

NYS HOME Local Program Tenant-Based Rental Assistance (TBRA)

A Guidebook for Grantees

New York State

Office of Community Renewal

HOME Investment Partnership Program (HOME)

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Introduction

Purpose of the Administrative Plans / How to use the Plans

This Administrative Plan (Plan) describes the Federal and State policies, procedures, and requirements applicable to a Tenant Based Rental (TBRA) Program. **This plan is specific to this activity only and supplements the General Administrative Plan that covers all HOME activities.**

This Plan must be followed by Local Program Administrators (LPAs) in the administration of a NYS HOME Program and will be enforceable along with all aspects of the contract and Federal HOME Investment Partnership Program regulations at 24 CFR Part 92.

The “Catalogue of Federal Domestic Assistance Number” for this Program is 14.239.

All forms and related documents referred to in this Plan are available on the HCR HOME Program website at: <https://hcr.ny.gov/nys-home-program>.

Acronyms used throughout the Plan:

HUD:	Housing and Urban Development
HCR:	NYS Homes and Community Renewal
HTFC:	Housing Trust Fund Corporation
LPA:	Local Program Administrator (Non-profit or Municipality)
POA:	Period of Affordability
MWBE:	Minority/Women-Owned Business Enterprise
IDIS:	Integrated Disbursement and Information System
WAP:	NYS HCR Weatherization Assistance Provider
EAU:	HCR’s Environmental Analysis Unit
OCR:	Office of Community Renewal

NYS HOME Local Program Manager: is assigned to the LPA at contract execution and is the HTFC OCR staff representative that will assist the LPA to administer the contract with HTFC.

Chapter One: Activity Eligibility

Eligible and Ineligible Activities

TBRA provides monthly assistance is for individual households at or below 60% of area median income. Assistance can move with the household and varies based on income and rent considerations detailed below.

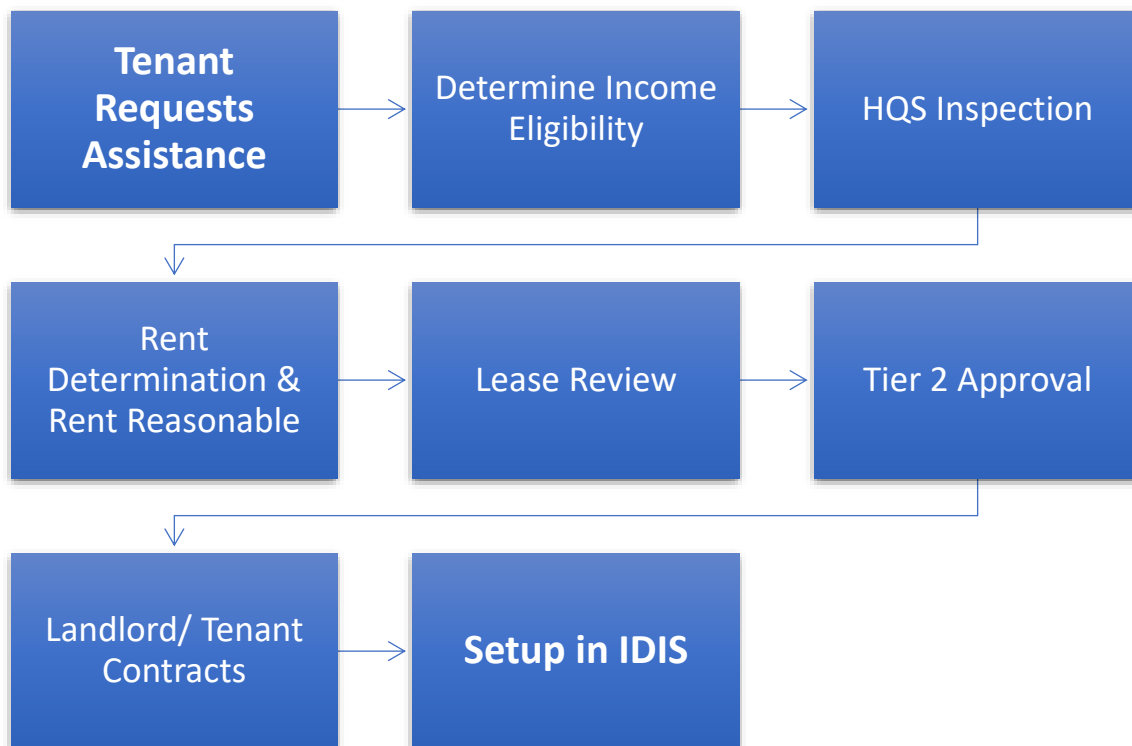
TBRA may be used for:

- Rent assistance including utility costs
- Utility deposits (only in conjunction with rent or security deposits). Utility deposits are not allowed for new services in NYS.
- Security deposits of up to one month's rent, provided as stand-alone assistance or in conjunction with a TBRA rental assistance
 - NYS Landlord Tenant Law says security deposits can be no more than one month's rent and should not be used as a final month's rent
 - Security deposits are provided as a grant and do not need to be repaid. The tenant may keep any remaining funds when leaving the unit.

TBRA may not be used for

- Duplication of other assistance, such as a Housing Choice Voucher. Households already receiving assistance under other rental assistance programs that already reduce tenant payment to 30% of income are not eligible for HOME TBRA.
- Prevention of displacement or relocation assistant to tenants as a result of activities other than the HOME Program
- Overnight or temporary shelter

TBRA programs are required to demonstrate compliance with HOME program regulations at 24 CFR 92.209.



Chapter Two: Property Eligibility and Inspections

Eligible properties may be publicly or privately owned. The LPA must ensure the tenant selected rental unit meets Section 8 Housing Quality Standards (HQS) through an inspection prior to rental assistance approval/at move-in and annually during the term of the TBRA assistance. If security deposit assistance provided alone, an inspection is required only at the time the LPA provides the security deposit assistance.

Households may select units developed or rehabilitated with HOME assistance however TBRA cannot be tied specifically to only HOME units.

LPA must also ensure compliance with the Lead Safe Housing Rule and conduct an initial and periodic visual assessment for deteriorated paint LBP, ongoing safe maintenance practices, and coordination with the public health department.

Lead Based Paint (LBP)

Pre-1978 housing or to be occupied by a child under the age of six assisted with HOME TBRA is subject to the HUD LBP rule at 24 CFR 35.1200 - .1225.

The LPAs inspector must be trained in visual assessment, available at: [Visual Assessment Training - HUD](#)

The inspector will conduct a visual assessment of all surfaces in covered areas (the dwelling unit to be occupied by a child under the age of six, common areas serving the dwelling unit, and exterior painted surfaces) for deteriorated paint.

If the visual assessment indicates deteriorated or deteriorating painted surfaces requiring repair, the LPA will require that surfaces be repaired following paint stabilization requirements in 24 CFR 35.1330(b) including:

- Repair will be conducted by a person or firm with interim control training under 24 CFR 35.1330 or EPA Renovator certification under 40 CFR 745.226.
- Safe work practices under 24 CFR 35.1350 will be followed, including occupant protections, unless the total painted surfaces disturbed by rehabilitation are less than the de minimis levels of 24 CFR 35.1350(d).
- Worksite clearance will be conducted by an EPA-certified professional under 24 CFR 35.1340, unless the total painted surfaces disturbed by rehabilitation are less than the de minimis levels of 24 CFR 35.1350(d).
- Most of the time there is no money in the budget to cover the costs therefore it is the expense of the landlord. Otherwise, the unit is not HOME eligible.

When work is complete, the LPA must ensure that the unit passes clearance (as defined in 35.1340) and must maintain a copy of the clearance report. Failure to obtain clearance on any unit where lead hazard reduction activities have occurred will result in disqualification of the unit.

The LPA must ensure the property owner provides the tenant (1) a disclosure of known lead paint hazards (and clearance results, if applicable), and (2) a copy of the HUD/EPA pamphlet, Protect Your Family from Lead in Your Home. This is a standard requirement of all landlords, but the LPA should collect a copy of the receipt signed by the tenant acknowledging receipt to document that disclosure has occurred or provide what they can if not received from the landlord.



DISCLOSE

- Pamphlet



LOOK

- Visual assessment



TREAT*

- Paint stabilization



CLEAR*

- Clearance



TELL

- Notification



MAINTAIN

- Ongoing maintenance

Occupancy Standards

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

It is suggested that LPAs use standards set forth in the HTFC Capital Programs Manual or the general HQS standard of two persons per bedroom or sleeping area. Standards should take into account the age, sex and medical needs of the household members

A household may elect a larger unit than indicated by the standards, but the LPA is not required to provide increased assistance to provide for the additional costs of a larger unit.

Fair Housing rules permit a household to elect a smaller unit than indicated by the standards, provided it does not result in seriously overcrowded conditions.

Occupancy standard for the unit should be reviewed annually along with unit inspection and income recertification.

Chapter Three: Financial Management

Project Costs

Project costs are those permitted by the NYS HOME Local Program Budget Policy and detailed in Chapter 2 of the General Administrative Plan.

Examples include:

- Rent and utility costs
- Security deposit assistance
- Utility deposit assistance

Applicant Fees

The LPA may not charge tenants fees for the purpose of covering costs of administering the HOME program.

The LPA may charge nominal application fees to discourage frivolous applications. The fees must be appropriate to the type of application and may not create an undue impediment to a low-income family's participation in the program.

Disbursements

Please refer to the Program General Administrative Plan for details on Disbursements.

Because HOME is a reimbursement program, most LPAs fund costs themselves or with a Line of Credit, however, if necessary, funds may be requested the month prior to the rental payment due date as long as a copy of the lease has been submitted for verification at set up.

Chapter Four: Rent and Lease Requirements

Assistance Limits and Terms

The term of the rental assistance commitment may not exceed 24 months, but may be renewed by the LPA, subject to the availability of HOME funds and needs of the tenant.

Written Agreements for assistance must be executed between the LPA and tenant and LPA and landlord. See Written Agreements in General Administrative Plan.

Written agreements/rental assistance contracts must begin on the first day of the term of the lease and for landlords must terminate on termination of the lease and for tenants, need not end on termination of the lease, but no payments may be made after termination of the lease until a tenant enters into a new lease. Assistance to tenants can be less than 12 months.

Rental Assistance Model

LPAs must use the Office of Community Planning and Development (CPD) Calculator Voucher Model. Under the Voucher Model:

- The LPA calculates and fixes the amount of rental assistance it will pay
- The tenant pays the difference between that amount and the rent of the unit that that household selects (and is approved by the LPA.)

Payment Standard

The LPA must establish a payment standard (or rent standard) by bedroom size that is inclusive of contract rent and tenant-paid utilities to calculate the rental assistance amount. Once established this remains the same for all units through the entire program.

Payment standard = Rent + Utility Cost can be determined based on

- Documented local market conditions
OR
- Section 8 HCV rent standards.

Utility allowance must be established by a schedule that estimates the average cost of utilities for typical housing types for water/sewer, electric, gas, and trash. Telephone, internet access, and cable TV are not considered utilities.

Utility allowance may adopt the schedule that the PHA uses for its Section 8 Housing Choice Voucher program, or establish their own schedule based on a survey of typical utility costs in the area.

The standard must be between 80 and 100 percent of the local Section 8 Fair Market Rent (FMR) or community-wide exception rent.

The LPA may approve rents at 110 percent of the applicable FMR in no more than 20 percent of the units assisted.

The maximum amount of subsidy is the difference between 30% of the family's monthly adjusted income (using the CPD calculator) and the payment standard established for the size of unit the tenant will occupy.

Example 1: Unit rents for more than payment standard:	
Payment standard = \$1,300	\$1,300 Payment Standard
Adjusted monthly income = \$950	- \$285 30% of adjusted income
30% of adjusted income = \$285	\$1,015 PJ's rental assistance payment
Rent = \$1,380	\$365 Tenant Contribution
Example 2: Unit rents for less than payment standard:	
Payment standard = \$1,300	\$1,150 Rent (Since lower than the Payment Standard)
Adjusted monthly income = \$950	- \$285 30% of adjusted income
30% of adjusted income = \$285	\$ 865 PJ's rental assistance payment
Rent = \$1,150	\$285 Tenant Contribution

The LPA must also establish a minimum monthly tenant contribution toward rent and utilities which can be a dollar amount or a percentage of income.

Rent Reasonableness

LPAs must disapprove a lease if rent is not reasonable, based on rents that are charged for comparable unassisted rental units.

Lease Provisions

The lease may not contain the prohibited lease provisions below and must be in effect for at least 12 months unless a shorter lease term is agreed to by both landlord and tenant. This lease requirement also applies to security deposit only assistance.

Under HUD regulations (24 CFR 92.253) a lease cannot include

Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

Excusing owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

Waiver of notice. Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

Waiver of legal proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;

Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease;

Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses; and

Mandatory supportive services. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

Every lease shall also provide notice of the following information related to the previous flood history and current flood risk of the leased premises, as follows:

- a) whether any or all of the leased premises is located wholly or partially in a Federal Emergency Management Agency ("FEMA") designated floodplain;
- b) whether any or all of the leased premises is located wholly or partially in the Special Flood Hazard Area ("SFHA"; "100-year floodplain") according to FEMA's current Flood Insurance Rate Maps for the leased premises' area;
- c) whether any or all of the leased premises is located wholly or partially in a Moderate Risk Flood Hazard Area ("500-year floodplain") according to FEMA's current Flood Insurance Rate Maps for the leased premises' area; and
- d) whether the leased premises has experienced any flood damage due to a natural flood event, such as heavy rainfall, coastal storm surge, tidal inundation, or river overflow.

Every residential lease shall also contain the following notice to tenants: "Flood insurance is available to renters through the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program to cover your personal property and contents in the event of a flood. A standard renter's insurance policy does not typically cover flood damage. You are encouraged to examine your policy to determine whether you are covered."

The lease must contain a provision for 30-day notice to terminate tenancy or increase rent.

The Violence Against Women Act VAWA lease addendum is required for all leases along with provision of all notices listed in the addendum. [Marketing Plans & Policies | Homes and Community Renewal \(ny.gov\)](#)

The LPA must establish written standards for when a landlord may elect to terminate or refuse to renew the lease of a TBRA household. These standards must also be included in the lease and in the Written Agreement between the LPA and the tenant.

Chapter Five: Activity Requirements

Tenant Selection Plan

The LPA must have a written tenant selection policy that clearly specifies how households will be selected for participation in their project. It must identify:

- Income requirements. A project can target assistance to distinct AMI levels 60% AMI or lower
- Preference, if any approved at application
- Generally special preferences are not approved, and general community-wide programs preferred
- Applicant selection procedures which may either select from a PHA HCV wait list or establish its own wait list that must provide for the selection of TBRA recipients from a written waiting list in the chronological order of application.
 - Households on the Section 8 wait list must remain in place while receiving the HOME TBRA.

LPAs must provide immediate written notification to any rejected applicant of the specific grounds for rejection and maintain records of the rejection.

LPAs must also provide for reasonable accommodations for persons with disabilities to ensure they have equal access.

The LPA should conduct a briefing for the tenant and supply guidance on:

- Shopping for and selecting units
- Dealing with landlords
- Fair Housing protections

The LPA must establish a deadline for the household to locate a unit.

Fair Housing and Accessibility

LPAs and property owners providing housing to TBRA households are subject to all state and federal fair housing laws, as referenced in 92.350. In general, the housing must be provided in a manner that does not discriminate against persons based on race, color, religion, sex, familial status, national origin, age, or disability. Reference Chapter 3 of the General Administrative Plan.

LPAs should be sure that participating landlords understand their fair housing obligations and comply with fair housing laws.

Further guidance may be provided by the NYS Fair and Equitable Housing Office. [Fair and Equitable Housing Office | Homes and Community Renewal \(ny.gov\)](https://www.fairandequitablehousingoffice.org/)

Private housing providers participating in a HOME TBRA program are not subject to the requirements of Section 504 of the Rehabilitation Act of 1973, but HTFC and LPAs are.

In addition, LPAs should be aware that they may need to provide reasonable accommodations to individuals with disabilities in order to make it possible for them to participate in the TBRA program. Such accommodations may include providing higher rents and sufficient assistance to enable a person with a disability who needs a live-in aide to rent a unit with an extra bedroom, in addition to that needed by the family.

Notice Regarding Income Discrimination

New York State 9 NYCRR 466.16 requires written notice to tenants about their rights regarding housing discrimination based on lawful source of income. This requirement can be satisfied by either using the following New York State Division of Human Rights Source of Income Discrimination in Housing brochure (available at: [nysdhr-income-source-discrimination.pdf](#)) or by providing written notice. This notice must be provided upon notification that the individual qualifies for assistance and receipt documented in the file.

Chapter Six: Contract Renewals and Ongoing Responsibilities

TBRA assistance is limited to 24 months but is renewable given availability of HOME funds and needs of the tenant.

However, household income eligibility and unit condition and occupancy must be reassessed and documented annually, and any changes in rent must be approved. Usually, these determinations coincide with renewal of an annual lease.

Income Recertification

The incomes of households receiving rental assistance must be re-examined at least annually using source documentation. The LPA must re-evaluate family income, size and composition.

Assistance must be terminated if the tenant's income goes above 60% AMI (with reasonable notice to the tenant and landlord.)

Unit Re-inspection

Prior to renewal of an assistance contract, the LPA must conduct an annual inspection to ensure that the unit still meets Section 8 Housing Quality Standards, and annually verify that the unit is appropriate for the household in order to meet the occupancy standard. Inspection standards are the same as for the original inspection.

If HQS standards are not met, the LPA must give owners a reasonable period of time to correct the deficiency and provide evidence of the corrective action.

If the violation is not corrected, the LPA should take actions provided in the assistance contract to terminate the lease and search for a new unit.

Rent Adjustments and Lease Renewals

Owners may adjust rents as leases are renewed (generally on an annual basis), unless they have agreed to a two-year lease.

HTFC must review and approve rent increases by landlords renting to TBRA tenants.

The LPA must also re-determine the applicable utility allowance in effect at the time of lease renewal/rent adjustment.

HTFC must reject a lease if the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.

Housing Assistance Contract Renewal

The TBRA assistance must be adjusted based on the approved changes to rents and utility allowances, based on the circumstances and limits in effect at the time of recertification.

Chapter Seven: Move Outs and Terminations

A tenant may elect to move or not renew.

If the tenant elects to move, the assistance is portable, but the tenant and new landlord must be advised of the remaining term of the assistance (which would be less than 2 years).

The LPA must have standards for a landlord-initiated termination of tenancy. The standards must adhere to non-performance of tenancy obligations and avoid terminations that are inconsistent with Fair Housing laws.

An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds, except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing or failure to follow any required transitional housing supportive services plan; or for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination

If the household is evicted for cause, the LPA must determine whether assistance will also be terminated or available to the household in a new unit.

Chapter Eight: Activity Setup and Completion

Setup

A TBRA Set Up Form located on the HOME website should be submitted when:

- First File Part 1 is approved
- The tenant income qualified
- The unit was inspected and passed an HQS inspection
- The rent was determined reasonable
- The lease was reviewed and approved and submitted with set up
- Tier 2 environmental approval received
- The landlord and tenant written agreements/contracts signed and dated
- LBP Visual Assessment completed

The setup amount should include hard costs, soft costs, and project delivery.

All set ups should be submitted to the HOME IDIS mailbox at: homeidis@hcr.ny.gov

Completion

The Completion Report should be submitted with the final disbursement for the project when:

- LPA has completed the First File Part 2 review and the Program Manager has approved it
- Project is complete and all funds have been disbursed

All completions should be submitted to the HOME IDIS mailbox at: homeidis@hcr.ny.gov