



To: HJN Members
From: NHLP Staff
Re: HUD Notice PIH 2020-05
Date: April 23, 2020

On April 10, 2020, HUD's Office of Indian and Public Housing published Notice PIH 2020-05¹ pursuant to the CARES Act and in response to the COVID-19 pandemic. The CARES Act provides HUD with broad authority to waive statutes and regulations related to its programs, except fair housing, nondiscrimination, labor standards, and environmental requirements. Note that the CARES Act also provides funding to PHAs for both the voucher and public housing programs to address challenges related to the Coronavirus. HUD will publish additional guidance about those funds soon.

Below is (1) an overview of the HUD waiver notice (2) a list of key policies to consider when advocating with your local PHA (3) a summary of the available waivers for the Housing Choice Voucher and Public Housing programs that will impact tenants' rights and housing access. For each of the waivers, NHLP provides a policy recommendation, with the understanding that local communities have been impacted differently by the Coronavirus and not all residents and PHAs are dealing with the same issues. Note that the PIH Notice includes a helpful chart that cites directly to the statutes and/or regulations that are being waived by each waiver (and therefore we did not include those cites in the memo).

Overview of HUD Waivers

HUD strongly *encourages* PHAs to "utilize any and all waiver and alternative requirements as necessary to keep public housing and HCV programs operational to the extent practicable."² However, **HUD is not requiring PHAs to implement any policies to meet these goals.** Advocates must therefore work with their PHA to adopt local rules that will protect tenants from negative impacts of the Coronavirus and ensure that HUD programs continue to provide healthy and safe housing. Important aspects of the waivers listed in HUD's notice include:

- All waivers are effective immediately, with the earliest effective date being April 10 (the date of publication of the notice).³ HUD, however, will not be penalizing PHAs who put policy changes into effect prior to the notice.⁴
- Waivers listed in the notice do not need to be approved by HUD.⁵

¹ HUD Notice PIH 2020-05, *COVID-19 Statutory and Regulatory Waivers for the Public Housing, Housing Choice Voucher, Indian Housing Block Grant and Indian Community Development Block Grant programs, Suspension of Public Housing Assessment System and Section Eight Management Assessment Program* (April 10, 2020) (hereinafter "HUD Notice").

² HUD Notice, § 1.

³ HUD Notice, § 5, p. 4.

⁴ On a stakeholder call for PHAs, HUD staff stated that they would not penalize PHAs for implementing emergency policies prior to the publication of the waiver notice because many jurisdictions were already facing public health crises prior to April 10.

⁵ HUD Notice, § 5, p. 4.

- The voucher waivers apply to all HCV, including special purpose HCVs including FUP, VASH, and mainstream vouchers.⁶
- PHAs can choose to apply some or all of the waivers. PHAs can also request HUD waivers outside of the notice but must wait for HUD approval before implementing the waiver.⁷
- Some waivers come with alternative requirements. If a PHA adopts a waiver with an alternative requirement, the PHA must comply with all the terms and conditions of the alternative requirements.⁸ *The alternative requirements are only a floor and the PHA can always provide greater protections to tenants.*
- PHAs are required to keep written documentation of waivers and effective dates.⁹ HUD may require PHAs to provide that information on a later date. HUD has provided a sample form for PHAs to track waivers. *Advocates should ask to see the PHA’s documentation of the waivers in order to understand what new policies apply to tenants. Advocates should also inquire about additional waivers the PHA applied for, outside of the waivers in the notice. Ideally, PHAs will insert the new policy into existing PHA plan documents for easy reference.*
- 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 or as soon as practicable.”¹⁰ The notices must comply with Section 504, the ADA, and LEP requirements.¹¹ *Notification to tenants is required but the standard is vague. Advocates should work with PHAs to make sure that tenants are informed of policy changes that impact them. Also note that there is no requirement for tenant participation in the waiver process nor is there a mechanism for tenants to complain if waivers are used improperly. Contact NHLP if you suspect a PHA is operating outside of the authority granted by an individual waiver.*
- Generally, there are two “periods of eligibility” for waivers. Short term waivers end on July 31, 2020. Long-term waivers end on December 31, 2020.¹² PHAs do not need to wait until the end of the period to end a waiver, however.¹³
- HUD may extend the periods of eligibility and publish additional waivers in subsequent notices.¹⁴

Key Waivers

The following are key waivers and recommendations that are necessary to protect tenants, no matter the local impact of COVID-19:

- **Interim Recertifications and Minimum Rents:** HUD provided PHAs with the waiver authority to locally implement interim recertification rules that will protect tenants in the event of a loss of income, but HUD fell short of requiring PHAs to adopt these common-sense policies. It is imperative that advocates work with local PHAs to adopt an interim recertification rule that (1) states if rent is not paid when due for April and other months during the emergency (and a reasonable period thereafter), PHAs and owners should presume that the cause is a reduction in income and begin the recertification process (2) allows tenants to self-certify their change in

⁶ HUD Notice, § 5, p. 4.

⁷ HUD Notice, § 5, p. 4.

⁸ HUD Notice, § 5, p. 4.

⁹ HUD Notice, § 5, p. 4-5.

¹⁰ HUD Notice, § 5, p. 4-5.

¹¹ Advocates should ensure that the PHA consider such notifications about waiver impacts, to the extent these notifications are written, to be vital documents under HUD’s 2007 LEP Guidance.

¹² HUD Notice, § 6, p. 5-6.

¹³ HUD Notice, § 6, p. 6.

¹⁴ HUD Notice, § 4, p. 3.

income using a variety of methods and (3) requires PHAs to apply any decrease in rent due to loss of income to the month following the change in income, retroactively if necessary. Advocates should also work with PHAs to suspend minimum rents, which can be done without a HUD waiver.

- **Property conditions:** HUD is allowing PHAs to adopt a policy whereby a voucher landlord can self-certify through an email or text that a life-threatening condition does not exist (after a tenant reports unsafe conditions). An inspection by the PHA or a third party is not required, contrary to past practice. For Public Housing, PHAs inspections for physical conditions are postponed, except where there is a threat to life or property, and HUD states that HUD will rely on residents' complaints and other sources to identify threats to health and safety, without identifying a particular process. It is unclear how PHAs with limited operational capacity will be able to respond to such complaints. Advocates should note that the Multifamily FAQs provide that where there is "an exigent circumstance or reason to believe that there is a threat to life or property," inspections will be conducted by HUD inspectors (FAQs on Asset Management, last updated on 4/16, Q1 on page 12). Advocates could request that their local PHAs utilize a similar process where there is a threat to health and safety. See below for specific recommendations regarding life-threatening conditions in the voucher and public housing programs.
- **Adding household members:** HUD provides significant waiver authority to make it easier for families to add household members. For example, PHAs can adopt policies that disregard subsidy standards. For public housing, HUD granted PHAs explicit authority to waive tenant selection criteria, although a similar waiver is not listed for the voucher program (but note that both programs can use waivers to amend most policies laid out in local plans). Because so much is left to the PHA's discretion with respect to tenant screening, in many cases a waiver is not needed for the PHA to revise its criteria. Advocates should be working with local PHAs to lift discretionary screening requirements such as most criminal history and credit, in order to support family reunification for people exiting jails and prisons and health care needs of members.¹⁵ Other policies to consider are (1) to permit additions to households during the length of the screening process (for PHAs who retain tenant screening for criminal history) and (2) extending guest periods.
- **Tenant notice requirements:** Through these waivers, HUD is allowing PHAs to change their policies and practices without prior notice to tenants. Notice to impacted tenants is only required after the policy is revised and "as soon as practicable." Advocates should work closely with PHAs to learn what policy changes will take place, how they will impact residents, and how residents will be informed, so they can help get the word out. Where Resident Advisory Boards (RABs) exist, advocates should request that PHAs, at the least, provide notice (preferably advanced notice) of policy changes to the RAB.

Waivers Applicable to Both Public Housing and Housing Choice Vouchers (Section 7)

PH and HCV-1: PHA 5-year and Annual Plan Submission Dates, Significant Amendment Requirements¹⁶

¹⁵ For a sample letter advocating for the lifting of criminal history screening requirements in light of HUD's waiver notice, see the Shriver Center's letter to the Governor of Illinois (April 14, 2020).

¹⁶ HUD Notice, § 7, p. 6.

Summary: PHAs with fiscal years ending June 30, September 30, or December 31, 2020 will have additional time to submit their PHA five-year (if due in 2020) and annual plans. HUD is providing the alternative deadlines due to the restrictions against large gatherings which would inhibit PHAs' ability to host public hearings on its plans. PHAs with fiscal years ending June 30 or September 30, 2020 will now be required to submit their five-year (if due) and annual plans by October 18, 2020. PHAs with fiscal years ending December 31, 2020 will now be required to submit their five-year (if due) and annual plans by January 16, 2021.

Additionally, PHAs will be able to make significant amendments or modifications to its policies without undergoing the formal process to amend its PHA plans and without board approval. The waiver does not apply to a change in PHA policies related to Section 18, Section 22, or the Rental Assistance Demonstration (RAD). PHAs are required to notify assisted families "of any impacts" of the significant amendment in the "most effective" and practicable manner. The notice must effectively communicate with each family member, including those with vision, hearing, and other communication-related disabilities, and ensure meaningful access for persons with limited English proficiency.

The waiver regarding the significant amendment is available for use until July 31, 2020; the availability of the waiver regarding PHA five-year and annual plan deadlines depends on the PHA's fiscal end of year date.

NHLP Recommendation: Note that with this waiver, PHAs are not required to formally amend Admin plans or ACOPs to adopt policy changes related to waivers, however, tenant notification of any impacts on tenants is required. Where possible, PHAs should provide assisted families and RABs with written notice of significant amendments to PHA policies. PHAs should also use email blasts, "robo" calls, and its website to inform families of the significant amendment. The RABs should still have an opportunity to provide written comments, and the PHA should give due consideration to those comments and explain to HUD how it considered those comments and if it altered its approach, even if it is permitted to proceed with the change. At public housing properties, the notice should be posted in common areas and on each floor by stairwells and/or elevators. PHAs should also inform community organizations, like legal services and social services organizations, of the policy changes. Ideally, PHAs will also insert new policies into existing PHA Plan documents.

PH and HCV-2: Family Income and Composition: Delayed Annual Examinations¹⁷

Summary: PHAs can elect to delay annual recertifications of assisted families; however, all annual recertifications due in calendar year 2020 must be completed by December 31, 2020. If the annual recertification of a voucher family is delayed, the PHA must apply any applicable payment standard increase to the HAP contract by the family's normal annual recertification date. This waiver is available for use until December 31, 2020.

NHLP Recommendation: PHAs should adopt this waiver, particularly where PHA operations have been severely curtailed or suspended. Advocates should check to make sure the PHA is applying payment standard increases in compliance with the waiver.¹⁸

¹⁷ HUD Notice, § 7, p. 8.

¹⁸ For voucher families, see waiver HCV-7, which allows PHAs to apply an increased payment standard prior to the family's annual recertification.

PH and HCV-3: Family Income and Composition: Annual Examination – Income Verification requirements¹⁹

Summary: HUD waived the requirement to use the income verification hierarchy described in PIH Notice 2018-18. Importantly, this waiver allows PHAs to forgo third-party income verification, including the use of EIV, and to consider the family’s self-certification as the highest form of income verification. Families can self-certify via telephone, email or postal mail with a self-certification form. PHAs will be responsible for addressing any material discrepancies later. Annual recertifications do not need to be completed in-person unless as a necessary reasonable accommodation. This waiver is available for use until July 31, 2020.

NHLP Recommendation: PHAs should adopt a process for completing annual recertifications remotely. Advocates should work with PHAs to ensure that tenants know their rights to self-certify income and that they have access to the technology to do so properly.

PH and HCV-4: Family Income and Composition: Interim Reexaminations²⁰

Summary: HUD waived the same rules that apply to interim recertifications as it did for annual recertifications, (see Waiver PH and HCV-3: HUD waived use of the income verification hierarchy described in PIH Notice 2018-18, will allow PHAs to forgo any third-party income verification, and will consider the family’s self-certification as the highest form of income verification.)

HUD also states that PHAs are encouraged to review and revise their interim recertification policies to allow PHAs to quickly process interim recertifications. This waiver is available for use until July 31, 2020

NHLP Recommendation: PHAs should adopt an interim recertification rule that (1) states if rent is not paid when due for April and other months during the emergency (and a reasonable period thereafter), PHAs and owners should presume that the cause is a reduction in income and begin the recertification process (2) allows tenants to self-certify their change in income and (3) requires PHAs to apply any decrease in rent due to loss of income to the month beginning the month following the change in income, retroactively if necessary.

Housing Choice Voucher Program Waivers – HQS Inspections (Section 8)

HUD implemented a number of waivers related to voucher unit inspections due to the potential health risks in many areas of physical inspections. The waivers also allow PHAs to lease-up families as quickly as possible, an important goal during the Coronavirus pandemic. HUD clearly states, however, that the waivers do not relieve landlords of the responsibility to maintain a unit in a habitable condition. Importantly, the PHA always retains the right to conduct an inspection, even if it chooses to apply one of the HQS-related waivers.

HQS-1: HCV Initial Inspection Requirements²¹

Summary: Under HUD regulations the PHA must inspect a unit prior to initial lease-up to make sure it meets the housing quality standards. This waiver allows PHAs to rely on an owner’s self-certification “that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the

¹⁹ HUD Notice, § 7, p. 8.

²⁰ HUD Notice, § 7, p. 9.

²¹ HUD Notice, § 8, p. 12-13.

unit or units in question.” If a PHA adopts this waiver, it must do an initial inspection as soon as possible but no later than October 31, 2020.

NHLP Recommendation: PHAs should adopt this policy if they provide housing in a community where physical inspections are a risk to the health and safety and/or a physical inspection would significantly increase the time it takes to lease-up. PHAs should be required to advise participants of the need to notify the PHA immediately of unsafe conditions, in which case the PHA will follow up with an inspection.

HQS-3: Initial Inspection: Non-Life-Threatening Deficiencies Option²²

Summary: PHAs have the option of adopting a policy that allows a family to move into a unit if it fails HQS for a non-life threatening HQS violation. Under the regulation, the owner has 30 days to fix the non-life-threatening violation and the PHA will withhold payments if it is not fixed at that time. This waiver allows owners an additional 30 days to make the repairs but if repairs are not made after 60 days, the PHA must withhold payments.

NHLP Recommendation: PHAs should adopt this waiver. It will allow families to lease up more quickly so long as the unit does not have a non-life threatening HQS violation. PHAs should be required to advise participants of the need to notify the PHA immediately of unsafe conditions, in which case the PHA will follow up with an inspection.

HQS 4: Initial Inspection Requirement – Alternative Inspection Option²³

Summary: PHAs have the option to approve alternative inspections in lieu of an HQS inspection (for example, if the voucher unit is in a LIHTC building, the PHA can commence HAP payments based on the LIHTC inspection). The PHA must still conduct an inspection but this waiver revises the timeline for the HQS inspection. So long as the owner certifies that there are no life-threatening conditions at the unit, the owner has until October 31, 2020 to conduct an HQS inspection.

NHLP Recommendation: PHAs should adopt this waiver because it will allow families to lease up more quickly. PHAs should be required to advise participants of the need to notify the PHA immediately of unsafe conditions, in which case the PHA will follow up with an inspection.

HQS-6: Interim Inspections²⁴

Summary: PHAs are normally required to conduct an on-site inspection within 24 hours if a tenant reports a life-threatening condition in the unit, or within 15 days for non-life-threatening conditions. This waiver allows the owner to fix the life-threatening condition or self-certify that one does not exist within 24 hours of the complaint. It allows the owner to fix a non-life-threatening condition or self-certify that it is fixed within 30 days of the PHA notification. Self-certification may be done by email or text.

NHLP recommendation: PHAs should not adopt this policy for life-threatening conditions because it puts the health and safety of HUD residents at risk. If tenants don’t learn of the new protocol, in some cases,

²² HUD Notice, § 8, p. 14.

²³ HUD Notice, § 8, p. 15.

²⁴ HUD Notice, § 8, p. 16.

they will continue to live in uninhabitable units. Advocates should urge PHAs to maintain a process whereby inspectors visit the property in the case of a life-threatening condition. To minimize the number of visits, inspections could be done by the PHA or another entity such as local code enforcement. Alternatively, advocates can request that tenants be (1) notified of the new protocol immediately (2) promptly notified if the owner is alleging that the work has been done and (2) allowed an opportunity for the tenant to contest the owner's statement. In that case verification should be required (but could include code enforcement inspectors, not just PHA contractors or employees).

HQS-10 Housing Quality Standards: Space and Security²⁵

Summary: PHAs are required to have policies about the minimum space standards for tenants. For example, PHAs set voucher subsidy standards using a "one-bedroom or living/sleeping area for two people" rule. Recognizing that families may need to add household members due to the Covid virus (for example, a family member needs full-time care), HUD is allowing PHAs to waive rules about space living standards. Note the waiver applies to current tenants only, not families entering a new lease. The waiver will remain in effect the duration of the current lease or one year from the date of the PIH Notice, whichever is longer.

NHLP recommendation: PHAs should adopt this waiver because it will make it easier for families to add household members during the pandemic. Even if not allowed to be added to the household, PHAs should implement a lenient policy that extends guest periods.

HCV Program Waivers – General (Section 9)

HCV 1: Administrative Plan²⁶

Summary: PHAs can on a temporary basis revise their PHA administrative plans without approval of the PHA board. PHAs must formally adopt any informal revisions to its administrative plan as soon as possible following June 30, 2020 but no later than July 31, 2020. This waiver is available for use until July 31, 2020.

NHLP Recommendation: PHAs should utilize this waiver to quickly revise their policies to better serve assisted families during the COVID-19 crisis. Note that PHAs are required to give tenants notice of all policy changes that will impact them, in whatever way practicable, in accordance with the recommendations described in PH and HCV-1. Advocates should request access to the PHA's waiver tracking log to understand the waivers and new policies being applied to tenants. Also, as described in the "Key Recommendations" section above, consider requesting notice of policy revisions to RABs and an opportunity to comment.

HCV-2: Information When Family is Selected – PHA Oral Briefing²⁷

Summary: HUD waived the oral briefing requirement for new voucher families. PHAs are permitted to use alternative methods to conduct the initial briefings for HCV and PBV participants. The briefing can be conducted by webcast, video call, other means, or with an expanded information packet. The alternative method must effectively communicate with each family member, including those with vision,

²⁵ HUD Notice, § 8, p. 18.

²⁶ HUD Notice, § 9, p. 19.

²⁷ HUD Notice, § 9, p. 19.

hearing, and other communication-related disabilities, and ensure meaningful access for persons with limited English proficiency. This waiver is available for use until July 31, 2020.

NHLP Recommendation: PHAs should adopt a process for facilitating remote *live* initial briefings for voucher participants, whenever possible. For families who do not have access to the internet or video conference platforms, PHAs should mail the briefing materials to the family and conduct the initial briefing via a phone conference. The PHA should include in the briefing materials a staff phone number for families to call with their questions. In some cases, there may be partner entities that would be willing to do briefings, in lieu of the PHA. With appropriate quality assurance it should be permitted, particularly where it may enable service of otherwise difficult to serve populations.

HCV-3 Term of Voucher – Extensions of Term²⁸

Summary: HUD has waived the requirement that extension(s) of a family's initial voucher term must be done in accordance with the PHA's administrative plans (typically voucher families receive 60 days to locate a new unit). This waiver is available for use until July 31, 2020.

NHLP Recommendation: PHAs should toll the search period for all vouchers. Social distancing protocols make it difficult for families who have been issued Housing Choice Vouchers, but have not yet leased up, to conduct a successful housing search. When families can't use their voucher they turn it back over to the PHA. Since many PHAs report that they are not issuing vouchers to new families at this time, tolling search times will both protect families looking for housing as well as maximize HUD resources during the crisis. Tolling voucher search times is important both for current voucher families (either at initial lease-up or for an extension period) and also families who have been awarded tenant protection vouchers to relocate due to a conversion because their housing is substandard.

HCV-4: PHA Approval of Assisted Tenancy – When HAP Contract is Executed²⁹

Summary: PHAs may not make payments to a landlord until the HAP contract is executed. Generally, the HAP contract must be executed no later than 60 days from the beginning of the lease term. Under this waiver, PHAs are allowed to execute HAP contracts up to 120 days after the beginning of an executed lease (PHAs can then make payments back to the beginning of the lease term). This waiver is available for use until July 30, 2020.

NHLP Recommendation: PHAs should utilize this waiver to allow additional time to execute the HAP contract electronically and to allow families to quickly secure housing. Families with a voucher may have difficulty in leasing a unit with the voucher as a result of a high-stressed housing market, changes in local leasing practices, limited or severely curtailed PHA operations, and shelter-in-place orders.

HCV-5: Absence from Unit³⁰

Summary: HUD waived the requirement that tenants cannot be absent from the unit for more than 180 consecutive days. PHAs now have the discretion to continue housing assistance payments and to not terminate the HAP contract if there is an extenuating circumstance. This waiver is available for use until December 31, 2020.

²⁸ HUD Notice, § 9, p. 20.

²⁹ HUD Notice, § 9, p. 20.

³⁰ HUD Notice, § 9, pp. 20-21.

NHLP Recommendation: Advocates should work with PHAs to adopt a policy that allows families to be away from their units indefinitely, but not later than December 31, 2020, for COVID-19 related reasons such as caring for loved ones, seeking medical care, extended stays at nursing homes, or other reasons. Advocates should inform tenants who have been absent from their unit over 180 consecutive days to return to their unit by December 31, 2020. The HAP contract will be terminated on that date if the family is still absent from the unit (and it is after the 180 day limit). However, note that tenants should consider a reasonable accommodation request if more time is needed and the absence from the unit was disability-related.

HCV-6: Automatic Termination of HAP Contract³¹

Summary: HUD has waived the requirement that HAP contracts be automatically terminated 180 days after the last housing assistance payment to the owner. Normally when the assistance payment is reduced to \$0, the contract is automatically terminated after 180 days. In the alternative, PHAs can, upon written notice to the owner and family, extend the period of time that would trigger automatic termination of the HAP contract. This waiver is available for use until December 31, 2020. Additionally, PHAs may not extend HAP contracts using this waiver beyond December 31, 2020.

NHLP Recommendation: Advocates should work with PHAs to adopt this waiver, which is especially important for families who may add a member to their household, resulting in a \$0 rental assistance payment, during the COVID-19 crisis.

HCV-7: Increase in Payment Standards Under HAP Contract Term³²

Summary: PHAs are allowed under this waiver to apply increased payment standards at any time, instead of having to wait until the family's annual recertification anniversary date. PHAs can conduct an interim recertification for the purpose of applying the new payment standard. When a PHA decides to delay processing a voucher family's annual recertification, as described in PH and HCV-2, the PHA must use the increased payment standard to calculate the rental assistance payment no later than the family's annual recertification anniversary date. This waiver is available for use until December 31, 2020.

NHLP Recommendation: PHAs should utilize this waiver to ensure assisted families receive the benefit of an increased payment standard. Any increase in the payment standard should be applied to all tenants as of the effective date of the new payment standard. Where the PHA has decided to delay annual recertifications for families, advocates should ensure the increased payment standard is used to calculate the housing assistance payment by the family's annual recertification anniversary date.

HCV-8: Utility Allowance Schedule- Required Review and Revision³³

Summary: This waiver will allow PHAs to delay their review and revision of their utility allowance schedule. Previously, PHAs were required to review its utility allowance schedule annually and revise the schedule if there was a change of ten (10) percent or more in the utility rate. Any outstanding review and revision obligations for calendar year 2020 must be completed by December 31, 2020.

³¹ HUD Notice, § 9, p. 21.

³² HUD Notice, § 9, p. 21.

³³ HUD Notice, § 9, p. 22.

NHLP Recommendation: Advocates should request that PHAs do not adopt this waiver because it could lead to increase costs for tenants. If PHAs do adopt this waiver, any increases in utility allowances that would have resulted in lower tenant contributions or a higher reimbursements should be provided to tenants retroactively as of the date that the regularly-scheduled updated allowance would have gone into effect.

HCV -10: Family Unification Program (FUP): FUP Youth Age Eligibility to Enter HAP Contract³⁴

Summary: HUD waived the requirement that assisted FUP youth must be 24 years or younger. PHAs may now execute a HAP contract on behalf of any otherwise eligible FUP youth who is up to 25 years-old. This waiver is available for use until December 31, 2020.

NHLP Recommendation: PHAs should adopt this waiver to allow additional time for FUP youth to secure housing. FUP youth with a voucher may have difficulty in leasing a unit with the voucher as a result of high-stressed housing markets, changes in local leasing practices, limited or severely curtailed PHA operations, and shelter-in-place orders.

Public Housing Program Waivers (Section 10)

PH-4 ACOP: Adoption of Tenant Selection Policies³⁵

Summary: A PHA can on a temporary basis revise their ACOPs without approval of its board. PHAs must formally adopt any informal revisions to its ACOP as soon as possible following June 30, 2020 but no later than July 31, 2020. This waiver is available for use until July 31, 2020.

Tenant selection policies may be amended under this waiver without formal approval but must still be consistent with fair housing and equal opportunity requirements.

NHLP Recommendation: PHAs should utilize this waiver to quickly revise their policies to better serve assisted families during the COVID-19 crisis. PHAs should lift tenant screening requirements for such characteristics as criminal and credit history when assisted families seek to add members to a household. Removing discretionary restrictions for COVID-19-related additions to the household such as family reunification for people exiting jails and prisons and health care needs is imperative during this health crisis. Note that there is no equivalent tenant selection process waiver for the voucher program. In addition, PHAs should amend their tenant preference selection guidelines to include survivors of domestic violence or any other local priorities (such as chronically homeless adults and at-risk families) in light of the COVID-19 pandemic.

If the PHA retains screening for criminal history, advocates should consider working with their PHAs to adopt other policies that will support family reunification such as (1) permitting proposed additions to the household during the screening process, which may be delayed because of COVID-19 and (2) extending discretionary “guest” periods so that family members can remain in the household beyond the normal limitations.

PH-5: Community Service and Self-Sufficiency Requirement (CSSR)³⁶

³⁴ HUD Notice, § 9, p. 23.

³⁵ HUD Notice, § 9, p. 24.

³⁶ HUD Notice, § 9, p. 25.

Summary: PHAs require each adult resident of public housing (except for exempt family members) to contribute 8 hours per month of community service or participate in an economic self-sufficiency program, or some combination of both. Noncompliance is grounds for non-renewal of the lease at the end of the lease term. This waiver allows PHAs to suspend the community service and self-sufficiency requirement. If a PHA adopts the waiver and suspends the community service requirement, then families will not be subject to the community service requirement until their next annual reexamination.

NHLP Recommendation: PHAs should adopt this waiver and suspend all community service and economic self-sufficiency requirements for the health and safety of residents.

PH-7: Over-Income Families³⁷

Summary: PHAs are required to terminate or charge an alternate rent to families whose income exceeds maximum income limits for two consecutive years. HUD has defined the two-year time period as two consecutive reexamination cycles. This waiver allows PHAs to waive this requirement and permit families to remain in their units and pay the same rent until the PHA conducts the next annual recertification. In order to adopt this waiver, PHAs must also adopt a waiver under **PH and HCV-2** (delayed annual examinations for family income and composition).

NHLP Recommendation: For PHAs that do have an over-income family rule, PHAs should adopt this waiver, as well as PH and HCV-2 (delayed annual examinations for family income and composition) in order to allow over-income families to remain in their units and pay the same rent until the next annual recertification.

PH-8: Resident Council Elections³⁸

Summary: Resident councils are required to adhere to certain election procedures, including holding elections at least once every three years for each resident council member. This waiver allows PHAs to delay resident council elections beyond the three-year limit, if necessary. However, the delayed resident council election must be rescheduled and as soon as reasonably possible once circumstances permit, after July 31, 2020.

NHLP Recommendation: PHAs should adopt this waiver and allow resident council elections to be delayed for the health and safety of residents.

PH-9 Review and Revision of Utility Allowances³⁹

Summary: PHAs are required to review utility allowances on at least an annual basis. This waiver allows PHAs to delay the review and update of utility allowances.

NHLP Recommendation: Advocates should request that PHAs do not adopt this waiver because it could lead to increase costs for tenants. If PHAs do adopt this waiver, any increases in utility allowances that would have resulted in lower tenant contributions or a higher reimbursements should be provided to tenants retroactively as of the date that the regularly-scheduled updated allowance would have gone into effect.

PH-10: Tenant Notifications for Changes to Project Rules and Regulations⁴⁰

³⁷ HUD Notice, § 10, p. 26.

³⁸ HUD Notice, § 10, p. 26.

³⁹ HUD Notice, § 10, p. 27.

⁴⁰ HUD Notice, § 10, p. 27.

Summary: PHAs are required to provide 30-day advanced notice to impacted families for changes to policies, rules, and special charges to families. This waiver relieves PHAs of the obligation to provide 30-day advanced notice, except notice related to tenant charges must still be provided (presumably 30 days in advance of the charges but the guidance does not specify). PHAs must still provide “adequate notification to impacted families within 30 days of making such changes”⁴¹ per this guidance.

NHLP Recommendation: Advocates should request that PHAs, even if they adopt this waiver, continue to provide tenants as much advanced notice as possible of all policy changes and continue to apply 30-days advanced notice of tenant charges. PHAs should give due consideration to tenant comments (both individual and through resident councils and RABs) and document how they have done so.

Public Housing Assessment System (PHAS) (Section 11)⁴²

Summary: HUD measures the performance of a PHA by measuring a PHA’s physical condition, financial condition, management operations, and Capital Fund obligation and occupancy. This waiver allows HUD to waive or postpone physical inspections for all PHAs until further notice, except where there is a threat to life or property. HUD will primarily rely on residents’ complaints and “other sources such as news articles, Congressional inquiries, and field office requests” to assess threats to life or property. In addition, HUD will not issue new PHAS scores unless the PHA requests that a new PHAS score be issued.

NHLP Recommendation: The notice is unclear as to how a PHA will respond in the event of a threat to life or property at a public housing site. It is imperative that advocates help residents make PHAs aware of uninhabitable housing conditions, particularly where PHA operations are minimal and raise the issue to HUD, when necessary.

If you have questions about this memo, please contact Deborah Thrope (dthrope@nhlp.org).

⁴¹ HUD Notice, § 10, p. 27.

⁴² HUD Notice, § 11, p. 27.