

# Guidance on COVID-19 State of Emergency Hardship Requests and Status of Monitoring and Compliance Functions



**\*\* Updated September 8, 2020 \*\***

Given the extraordinary nature of the COVID-19 emergency, the Department of Housing and Community Development's (HCD or Department) Asset Management and Compliance (AMC) Branch is providing guidance related to asset management and compliance functions for projects in the Department's portfolio. **Please Note: This notice updates and revises the guidance originally issued April 16, 2020, and reflects additional authority provided through Executive Order N-66-20 issued May 29, 2020. This guidance will be re-evaluated on a continual basis.**

Property owners (also referred to as Sponsors and/or Borrowers) and management agents should refer to this guidance when considering relief options for properties experiencing cash flow shortages due decreased rental revenue caused by renter (both residential and commercial) failure to pay and/or significantly increased operating expenses as a result of the COVID-19 state of emergency.

The guidance below is focused on the following items:

1. Relief Requests
2. Reporting Requirements
3. Compliance Monitoring
4. **New!** Income Calculation Guidance for CARES Act Unemployment Compensation
5. **New!** Electronic Signature Acceptance Policy
6. COVID-19 Response Best Practices

## Relief Requests

HCD will consider and implement reasonable financial accommodations for projects affected by the COVID-19 state of emergency as detailed below. However, in order to adequately assess any financial hardship and need for any of the relief options provided below, HCD will require sufficient documentation to substantiate the hardship.

Depending on the type of relief sought, HCD may require documentation including but not limited to the following:

- Detailed hardship request, on the Owner/Developer's letterhead, signed by an authorized representative
- 2019 Project Audit or internally prepared Y-T-D December 31, 2019 Project Income and Expense Statement
- The most recent three months prior to the request submittal of the following: Balance Sheet, Income and Expense Statement, and Rent Roll
- Detailed list of any and all reserves held outside of HCD, including description of required use of those funds and current balances
- Information on additional sources of financial relief funded and/or applied for, with proof of application

- 2020 rent ledger showing actual rent receipts, including units with delinquent rents identified and projected loss of revenue

Upon receipt of a written request from the Owner/Developer, HCD will inform the Owner/Developer of the required supporting documentation. Upon receipt of such documentation, HCD will assess each individual project and provide a written response within 15 business days. Depending on the number of requests received, the Department may need additional time to review requests, but the requestor will be notified within 7 business days if more than 15 business days will be needed.

### ***Forbearance Requests***

For Owner/Developers with required monthly mandatory payments under the Mobilehome Park Resident Ownership Program (MPROP), Child Care Service (CCS) program, or with a current workout plan that includes a required mandatory debt payment, the Department will accept requests for forbearance based on the submittal of all hardship documentation as detailed above.

Additionally, any Owner/Developer with an outstanding loan due to mature any time during which the state of emergency remains in effect may request a forbearance with the same documentation to substantiate the request.

Any request for forbearance, provided financial hardship is documented, will be approved for 30 days. Upon official request, a forbearance may be extended for up to two additional 30-day periods for a maximum forbearance period of 90 days (three consecutive months or monthly payments). The Borrower has the option to discontinue the forbearance at any time. HCD will continually evaluate the need for an extension.

### ***Extension of Residual Receipt Payment Due Dates***

The Department will extend the due date for Fiscal Year 2019 residual receipt payments to HCD until 90 days after the Annual Report Review and Approval Letter is sent by the Department's Asset Management and Compliance staff to the Borrower. No documentation of hardship will be required. This extension is contingent upon the Owner/Developer agreeing to forego Sponsor Distributions during the same time period.

### ***Use of HCD-Restricted Reserves***

Owners/Developers may request to use funds from HCD-restricted reserve accounts such as the operating reserve, replacement reserve, transition reserve or operating reserve II (OR2) accounts for relief such as paying for increased operating costs associated with COVID-19, paying HCD's required .42% loan payments or annual monitoring fees, or requesting a reduction in required deposits to reserve accounts. . . Approval of all such requests will be on a case-by-case basis. Please note that reserve account replenishment requirements shall apply.

### ***Deferment of .42% Loan Payments or Annual Monitoring Fees - Updated!***

The Department will extend the payment due date for projects with either 1) a mandatory .42% HCD loan payment or 2) an Annual Monitoring Fee under the HOME or LPR Program with a due date between November 2019 and October 2020 until December

2020.

HCD will continue to assess the situation and, should the impacts of the COVID-19 state of emergency continue through the end of the year, HCD will evaluate ability to defer .42% loan payments or Annual Monitoring Fees due at the end of the 2020 calendar year while ensuring continued staffing resource costs are maintained.

### ***Consent of Hardship Requests Provided Through Other Lenders***

HCD is preparing to promulgate a pro forma form of “consent to forbearance by junior lien holders” and a proposed consent to forbearance by senior lienholders form. However, generally all such senior lienholders will want to use their own form. Currently, the Department intends to place a limitation on all such consents to be time-limited to the longer of either six months or the duration of the declared COVID-19 state of emergency.

Additionally, during the period of any COVID-19 relief approved by the Department, the Borrower that receives such relief must agree to the following:

- Not charge any late fees, penalties, or other charges to a tenant who, as a consequence of the COVID 19 emergency, is late in the payment of rent
- Not implement any rent increases without prior written approval of the Department
- Not make residual receipts or mandatory debt service payments to subordinate lenders
- Forego Sponsor distributions
- Suspend payment of Limited Partner and General Partner fees
- Adhere to all active Executive Orders

During this period, all other material terms and conditions of the Department’s Loan Documents and the Regulatory Agreement remain in full force and effect, including but not limited to:

- Borrowers must remain current with all tax, water, sewage or other such bills as they become due, unless the Borrower has obtained written forbearance relief from such authorities
- Borrowers must use collected rents and other receipts of the project for no purpose other than for Reasonable Operating Expenses or making payments of amounts due to a senior lender under the terms of the Department’s Loan Documents and Regulatory Agreement
- Borrowers shall not without the prior written approval of HCD accept any relief or assistance, including COVID-19 relief, that may encumber the Mortgaged Property; or enter into any contract, agreement or arrangement to borrow funds or finance any purchase or incur any liability, direct or contingent other than for Reasonable Operating Expenses as defined in the Regulatory Agreement

### **Reporting Requirements - Updated!**

The Department is allowing a grace period for all projects to comply with AMC Fiscal and AMC Occupancy reporting requirements. The Department shall not issue Delinquency Notices or apply negative points to applications for new funding based on late submittal of any of the reports listed below that were due on or after March 1, 2020 provided all outstanding reports are submitted no later than September 30, 2020.

- Annual Report (per Department loan program)
- Certified Financial Statement (CPA-certified Audit)

- Sponsor's Project Rating – AMC Form 184
- Annual Supportive Housing Report – AMC Form 185
- Annual Special Needs Population Report – AMC Form 187
- HOME Annual Affirmative Marketing Analysis Report (AAMAR)
- Operating Budgets and Schedules of Rental Income

### Compliance Monitoring - **Updated!**

HCD has cancelled all scheduled site inspections through at least December 31, 2020. Beginning in the month of July, the Department started conducting desk audits with the intent of scheduling physical inspections at a later date. The requirements and process for desk audits are detailed in the desk audit notification letter. In the event a site inspection is deemed necessary by the Department, the Sponsor will be notified and a site inspection will be scheduled.

Please contact your AMC Fiscal and Occupancy representatives for further information.

### Income Calculation Guidance for CARES Act Unemployment Compensation – **New!**

The Department seeks to provide clarification for income calculations of unemployment compensation while determining tenant annual income. The Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed on March 26, 2020 providing additional funds to families and individuals impacted by COVID 19. For the purposes of income determination, the following types of CARES Act unemployment compensation should be treated as follows:

- Pandemic Unemployment Assistance (PUA) – This unemployment compensation is for individuals who are self-employed, seeking part-time employment or who do not qualify for general unemployment benefits. The Department recognizes this benefit as a reoccurring unemployment benefit and must be included in annual income calculation.
- Federal Pandemic Unemployment compensation (FPUC) – This unemployment compensation provides eligible individuals receiving certain Unemployment Income which includes regular unemployment benefits to receive an additional \$600 per week ending on July 31, 2020. The Department recognizes this benefit as temporary income and should be excluded in annual income calculation.
- Pandemic Emergency Unemployment Compensation (PEUC) – This unemployment compensation allows for an extension to eligible individuals to receive up to 13 weeks of additional payments extending the original unemployment compensation from 26 weeks to 39 weeks. The Department recognizes this benefit as an extension of the reoccurring unemployment benefit and must be included in annual income calculation.
- One-time COVID-19 Relief Payment – Assistance paid to individuals earning less than \$75,000 annually of \$1200 and \$500 for each child (or any amounts prorated for individuals with higher incomes). The Department recognizes the COVID-19 Relief Payment of \$1200 for individuals and \$500 per child as a one-time lump sum payment and should be excluded from income calculations.

### Electronic Signatures - **New!**

On September 1, 2020 the Department issued a memo stating it accepts electronic copies of signatures (“e-signatures”) instead of a wet or original signature. This includes application submittal documents, organizational documents (e.g. articles of incorporation, bylaws, etc.), authorizing resolutions, grant fund disbursement requests, monitoring and compliance reports, etc. The requirements for the e-signature may vary slightly depending on the document and these requirements are detailed in the [memo](#).

### COVID-19 Response Best Practices for Rental Housing Developments

- Adopt and implement an emergency protocol plan in place to address both this current concern and any future problems
- Wherever possible, allow for remote working for staff
- Limit office hours and have a sign-up sheet where tenants can schedule face-to-face meetings instead of walk-ins
- Conduct face-to-face interactions in a community room or somewhere that will offer Center for Disease Control (CDC) recommended social distancing of at least six feet
- The CDC is advising the use of cloth face coverings to slow the spread of the virus, and help people who have the virus and do not know it, from transmitting it to others. However, cloth face coverings are not a substitute for social distancing, frequent hand washing and staying home when ill.
- Sanitize all surfaces after meetings using soap and water, then use disinfectant; following the instructions on the label to ensure safe and effective use of the product
- Post guidance on window or door describing how to apply at the property.
- Create an online application system or a drop box where potential applicants can pick-up/drop-off an application
- Ensure staff working in offices stay a minimum of six feet from each other or, if the office is too small, rotate the days on-site staff is physically in the office (or abide by local government directives, if more restrictive)
- Prioritize work orders to emergency or critical repairs only
- Notify tenants that non-essential work orders will be delayed until after the “shelter in place” and “stay at home” restrictions have been lifted

Please refer to the Center for Disease Control [website](#) for current information on best practices.

*Revision History:  
April 16, 2020*

*June 17, 2020  
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