

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



Given the extraordinary nature of the COVID-19 emergency, the Department of Housing and Community Development (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. This guidance will be in effect beginning April 16, 2020 and 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 to decreased rental revenue caused by renter (both residential and commercial) failure to pay 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. 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. At a minimum, HCD will require the following documentation:

- Detailed hardship request signed by an authorized representative of the Owner/Developer
- 2019 Project Audit or internally prepared December 31, 2019 Project Income and Expense Statement
- Three consecutive months of the following for the most recent three months prior to the request submittal: 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
- Information on additional sources of financial relief anticipated and/or funded
- 2020 rent ledger for units with delinquent rents

Upon receipt of a written request from the Owner/Developer, 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 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) or Child Care Service (CCS) programs, the Department will accept requests for forbearance based on the submittal of 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.

Any request for forbearance, provided financial hardship is documented, will be approved for 30 days. With sufficient documentation, 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.

Please note, at this time, HCD will not accept requests for forbearance of required 0.42 percent HCD loan payments (or other monitoring fees).

Extension of Residual Receipt Payment Due Dates

The Department will extend the due date for residual receipt payments to HCD until July 15, 2020. No documentation of hardship will be required. This extension is contingent upon agreeing to forego sponsor distributions during the same time period.

Use of Operating Reserves

Upon request and approval by the Department, Owners/Developers may use funds from HCD-controlled operating reserve accounts to pay reasonable required operating expenses. Owner/Developers may request other forms of relief regarding reserve balances, required deposits to reserve accounts, or use of reserve funds, the approval of which will be on a case-by-case basis.

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

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 either March 1 or April 1, 2020, provided they are received by May 15, 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)
- Budgets and Schedule of Rental Income

This allowance is only applicable during the state of emergency in effect due to the COVID-19 epidemic. AMC will reevaluate the situation prior to May 15, 2020 to determine the need for any further extensions. To the extent property owners can submit prior to May 15, 2020 the Department will review reports in order received.

Compliance Monitoring

HCD has cancelled all scheduled inspections through at least May 15, 2020. If the state of emergency continues past May 30, 2020, the Department may elect to conduct desk audits with the physical units to be conducted at a later date. Additional information on the content and process for desk audits will be sent at that time.

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

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
- There may be a benefit to wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain. However, cloth face coverings are not a substitute for social distancing and frequent hand washing and staying home when ill, but they may be helpful when combined with these primary interventions.
- 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