

HUD COVID-19 Updates and FAQs

By: Akritee Aggarwal and Adam Norlander

April 9, 2020

As the coronavirus (COVID-19) pandemic grew more acute over the last several weeks, Congress and HUD responded with some much-needed, additional funding and flexibility for HUD programs. This summary provides a snapshot of some of the recent legislation passed, and HUD guidance issued, in response to the COVID-19 crisis. Of course, the HUD guidance is still evolving and further legislative relief is anticipated in the near future. We will seek to keep you apprised of future significant legislative and regulatory actions as they develop.

Coronavirus Aid, Relief, and Economic Security (CARES) Act: Funding, Statutory Waiver Authority, Eviction Moratorium for Tenants and Forbearance for Owners

Enacted on March 27, 2020, the CARES Act (Public Law 116-113, available [here](#)) provides HUD with approximately \$12.4 billion in funding to maintain normal operations and to prevent, prepare for and respond to coronavirus. Funding includes:

- \$5 billion for the flexible Community Development Block Grant (CDBG) program;
- \$4 billion in homeless assistance grants;
- \$1.25 billion for the Section 8 tenant-based, housing choice voucher (HCV) program;
- \$1 billion for the Section 8 project-based rental assistance (PBRA) program;
- \$685 million towards a public housing operating fund for public housing agencies;
- \$50 million for Section 202 elderly projects, including up to \$10 million for service coordinators; and
- \$15 million for Section 811 projects.

The CARES Act gives HUD the authority to waive, or specify alternative requirements for, any provision of statute or regulation (except those related to fair housing, nondiscrimination, labor standards, and the environment) to ensure the safe and effective administration of funds of programs funded by the CARES Act as well as FY2020 appropriations for those programs.

The CARES Act also imposes a 120-day moratorium on evictions, and fees and penalties, related to the nonpayment of rent for tenants in federally subsidized properties. Multifamily property owners that have a federally backed multifamily mortgage loan may request a 30-day forbearance, with up to two additional 30-day extensions, to their loan servicer due to financial hardship during the coronavirus national emergency provided that they were current on their payments as of February 1, 2020.

HUD FAQs and Related Guidance

Over the past several weeks HUD has been updating its guidance related to COVID-19 on a regular basis, and is maintaining a webpage with accumulated guidance, available [here](#). Below, we highlight certain HUD guidance that may be of particular interest to affordable housing owners and developers who are responding to the pandemic in real time. Because this is only a summary, we encourage stakeholders to review HUD's guidance carefully and to consult with your legal counsel, as appropriate.

Multifamily Housing

The Office of Multifamily Housing has published FAQs, last updated April 2, 2020, available [here](#) and has provided an audio recording of updated guidance available [here](#). The Office of General Counsel has also provided guidance on closings, available [here](#), as well as guidance on best practices for electronic submission of documents, which can be found [here](#).

Property Management

HUD advises property owners and agents to follow Center for Disease Control (CDC) guidelines for quarantine procedures and the direction of local health officials. The HUD guidance indicates that if there is a confirmed case of coronavirus at a property, property management may inform residents that someone is positive, but should not reveal any personally identifiable information, such as the apartment number.

HUD indicates that property owners and agents may use property operating accounts without prior HUD approval to pay for any expenses reasonable and necessary to prepare for and respond to coronavirus, including supplies, staff hours, and overtime. In contrast, funds in replacement reserve and residual receipts accounts should only be used for eligible items according to current policy in HUD Handbook 4350.1, REV-1, Chapter 4 (for reserve fund for replacements) and Chapter 25 (for residual receipts). Any non-eligible uses require the prior approval of HUD.

HUD considers CDC's recommendations to control the spread of the virus and shelter-in-place and similar orders as an extenuating circumstance. Consequently, HUD will allow assisted tenants that may have lost income due to coronavirus to self-certify for annual or interim recertifications and to provide copies or images of signatures, so long as original, "wet" signatures are obtained later. Owners should maintain at least 90% of their certifications in an active status in TRACS to maintain subsidy payments.

Section 8 Project-Based Rental Assistance (PBRA) Renewals and Rent Adjustments

Multifamily field and Headquarters staff will continue to process subsidy contract renewals and related funding actions remotely. HUD's initial COVID-19 guidance indicated that if an owner's RCS has triggered the need for a HUD RCS, HUD would provisionally allow increases up to 5% so long as the rent conclusions were found to be reasonable. In its updated FAQ, however, HUD has rescinded its prior guidance and states that it will issue new guidance "in the upcoming weeks." It is unclear at this time

what adjustments may be made to requirements for Project Capital Needs Assessments (PCNAs)/Comprehensive Needs Assessments (CNAs) or required tenant notifications.

Alternatives to In-Person Inspections and RAD Resident Communication

- On-site inspections: Where the HUD inspector or supervising architect, or both, are unable to conduct on-site inspections of work, HUD will accept the supervising architect's verification of work completed based upon a recorded virtual inspection and virtual site meeting.
- RAD required tenant meetings: May be held using videoconferencing or teleconferencing technologies, insofar they allow for interaction, can log participation, are accessible to persons with disabilities, and provide follow-up notice.
- RAD ongoing resident engagement: HUD recommends public housing agencies and owners develop an alternative communication plan that is sustainable for at least 8 weeks. Some methods include the use of:
 - Videoconferencing or teleconferencing to hold virtual meetings;
 - Flyers, notices, online materials, texts, letters to update residents; and
 - A survey to gather information about their questions, experience, and preferences.

Public and Indian Housing (PIH)

HUD encourages public housing agencies (PHAs) to follow state, local, and federal guidance related to coronavirus preparation and response, such as social distancing, shelter-in-place orders, and restrictions on visitors. PHAs are advised to continue operations remotely where possible and to take the necessary actions to ensure the health and safety of residents and security of the property. FAQs, last updated March 31, 2020, are available [here](#).

Until December 31, 2020, PHAs may use existing operating and capital funds to pay for expenses, such as:

1. Staff labor hours for emergency planning and response;
2. IT equipment and upgrades;
3. Capital expenditures to improve the safety of residents such as improved ventilation systems and high-grade filters, portable air filtration equipment, and portable humidifiers;
4. Personal protective equipment;
5. Cleaning supplies such as disinfectants and sanitizers; and
6. Contracted services for cleaning.

If a PHA must do specialized cleaning of a unit or building, it should follow CDC guidelines. Given the national emergency, PHAs may procure such services from a single source through noncompetitive proposals. However, PHAs must maintain in their files a rationale of the single source proposal and cost analysis (i.e., proposed cost data, cost projections, evaluation of specific elements of cost and profits). Labor costs are based on the going market rate at the time and conflict of interest requirements continue to apply.

Absent a state or local health department directive, PHAs do not need to grant temporary relocation requests related to coronavirus. PHAs may request verification from a medical health professional in reviewing such requests.

REAC Inspections (PIH and Multifamily Properties)

All REAC property inspections for multifamily and public housing properties are postponed until further notice. If there is any exigent circumstance or reason to believe that there is a threat to life or property at a specific location, inspections will be conducted by HUD quality assurance inspectors consistent with CDC guidelines.

HUD also recognizes that the national emergency related to coronavirus limits or prevents performance of Management and Occupancy Reviews (MORs). Thus, HUD is suspending standard MORs until the Performance-Based Contract Administrator (PBCA) determines that local conditions allow MORs to be performed safely. Additional guidance will follow.

Other Resources/FAQs

HUD has been regularly updating its guidance related to the COVID-19, and is maintaining a webpage with accumulated guidance, available [here](#). A few resources to highlight include:

- CDBG Quick Guide to Eligible Activities to Support Infections Disease response, available [here](#).
- Environmental Review Guidance, available [here](#)—provides that Responsible Entities should make Environmental Review Records available electronically or by U.S. Mail upon request and that public comment periods should provide allowance for comments by mail.
- Section 3 FAQs, available [here](#)—Note that Section 3 requirements have not been waived or reduced by HUD. Section 3 covered recipients are still required to comply with the requirements in 24 CFR 135 “to the greatest extent feasible,” such as through virtual or online methods.
- Tribes and Tribally Designated Housing Entities FAQs, available [here](#).

Should you have any questions about this KH Housing Alert or require any further information, please contact Akritee Aggarwal (aaggarwal@kleinhornig.com or 202.495.7216) or Adam Norlander (anorlander@kleinhornig.com or 202.495.7205).