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| **Housing Board Meeting Date:** | April 24, 2020 |
| **Agency Title:** | COVID-19 Statutory and Regulatory Waivers from HUD for Housing Choice Voucher Program and Suspension of Section Eight Management Assessment Program (SEMAP) |
| **Requested Action:** | Approval of Utilization of COVID-19 Statutory and Regulatory Waivers from HUD for Housing Choice Voucher Program and Suspension of Section Eight Management Assessment Program (SEMAP) |
| **Staff Lead:** | Billy J. Lake, Director |

**BACKGROUND**

The COVID-19 pandemic presents significant challenges for HUD and Public Housing Authorities/Agency (PHA’s) partners to continue to carry out HUD’s fundamental mission to provide decent, safe, and sanitary affordable housing for low-income families. Program operations have been severely impacted as PHAs comply with critically important advisories and directives from public health professionals, including social distancing and other preventive practices that will slow the spread of COVID-19 and reduce the risk of exposure.

On March 27, 2020, President Trump signed the CARES Act into law, which authorizes over $2 trillion in emergency assistance and health care response for individuals, families and businesses affected by the COVID-19 pandemic, and emergency appropriations to support Executive Branch agency operations during the COVID-19 pandemic. The CARES Act further provides HUD with broad authority, in the context of the current public health emergency, to waive statutes and regulations (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment) for Housing Choice Voucher (HCV) programs. Through issuance of this notice, HUD is exercising this authority to provide PHAs with flexibility to adjust program practices where necessary to prioritize mission critical functions when normal operations are restricted and severely constrained, further prevent the spread of COVID-19, and mitigate the health risks posed by COVID-19 to PHA staff, families, landlords, and their communities at large.

The waivers implemented through this notice provide administrative relief and allow for alternative approaches to various aspects of PHA operations. With this flexibility, HUD strongly encourages PHAs to continue using available funding to house families, keep families in their homes, and conduct critical operations that can be done remotely and safely. Some critical functions for PHAs include but are not limited to issuing vouchers so families can find housing, processing Requests for Tenancy Approvals (RFTAs) so families can be approved to move into a unit, processing requests for portability moves, ensuring occupancy of Public Housing units, processing minimum rent hardship exemptions, and completing reexaminations for participants who have experienced a decrease in income.

HUD encourages PHAs to apply the waivers authorized on local circumstances and needs. HUD also encourages PHAs to document and expeditiously implement plans for alternative procedures in order to provide stable housing for some of our country’s most vulnerable families. Alternative processes may include electronic transmission of information to families, conducting briefings online, conducting conference calls, or using self-service features on the PHA’s website if available, and providing business-reply envelopes or secure drop-box apparatuses for document for assisted families that do not have access to the Internet.

HUD is making the waivers and alternative requirements effective immediately for those PHAs that elect to adopt them. PHAs may adopt the use of these waivers at any time during the period of availability. The use of these waivers is at the discretion of the individual PHA. A PHA may choose to apply all, some, or none of the waivers to their HCV programs.

PHAs are required to keep written documentation that record which waivers the PHA applied to their programs(s) and the effective dates. A PHA does not need to notify HUD or receive HUD approval to begin utilizing these waivers/alternative requirements. However, HUD may subsequently require the PHA to provide information to HUD on the waivers used by the PHA and the date the PHA applied the waiver to its program(s).

If a PHA chooses to apply any of the waivers provided for in this notice, the PHA is required to notify residents and owners of any impacts that the waiver and alternative requirement (where applicable) may have on them by whatever means it considers most effective as soon as practicable. HUD recognizes that the COVID-19 public health emergency presents unique challenges from a staffing and communication perspective and encourages PHAs to adapt their communications in consideration of local conditions and resources.

With respect to the HCV programs, pursuant to the CARES Act, the waivers/alternative requirements are effective for immediate use by PHAs as of the date of notice PIH 2020-05 issued on April 10, 2020.

Below are the specific statute and regulation being waived (or solely the regulation if no statutory requirement is being waived), the period of availability, and the alternative requirement (if applicable). The period of availability for these waivers/alternative requirements, collectively or individually, may be extended by PIH notice should HUD determine this to be necessary. PHAs are not required to keep the waiver/ alternative requirement in-place for the full period of availability (including any extension) but may at any time choose to revert to regular program requirements and operations.

**WAIVERS APPLICABLE TO HCV PROGRAMS**

**Family Income and Composition: Annual Examination - Income Verification requirements**

***Regulatory Authority: 24 CFR § 5.233(a)(2) Sub-regulatory Guidance: PIH Notice 2018-18***

**Description:** PHAs are required to use the Enterprise Income Verification (EIV) System for verification of family income at the annual examination. 24 CFR § 5.233(a)(2) requires PHAs to use EIV as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income in accordance with §5.236 and administrative guidance issued by HUD. PIH Notice 2018-18 describes the required verification hierarchy process PHAs must follow. HUD understands that documentation may be difficult to obtain as a result of the COVID-19 public health emergency. PHAs are also facing challenges with securely accessing HUD systems while many if not all staff are working remotely.

*To address these challenges, HUD is waiving the requirements to use the income hierarchy described by PIH Notice 2018-18 and will allow PHAs to forgo third-party income verification requirements for annual reexaminations, including the use of EIV, if the PHA wishes to conduct the annual recertification rather than delaying the family’s annual recertification.*

*During the allowable period of availability, PHAs may consider self-certification as the highest form of income verification to process annual reexaminations. This may occur over the telephone (but must be documented by PHA staff with a contemporaneous written record), through an email or postal mail with a self-certification form by the tenant, or through other electronic communications. PHAs are encouraged to incorporate procedures to remind families of the obligation to provide true and complete information when adopting these flexibilities.*

PHAs are further reminded that there is no HUD requirement that income and family composition examinations and recertifications must be conducted in-person unless determined necessary as a reasonable accommodation as long as applicable public health guidelines are followed (e.g., social distancing) and any state or local ordinance is followed.

PHAs that conduct annual examinations under this waiver/alternative requirement will be responsible for addressing any material discrepancies that may arise later. For example, if a tenant self-certified that the tenant lost their job, but later the EIV Income Validation Tool (IVT) shows the tenant’s employment continued, the PHA must take enforcement action in accordance with their policies and procedures.

**Period of Availability:** The period of availability to conduct annual reexaminations using these modified verification requirements ends on July 31, 2020.

**Family Income and Composition: Interim Examinations**

***Statutory Authority: Section 3(a)(1) of the USHA of 1937***

***Regulatory Authority: 24 CFR § 5.233(a)(2) - HCV and Public Housing Regulatory Authority: 24 CFR § 982.516(c)(2) - HCV***

***Regulatory Authority: 24 CFR § 960.257(b) and (d) - Public Housing Sub-regulatory Guidance: PIH Notice 2018-18***

**Description:** For the HCV programs, PHAs are required to adopt policies (in their Administrative Plans) prescribing when and under what conditions the family must report a change in family income or composition. However, at any time that a family requests an interim determination of family income or composition because of any changes since the last determination, the PHA must make the interim determination within a reasonable time after the family’s request. In most cases, the reason a family requests an interim determination is due to a loss in income or a change in family composition.

PHAs are required to use EIV for verification of family income at interim reexamination. 24 CFR § 5.233(a)(2) requires PHAs to use EIV as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income in accordance with §5.236 and administrative guidance issued by HUD. PIH Notice 2018-18 further describes the required verification hierarchy process PHAs must follow.

*To assist PHAs that may be prioritizing the processing of interim reexaminations due to decreases in family income and mitigate the challenges of transferring documentation during periods of shelter-in-place/stay-at-home efforts in response to the COVID-19 emergency, HUD is waiving the requirements to use the income verification hierarchy as described by PIH Notice 2018-18. HUD will allow PHAs to forgo third-party income verification requirements for interim reexaminations, including the required use of EIV. During the allowable period of eligibility, PHAs may consider self-certification as the highest form of income verification to process interim reexaminations. This may occur over the telephone (with a contemporaneous written record by the PHA staff person), through an email with a self-certification form by the family, or through other electronic communications.*

PHAs that conduct interim reexaminations under this waiver/alternative requirement will be responsible for addressing any material discrepancies that may arise later. For example, if a tenant self-certified that the tenant lost their job, but later the EIV IVT Report shows the tenant’s employment continued, the PHA must take enforcement action that is consistent with its policies and procedures.

**Period of Availability:** The period of availability ends on July 31, 2020.

**Enterprise Income Verification (EIV) Monitoring**

***Regulatory Authority: 24 CFR § 5.233***

***Sub-regulatory Guidance: PIH Notice 2018-18***

**Description:** PIH Notice 2018-18 specifies the required monitoring of EIV reports. For example, PHAs are required to monitor the Deceased Tenants Report, the Identity Verification Report, the Immigration Report, the IVT Report, and the Multiple Subsidy Report and the New Hires Report on a monthly basis. *Recognizing the challenges PHAs are facing with many if not all staff working remotely, HUD is waiving the mandatory EIV monitoring requirements.*

**Period of Availability**: The period of availability ends on July 31, 2020.

**Family Self-Sufficiency (FSS) Contract of Participation; Contract Extension**

***Regulatory Authority: 24 CFR § 984.303(d)***

**Description:** Part 984 establishes the requirements for the Section 8 FSS Program. Section 984.303(d) authorizes a PHA to extend a family’s contract of participation for a period not to exceed two years upon a finding of good cause. *HUD has made a determination that the circumstances surrounding COVID-19 qualify as “good cause” to extend family contracts, and FSS programs may consider this expanded definition of “good cause” as they make their determinations on each family’s eligibility for an extension.*

**Period of Availability:** The period of availability during which the PHA may extend the family’s contract of participation using COVID-19 as the “good cause” ends on December 31, 2020.

**WAIVERS APPLICABLE TO**

**HOUSING QUALITY STANDARDS (HQS) INSPECTIONS**

**HQS: Initial Inspection Requirements**

***Statutory Authority: Section 8(o)(8)(A)(i), Section 8(o)(8(C) of the USHA of 1937 Regulatory Authority: 24 CFR §§ 982.305(a), 982.305(b), 982.405***

**Description:** Section 8(o)(8)(A)(i) requires that the PHA must inspect the unit before any assistance payment is made to determine whether the unit meets HQS. Section 8(o)(8)(C) requires the PHA to conduct the initial inspection within certain time frames after receiving the RFTA. Section 982.305 provides that the PHA may not approve the assisted tenancy or execute a HAP contract until the unit has been inspected by the PHA and passes HQS. Additionally, Section 982.305 requires that the PHA must inspect the unit to determine that the unit satisfies the HQS before the beginning of the initial lease term, and that the PHA must perform this inspection within either 15 days or within a reasonable time depending on the size of the PHA.

*HUD is waiving these requirements and providing an alternative requirement. In order to place the unit under HAP contract and commence making payments, the PHA may rely on the owner’s certification that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the unit or units in question instead of conducting an initial inspection. At minimum the PHA must require this owner certification. However, the PHA may add other requirements or conditions in addition to the owner’s certification but is not required to do so. The PHA is required to conduct an HQS inspection on the unit as soon as reasonably possible but no later than October 31, 2020.*

**Period of Availability:** The period of availability for PHAs to accept owner’s self- certification for an initial inspection ends on July 31, 2020. The period of availability for the PHA to inspect a unit that was placed under HAP contract based on the owner’s self-certification ends on October 31, 2020.

**HQS: Initial Inspection Requirement – Alternative Inspection Option**

**Statutory Authority: Section 8(o)(8)(A)(iii) of the USHA of 1937**

**Implementation of Various Section 8 Voucher Provisions, 82 Fed. Reg. 5458 (Jan. 18, 2017)**

**Description:** Section 8(o)(8)(A)(iii) provides the PHA with the option to authorize occupancy of a unit prior to the initial inspection being completed if the unit had in the previous 24 months passed an alternative inspection. Under the statute the PHA may then make assistance payments retroactive to the beginning of the lease term once the unit had been determined to meet HQS pursuant to the PHA’s inspection. The Federal Register Notice that implemented this statutory option further provided that the PHA must inspect the unit within 15 days of the RFTA.

*HUD is waiving the requirement that the PHA must conduct its own inspection of the unit in order to commence making assistance payments under the Initial Inspection – Alternative Inspection option. Under this waiver and alternative requirement, the PHA may commence assistance payments at the beginning of the lease term based on the alternative inspection and the owner’s certification that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the unit or units in question. At minimum, the PHA must require this owner certification. The PHA may add other requirements or conditions in addition to the owner’s certification but is not required to do so. The PHA must conduct the HQS inspection for the unit for which it has commenced assistance payments under this waiver authority as soon as reasonably possible but no later than October 31, 2020.*

**Period of Availability:** The period of availability for the waiver to place a unit under HAP contract and commence payments ends on July 31, 2020. The period of availability for the PHA to inspect a unit placed under HAP contract under this waiver authority is October 31, 2020.

**HQ: Interim Inspections**

**Statutory Authority: Section 8(o)(8)(F) of the USHA of 1937 Regulatory Authority: 24 CFR §§ 982.405(g), 983.103(e)**

**Description:** The statute requires that upon notification to the PHA by a family or government official that the assisted unit does not comply with the HQS, the PHA must inspect the unit within 24 hours of when the PHA received the notification if the condition is life-threatening. 24 CFR 982.405(g) provides that if the reported condition is not life- threatening, the PHA must inspect the unit within 15 days. The regulation further provides that in the event of extraordinary circumstances HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

*HUD is waiving these requirements and establishing an alternative requirement for both tenant-based and PBV units. If the reported deficiency is life-threatening, the PHA must notify the owner of the reported life-threatening deficiency and that the owner must either correct the life-threatening deficiency within 24 hours of the PHA notification or provide documentation (e.g., text or email a photo to the PHA) that the reported deficiency does not exist. In the case of a reported non-life-threatening deficiency, the PHA must notify the owner of the reported deficiency within 30 days and the owner must either make the repair or document that the deficiency does not exist within 30 days of the PHA notification or any approved PHA extension. The PHA may add other requirements or conditions in addition to the owner’s documentation but is not required to do so.*

As is the case under the current HCV program requirements, the PHA is not required to conduct an on-site inspection to verify the repairs have been made but may rely on alternative verification methods (e.g., photos submitted by the owner, tenant certification, etc.).

**Period of Availability:** The period of availability ends on July 31, 2020. After July 31, 2020, the PHA must conduct the HQS inspection in accordance with the applicable time periods upon notification by a family or government official that the assisted unit does not comply with the HQS.

**HOUSING CHOICE VOUCHER PROGRAM WAIVERS - GENERAL**

**HCV: Administrative Plan**

**Regulatory Authority: 24 CFR § 982.54 (a)**

**Description:** The regulation requires that any revisions of the PHA’s administrative plan must be formally adopted by the PHA Board or other authorized PHA officials. *Recognizing the foreseeable difficulties in complying with this requirement in light of the COVID-19 emergency, HUD is waiving the requirement to allow the PHA administrative plan to be revised on a temporary basis without Board approval. As an alternative requirement any informally adopted revisions under this waiver authority must be formerly adopted as soon as practicable following June 30, 2020, but no later than July 31, 2020.*

**Period of Availability:** The period of availability ends on July 31, 2020.

**HCV: Information When Family is Selected - PHA Oral Briefing**

**Regulatory Authority: 24 CFR § 982.301(a)(3), § 983.252(a)**

**Description:** The regulation requires when the PHA selects a family to participate in the HCV program, the PHA must give the family an oral briefing. *HUD is waiving this requirement and as an alternative requirement allowing the PHA to conduct the briefing by other means such as a webcast, video call, or expanded information packet. Section 504 and the ADA require PHAs to ensure effective communication with applicants, participants and members of the public in all communications and notices. The PHA must ensure that the method of communication for the briefing effectively communicates with, and allows for equal participation of, each family member, including those with vision, hearing, and other communication-related disabilities, and ensures meaningful access for persons with limited English proficiency.*

**Period of Availability:** The period of availability ends on July 31, 2020.

**HCV: PHA Approval of Assisted Tenancy – When HAP Contract is Executed**

**Regulatory Authority: 24 CFR § 982.305(c)**

**Description:** The PHA may not make any housing assistance payments to the owner until the HAP contract is executed. The regulation provides that PHA must use best efforts to execute the HAP contract before the beginning of the lease term and that the HAP contract must be executed no later than 60 days from the beginning of the lease term. Any HAP contract executed after the 60-day period is void and the PHA may not pay any housing assistance payments to the owner. *HUD is waiving the regulatory requirement to allow PHAs to execute the HAP contract after the 60-day deadline has passed and make housing assistance payments back to the beginning of the lease term. However, the PHA and owner must execute the HAP contract no later than 120 days from the beginning of the lease term.*

**Period of Availability:** The period of availability to execute the HAP contract after the normally 60-day period from the beginning of the lease term ends on July 31, 2020.

**HCV: Family Unification Program (FUP): FUP Youth Age Eligibility to Enter HAP Contract**

**Statutory Authority: Section 8(x)(2) of the USHA of 1937**

**Description:** The statute provides that a FUP youth must be not more than 24 years of age (not yet reached their 25th birthday) to be eligible to be placed under HAP contract. A FUP youth issued a voucher at 24 years of age may not be able to lease the voucher before their 25th birthday where PHA operations may have been shut down or severely curtailed, unit searches are not possible due to shelter-in-place orders, or where the movement of people is significantly restricted.

*HUD is waiving this requirement and providing as an alternative requirement that the PHA may execute a HAP contract on behalf of any otherwise eligible FUP youth not more than 25 years of age (not yet reached their 26th birthday).*

**Period of Availability:** The period of availability ends on December 31, 2020.