



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

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

To: Owners and Managers of Private Housing
From: Roberta Rubin, Chief Counsel
Subject: FAQ #2 – Clarification on Rent Increases in Private Affordable Housing
Date: April 24, 2020

DHCD continues to receive questions relating to recently issued [DHCD Guidance on Rents in Privately Owned Affordable Housing](#) and [Guidance for Owners and Managers of 40B Comprehensive Permit and LIP Projects Regarding Rent](#) regarding the ability of owners and managers to increase rents based on the new income and rent limits announced by the United States Department of Housing and Urban Development (HUD) on April 1, 2020. On April 3, DHCD posted initial responses to frequently asked questions (see [Clarification on Rent Increases in Units with Rental Assistance During COVID-19 Emergency](#)). The Department will continue to issue responses to FAQs in order to provide the best possible guidance as quickly as possible.

The following responses to FAQs supplement earlier guidance but do not supersede it unless otherwise noted. For responses to FAQs ##1-7, please see [Clarification on Rent Increases in Units with Rental Assistance During COVID-19 Emergency](#).

8. **FAQ #8 – Substantial Reduction in Rent Collections:** I am the owner of a property developed or preserved with Commonwealth financial assistance including low-income housing tax credits, tax-exempt bonds, HOME funds, or other state capital dollars, but no project-based rental assistance. My April rent collections were off by 60%. I would welcome any suggestions from the Department.

DHCD Response to FAQ #8:

- a. As a first step, owners should begin the process of making contact with each and every tenant in the property, particularly those who have not been able to make their full rental payments to date, to discuss future arrangements for payment. DHCD expects to issue guidance for tenants over the coming days and weeks, geared both to helping tenants understand their legal rights and responsibilities, and also to direct them to available resources that may enable them to cover their expenses, including rent. We encourage owners to disseminate that guidance broadly when it is available. In the meantime, owners can refer tenants to their local Housing Consumer Education Center for guidance on programs that may be available to them.
- b. Owners whose rent collections do not cover operating expenses and debt service should also consider drawing down on the operating reserves established for the purpose of covering operating deficits. Prior to drawing on reserves, owners should contact their permanent lender, investor, and

any other party holding approval rights over the use of reserves.

- c. Owners should also contact their permanent lender and investor and request relief from any debt service coverage requirements or other financial covenants that would otherwise trigger a default.
- d. Owners also may qualify for low-interest, long-term loans under the Economic Injury Disaster Loan (EIDL) Program under Section 1110 of the CARES Act, which expanded the existing EIDL program administered by the Small Business Administration (SBA). Unlike the Paycheck Protection Program, assistance under the EIDL program is not tied to payroll, and the CARES Act specifically authorizes the use of funds to make mortgage payments.
- e. We encourage owners to make contact with DHCD's Division of Housing Development and also with any of the quasi-public housing entities that may be involved with the property, such as MassHousing, MassDevelopment, MHP or CEDAC, to discuss specific concerns. The Division of Housing Development is in very regular contact with all of the quasi-public housing entities and has had numerous discussions with owners on rent collection issues. The Division is willing to talk to any owner with this issue.

9. **FAQ #9 – Drop in Rent Collections – Properties with Section 8 Project-Based Rental Assistance and State Financial or Technical Assistance:** I have a Section 8 project-based rental assistance contract administered by DHCD. While I understand the Commonwealth's desire to keep rents flat, I am already seeing a drop in rent collections at my property. It would help immensely to use the HUD income limits on the project-based Section 8 units only. Can I do this?

DHCD Response to FAQ #9:

- a. As we continue to recognize the effects of the COVID-19 pandemic, we are very mindful of the problems that property owners are encountering as tenants who have vastly reduced incomes are unable to pay their full rents. As noted in our response to FAQ #1, we strongly encourage all owners to take alternative measures to stabilize their properties, including working with tenants to help them to access any available resources to supplement their incomes, drawing on reserves, and seeking additional resources for the property.
- b. We understand, however, that some owners are facing unprecedented declines in rental payments that may threaten the continued viability of their properties. Accordingly, DHCD is advising our administering agencies that they should consider requests for rent increases for units receiving Section 8 project-based rental assistance, based on the April 1 HUD notice, in accordance with DHCD's Section 8 Moving to Work Administrative Plan (MTW Plan), so long as there is no adverse impact on tenants. Any request for a rent increase will be subject to generally applicable requirements under our MTW Plan, including rent reasonableness requirements. Per HUD regulations and DHCD's MTW Plan, the maximum allowable rent will be the lowest of the DHCD payment standard, the rent requested by the owner, or a reasonable rent based on rents for comparable units in the area. Please note that, under HUD rent reasonableness requirements, Section 8 rents typically cannot exceed rents for comparable units in the same property, except where the comparable units are subject to rent restrictions under the low income housing tax credit program.

- c. Similarly, DHCD will not object to the use of HUD income limits on project-based Section 8 units only where rent increases are approved by other administering agencies and where there is no adverse impact on tenants.

10. **FAQ #10 – Previously Requested Rent Increases:** I requested a rent increase before DHCD issued its guidance. How does that guidance impact my pending request?

DHCD Response to FAQ #10: DHCD’s Administering Agencies will continue to review these pending requests (submitted prior to April 3) in accordance with our administrative plans. See FAQ #2 above regarding allowable rent increases under project-based Section 8 contracts. Pending rent increases under project-based MRVP contracts submitted prior to April 3 will also be reviewed in the ordinary course of business.

11. **FAQ #11 – Lease Renewals for Leases Subject to Rent Increase Limits:** DHCD has asked owners to refrain from raising rents until the later to occur of August 1 (120 days from April 3rd, the date of DHCD’s initial notice) or the end of the state of emergency, which currently is set to expire on May 4, 2020. How should we handle lease renewals where the lease term will extend beyond this temporary hold on rent increases?

DHCD Response to FAQ #11

- a. To the extent feasible, DHCD urges owners to hold rents at current levels for any lease renewals occurring through the end of the calendar year. While the extent of economic dislocation from the current state of emergency remains unknown, we do know that many low- and moderate- income tenants are experiencing COVID19-related financial hardship, and it seems likely that tenants may continue to experience financial distress for some time after the state of emergency is ended.
- b. If a project lacks adequate reserves to enable the owner to maintain financial stability while keeping rents at current levels, DHCD still expects the owner to limit rent increases to the minimum necessary to achieve financial stability, taking into account the recommendations in DHCD’s Response to FAQ #1 above.
- c. Owners that do need to phase in rent increases should enter into leases that provide for:
 - i. Current rent level for the period from lease renewal through August 1, 2020 or the end of the state of emergency, whichever is later;
 - ii. At least 30 days’ notice to tenants of the effective date of the proposed rent increase; and
 - iii. New rent level for the balance of the term of the lease.
- d. Upon an owner’s request, DHCD is willing to review any proposed lease provisions.

