



HOME Program COVID-19 Response

Statutory Suspensions and Regulatory Waivers

Office of Affordable Housing Programs

April 20, 2020

Welcome

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Presenters

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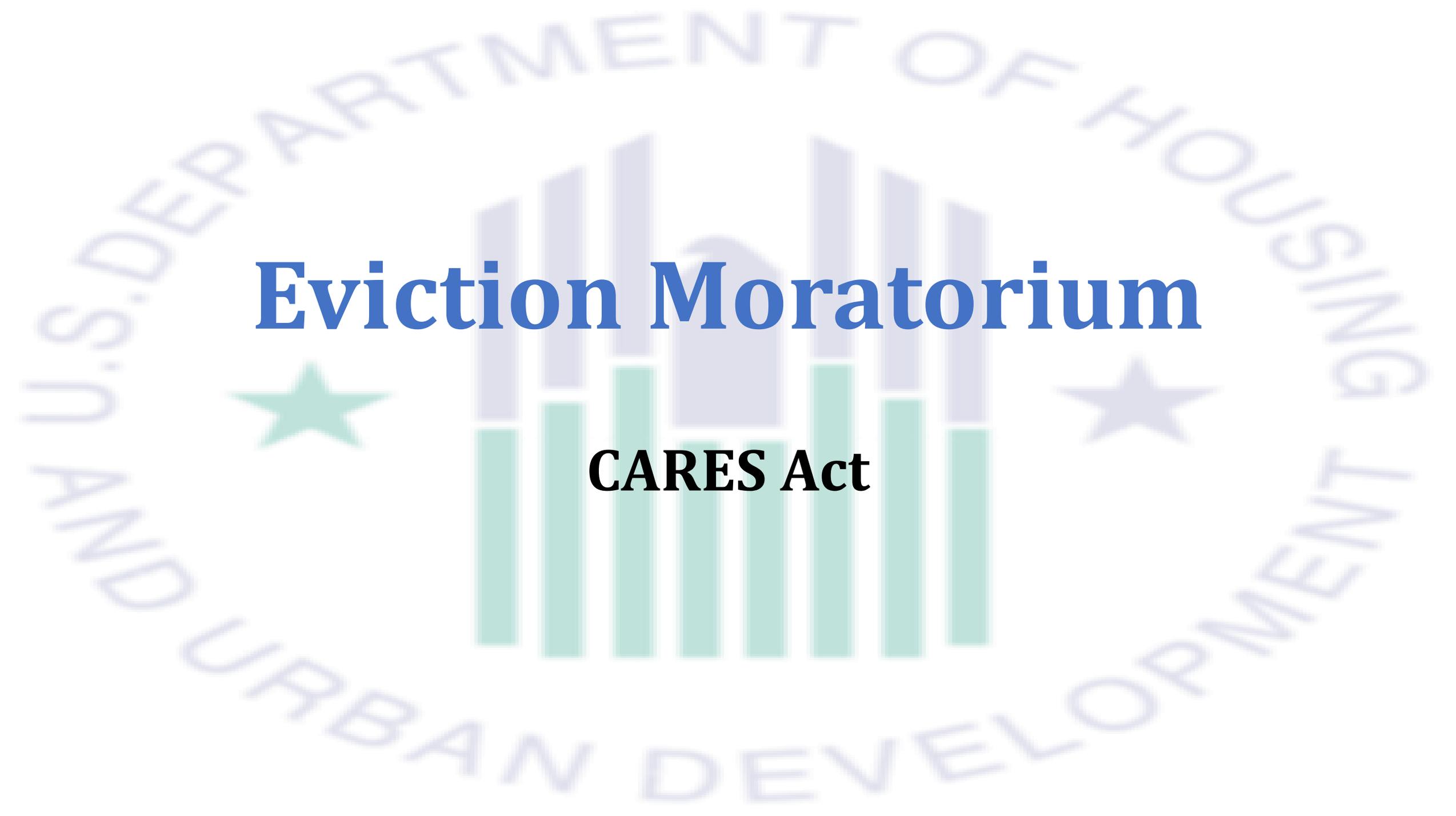
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Today's Agenda

- CARES Act Eviction Moratorium
- General Statutory Suspensions and Regulatory Waivers in Support of COVID-19 Pandemic Response
- Statutory Suspensions and Regulatory Waivers to Facilitate Provision of HOME Tenant-Based Rental Assistance to Households Affected by COVID-19 Pandemic

Eviction Moratorium

CARES Act



CARES Act Eviction Moratorium

- Coronavirus Aid, Relief, and Economic Security Act (CARES) Act, signed into law on March 27, 2020, provides immediate protections for tenants unable to pay rent.
- Act establishes 120-day federal eviction moratorium for tenants of covered dwelling units on or in properties assisted by federal housing programs:
 - Properties that have federally-backed mortgage loans as defined in the CARES Act
 - Properties assisted by covered housing programs defined in the Violence Against Women Act (VAWA)(34 U.S.C. 12491(a))

CARES Act Eviction Moratorium

- HOME is a “covered housing program” under VAWA
 - Units in HOME rental projects and HOME TBRA units are “covered dwelling units”
- A HOME loan secured on a multifamily rental property is a Federally backed multifamily mortgage loan under Section 4024(a)(5) of the CARES Act, and all dwelling units on or in the property are covered dwelling units.
- A HOME loan secured on a multi-unit single family property with residential rental units (i.e., a duplex or triplex) is a Federally backed mortgage loan under Section 4024(a)(4) of the CARES Act and these rental units are covered dwelling units.

HOME Units under Eviction Moratorium

- HOME-assisted rental projects currently within period of affordability (POA) specified in HOME written agreements
 - Includes projects under agreements imposing “extended” POAs beyond minimum POA specified in HOME regulations
- Rental projects that received HOME funds and are no longer within POA, but still have a HOME loan within its term of repayment and secured on property as a first or subordinate lien
- Homeownership projects (funded for acquisition and/or rehabilitation) that contain rental units within POA or have a HOME loan within its term of repayment and secured on property as first or subordinate lien
- Units occupied by recipients of HOME TBRA

Effect of Eviction Moratorium on Projects

- HOME-assisted units in a project are subject to moratorium for the following:
 - HOME rental projects under POA or extended POA
 - Rental projects outside of HOME POA but with HOME loan secured by lien and within repayment period
 - HOME homeownership projects within POA and/or with a HOME loan secured by lien and within its repayment period
- Effect of CARES Act on non-HOME units is under legal review
- In projects that are not otherwise covered by the CARES Act moratorium but have unit(s) occupied by HOME TBRA recipients:
 - Eviction moratorium applies only to the units occupied by TBRA recipients

CARES Act Eviction Moratorium

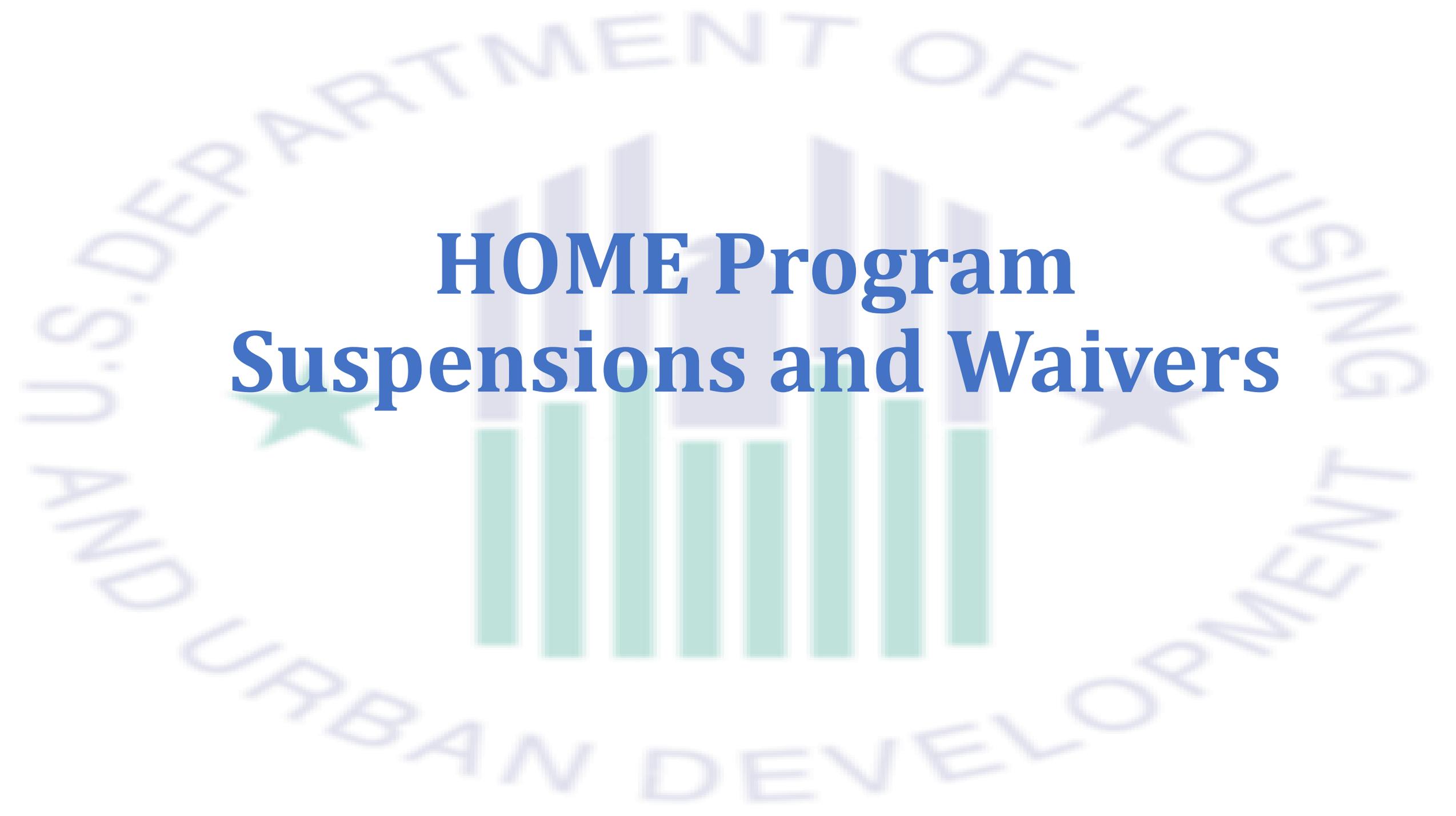
- From March 27-July 24, owners and/or lessors of covered HOME-assisted projects or units occupied by HOME TBRA recipient prohibited from:
 - Initiating eviction (e.g., an unlawful detainer action, complaint) for non-payment of rent or other fees or charges by filing in the court of jurisdiction; or
 - Charging fees, penalties, or other charges to the tenant related to non-payment of rent
- If owner did not provide tenant with an eviction notice for nonpayment of rent or other fees/charges before March 27th, the owner may not issue such notice until after July 24th

CARES Act Eviction Moratorium

- If owner issued eviction notice to tenant for nonpayment of rent or other fees or charges and filed the eviction with court of jurisdiction before 3/27/2020, the HOME statute and regulations at 24 CFR §92.253(c) require a 30-day written notice requirement for evictions

CARES Act Eviction Moratorium

- PJs should notify owners of projects covered by moratorium or rental units occupied by HOME TBRA recipients of their obligations under the CARES Act
- HUD will issue FAQs further explaining moratorium and PJ responsibilities



HOME Program Suspensions and Waivers

HOME Suspension and Waiver Authority

- Section 290 of the National Affordable Housing Act of 1990
 - Provides HUD authority to suspend certain HOME Program statutory requirements to address damage in areas declared a major disaster under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)
 - Affordability, income targeting, environment, fair housing, and labor standards are excluded from this authority
 - As of today, all 50 states and most territories have Disaster Declaration.
- 24 CFR 5.110
 - Provides HUD authority, subject to statutory limitations, to waive regulatory provisions upon a finding of “good cause”

Purpose of Suspensions/Waivers

- Increase HOME funding for administrative costs
- Help sustain CHDO staff capacity
- Maximize availability of funding for COVID-19 response
- Reduce administrative obstacles to providing assistance
- Facilitate social distancing to protect PJ staff and HOME tenants
- Provide relief from deadlines
- Stabilize financial condition of existing HOME rental projects
- Facilitate emergency tenant-based rental assistance (TBRA)

HOME Suspensions and Waivers

- HUD announced availability of waivers and suspensions in two memoranda signed on April 10, 2020:
 - “Availability of Waivers and Suspensions of the HOME Program Requirements in Response to COVID-19 Pandemic”
 - “Suspensions and Waivers to Facilitate Use of HOME-Assisted TBRA for Emergency and Short-term Assistance in Response to COVID-19 Pandemic”
- Before using suspensions or waivers, PJs must notify their local Field Office in writing via notification mailbox established for that purpose
 - https://www.hudexchange.info/search/?km=10&ct=&dsp=&q=cpd_covid-19waiver

10% Administration and Planning Cap

Section 212(c) of NAHA and 24 CFR 92.207

Requirement: Use of HOME funds for administrative costs limited to 10 percent of annual HOME allocation

Suspension: Increases the limit to enable PJs to expend up to 25 percent of HOME allocation and program income

Applicability: FY 2019 and FY 2020 HOME allocations

PJ Responsibility:

- Program files must document implementation of waiver
- Maintain records demonstrating compliance with suspension

CHDO Set-Aside Requirement

Section 231 of NAHA and 24 CFR 92.300(a)(1)

Requirement: PJs must use 15% of each annual allocation of HOME funds only for housing owned, developed or sponsored by CHDOs

Suspension: Reduces set-aside requirement to 0%

Applicability: Set-aside reduced for fiscal years 2017, 2018, 2019 and 2020 HOME allocations

PJ Responsibility: Program files must document implementation of waiver

Limits/Conditions on CHDO Operating Assistance

Section 212(g) and 234(b) of NAHA; 24 CFR 92.208 and 92.300(e) and (f)

Requirement:

- CHDO operating assistance limited to 5% of HOME allocation
- Limited to greater of 50% of CHDO's operating budget or \$50,000
- CHDO expected to receive CHDO set-aside funds for specific project within 24 months of receiving operating assistance

Suspension:

- PJ may provide up to 10% of allocation as operating assistance
- Limit on how much a CHDO may receive is eliminated
- PJs not required to limit assistance to CHDOs expected to receive set-aside funds for a project within 24 months

Limits/Conditions on CHDO Operating Assistance

Section 212(g) and 234(b) of NAHA; 24 CFR 92.208 and 92.300(e) and (f)

Applicability: Fiscal Years 2019 and 2020 allocations for expenses incurred by CHDOs through June 30, 2021

PJ Responsibility:

- Ensure increased operating assistance used by CHDO to maintain organizational capacity during COVID-19
- Program files must document implementation of waiver
- Maintain records demonstrating compliance with suspension

Matching Contribution Requirements

24 CFR 92.218 and 24 CFR 92.222(b)

Requirement: PJs must make contributions to housing that qualifies as affordable under HOME regulations equaling not less than 25% of HOME funds drawn for project during fiscal year

Waiver: Reduces match requirement by 100 percent for FY 2020 and FY 2021

Applicability: Reduction applies to funds a PJ expends between October 1, 2019 and September 30, 2021

PJ Responsibility: Program files must document implementation of waiver

Citizen Participation/Public Comment

24 CFR 91.105(c)(2) and (k) (Local governments), 24 CFR 91.115(c)(2) and (i) (States), and, 24 CFR 91.235(e) (Insular areas) 24 CFR 91.401 (Consortia)

Requirement: Follow citizen participation plan to provide reasonable notice and opportunity (30 days) to comment for substantial amendments to consolidated plan

Waiver: Reduces public comment period to 5 days for amendments to consolidated plan and annual action plan

Applicability: Substantial amendments to FY 2020 and earlier consolidated plans or action plans

PJ Responsibility:

- Provide a 5-day public comment period, if amendment constitutes a substantial amendment under jurisdiction's adopted definition
- Program files must document implementation of waiver

Income Determination

24 CFR 92.203(a)(1) and (2) and 24 CFR 92.64(a) (Insular Areas)

Requirement: Determine initial income using 2 months source documentation

Waiver: Permits use of self-certification as specified in 24 CFR 92.203(a)(1)(ii)

Applicability: Individuals or families that have lost employment or income as a result of COVID-19 pandemic applying for admission to HOME rental units or TBRA program through December 31, 2020

Income Determination

24 CFR 92.203(a)(1) and (2) and 24 CFR 92.64(a) (Insular Areas)

PJ Responsibility:

- Include all income received by the applicant, including any unemployment or emergency benefits received as a result of the pandemic (excluding stimulus payments)
- Conduct on-site rent and income reviews within 90-days after waiver period
- Include tenant income certifications in project files
- Program files must document implementation of waiver

On-Site Reviews of HOME Rental Housing

24 CFR 92.504(d)(1)(ii) and 24 CFR 92.64(a) (Insular Areas)

Requirement: Perform on-site inspections of units at least every 3 years and verify income/rent information annually

Waiver: Extends timeframe for PJs to perform periodic inspections and on-site reviews to ensure compliance with property standards & rent/income req'ts

Applicability:

- On-site inspections required before December 31, 2020
- Income/rent reviews required before December 31, 2020, if project owner is unable to make documentation available electronically

PJ Responsibility:

- Physical inspections within 120 days of end of waiver
- Program files must document implementation of waiver

Ongoing Inspections of HOME TBRA Units

24 CFR 92.504(d)(1)(iii); 24 CFR 92.209(i) requirement for annual re-inspections and 24 CFR 92.64(a) (Insular Areas)

Requirement: Annual HQS inspection of units occupied by TBRA recipients

Waiver: Eliminates annual HQS inspections of units occupied by HOME TBRA recipients

Applicability: Annual HQS inspections required to occur between April 10, 2020 and December 31, 2020

PJ Responsibility:

- Take reasonable efforts to address tenant reported health and safety issues during the waiver period
- Conduct annual inspections that would have been performed during waiver period within 120 days following end of waiver period
- Document implementation of waiver in program files

Four-Year Project Completion Deadline

24 CFR 92.205(e)(2) and 24 CFR 92.64(a) (Insular Areas)

Requirement: Complete HOME-assisted projects within 4 years of HOME commitment

Waiver: Extends 4-year project-completion deadline to December 31, 2020, thereby suspending HUD enforcement action

Applicability: 4-year project completion deadlines occurring between April 10, 2020 and December 31, 2020

PJ Responsibility: Program files must document implementation of waiver

Nine-Month Sale Deadline for Homebuyer Units

24 CFR 92.254(a)(3) and 24 CFR 92.64(a) (Insular Areas)

Requirement: Ratified contract for sale of homebuyer units within 9-months of construction completion

Waiver: Extends 9-month sale deadline to December 31, 2020, thereby suspending HUD enforcement action

Applicability: 9-month sales deadlines occurring between April 10, 2020 and December 31, 2020

PJ Responsibility: Ensure all other requirements satisfied including

- Homebuyer receives housing counseling
- Determination of family eligibility
- Program files must document implementation of waiver

Operating Reserves for Troubled HOME Projects

24 CFR 92.210(a) and (b) and 24 CFR 92.64(a) (Insular Areas)

Requirement:

- Preservation of financially troubled HOME rental projects using HOME funds to recapitalize project reserves
- HUD review of market needs, available resources and likelihood of long-term viability of project
- Written MOA between HUD and PJ as pre-condition of funding and limits on funding amount

Waiver: For projects where operating costs > revenue, eliminates requirement to obtain HUD approval/execute MOA before using HOME to recapitalize operating deficit reserves to preserve viability

Operating Reserves for Troubled HOME Projects

24 CFR 92.210(a) and (b) and 24 CFR 92.64(a) (Insular Areas)

Applicability:

- HOME projects within POA experiencing operating deficits
- Assistance provided for period beginning April 1, 2020 and ending December 31, 2020
- Limited to owners who agree to forego:
 - Distributions of residual receipts through waiver period and 6 months thereafter
 - Rights under lease or State or local law to take legal action for non-payment of rents and collection of late fees
 - Adverse credit reporting for nonpayment of rent or fees

Operating Reserves for Troubled HOME Projects

24 CFR 92.210(a) and (b) and 24 CFR 92.64(a) (Insular Areas)

PJ Responsibility:

- Determine operating deficits not covered by business disruption insurance or other sources
- Determine maximum HOME assistance to be provided
- Require owner to document operating expenses
- Amend HOME written agreement
- Review project records. Require repayment for ineligible costs and reserve balance after waiver period
- Repaid funds are program income
- Program files must document implementation of waiver

Timeframe for PJ's Corrective Actions

24 CFR 92.551(b)(1) and 24 CFR 92.64(a) (Insular Areas)

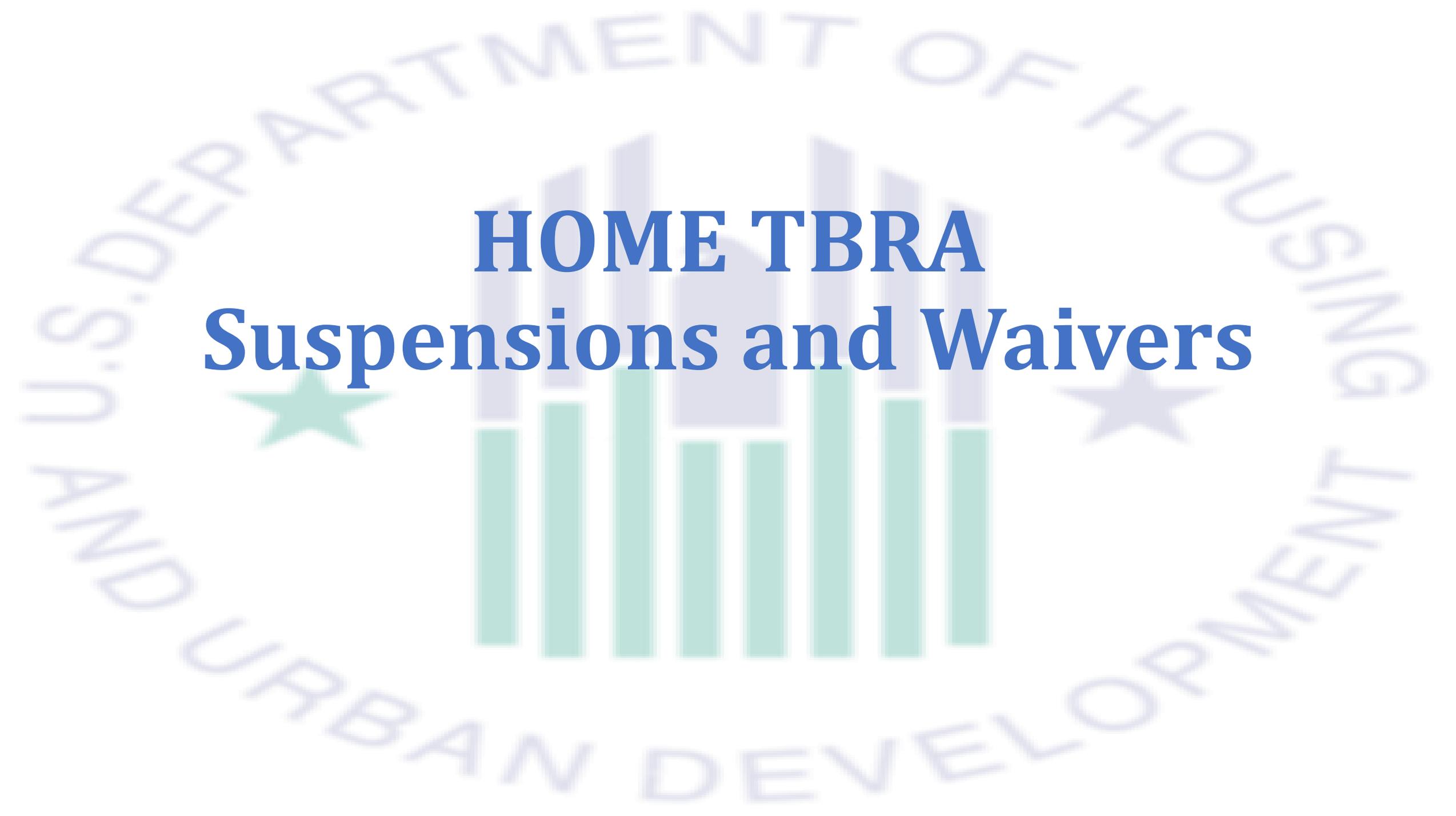
Requirement: PJ must respond to HUD findings of noncompliance within HUD prescribed time period (not to exceed 30 days)

Waiver: Gives HUD discretion to extend response periods for findings of noncompliance

Applicability: Findings of HOME regulatory noncompliance issued between April 10, 2020 and December 31, 2020

HUD Responsibility:

- Specify extended response period
- Upon PJ request, review and approve/deny extensions to time periods imposed before April 10, 2020



HOME TBRA

Suspensions and Waivers

Waivers and Suspensions Overview

- Effective April 10, 2020 through December 31, 2020
- Allows PJs to provide TBRA to individuals and families experiencing financial hardship as a result of COVID-19, including
 - Individuals and families seeking immediate housing
 - Households that have housing but are experiencing financial hardship due to COVID-19 pandemic
 - Existing TBRA households that need additional assistance as a result of financial hardship experienced from COVID-19
- Recipient must be income-eligible & execute rental assistance contract with PJ for mutually agreed term, not to exceed December 31, 2020

Consolidated Plan – Market Analysis, Citizen Participation & Certification

Requirement: PJ must conduct local market analysis to support TBRA, amend Con Plan, provide 30-day public comment period, and certify that TBRA is essential element of its Con Plan

Suspension/Waiver:

- Eliminates need to conduct/revise analysis, amend Con Plan
- Eliminates requirement that PJ certify that TBRA is essential element of Con Plan based on local market analysis
- Reduces citizen participation public comment period to 5 days for amendments to Annual Action Plan

Consolidated Plan - Market Analysis, Citizen Participation & Certification

Applicability: PJ's current 5-year Con Plan and any Con Plan/Action Plans amended to reprogram HOME funds for TBRA due to COVID pandemic

PJ Responsibility:

- Amend Annual Action Plan to add or increase HOME funding for TBRA to address COVID-19 housing needs
- Provide a 5-day public comment period, if Action Plan amendment constitutes a substantial amendment under jurisdiction's adopted definition

Tenant Selection & Targeted Assistance

Section 212(a)(3)(A)(ii) of NAHA, 24 CFR 92.209(c), and
24 CFR 92.64(a) (Insular Areas)

Requirement: Written TBRA tenant selection criteria must align with local housing needs and priorities in Consolidated Plan

Suspension: Eliminates need to develop or revise tenant selection criteria prior to providing TBRA

Applicability: TBRA provided in response to COVID-19 pandemic through December 31, 2020

PJ Responsibility: TBRA program files must document criteria for selecting individuals and families assisted during pandemic

Rent Reasonableness

24 CFR 92.209(f) and 24 CFR 92.64(a) (Insular Areas)

Requirement: Must assess rents charged for comparable unassisted units before providing assistance

Waiver: Permits PJ to provide TBRA without requiring assessment of rents charged for comparable unassisted units

Applicability: TBRA provided in response to COVID-19 pandemic through December 31, 2020

PJ Responsibility: Must execute a rental assistance contract with the owner or tenant

Eligible TBRA Costs & Maximum Subsidy

24 CFR 92.209(a) & (h) and 24 CFR 92.64(a) (Insular Areas)

Requirement:

- Eligible costs limited to rental assistance and security/utility deposits
- Maximum subsidy cannot exceed difference between rent standard and 30% of tenant monthly adjusted gross income
- Must establish utility allowance for different types/size units

Waiver:

- Permits payments up to 100% of monthly rent, utility costs, and security deposit payments
- Eliminates need to establish utility allowance for different unit types/sizes

Eligible TBRA Costs & Maximum Subsidy

24 CFR 92.209(a) & (h) and 24 CFR 92.64(a) (Insular Areas)

Applicability: TBRA provided in response to COVID-19 pandemic through December 31, 2020

PJ Responsibility:

- Must execute rental assistance contract with owner or tenant for term mutually agreed upon by all parties, but not to exceed December 31, 2020
- Utility payments may be made directly to tenant or utility company based on utility bills submitted

Term of Rental Assistance Contract

24 CFR 92.209(e) and 24 CFR 92.64(a) (Insular Areas)

Requirement: Rental assistance contract must begin on first day of the term of the lease

Waiver: Eliminates requirement that rental assistance contract must begin on first day of the term of the lease

Applicability: TBRA provided in response to COVID-19 pandemic through December 31, 2020

PJ Responsibility: Must execute a rental assistance contract with owner or tenant for term mutually agreed upon by all parties, but not to exceed December 31, 2020

Tenant Protections – Lease

24 CFR 92.209(g) and 24 CFR 92.64(a) (Insular Areas)

Requirement: Lease cannot include any prohibited lease terms

Waiver: Permits a PJ to assist individuals with current leases that contain one or more prohibited provisions, without requiring that the lease be immediately amended to eliminate prohibited provisions

Applicability: TBRA provided in response to COVID-19 pandemic through December 31, 2020

PJ Responsibility:

- Must execute a rental assistance contract with owner or tenant for term mutually agreed upon by all parties, but not to exceed December 31, 2020
- Lease must comply with VAWA requirements at 24 CFR 92.359

Housing Quality Standards (HQS)

24 CFR 92.209(i) and 24 CFR 92.64(a) (Insular Areas)

Requirement: Units occupied by TBRA tenants must meet HQS at initial occupancy

Waiver: Initial HQS inspection not required before providing TBRA

Applicability: TBRA provided in response to COVID-19 pandemic through December 31, 2020

PJ Responsibility:

- Procedures to minimize risk of housing tenants in substandard units
- Procedures for conducting physical inspections within 120 days following end of December 31, 2020 waiver period
- Lead-based paint provisions of 24 CFR part 35 subpart M not waived

Annual HQS Inspection

24 CFR 92.504(d)(1)(iii), 24 CFR 92.209(i) and 24 CFR 92.64(a) (Insular Areas)

Requirement: Annual HQS inspection of units occupied by TBRA recipients

Waiver: Eliminates the requirement to conduct annual HQS inspections of units occupied by TBRA recipients

Applicability: HQS inspections of TBRA units occurring between April 10, 2020, and December 31, 2020

PJ Responsibility: Within 120 days of December 31, 2020, physically inspect units that were subject to HQS inspection during waiver period

Income Determinations

24 CFR 92.203(a)(2) and 24 CFR 92.64(a) (Insular Areas)

Requirement: Determine annual income using 2 months source documentation and project anticipated income forward 12 months

Waiver: Permits use of self-certification in accordance with 24 CFR 92.203(a)(1)(ii)

Applicability: TBRA provided in response to COVID-19 pandemic through December 31, 2020

PJ Responsibility:

- Self certification must indicate how tenant's financial situation changed
- Include all income received by tenant, including unemployment or emergency benefits received as a result of pandemic (excluding stimulus payments)
- Include tenant income certifications in project files

Questions?