

Emergency HOME TBRA Program Design Crosswalk – Final Rule Requirements & Suspensions/Waivers

This crosswalk provides an overview of the HOME Investment Partnerships Program regulations applicable to the design and management of a TBRA program and highlights those statutory provisions suspended and regulations waived by HUD on April 10, 2020 in response to the COVID-19 pandemic. HOME Participating Jurisdictions (PJs) can use this document to guide the development of TBRA programs for emergency and short-term assistance to individuals and families that are experiencing financial hardship as a result of the COVID-19 pandemic. It is not intended to be a complete discussion of either the regulations or the suspensions and waivers. For additional details, PJs should refer to:

- HOME Final Rule 24 CFR Part 92: <https://www.hudexchange.info/programs/home/home-laws-and-regulations/>
- HUD memoranda regarding COVID-19 suspensions and waivers: <https://www.hudexchange.info/programs/home/covid-19/>

Requirement (Final Rule Reference) ¹	Summary of Requirement	Requirement Suspended/Waived
ConPlan & Citizen Participation		
1) Consolidated Plan – Market Analysis and Certification (§92.209(b)) ²	PJ must conduct analysis of local market conditions to support TBRA and certify that TBRA is an essential element of its ConPlan	Suspends analysis of local market conditions and need to certify TBRA is essential element of ConPlan & Action Plan based on that analysis of local need
2) Citizen participation (§91.105 , .115 , .235 , .401) ³	PJ must provide a 30-day period for public notice and opportunity to comment on substantial amendment to ConPlan	For approved Action Plans, public comment period for COVID-19 TBRA amendments reduced to 5 days
Eligibility & Selection		
3) Written tenant selection policies (§92.209(c))	PJ must have written tenant selection policies & criteria based on local needs & priorities in ConPlan	Suspends the requirement to develop or revise written tenant selection criteria consistent with ConPlan need and priorities; PJ must still document selection criteria used during pandemic in program file
4) Low Income/Very Low Income eligibility (§92.209(c)(1))	PJ must limit assistance to LI & VLI families; income must be determined annually	
5) Income determination (§92.203(a)(2))	PJ must determine initial TBRA tenant income eligibility by examining at least 2 months source documentation	Tenant certification permitted in lieu of 2 months source documentation; certification must indicate loss or reduction of income & include all benefits except CARES Act Economic Impact Payments (“stimulus payments”) and Federal Pandemic Unemployment Compensation (\$600/week)

¹ Unless specifically noted otherwise, all regulatory references are made applicable to Insular Areas by §92.64(a). !

² For Insular Areas, this requirement is made applicable by §92.61. !

³ Sections apply to local governments, states, Insular Areas, and consortia respectively. !

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6) Income targeting (§92.216 (a) & (b))	PJ must meet annual allocation income targeting requirements, 90% of rental and TBRA families assisted must be at or below 60% AMI; remainder of TBRA and rental tenants may be at or below 80% AMI	
7) Targeted assistance (§92.209 (c)(2))	PJ may establish TBRA programs with preference for special populations and TBRA programs targeting self-sufficiency and homebuyers; participants cannot be prohibited from applying for other assistance/programs	
8) Preference - Existing Tenants in future HOME projects (§92.209 (c)(3))	PJ may establish a preference to provide TBRA to existing tenants in housing to be assisted with HOME; tenants may use assistance on HOME-assisted units or non-HOME assisted units	
9) Limitation on assistance to student households (§92.2 Low-income Family and Very Low-Income Family)	PJ prohibited from assisting student households if ineligible to receive Section 8 assistance under 24 CFR 5.612	
10) Conflict of interest – assistance (§92.356 (b)-(e))	Assistance (as tenant or owner) may not be provided to PJ/subrecipient officials, staff, etc. or their immediate family or business associates; only HUD can approve conflict of interest waivers	
Determination of Assistance		
11) Eligible TBRA Costs (§92.209 (a))	PJ may provide assistance for rent (incl. utility allowance), security deposit, and utility deposit (if also providing rent or security deposit)	PJ may pay up to 100% of rent and utility bills for households experiencing financial hardship as a result of COVID-19 pandemic; waives utility allowance requirement; PJ may pay outstanding rent/utility bills due on or after March 13, 2020
12) Security deposits (§92.209 (j))	PJ may provide loans or grants (can be sole subsidy) not exceeding 2 months’ rent; income determination only at time of assistance	

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13) Maximum subsidy (§92.209(h))	PJ may not provide assistance that exceeds TBRA maximum subsidy amounts; monthly assistance is capped at the difference between PJ’s rent standard (by unit size) and 30% of the tenant’s monthly adjusted income; PJ must establish minimum tenant contribution; PJ must establish rent standard based on local market conditions or Section Housing Choice Voucher	PJ may provide up to 100% of rent and utility costs for households experiencing financial hardship as a result of COVID-19 pandemic; waives minimum tenant contribution requirement; PJ expected to develop alternative policy for calculating assistance level/tenant contribution
14) Rent reasonableness (§92.209(f))	PJ must disapprove lease if rent is not reasonable based on assessment of comparable unassisted units	Waives assessment of rent reasonableness for TBRA provided to households experiencing financial hardship as a result of COVID-19 pandemic
Rental Assistance Contract & Lease		
15) Rental assistance contract and lease approval (§92.209(k))	Contract may be between PJ and property owner or assisted tenant; if contract with owner, must also have written agreement with tenant; PJ must approve the lease. ⁴	
16) Term of rental assistance contract (§92.209(e))	Contract term may not exceed 24 months, but may be renewed; contract & lease must have same start date; contract terminates if lease terminates (except contract with tenant may be transferable to lease of new unit)	For currently housed tenants and existing TBRA households experiencing financial hardship as a result of COVID-19 pandemic the rental assistance contract is not required to begin on 1 st day of lease; contract cannot go beyond December 31, 2020
17) Lease & tenant protections (§92.209(g))	Written lease of at least 1 year required, unless shorter period agreed upon by all parties; lease may not include prohibited lease terms defined in §92.253(b)	For currently housed tenants experiencing financial hardship as a result of the COVID-19 pandemic, the PJ is not required to execute or amend a lease to create a 1-year term or remove lease terms prohibited by §92.253(b) , however the PJ must comply with all VAWA requirements in §92.359

⁴ A contract for assistance (i.e. written agreement) and approval of the lease are still required, but for currently housed tenants other waivers affect the elements of a PJ’s review, including lease term and tenant protections.

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18) VAWA (§92.359)	VAWA requirements apply to owner for term of rental assistance; PJ provides VAWA lease addendum, notice & certification form at lease execution & termination; owner must notify PJ if eviction or lease bifurcation occurs; PJ determines continuation of assistance & may provide assistance for emergency transfers	
Property Standards		
19) Housing quality standards (§92.209(i))	PJ must inspect unit at initial occupancy and annually to ensure unit meets Section 8 HQS (24 CFR 982.401) property standards	For all TBRA programs, including pandemic response and preexisting programs, initial inspections and annual re-inspections due during the waiver period not required, but PJ must have procedures to minimize risk of substandard housing
20) Lead-Based Paint (§35.1200-.1225)	For pre-1978 housing not otherwise exempt and child under the age of 6, a visual assessment of painted surfaces must be conducted, and deteriorated paint stabilized	
Program Design Options⁵		
21) Special needs/disability (§92.209(c)(2)(i)-(ii))	PJ may allow for disability preference if ConPlan identifies unmet need; may limit to specific disability if meets 24 CFR 8.4(b)(1)(iv)	
22) Self-sufficiency program (§92.209(c)(2)(iii))	PJ may require participation as condition of selection & renewal; not basis for termination; may not require if TBRA is provided for relocation under the URA	
23) Homebuyer programs (§92.209(c)(2)(iv))	PJ may use rental assistance for lease-purchase programs (up to 36 months); not for downpayment/closing cost accumulation	
24) Portability of assistance (§92.209(d))	PJ may require use within the jurisdiction or allow portability outside the jurisdiction	

⁵ While these targeted program options are permissible under the Final Rule, HUD recognizes it is unlikely such preferences will be incorporated into emergency TBRA programs. !
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Administrative Requirements		
25) Policies & procedures (§92.504(a))	PJ must manage day-to-day operation of its TBRA program or oversee subrecipient/contractor; must have and follow written policies and procedures	
26) Monitoring (§92.504(a))	PJ must have a system for assessing risk of activities and projects and a system for monitoring administrative subrecipients/contractors and projects	
27) Program operation (§92.209(k))	PJ may operate program itself or contract with: <ul style="list-style-type: none"> • State Recipient/subrecipient, written agreement required (§92.504(b) & (c)(1) or (c)(2)) • Contracted administrator, procurement applies (2 CFR Part 200 & §92.504(c)(4)) 	
28) Administration eligible as project costs (§92.209(a))	PJ may charge cost for income eligibility determinations & property inspections as project cost	
29) Disbursements (§92.503)	PJ must set up, fund, draw and complete TBRA activities in IDIS - following HOME FACTS Vol. 9, No. 1, May 2020	
30) TBRA project completion (§92.2 (Project completion))	PJ may complete TBRA projects in IDIS upon meeting the definition of project completion; means the final drawdown has been disbursed for the project	
31) Records (§92.508)	PJ must maintain records (§92.508(a)(2) program files and §92.508 (a)(3) project files) ⁶ retained 5 years after assistance terminates (§92.508 (c)(3))	
Other Federal Requirements		
32) Affirmative marketing (§92.351(a))	TBRA programs must be affirmatively marketed, including specific actions to attract applicants least likely to apply	

⁶ Note, suspensions and waivers may affect composition of records otherwise required. !
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33) Fair housing & non-discrimination, including Section 504 (§92.351)	PJ/subrecipient & owner subject to fair housing & non-discrimination, and to reasonable accommodations or modifications; PJ/subrecipient subject to Section 504 program accessibility	
34) Environmental review requirements (§92.352(a) & §58.35(b)(1))	TBRA is Categorically Excluded Not Subject to §58.5 (CENST) but is subject to §58.6 ; publication and notice likely not required	
35) Conflict of interest (§92.356(b) - (e))	Assistance (as tenant or owner) may not be provided to PJ/subrecipient officials, staff, etc. or their immediate family or business associates; only HUD can approve waivers of conflict	