

DEPARTMENT OF HUMAN SERVICES

Adoption of Amendments to the Hawaii Public Housing
Authority Section 8 - Housing Choice Voucher
Emergency Rules Relating to COVID-19 Emergency

October 15, 2020

SUMMARY

Hawaii Administrative Rules, entitled "Hawaii Public
Housing Authority Section 8 - Housing Choice Voucher Emergency
Rules Relating to COVID-19 Emergency"

Hawaii Public Housing Authority
Section 8 - Housing Choice Voucher Emergency Rules Relating to
COVID-19 Emergency

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Historical Note: This adoption of Hawaii Administrative Rules, entitled "Adoption of Amendments to and Compilation of the Hawaii Public Housing Authority Section 8 - Housing Choice Voucher Emergency Rules Relating to COVID-19 Emergency" is to amend Hawaii Public Housing Authority Section 8 - Housing Choice Voucher Emergency Rules Relating to COVID-19 Emergency, Hawaii Administrative Rules, adopted April 16, 2020, and filed with the Office of the Lieutenant Governor on May 12, 2020; and renewed and extended for an additional 113 days after September 9, 2020, by Adoption of Extension of Hawaii Public Housing Authority Section 8 - Housing Choice Voucher Emergency Rules Relating to COVID-19 Emergency on September 2, 2020, and filed with the Office of the Lieutenant Governor on September 8, 2020, pursuant to Hawaii Revised Statutes sections 91-3(b) and 91-4(b)(2); and amended by Adoption of Amendments to and Compilation of the Hawaii Public Housing Authority Section 8 - Housing Choice Voucher Emergency Rules Relating to COVID-19 Emergency on September 17, 2020, and filed with the Office of the Lieutenant Governor on -----, 2020, pursuant to Hawaii Revised Statutes sections 91-3(b) and 91-4(b)(2).

S8-§1 Findings. The authority finds that:

(a) The Governor of the State of Hawaii has determined and proclaimed that the COVID-19 pandemic in the State of Hawaii is an emergency contemplated by section 127A-2 and 127A-14, Hawaii Revised Statutes ("HRS"), and that this emergency continues, as evidenced by his Proclamation dated March 4, 2020, and Supplementary Proclamations dated March 16, 2020, March 21, 2020, March 23, 2020, and March 31, 2020 ("Emergency Proclamations");

(b) Section 127A-2, HRS, defines "emergency" as "any occurrence, or imminent threat thereof, which results or may likely result in substantial injury or harm to the population or substantial damage to or loss of property";

(c) There is an occurrence of a severe and extraordinary event that constitutes a public health emergency which continues to evolve and spread around the globe and is now spreading in the community which has caused damages, losses and suffering of such character and magnitude to affect the health, welfare, and living conditions of a substantial number of persons, and is anticipated to affect the economy of the State of Hawaii as the Governor has declared through his Emergency Proclamations;

(d) By Supplementary Proclamation dated March 16, 2020, the Governor directed all state agencies and officers to cooperate with and suspend statutes related to any administrative procedures in Chapter 91, HRS in order for state agencies to more effectively provide emergency relief and engage in emergency management functions as may be required to assist in all efforts to address the objectives of his proclamation;

(e) As the authority agrees with the Governor that the ongoing COVID-19 pandemic is of such magnitude to warrant protective action, the authority finds it must provide emergency relief to its Section 8 - Housing Choice Voucher Program participants who lost employment or income due to the COVID-19 emergency;

(f) This emergency rule provides financial relief assistance to the authority's Section 8 - Housing Choice Voucher program participants by allowing interim rent adjustments to be effective on the day the participant's employment and corresponding income were lost due to the COVID-19 emergency in the State of Hawaii;

(g) Based on the above, there is an imminent peril to the public health, safety or morals, caused by the COVID-19 pandemic statewide requiring immediate adoption of this emergency rule upon less than thirty days' notice of hearing; and

(h) These findings are based on the Board's personal knowledge and professional experiences.

S8-§2 Purpose. These emergency rules are adopted based on the findings in section S8-1 to respond to the COVID-19 emergency declared by the Governor and enable the authority to provide certain financial relief to participating families in the authority's Section 8 Housing Choice Voucher Program due to the COVID-19 emergency.

S8-§3 Authority. These rules are adopted pursuant to section 91-3, HRS.

S8-§4 Applicability. Notwithstanding Chapter 15-185 Section 8 - Housing Choice Voucher Program, and any subsequent repeal or revisions, these rules shall apply to the authority's Section 8 Housing Choice Voucher Program participants and modify certain sections in Chapter 15-185; provided that upon expiration of these emergency rules, these rules shall terminate.

S8-§5 Definitions. (a) All definitions provided in these rules shall be the same as those provided in chapter 356D, HRS [and], Chapter 15-185, and the Section 8 - Housing Choice Voucher Administrative Plan unless an expanded definition is provided specifically by these rules.

(b) As used in these rules:

"Authority" means the Hawaii public housing authority.

"Board" means the board of the directors of the Hawaii public housing authority.

"Life threatening condition" means any condition that jeopardizes the security of the unit; major plumbing leaks or flooding, waterlogged ceiling or floor imminent danger of falling; natural or LP gas or fuel oil leaks; any electrical problem or condition that could result in shock or fire; absence of a working heating system when outside temperature is below 60 degrees Fahrenheit; utilities not in service, including no running hot water; conditions that present the imminent possibility of injury; obstacles that prevent safe entrance or exit from the unit; absence of a functioning toilet in the unit; or inoperable smoke detectors.

S8-§6 Interim Rent Adjustment. (a) Section 15-185-33 is suspended. While Section 15-185-33 is suspended, this section shall apply.

(b) The authority may adjust a participant's rent between reexaminations if a participant reports a change in income.

(c) Adjustments reflecting a lower rent shall be made effective as of the date the participant's income decreased due to the COVID-19 emergency. A participant who has obtained a decrease in rent under this section shall report all income increases which occur prior to the next reexamination and rent may be readjusted accordingly.

(d) A rent adjustment shall be made between reexaminations when a participant's income increases as a result of the inclusion of additional persons with income to the family, and such adjustment shall be made effective on the first day of the second month following the inclusion.

(e) The participant and owner shall be notified in writing by the [~~corporation~~] authority of the results of any reexamination within a reasonable time.

S8-§7 Initial inspections. (a) The authority may execute a HAP contract on a dwelling unit that fails the initial inspection required under section 15-185-42, provided such failure was the result of only non-life-threatening deficiencies, and corrections are made within the HUD allowed time period, without affecting the housing assistance payment.

S8-§8 Voucher briefing. The authority may use alternative methods to conduct voucher issuance oral briefings required by section 15-185-29 provided these alternative methods shall not be conducted beyond [~~July~~]December 31, 2020.

S8-§9 Payment standard. In addition to payment standard rules set forth in section 15-185-55, the authority may apply a payment standard increase at any time (e.g., interim reexamination or owner rent increase) after the effective date of the increase in the payment standard amount, provided the increased payment standard is used to calculate the HAP no later than the effective date of the participant's first regular reexamination following the change.

S8-§10 Housing assistance payment contract execution. (a) The authority shall execute a HAP contract no later than 120 days from the beginning of the lease term provided the contract is executed no later than [~~July~~]December 31, 2020.

(b) On or after [~~August~~]January 1, [~~2020~~]2021, the authority shall use best efforts to execute the HAP contract

before the beginning of the lease term and execute the HAP contract no later than 60 days from the beginning of the lease term. Any HAP contract executed after the 60-day period is void and the authority shall not pay any housing assistance payments to the owner.

S8-§11 Absence from unit. The authority may continue to provide housing assistance payments when a participant is absent from the unit more than 180 consecutive calendar days due to extenuating circumstances, provided the absence from the unit does not extend beyond December 31, 2020. Extenuating circumstances include but are not limited to hospitalization of participant, extended stays at nursing homes, or caring for family members.

S8-§12 Automatic termination of HAP contract. Should the participant's income increase to the extent that the housing assistance payment is reduced to \$0 (zero dollars), the authority will not automatically terminate the HAP contract 180 days after the last housing assistance payment to the owner. Instead of automatic termination, the authority, upon written notice to the owner and participant, may extend the period of time following the last payment to the owner beyond the normally applicable 180 days.

S8-§13 Findings to Extend Hawaii Public Housing Authority Emergency Rules Relating to COVID-19 Emergency.

The authority finds that:

(a) Governor David Y. Ige declared a state of emergency in the State of Hawaii due to COVID-19 by issuing an Emergency Proclamation on March 4, 2020, that was extended by Supplementary Proclamations, most recently on August 20, 2020, which extended the emergency through September 30, 2020;

(b) The authority agrees with the Governor that the ongoing COVID-19 pandemic is of such magnitude to warrant protective action, the authority finds it must provide emergency relief to its Section 8 - Housing Choice Voucher Program participants who lost employment or income due to the COVID-19 emergency;

(c) These emergency rules provide financial relief assistance to the authority's Section 8 - Housing Choice Voucher program participants by allowing interim rent adjustments to be effective as of the date the participant's

income decreased due the COVID-19 emergency; and

(d) These emergency rules enable the authority to delay or suspend program requirements as allowed under HUD Notice PIH 2020-05 regarding COVID-19 Statutory and Regulatory Waivers for the Public Housing, Housing Choice Voucher, Indian Housing Block Grant and Indian Community Development Block Grant Programs, Suspension of Public Housing Assessment System and Section Eight Management Assessment Program dated April 10, 2020, issued by HUD to public housing agencies ("PIH Notice 2020-05"). In PIH Notice 2020-05, HUD waived and established alternative requirements for numerous statutory and regulatory requirements for the Housing Choice Voucher program, pursuant to the authority provided to HUD under the Coronavirus Aid, Relief and Economic Security (CARES) Act, Public Law 116-136 (March 27, 2020).

S8-§14 Extension. Based on the authority's findings set forth in section 8-13, the authority is renewing and extending Hawaii Public Housing Authority Section 8 - Housing Choice Voucher Emergency Rules Relating to COVID-19 Emergency, adopted April 16, 2020, and filed with the Office of the Lieutenant Governor on May 12, 2020, for an additional 113 days after September 9, 2020.

S8-§15 Waiting list. (a) Section 15-185-26, HAR and the authority's Section 8 Administrative Plan, Chapter 4-III, in part where applicable, is suspended. While Section 15-185-26 and the Section 8 Administrative Plan, Chapter 4-III are suspended, this section shall apply.

(b) The authority shall maintain a separate waiting list for each of its housing choice voucher or project-based voucher programs.

(c) Placement on the waiting list may be by:

(1) Date and time; or

(2) Lottery selection, so long as all adopted preferences are considered.

(d) Applicants shall be notified of the opportunity to apply for vouchers and of the procedure to be used to be placed on the waiting lists through notices posted in a conspicuous place at the authority's offices that accept applications, the authority's website, and printed statements in the authority's informational material on its application process.

(e) The notice to open the waiting list shall include information on what procedure shall be used to place applicants

on the waiting list, how to apply, the date and time of the lottery selection and the number of applicants that will be selected by the lottery.

(f) The authority may accept applications from applicants with a preference, without a preference, or a combination of both which will be specified in the notice of opening of the wait list.

(g) Applicants that are selected for placement on the waiting list shall be notified in writing of their selection on the waiting list within ten business days. Applicants that are not selected by the lottery shall be informed in writing of their non-selection for placement on the waiting list within ten business days.

(h) Selection of applicants from the waiting list shall be based upon:

- (1) A randomly assigned number based on the number of applicants that were selected by the lottery; or
- (2) Date and time of the application; and
- (3) Applicable local preference.

(i) An applicant must notify the authority, at least annually, of any change that may affect the applicant's place on the waiting list and the authority's ability to contact applicant. Changes include, but are not limited to, familial status, financial status, mailing address and current residence.

(j) An applicant may continue to be on the waiting list even though the applicant is a tenant in or receiving housing assistance from another housing program.

(k) Applications for the housing choice voucher program ~~[will be active for eighteen months from the date of placement on the waiting list and then will expire.]~~ placed on the waiting list during the period when these emergency rules are in effect will be active up to the expiration of these emergency rules, when all remaining applications will be purged from the waitlist. ~~[Applicants on the waitlist at eighteen months will receive a letter informing them that their application has expired within ten business days.]~~

(l) Should the authority open the waiting list for applicants with local preferences, any applicant who is unable to verify their qualifications for meeting the preference within seven ~~[10]~~ business days may be removed from the waiting list.

(m) Applicants who were either not selected to participate in the lottery, or whose application has expired, will not qualify for an informal hearing.

S8-§16 Local preference. (a) Section 15-185-25, HAR, and the authority's Section 8 Administrative Plan, Chapter 4-III, in part where applicable, are suspended. While section 15-185-25

and the Section 8 Administrative Plan, Chapter 4-III are suspended, to establish a preference to lease in place families already housed as a means to prevent possible homelessness during the COVID-19 emergency, this section shall apply.

(b) Eligible applicants shall be given preference for certification in the program if, at the time they are seeking housing assistance, they fall within the following preference:

(1) Families housed in the City and County of Honolulu under an existing rental agreement where the landlord has agreed to enter into the housing choice voucher program shall be given first priority.

(A) All other participation requirements shall be maintained, including, but not limited to income qualifications, payment standard limits, rent reasonableness, and housing quality standard inspection criteria.

(B) Should a dwelling unit not meet all housing choice voucher criteria for the authority to enter into a housing assistance payment contract with the landlord, the family shall be deemed not qualified for the preference.

S8-§17 Emergency Landlord Incentive. (a) All new landlords entering into a housing assistance payment contract with the authority under section S8-§16 shall be eligible for landlord incentive should the applicant's residence not pass the initial housing quality standards inspection for non-life-threatening conditions.

(b) Landlords shall be eligible to receive up to \$500 in the form of a gift card to a local hardware store to be used to off-set the cost to correct non-life-threatening deficiencies in the participant's dwelling unit, identified by the authority's inspection.

(c) Emergency landlord incentive payments shall not apply to:

(1) Upgrade of deficient items beyond a reasonable level required to pass inspection;

(2) Non-inspection related items in or around the dwelling unit's property or inspection items not cited as deficient; or

(3) Installation of features not in the dwelling unit prior to inspection;

(d) Landlords shall be required to correct the noted inspection errors within the HUD allotted time period.

(e) The authority shall determine the amount of emergency incentive a landlord can request, based on the authority's inspection of the applicant's dwelling unit.

(f) Eligibility and the amount of emergency incentive provided shall be contingent on available funding.

DEPARTMENT OF HUMAN SERVICES
Hawaii Public Housing Authority Emergency Rules
Relating to COVID-19 Emergency

The Section 8 - Housing Choice Voucher Emergency Rules Relating to COVID-19 Emergency, Hawaii Administrative Rules, were adopted on April 16, 2020, and subsequently extended on September 2, 2020, and amended on September 17, 2020 by the Hawaii Public Housing Authority Board of Directors at its board meeting with prior public notices provided in accordance with section 92-7, Hawaii Revised Statutes, and with abbreviated notice and hearing pursuant to section 91-3(b), Hawaii Revised Statutes.

The rules shall take effect upon filing with the Office of the Lieutenant Governor for a period of not longer than 77 days after October 15, 2020 unless extended in compliance with section 91-3(b), Hawaii Revised Statutes.

ROBERT J. HALL, Chairperson
Board of Directors
Hawaii Public Housing Authority

Pursuant to my Proclamation dated March 4, 2020, and Supplementary Proclamations dated March 16, 2020, March 21, 2020, March 23, 2020, March 31, 2020, April 17, 2020, April 25, 2020, May 5, 2020, May 18, 2020, June 10, 2020, July 17, 2020, August 6, 2020, August 20, 2020, and September 22, 2020 relating to COVID-19, I approve these rules.

APPROVED:

DAVID Y. IGE
Governor
State of Hawaii
Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed