



HUD issues CARES Act waivers for Public and Indian Housing programs, including Section 8 Project-Based Vouchers (PBVs)

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In the latest round of CARES Act implementation, the U.S. Department of Housing and Urban Development (HUD) Office of Public and Indian Housing (PIH) issued waivers aimed at providing administrative relief and ensuring continued program operations during the COVID-19 pandemic. These waivers are directed to public housing authorities (PHAs), Indian tribes and tribally designated housing entities (TDHEs), and affect public housing, Section 8 Housing Choice Voucher (HCV), Section 8 Project-Based Voucher (PBV), and Indian housing programs. PHAs, Indian tribes, and TDHEs can choose to implement any or all of these waivers, immediately or at any point during the relevant applicability period. HUD has also waived certain requirements relating to notice and approval of Administrative Plan and ACOP amendments, which will allow PHAs to adopt these new waivers more quickly. This Alert focuses on the waiver applicable to the public housing and HCV/Section 8 programs. The full guidance can be found in Notice PIH-2020-05.

The period of applicability for each waiver is listed below. Short-term waivers, focused on providing essential flexibilities when normal operations are severely disrupted, generally end on July 31, 2020. Longer term waivers, allowing PHAs to defer important but less critical functions in order to focus on the most vital responsibilities until transitioning back to normal operations, typically expire on December 31, 2020. HUD may extend these periods of applicability further, if it determines necessary.

HQS waivers

- PHAs can enter into a Housing Assistance Payment (HAP) contract for tenant-based or PBV units, turn over units to a new family, add new units to a PBV HAP contract, or substitute units on a PBV HAP contract without conducting a Housing Quality Standards (HQS) inspection through July 31, 2020.
- In lieu of the HQS inspection, the PHA may accept a certification from the project owner that the owner “has no reasonable basis to have knowledge that life threatening conditions exist” in the units in question.
- Units must be inspected by October 31, 2020.

- These same alternate requirements apply to PHAs choosing to utilize the alternative inspection flexibility that had previously been provided under the Housing Opportunity Through Modernization Act of 2016 (HOTMA), which allows the PHA to recognize alternative inspection regimes such as REAC. In lieu of a PHA inspection within 15 days, the PHA may accept an owner’s certification of no knowledge of life threatening conditions to delay inspections until no later than October 31, 2020.
- If an HQS inspection has been conducted but the PHA utilizes the Non-Life Threatening Deficiencies (NLT) flexibility that had previously been provided under HOTMA, project owners can have up to 60 days, instead of 30, to make NLT repairs.
- For units already under a HAP contract, PHAs may delay the required biennial HQS inspections until no later than October 31, 2020.
- If a tenant notifies a PHA that their unit does not comply with HQS, through July 31, the PHA may notify the project owner in lieu of conducting an HQS inspection. For life threatening deficiencies, the owner must either correct the deficiency or provide evidence that the deficiency does not exist within 24 hours. For non-life threatening deficiencies, the project owner must either correct the deficiency or provide evidence that the deficiency does not exist within 30 days of the PHA notification.
- HUD is waiving the HQS requirement that a leased unit have at least one bedroom or sleeping room for every two people in order to accommodate residents who may need to add household members as a result of the COVID-19 emergency.

Re-certifications for Income and Family Composition (Public Housing and HCV/Section 8)

- PHAs can delay annual re-examinations of family income and composition until December 31, 2020.
- If the PHA wishes to proceed with re-certifications, through July 31, 2020, PHAs can rely on family self-certification and forego reliance on third-party income verification, such as the Enterprise Income Verification System (EIV). HUD is even allowing this self-certification to occur over the phone if the PHA staff creates a contemporary written record.
- Interim certifications can be used to adjust a family’s tenant portion of rent if they have lost income. Again, PHAs may rely on family self-certifications and need not rely on EIV or other third-party verification through July 31, 2020. Further, PHAs may wish to review and adjust their interim re-examination policies, such as when increases in family income must be reported or how to determine the effective date of the interim certification.
- Mandatory EIV monitoring is waived through July 31, 2020. However, families will be responsible if significant discrepancies from their self-certification are later discovered.
- Additionally, if a PHA’s payment standard increases, PHAs need not wait until the regular family re-examination for a unit to increase the HAP subsidy.

Additional waivers applicable to PIH and HCV/Section 8 programs:

- Section 8 Administrative Plans and public housing Admissions and Continued Occupancy Policies (ACOPs) may be temporarily amended without board of directors approval until July 31,

2020.

- PHA Annual Plan/5-Year Plan submission dates extended—PHAs with June 30 and September 30 fiscal year ends now have until October 18, 2020, to submit their annual or 5-year plans. PHAs with December 31 fiscal year ends have until January 16, 2021. In addition, plan amendments, except for amendments required for RAD, Section 18, and Section 22 repositioning efforts, can be adopted without an open public meeting of the PHA's board of directors.
- HUD is still requiring PHAs to notify tenants of policy changes, but 30-day advanced notice is no longer required.
- PHAs have been given broad latitude to extend a family's initial voucher, execute HAP contracts up to 120 days after the start of family's lease, allow vacancies for more than 180 days, and retain units on a HAP contract even if the unit does not generate subsidy for more than 180 days.
- COVID-19 qualifies as "good cause," through December 31, 2020, to extend a family's participation in the Family Self-Sufficiency (FSS) program for up to two years.
- Public notice for PHAs opening or closing waitlists can be provided by leaving an outgoing voice message on its answering system and website, if the messages are accessible for hearing, visual, and other communication-related disabilities.
- Capital Fund obligation end dates and expenditure end dates are extended by one year. PHAs may exceed Total Development Cost (TDC) and Housing Construction Cost (HCC) limits by 25%, and may seek HUD approval to exceed TDC and HCC by up to 50%. Deadlines for closeout forms are extended by six months.
- PHAs may use force account labor (workers employed directly by the agency), rather than contracted labor, for modernization activities.
- Energy audits are suspended and PHAs need not review utility allowances until December 31, 2020.
- HUD is temporarily suspending the Public Housing Assessment System (PHAS) and the Section Eight Management Assessment Program (SEMAP) for PHAs with a fiscal year end on or before December 31, 2020.
- Financial statement submission deadlines have been extended.
- PHAs now have 90, rather than 60, days to submit form HUD-50058 for transactions impacted by these waivers. HUD will provide future guidance regarding reporting work-arounds in the PIH Information Center (PIC) system.

The CARES Act also provides supplemental funding for the Public Housing and HCV programs and additional flexibility to move monies between Operating and Capital Funds. HUD will publish additional guidance regarding these aspects of the CARES Act in the future.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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