

## Chapter 29

### TENANT-BASED RENTAL ASSISTANCE (TBRA)

Home funds may be used by Awardees to help eligible individual households afford housing costs such as rent, utility costs, security deposits and utility deposits. Utility deposit assistance can only be provided if this assistance is along with tenant-based rental assistance or security deposit payment. During the period of assistance, OHFA will annually verify that the family continues to be low-income.

### INCOME

Awardee must determine that a prospective tenant is income-eligible before qualifying for TBRA assistance. This means verifying the household's anticipated annual gross income and determining income does not exceed the HOME low- and very low-income limit. There needs to be at least one income document for each adult; either document actual income or zero income. Also include verification of all assets. If household consists of single parents or children with differing last names, need proof of child support. Effective 10-1-14 OHFA will now allow unborn children to be counted when determining household size with a self-affidavit. See Chapter 8 on income. Annually, during the period of assistance, the Awardee must recertify the tenant's income eligibility.

Effective 8/23/13, the HOME Student question must be asked at initial certification and recertification.

*Is anyone attending an institution of higher education?*

*If yes, can this person meet an exception below?*

- 1. Is this person over the age of 23?*
- 2. Is this person a veteran of the US military?*
- 3. Is this person married? (HUD should recognize same sex marriage)*
- 4. Does this person have dependent child(ren)?*
- 5. Does this person have disabilities?*
- 6. Will you reside with and are a dependent of a household member in this unit?*

If the student cannot meet one of the six exceptions above, they are not eligible.

Source documents are written documentation, generated by a third party (such as an employer), that verifies the income sources the applicant reports. Third party verification is the preferred method. If this is unobtainable, you will need to obtain and examine at least two months of source documentation evidencing annual income.

Acceptable source documents include:

- Wage statements;
- Interest statements;
- Unemployment compensation statements; and
- Third party verifications from employers, banks, or others with first-hand information about the applicant's finances. These verifications should be in writing, and can include documented telephone interviews.

Awardees can use a prospective tenant household's income-eligibility determination for up to six months after the determination is made. (See Chapter 8 for income forms)

## **Occupancy Standards**

Awardees must develop local occupancy standards that specify the number of bedrooms needed by households of various sizes and composition.

### **Eligible unit size:**

The occupancy standards are used to provide consistent criteria for determining the unit size for which the household is eligible.

When the household is selected for the HOME TBRA program, the Awardee should counsel the household about the unit size for which the household is eligible.

If the household will be permitted to select a unit that is larger or smaller than the eligible unit size, the Awardee should explain the impact of this choice on the tenant's payment.

The Awardee may refer the household to appropriate units, but may not require the household to select the referral unit.

## **Minimum and Maximum Payment**

The HOME program rules establish a maximum TBRA assistance payment and require the OHFA to establish a minimum tenant payment.

**Minimum tenant payment:** Minimum tenant rent may be established at zero for extremely low-income, no income or homeless families/individuals.

- Maximum TBRA payment:** The maximum amount that the HOME TBRA program may pay to assist any given household is the difference between 30 percent of the household's *adjusted* monthly income (see Technical Guide for Determining Income and Allowances for the HOME Program Chapter 4 for additional guidance) and the Fair Market Rent as determined by unit size and location in the U.S. Department of HUD current HOME Program rents.

The two-year period begins on the first day of the lease and will end upon termination of the lease (if the TBRA payment is made directly to the landlord).

In circumstances where the payment is made directly to the tenant, the TBRA payment ends when a lease is terminated. However, payments can begin again once the household enters into a new lease.

### **Program Models**

TBRA program models are either the Section 8 Certificate or the Section 8 Voucher programs.

- **Section 8 Certificate Program model:** Under a TBRA program modeled after the Section 8 Certificate Program, (which was recently combined with the Section 8 Voucher program), tenants pay 30 percent of their monthly adjusted income toward rent. The TBRA assistance then makes up the gap between the tenant's payment and the actual rent plus utilities for the tenant's unit.

The rent and utilities of the unit selected by the household may not exceed the current HOME Program Rents.

- **Section 8 Voucher Program model:** Under a TBRA program modeled after the Section 8 Voucher Program, the Awardee calculates the difference between 30 percent of the household's monthly adjusted income and the current HOME Program Rents. This gap is then the constant amount of the monthly TBRA assistance. The household is free to select an actual unit that costs more or less than the current HOME Program Rents.

Unit costing more: If the household selects a unit costing more than the current HOME Program Rent, the household's monthly payment will exceed 30 percent of its monthly adjusted income.

Unit costing less: If the household selects a unit costing less than the current HOME Program Rent, the household's monthly payment will be less than 30 percent of its monthly adjusted income.

Regardless of whether the unit costs are more or less than the current HOME Program Rents, the monthly TBRA to the household remains fixed at the gap between what it can afford and the current HOME Program Rent, regardless of the actual unit selected.

### **PROHIBITED LEASE TERMS AND TENANT PROTECTIONS**

Tenants with TBRA assistances must be protected by a written lease. Awardees must make sure that leases do not exceed the HOME rent limits and do not contain any clauses that are prohibited by the HOME Rule. Lease terms must be for a minimum of one year, unless the owner and tenant mutually agree to a lesser term. In no event can the lease be for less than thirty days. Owners must also comply with applicable state and/or local tenant-landlord laws.

### **Notice of Termination**

Awardees must establish standards for when a landlord may elect to terminate or refuse to renew the lease of a TBRA household. These standards must be in writing. They must also be included within the lease and/or in the contract between the Awardee and the tenant.

The requirement for 30 days' notice of refusal to renew or termination of tenancy that is required of HOME-funded rental projects does not apply to TBRA.

The lease *may not* contain the following provisions:

- Agreement by the tenant to be sued or to admit guilt, or a judgment in favor of the owner in a lawsuit brought in connection with the lease;
- Agreement by the tenant that the owner may take, hold or sell the personal property of household members without notice to the tenant and a court decision on the rights of the parties (this does not apply to personal property left by the tenant after move-out);
- Agreement by the tenant not to hold the owner or its agents legally responsible for any action or failure to act, whether intentional or negligent;
- Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant;
- Agreement that the owner may evict the tenant (or other household members) without a civil court proceeding where the tenant has the right to present a defense, or before a court decision on the rights of the tenant and the owner;
- Agreement by the tenant to waive a trial by jury;
- Agreement by the tenant to waive the tenant's right to appeal or otherwise challenge a court decision; or
- Agreement by the tenant to pay attorney fees or other legal costs, even if the tenant wins in court.

### **UTILITIES**

The HUD-published HOME rent limits include utilities. This means when a tenant pays directly for utilities, the owner/manager must subtract an OHFA-approved utility allowance from the applicable HUD-published HOME rent limit.

Utility Deposit Assistance must be provided in conjunction with a TBRA security deposit or monthly assistance program. In addition, utility deposit assistance may be used only for utilities permitted under the Section 8 utility allowance. This includes electric, gas, water and trash, but does not include telephone and cable television.

**Note:** As long as the lease complies with the rent limits and utility allowance in effect at the time of lease execution, the owner is not required to increase or reduce the rent until the lease is renewed.

## **LEAD-BASED PAINT**

Follow Lead-Based Paint Requirements found in Chapter 19.

## **MONITORING**

OHFA is required to:

- conduct an annual inspection to ensure that the unit still meets HQS.
- ensure that the unit is the appropriate size for the household in order to meet the occupancy standard.
- review and approve rent increases by landlords renting to tenants participating in the TBRA program. OHFA must disapprove a lease if the rent is not reasonable.
- review file and records the incomes of tenants receiving rental assistance are re-evaluated at least annually using source documentation.

Rent and assistance is adjusted accordingly, based on the circumstances in effect at the time of recertification.

If a tenant's income goes above the Section 8 low-income limit at re-examination, assistance must be terminated after the Awardee gives reasonable notice to the tenant and the owner.

**Tenants on Section 8 waiting list:** Special provisions are needed for tenants receiving HOME TBRA who were on the Section 8 waiting list at the time of selection. Households on the Section 8 waiting list when selected for HOME-funded TBRA must remain in their place on the waiting list while receiving the HOME-funded TBRA.

The requirement for ongoing income determination and HQS inspections do not apply to security deposit only programs.

## **Additional Resources:**

- Guidance for HOME TRBA Compliance Checklist
- HOME Rent Limits
- Utility Allowances
- Rent Increase Request