



Update 4.0: HUD issues updated Coronavirus (COVID-19) guidance

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On April 14, the Department of Housing and Urban Development (HUD) issued its latest COVID-19 FAQs (4/14 FAQs), adding new guidance and reorganizing some of the existing guidance. Key additions in the 4/14 FAQs explain provisions of the CARES Act on forbearance and eviction moratoriums, provide guidance to owners on Housing Assistance Payments (HAP) contract renewals, address thorny management questions, and add document submission best practices from the Office of General Counsel (OGC).

CARES Act guidance

The single biggest addition to the FAQs is guidance concerning the implementation of provisions of the CARES Act, including two parts critical to housing providers—its mortgage forbearance and eviction moratorium provisions. Here are the highlights of the new guidance in the 4/14 FAQs on the CARES Act:

Eviction moratoriums

The CARES Act contains two eviction moratoriums. First, section 4024 imposes a broad 120-day moratorium on evictions for nonpayment of rent at many federally assisted or supported multifamily housing. In addition, section 4023 contains a separate moratorium for properties that invoke its mortgage forbearance relief. The scope of the eviction moratoriums in the CARES Act is broad and, because of the complexity of federal housing programs, often confusing. The 4/14 FAQs (at pages 10-11) attempt to clarify some of these issues but again leave some issues for later resolution. Here's the latest from HUD:

- The eviction moratorium applies to all HUD-assisted multifamily housing, as well as all multifamily housing with Federal Housing Administration (FHA)-insured mortgages.
- Although the moratorium applies to all properties covered by the Violence Against Women Act (VAWA), and VAWA includes low-income housing tax credit (LIHTC) properties, HUD stops short of confirming that the moratorium applies to LIHTC properties and instead directs questions to the Internal Revenue Service.
- Properties that receive mortgage forbearance pursuant to section 4023 of the CARES Act may not, for the duration of the forbearance period, evict or commence eviction

proceedings against a tenant solely for nonpayment of rent or charge late fees or penalties for late payment of rent. Depending on when the borrower invokes the mortgage forbearance provisions, this may have the effect of extending the 120-day eviction moratorium found in section 4024 past its July 25, 2020 expiration date.

- An owner who takes advantage of mortgage forbearance cannot require a tenant to vacate a unit until it issues a notice to vacate, and it cannot issue a notice to vacate until after the end of the forbearance period.
- The eviction moratorium applies to any eviction based on nonpayment of rent, regardless of whether the nonpayment resulted from unemployment related to coronavirus or other causes.
- However, evictions for reasons other than nonpayment of rent (or nonpayment of other charges) are permitted to the extent allowed by HUD Handbook 8350.3, Chapter 8.
- The eviction moratorium may not apply to tenants who “abandon” their unit. Abandonment may occur if a tenant leaves the unit, stops paying rent, and fails to respond to notices from the owner. However, “abandonment” is a “fact-specific determination,” and under the COVID-19 emergency, tenants might vacate a unit without intending to abandon it. Before taking action, owners or agents should ensure that the unit is, in fact, “abandoned” by the family.
- Owners are not prohibited from issuing a notice of late payment. The notice may not include a notice to vacate or include fees or charges for late payment. This advice is consistent with verbal guidance provided on April 7, when HUD officials advised that the eviction moratorium does not constitute rent forgiveness and that renters remained responsible for any unpaid rent accruing during the moratorium period. HUD mentioned forthcoming guidance on tenant rights and responsibilities during the eviction moratorium, but such guidance has not yet been released.

Mortgage forbearance

The 4/14 FAQs refer to its newly published Mortgagee Letter 2020-09,¹ which sets protocols for the mortgage forbearance program for FHA-insured, Risk Share, and HUD-held mortgages. HUD warns, however, that mortgage forbearance involves a negotiation between borrower and lender, and that HUD will not participate in forbearance negotiations unless the loan involved is a HUD-held loan.

Additional regulatory flexibility

The 4/14 FAQs note that the CARES Act allows HUD to waive some requirements for the Section 8, 202 and 811 programs as “needed to expedite or facilitate the use of the funds to prepare for, and respond to situations” resulting from the COVID-19 emergency. At the moment, however, the 4/14 FAQs don’t identify any specific waivers for these programs.

¹ ML 2020-09 is discussed in more detail in our alert, [“HUD issues mortgagee letters implementing new debt service reserve requirements and forbearance protocol during coronavirus \(COVID-19\).”](#)

Guidance for HAP renewal, RCS, and utility allowances

The 4/14 FAQs provide additional detail to assist owners navigating issues relating to HAP contract renewals, difficulties in obtaining rent comparability studies (RCSs), and logistical issues in connection with processing utility analyses (UAs).

Some HUD RCS's continue to be suspended

Specifically, “in areas that are under a state or nationally declared emergency or where public health officials have imposed limited travel.” Currently, this is the case in every state, the District of Columbia, and certain territories.

Twelve-month renewals without RCS's

An RCS may be required in connection with a HAP contract renewal or a required five-year comparability process. For those renewals where an RCS is unavailable, HUD will allow contracts to be renewed as twelve-month short-term renewals at current HAP rents. This includes option one, option two, initial option three renewals, and some option four renewals. Where a contract renewal option does not require an RCS, such as an expiring full market-to-market renewal, then the standard renewal processing can occur. The FAQs do not currently discuss the issue of fifth-year comparability. However, it would be consistent with this guidance to essentially suspend fifth-year comparability in cases where the owner could not obtain an RCS since that would have a materially consistent outcome with the twelve-month short term renewal for an expiring renewal.

UA baseline extended

HUD recognizes that utility data may be impossible to obtain as part of a required UA baseline. Currently, a new utility allowance baseline must be set every third year. For properties subject to that requirement, the 4/14 FAQs ask that owners attempt to obtain utility data directly from tenants, but recognize that in some cases that will not be a workable solution. In those cases, HUD is allowing the use of a utility factor increase for the third year and allowing the new UA baseline to be delayed by one year, meaning that it would be set in the fourth year rather than the third year.

Property management guidance

In the first sets of FAQs it issued, HUD laid out a set of important property management topics—What steps should housing providers take to prepare for COVID-19? What options are available to a property manager when a resident needs to be isolated?—but in most cases, HUD referred readers to guidance issued by the Centers for Disease Control and Prevention (CDC), little of which directly addressed problems faced by owners and managers of multifamily housing. In recent weeks, however, HUD and the CDC have provided additional guidance, including confirming that owners and managers can notify residents when another resident has a confirmed case of positive coronavirus cases (so long as the individually identifying information was not disclosed). Nevertheless, there are still large gaps and uncertainties in specific property management issues that housing providers have been left to fill in.

The new FAQs adds to the body of HUD's property management guidance, including the following:

Can an owner restrict visitors to HUD-assisted properties?

Anxious to prevent the introduction of the virus to their properties, owners and managers have asked if they are allowed to restrict the admission of visitors to their properties. There is tension in imposing such restrictions because, under common law, tenants generally have a right to invite guests to visit their dwelling. At its April 7 Q&A session, HUD warned that owners and managers

should not do anything that would violate tenants' rights and should avoid restrictions on visitors except pursuant to guidance from the CDC and local public health and law enforcement officials. The 4/14 FAQs appear to take a less restrictive view, saying that "owners and agents may have the authority to restrict visitors from HUD-assisted Multifamily housing properties," but should consider state and local laws before adopting restrictions. HUD warns that any such restriction should be expressly tied to coronavirus prevention and must still allow for "essential services," such as food deliveries, medications, and personal care assistants." HUD also warns that any such restriction must follow Fair Housing Act requirements.

Can properties continue to undergo major rehabilitation work?

There is no blanket prohibition on continuing major rehabilitation work, but the decision to continue or suspend such work should be made taking into account the safety of workers, staff, and residents, and should conform to guidance from state and local officials.

How should owners and managers handle in-person meetings, such as tenant meetings, in light of social distancing concerns?

HUD says safety is paramount and that owners and managers considering in-person meetings should follow guidance from the CDC and state and local health officials.

Can a person hospitalized with COVID-19 return to their apartment before they receive a negative test?

Yes. HUD says that "there is no prohibition against a resident returning to their unit until a negative test is received." This can be an important advantage to overstressed hospitals, which may be able to discharge a recuperating patient to their own home, to make urgently needed hospital space and resources available for other patients. HUD assumes, however, that the discharged patient will continue to follow orders to self-quarantine until they receive a negative test.

What should an owner/manager do to properly disinfect common spaces and units and to protect their staff?

HUD has updated its guidance to include new references to CDC guidance on these topics. In addition, HUD has added new references to HUD-produced guidance focused on multifamily housing for disposing of medical wastes. Some of the guidance, such as techniques for disposal of sharps/needles and expired medication, is generally useful, irrespective of the threat of coronavirus.

OGC transactional guidance

OGC has developed a set of ["best practices" for its electronic transmission and review process](#). This adds to guidance provided last month on new [transactional protocols in the COVID-19 emergency](#), which has been moved to a stand-alone document.

For more information on the content of this alert, please contact our [Coronavirus Response Team](#), your Nixon Peabody attorney, or:

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