PJ must conduct an HQS inspection in accordance with the HOME requirements at 24 CFR 92.209(i) and 24 CFR 92.64(a) (Insular Areas) prior to executing a new rental assistance contract. The waiver in the April 2020 TBRA Memo is superseded by the following with revisions noted in italics:

### 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 *the extended waiver period* 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. *If TBRA to the household will continue beyond the extended waiver period, the PJ must conduct an HQS Inspection, in accordance with the HOME requirements at 24 CFR 92.209(i), prior to executing a new TBRA contract.*

## **Revision to Annual Inspection of Units Occupied by Recipients of HOME TBRA Waiver**

The April 10, 2020 waiver of the requirement that PJs must annually inspect units occupied by TBRA tenants is clarified to state that a unit that is subject to an annual HQS inspection during the waiver period must meet the HQS requirements at 24 CFR 982.401 if TBRA to the household will continue beyond the extended September 30, 2021, waiver period. The waiver in the April 2020 TBRA Memo is superseded by the following waiver with revisions noted in italics:

### 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 annual HQS 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.

Applicability: The waiver is applicable to annual HQS inspections required to occur from *April 10, 2020 through the end of the extended waiver period. PJs using this waiver authority are not required to inspect for compliance with HQS in accordance with 24 CFR 982.401. PJs shall make reasonable efforts to address any tenant reported health and safety issues during the waiver period. All housing that will continue to be occupied by HOME TBRA households after the end of the extended waiver period, must be inspected for compliance with HQS prior to executing a new TBRA contract.*

## **Unemployment Insurance Under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, Pub. L. 116–136)**

The CARES Act includes provisions to strengthen and extend unemployment benefits in response to the economic damage caused by the COVID-19 Pandemic. The April 2020 TBRA Memo announcing the availability of statutory suspensions and regulatory waivers under the HOME program includes a waiver of 24 CFR 92.203(a)(2) and 24 CFR 92.64(a) (Insular Areas) allowing self-certification of income in lieu of source documentation to determine the income eligibility of individuals and families requiring immediate HOME assistance due to the COVID-19 pandemic. The April 2020 TBRA Memo required PJs choosing to use the waiver to ensure that an applicant's self-certified income include any unemployment and emergency benefits the applicant will receive. Since issuance of the memorandum, the Department has re-examined the inclusion of certain unemployment benefits provided by the CARES Act to align treatment of these benefits across all HUD programs.

To achieve this alignment, the Department is revising the Income Determination waiver for the following unemployment benefits:

**Federal Pandemic Unemployment Compensation (FPUC):** Created by Section 2104 of the CARES Act, the FPUC program allowed eligible individuals who were collecting certain unemployment insurance benefits, including regular unemployment compensation, to receive an additional amount in federal benefits per week as an enhanced unemployment benefit for 18 weeks of unemployment ending on or before July 31, 2020. The Department has determined that the additional federal weekly benefit was a temporary, nonrecurring enhanced amount and was not regular unemployment insurance from the state. The Department made this determination because the duration of FPUC was for a limited time and is unlikely to recur. This is consistent with other income currently excluded under 24 CFR 5.609(c)(9), which excludes “temporary, nonrecurring or sporadic income” received by a family from the definition of “annual income” under 24 CFR Part 5.

The other unemployment benefits provided under the CARES Act of Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC) must still be included as income as the Department determined the PUA to be regular unemployment insurance under 24 CFR 5.609(b)(5) and PEUC to be an extension of regular unemployment insurance benefits.

**Lost Wages Supplemental Payment Assistance:** On August 8, 2020, President Trump issued, “*Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019*,” authorizing the Federal Emergency Management Agency (FEMA) to expend up to \$44 billion from the Disaster Relief Fund for lost wage payments to ease the economic burden for those struggling with lost wages due to the COVID-19 pandemic (“Lost Wages Supplemental Payment Assistance”). The Lost Wages Supplemental Payment Assistance provided by FEMA increases the amount of money states can provide to unemployed Americans up to an extra \$300 per week with a 25 percent state match for a total of \$400 per week. FEMA is providing the supplemental payments for lost wages as grants to states in accordance with section 408(e)(2) of the Stafford Act (42 U.S.C. 5174(e)(2)) and 44 CFR §206.119(c)(6)(ii) for major disasters declared by the President pursuant to section 401 of the Stafford Act (42 U.S.C. 5170) for COVID-19. Pursuant to 24 CFR 5.609(c)(17), HUD excludes “[a]mounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply.” HUD’s 2014 Federal Register Notice (79 FR 28938) provides a list of amounts specifically excluded by any Federal statute from consideration as income for purposes of determining eligibility or benefits in a HUD program. This list specifically identified “Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)),” as excluded from consideration as income under the Stafford Act. (79 FR 28940). As the Lost Wages Supplemental Payment Assistance from FEMA and the required state match are both “major disaster and emergency assistance received by individuals and families” under the Stafford Act, HUD has determined the assistance to be excludable from income.

### **Revision to Income Determination Waiver**

Because the Department determined that the FPUC benefit is temporary in nature and

excluded from income under 24 CFR 5.609(c)(9) and that the Lost Wages Supplemental Payment Assistance is excluded from income under the Stafford Act, in accordance with 24 CFR 5.609(c)(17), the April 2020 TBRA Memo waiver of 24 CFR 92.203(a)(2) and 24 CFR 92.64(a) is revised to clarify that the FPUC benefit and Lost Wages Supplemental Payment Assistance is excluded from income for purposes of determining income eligibility for HOME assistance. Consequently, a PJ may choose to redetermine income, according to its policy, in cases where the income self-certification included the FPUC benefit and/or the Lost Wages Supplemental Payment Assistance and resulted in the ineligibility of an applicant. The FPUC benefit expired on July 31, 2020 and as of October 16, 2020, FEMA has approved 53 states and territories for Lost Wages Supplemental Payment Assistance grants. Therefore, the waiver included in the April 2020 TBRA Memo is superseded by the following waiver with revisions shown in italics:

### 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. *In addition, social distancing measures may make submission of source documentation unduly difficult.*

Applicability: This waiver is applicable to TBRA provided to individuals or families experiencing financial hardship. This requirement is waived through *the end of the extended waiver period* 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 benefits received by the tenant as a result of the pandemic. *The Department determined that the FPUC benefit was temporary in nature and excluded from income under 24 CFR 5.609(c)(9) and that the Lost Wages Supplemental Payment Assistance is excluded from income under the Stafford Act, in accordance with 24 CFR 5.609(c)(17). Therefore, this income must not be taken into consideration when determining*

*eligibility under the HOME program. In addition, a PJ may choose to redetermine income, according to its policy, in cases where an applicant's income self-certification included these benefits and resulted in the ineligibility of the applicant.*

*If the household will continue to receive TBRA beyond the extended waiver period, the PJ must determine the household's income eligibility in accordance with 24 CFR 92.203(a)(2) prior to executing a new TBRA contract. The PJ must include tenant income certifications in each project file. This waiver is effective from the date of this memorandum and remains in effect through the end of the extended waiver period.*

### **Extension of Waiver Deadline**

In addition to the waivers discussed above, the following waivers outlined in the April 2020 TBRA Memo are extended from December 31, 2020 to *September 30, 2021*. All other provisions of the April 2020 TBRA Memo related to the following waivers remain in effect.

Rent Reasonableness – 24 CFR 92.209(f) and 24 CFR 92.64(a) (Insular Areas),

Eligible Tenant-based Rental Assistance Costs and Maximum TBRA Subsidy – 24 CFR 92.209(a) and (h) and 24 CFR 92.64(a) (Insular Areas),

Term of Rental Assistance Contract – 24 CFR 92.209(e) and 24 CFR 92.64(a) (Insular Areas).

Questions regarding this memorandum 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.