



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lieutenant Governor ♦ Jennifer D. Maddox, Undersecretary

To: All Local Housing Authority Executive Directors
From: Ben Stone, Associate Director, Division of Public Housing
Date: May 11, 2020

Subject: **PHN 2020-21A**
ADDENDUM #1
Rent Policy During COVID-19 Emergency Q&A

This notice supersedes the Rent Policy Q&A issued on April 30, 2020. This Q&A provides guidance on the implementation of PHN 2020-21A, Rent Policy During COVID-19, issued May 11, 2020, and associated regulatory waivers directing LHAs to implement a rent cap, previously referred to as a “rent freeze”. The rent cap applies to those tenants whose household income has increased due to unemployment insurance (UI) or earned income since March 1. Those tenants will be charged no more than the amount of their March 1 rent for June and July 2020. This temporary policy includes the following principles:

1. Tenants should not be charged rent in excess of March 1 rent for the period June 1 through July 31 where their increased income is due to unemployment insurance (UI) or earned income. This applies only to increased income due to earned income or unemployment insurance, including the temporary enhanced \$600/week unemployment benefit sometimes referred to as Federal Pandemic Unemployment Compensation (FPUC) under the CARES Act. Increases due to earned income or FPUC for new household members and income from new jobs will also be subject to the rent cap. **All other rent changes due to other changes to household income, such as Cost of Living Adjustment (COLA), are calculated normally.**
 - a. Tenants whose household income has decreased for any reason will have rent charged based on their income and deductions.
2. LHA calculated tenant rent for April and May does not need to be adjusted UNLESS:
 - a. The LHA chose to include in income one or more full \$600/week FPUC benefits actually received in April or May for purposes of April or May rent calculation
 - i. LHAs that performed rent calculations that included the \$600/week FPUC must recalculate the rent and provide refunds or credits.
 - b. A resident receives a retroactive lump sum payment after the issuance of PHN 2020-21-A for UI (regular and/or FPUC) accrued in April and May
 - i. In the case of lump sum, retroactive UI and FPUC payments, the LHA will have to assign the benefit to the weeks for which it was actually accrued. (i.e., if accrued in April and May, the FPUC should be excluded from income; if accrued in June and July, the LHA should apply the above rent cap policy).
3. This policy only extends through July 31, 2020, or such later date as determined by DHCD.
4. LHAs may charge rent based on actual income for August 2020, unless this policy is extended by DHCD.
5. Tenants may request an interim redetermination when household income decreases in order to reduce rent at any time.

6. Tenants are still obligated to report increases in monthly household income exceeding 10%; for example, this applies to those who have claimed \$0.00 following job loss and who are now receiving unemployment benefits.
7. Minimum rent of \$5.00 may not be charged to tenants during the COVID-19 public health emergency. No financial hardship need be shown.
8. Late fees and interest may not be charged to tenants for a period of 120 days after April 20, 2020 or 45 days after the end of the emergency, whichever is later, unless extended by the Governor. No financial hardship need be shown.

RENT POLICY Q&A

1. **Question:** *Do LHAs need to retroactively recalculate April or May rents that were lower than March and charge tenants the difference?*

Answer: No, the only time an LHA needs to recalculate or adjust an April or May rent determination is when the LHA included the \$600/week FPUC in a household's income. The LHA must recalculate the rent excluding the FPUC. A refund or a credit to the tenant's account must be made in the amount the tenant was charged in excess of the newly recalculated rent.

2. **Question:** *If an LHA typically conducts its annual rent determinations in April, May, June, or July, must they delay the 2020 annual rent determination?*

Answer: An LHA can choose to conduct annual rent redeterminations in 2020 or can choose to forego them until 2021. If an LHA has not conducted annual rent determinations for 2020 and chooses to postpone them, current rents will remain in effect until the LHA conducts annual rent determinations in 2021 **OR**, for a tenant that requests an Interim Rent Determination, the interim tenant monthly rent will remain in effect until the 2021 annual rent determination.

If an LHA decides to forego annual determinations in 2020, the 2021 annual determinations shall be conducted to become effective on the currently established annual rent redetermination date in 2021 (i.e., if annual rent determination would have been effective on May 1, 2020, due to foregoing 2020 determinations annual rent determination for 2021 should be conducted to be effective May 1, 2021). If a tenant has requested an interim rent determination, the LHA must calculate the corresponding increase or decrease to the rent, but rent increases for the months of June and July must be capped at the March 1 rent, if the increase in income was due to earned income or unemployment benefits. This does not apply to any rent changes caused by changes to household income other than increased earned income or unemployment benefits, such as Cost of Living Adjustment (COLA), which are to be calculated normally.

3. **Question:** *A tenant had zero income for rent roll April 1st because his unemployment was pending. At the end of April, he reported his unemployment had begun. His rent change should be May 1st, but that goes against the regulation requiring 14 days' notice of all rent increases. Under the regulation, his rent change should be recorded June 1st. Is this correct?*

Answer: An increase in tenant rent due to an interim rent determination requires a 14-day notice of an increase. It is correct that the tenant rent will increase on June 1st, provided that notice was given to the tenant by May 18th. However, the June 1st rent cannot exceed the monthly rent charged for March 1st.

4. **Question:** *Are LHAs to assume that a now unemployed household is receiving the Enhanced Unemployment Benefit of \$600 per week?*
- a. *Is it the responsibility of that household to report that to the LHA?*
 - b. *If they do not report it, should the LHA reach out to the household requesting confirmation?*

Answer: LHAs should not assume that a tenant or household member is receiving the \$600 FPUC benefit just because they are receiving unemployment. It is the responsibility of the tenant to inform the LHA of income received by the tenant and each member of the household. LHAs may, however, ask the tenant if the tenant or any other household member is receiving the \$600 FPUC payment.

5. **Question:** *What if a tenant receives the weekly \$600 federal unemployment on June 15th as a lump sum for weeks that he was unemployed in April and May?*

Answer: Please note that the policy requires LHAs to exclude the FPUC from rent calculations for April and May, so there is no need to recalculate the rent due to receipt of the lump sum amount for these months.

Some households, entitled to FPUC through July 31, may not yet have received it due to administrative issues. When and if the household receives and reports this retroactive lump sum income, the LHA will calculate a retroactive lump sum amount excluding the amount of FPUC for the months of April and May. The remainder of the lump sum will be included in the retroactive lump sum rent calculation for June and July, but the rent for those months will be capped at the March 1st amount. Tenant shall pay any retroactive rent due on account of such income upon receipt of a bill from the LHA in accordance with 760 CMR 6.04(9).

6. **Question:** *If rents would have been higher but for the COVID-19 exclusion of FPUC in April and May and the rent cap for June and July, would those increases be considered retroactive and collected after August 1, 2020?*

Answer: No, under this policy there will be no retroactive changes for the months of April, May, June and July, 2020, except if LHA needs to exclude FPUC from the April and May rent calculation, or if the tenant household receives unemployment benefits as a retroactive lump sum.

7. **Question:** *Are all increases in income, regardless of source, disregarded after getting up to old rent during this time period?*

Answer: Only households with unemployment income or earned income are affected by the ‘rent cap’ for June and July. Any increase in income due to the \$600 weekly FPUC is excluded from household income for April and May 2020. Where household income due to earnings or unemployment benefits would result in a rent that is higher than March 1st rent, rent for June and July is capped at the March 1 rent. Rent changes due to other changes to household income, such as Cost of Living Adjustment (COLA), are to be calculated normally as part of income for purposes of rent determination.

8. **Question:** *If a household's income has decreased to \$0.00, should the LHA charge the household the minimum rent of \$5.00?*

Answer: DHCD has determined that LHAs may not charge minimum rent during the public health emergency because it has determined that the COVID-19 public health emergency qualifies as a financial hardship for all public housing tenants for purposes of DHCD minimum rent rules.

9. **Question:** *May an LHA charge late fees or interest during the eviction moratorium?*

Answer: DHCD is not permitting LHAs to charge late fees or interest during this period. Note also that LHAs may never report late or nonpayment of rent to credit bureaus at any time because it is prohibited by M.G.L. c. 66A and 760 CMR 8.00.

10. **Question:** *Is DHCD working to arrange for LHAs to receive electronic verification of other income such as: (i) child support received through the Department of Revenue; (ii) Department of Transitional Assistance cash benefits; and/or (iii) unemployment benefits?*

Answer: DHCD is not working on this at this time. Guidance has been issued to LHAs regarding verification of income, exclusions and deductions in [PHN 2020-11](#). DHCD will take this into consideration while evaluating policy moving forward.

11. **Question:** *A widow started collecting her late husband's increased SS survivor benefit in January, an increase that was not reported until May. Normally, the unreported income would be calculated into a separate payment agreement (in this case about \$200) that the resident would need to repay. Should the LHA continue to charge the payment agreement, or suspend it until July 31?*

Answer: The LHA should continue to charge the repayment agreement. A repayment agreement does not change the amount of rent charged. A repayment agreement adds an additional amount that the tenant must pay in addition to the rent in order to pay back the arrears. The rent cap policy does not apply to a repayment agreement.

12. **Question:** *If an LHA discovers income fraud for the period prior to COVID-19, what action should an LHA take? Do tenants get a pass on not reporting income?*

Answer: No, tenants do not get a pass. LHAs should include unreported income in the calculation of rent and enforce the lease for this violation in the same manner LHAs have always done, but using the guidance provided in PHN 2020-21A related to the moratorium on evictions and the cap for June and July rent. If there was unreported income that would have created a higher March 1 rent, LHAs should calculate the increased rent retroactively to when the tenant should have reported the increase in income and that becomes the new rent that would have been in effect March 1st.

13. **Question:** *Is the income exclusion for tenants or household members who are 62 years of age or older applied to unemployment? Is the income exclusion applied during April, May, June or July if a tenant or member of the household who is 62 years of age or older gets a job?*

Answer: Yes, the income exclusion for wages and/or salary earned by a tenant 62 years of age or older, or other household member, 62 years of age or older, not to exceed the total amount which would have been earned by a person working 20 hours per week at the minimum wage, is excluded from unemployment and from any earned income. In determining rent for April and May, do not include the FPUC.

In determining rent for June and July, the LHA must determine whether or not the rent calculated with the elderly worker income exclusion and the FPUC benefit is less than or greater than the March 1 rent. If it is less, then the monthly rent will be the new amount, if it is greater, the monthly rent for June and July will be capped at the March 1 rent.

14. **Question:** *An LHA is conducting annual rent determinations to become effective June 1. Tenants will be notified that they will continue to pay the March 1 rent amount until August 1, 2020. Effective August 1, tenants will pay their new rent. An LHA has a lot of c. 667 and c. 705 tenants that have multiple medical expenses and corresponding rent decreases. Do the tenants pay their new rent effective June 1?*

Answer: When an annual rent determination effective June 1 **decreases** tenant monthly rent, tenant rent for June 1, until the next annual rent determination date or an interim determination is requested, is the tenant monthly rent.