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Housing-related provisions in “Phase 3” coronavirus stimulus

By Nathaniel Cushman and Richard Michael Price

Here is a summary of the major housing-related provisions in the \$2 trillion coronavirus emergency stimulus package that was passed by the Senate yesterday. The expectation is that this package will be passed by the House and signed into law this week without modifications. Over \$12.4 billion are proposed for various HUD programs, detailed below. The law also includes provisions allowing for certain borrowers to obtain loan forbearance and certain tenants to receive a moratorium on evictions.

Housing programs

Project-based rental assistance: \$1 billion

This appropriation is to maintain normal operations and assist owners or sponsors of Section 8 properties. This funding will make up for any reduced tenant payments as a result of the coronavirus. HUD previously issued guidance encouraging PBRA owners to process interim recertifications for residents who report a reduction in income for more than one month, as detailed in our alert, [“HUD issues frequently asked questions for owners of multifamily assisted housing on dealing with Covid-19.”](#) These reductions in tenant income would reduce tenant payments and increase the demand on the PBRA account.

Section 202 housing for the elderly: \$50 million

This appropriation is to maintain normal operations and assist owners or sponsors of Section 202 properties in preparing for and responding to the coronavirus pandemic. It sets aside \$10 million specifically for service coordinators and the continuation of congregate service grants for residents of assisted Section 202 housing projects.

Section 811 housing for persons with disabilities: \$15 Million

This appropriation is to maintain normal operations and assist owners or sponsors of Section 811 properties. This funding will make up for any reduced tenant payments as a result of the coronavirus.

Community development block grants

Up to \$2 billion is slated for grantees under Section 106 of the Housing and Community Development Act of 1974 (Indian tribes, discretionary fund, and metropolitan cities and urban counties) using the FY2020 CDBG formula. These funds are mandated to be allocated within 30 days of enactment.

The stimulus sets aside \$1 billion for direct allocation to State and local governments to prepare for and respond to coronavirus conditions within that State or local area. The funds will be allocated within 45 days of enactment. Among other purposes, this sum can be used to address housing market disruption.

The remaining \$2 billion will be distributed on a rolling basis to State and local governments at the discretion of the Secretary based on a HUD formula. The Secretary will factor in the number of coronavirus cases, the priority of risk transmission of the coronavirus, and economic and housing disruptions resulting from the coronavirus. All submissions of final statements of activities and/or comprehensive housing affordability strategies for FY2019 and FY2020 can now be submitted no later than August 16, 2021.

Up to \$10 million may be used to make new awards or increase prior awards to existing technical assistance providers and provide an immediate increase in capacity building and technical assistance to support the use of all previous amounts.

A grantee of funds under this appropriation is exempted from holding in-person public hearings, but must provide notice and opportunity to comment for no less than five (5) days. A grantee may create a virtual public hearing to fulfill public hearing requirements for any grants. This appropriation will remain available until September 30, 2022. Any amount can be used to reimburse allowable costs by state and local governments to prevent and prepare for the coronavirus.

Public and Native American housing

Tenant-based rental assistance: \$1.25 billion

The appropriation sets aside \$850 million for administrative expenses and public housing agency expenses, including Section 8 vouchers. It also sets aside \$400 million for adjustments to the 2020 calendar year Section 8 renewal funding allocations to cover any public housing agency that experiences an increase in voucher per-unit costs related to the coronavirus. Any amount will be distributed at the discretion of the Secretary based on need.

Public housing operating fund: \$685 million

This appropriation is to provide public agencies with additional funding to maintain normal operations and take necessary actions resulting from the coronavirus, including supporting the health and safety of assisted individuals and families, and education and child care for affected families.

Native American programs: \$300 million

No less than \$200 million is set aside for the Native American Housing Block Grants to maintain normal operations and fund eligible housing activities affected by the coronavirus. This amount will be distributed according to the FY2020 formula. Up to \$100 million is set aside for grants to Indian tribes under the Indian Community Development Block Grant program, to be used for

imminent health and safety emergencies. This amount will be distributed at the discretion of the Secretary. No more than 20 percent of this amount will be used for planning and management development and administration.

Homeless assistance grants

Up to \$2 billion is set aside to assist individuals and families who are homeless or receiving homeless assistance or homelessness prevention programs under the Emergency Solutions Grants Program, using the FY2020 formula, and will be allocated within thirty (30) days of enactment.

The remaining amount will be distributed to State and local governments at the discretion of the Secretary based on a HUD formula and will be allocated within ninety (90) days of enactment.

This appropriation will remain available until September 30, 2022. Any amount can be used to reimburse allowable costs by state and local governments to prevent and prepare for the coronavirus.

Housing opportunities for people with AIDS

No less than \$50 million is allocated to maintain operations and provide rental assistance and supportive services under the AIDS Housing Opportunity Act program, using the FY2020 formula.

Up to \$10 million is set aside to provide additional awards to grantees currently administering existing supportive housing.

This appropriation will remain available until September 30, 2021. Any amount can be used to reimburse allowable costs by state and local governments to prevent and prepare for the coronavirus.

Amounts are also appropriated for administrative expenses and other program offices: \$2.5 million for fair housing; \$50 million for HUD administrative expenses; and \$5 million for the HUD Inspector General's office.

Multifamily loan forbearance

Multifamily borrowers of federally backed multifamily mortgage loans will be provided with up to ninety (90) days of forbearance if they have experienced financial hardship. Applicable mortgage loans include those for properties intended for five (5) or more families and insured, guaranteed, supplemented, protected, or assisted by HUD or other such agency (presumably including USDA Rural Development), Fannie Mae, or Freddie Mac. Borrowers under forbearance cannot evict tenants or charge late fees for the duration of the forbearance.

This section terminates at the earliest date of the termination of the national emergency or December 31, 2020. There is also a mirror provision allowing for single-family loan forbearance.

Temporary eviction moratorium for certain landlords

For a 120-day period beginning on the date of enactment, landlords are prohibited from commencing legal actions to recover possession of a rental unit or to charge fees related to a tenant's nonpayment of rent. This provision of the law applies to landlords with mortgages for

properties insured, guaranteed, supplemented, protected, or assisted by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program, or the Violence Against Women Act (VAWA).

Please notice the inconsistency between the 120-day renter moratorium and the 90-day loan forbearance, which may become an operational problem. Also, there is concern that some renters and borrowers will confuse forbearance and moratorium for forgiveness of unpaid rent or debt. We understand that at this time, the mortgage and rent provisions are not forgiveness.

We are also noticing an inconsistency between the definitions used for “covered property” and “federally backed mortgage loan,” including that the former relies on the VAWA, which has expired.

FEMA

The Federal Emergency Management Agency (FEMA) is allotted \$45 billion for its Disaster Relief Fund. Among the other provisions are appropriations to tackle the coronavirus outbreak. Affected residents may be eligible for different forms of relief.

For more information on the content of this alert, please contact our [Coronavirus Response team](#), your Nixon Peabody attorney, or:

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