



OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

**MEMORADUM FOR:** All Community Planning and Development Field Office Directors,  
Deputy Directors and Program Managers

**FROM:** John Gibbs, Assistant Secretary, Acting, D JOHN GIBBS Digitally signed  
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Date: 2020.09.30  
17:25:45 -0400

**SUBJECT:** Availability of Additional Waivers for Community Planning and  
Development (CPD) Grant Programs to Prevent the Spread of  
COVID-19 and Mitigate Economic Impacts  
Caused by COVID-19

## PURPOSE

This memorandum explains the availability of waivers of certain regulatory requirements and one NOFA requirement associated with several Community Planning and Development (CPD) grant programs to prevent the spread of COVID-19 and to facilitate assistance to eligible communities and households economically impacted by COVID-19. This memorandum covers program-specific waivers for the following CPD programs:

- Continuum of Care (CoC),
- Youth Homelessness Demonstration Program (YHDP), and
- Emergency Solutions Grants Program

This memorandum also announces a simplified notification process for recipients of these programs to use this waiver flexibility to expedite the delivery of assistance. CPD Field Office Directors, Deputy Directors, and Program Managers are instructed to inform CPD recipients operating within their jurisdictions of the content of this memorandum.

## NOTIFICATION PROCESS

Recipients may use the waivers described in this memorandum to assist affected CPD program beneficiaries and CPD program eligible households to prevent the spread of COVID-19 and to mitigate against the economic impact caused by COVID-19 for eligible households. To use the waiver flexibility provided in this memorandum, the recipient must provide notification in writing, either through mail or e-mail, to the CPD Director of the HUD Field Office serving its jurisdiction no less than two days before the recipient anticipates using the waiver flexibility. Further directions on notifying HUD can be found in Attachment #1.

## WAIVER AUTHORITY

In December 2019, a new coronavirus known as SARS-CoV-2 was first detected in Wuhan, Hubei Province, People's Republic of China, causing outbreaks of the coronavirus disease COVID-

19 that has now spread globally. The first case was reported in the United States in January 2020. In March 2020, the World Health Organization declared the coronavirus outbreak a pandemic and President Trump declared the outbreak a national emergency. During this time, the majority of states have declared states of emergency with most shutting down large gathering places and limiting the movement of their residents. As a consequence, many CPD recipients are facing challenges in ensuring appropriate shelter options are available for program participants who need to be separated from others because they are exhibiting symptoms, training staff on how to safely work with program participants and prevent spreading the virus, obtaining supplies to prevent the spread of the virus, and maintaining necessary staffing levels during the outbreak. Further, many program participants are suffering economic consequences from the mass shutdown of businesses and lack of availability of traditional mainstream benefits. A number of recipients have inquired about the availability of waivers of various CPD program requirements to facilitate assistance to program participants and prevent the spread of the virus.

In accordance with 24 CFR 5.110, HUD may, upon a determination of good cause and subject to statutory limitations, waive regulatory provisions. Additional regulatory waiver authority is provided in 24 CFR 91.600. Regulatory waiver authority for the ESG grants is provided under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116- 136. On March 31, 2020, CPD issued its first waivers of regulatory authority to help recipients prevent and mitigate the spread of COVID-19. On May 22, 2020, CPD issued its second set of waivers of regulatory authority to prevent and mitigate the spread of COVID-19. This memorandum includes additional waivers for the CoC, ESG, and YHDP Programs.

Waivers and alternative requirements within this memorandum of the ESG grants shall be deemed to be effective as of the date a State or unit of local government began preparing for coronavirus, which HUD shall presume to be January 21, 2020 – the date the first confirmed case was reported in the United States.

## **WAIVER AVAILABILITY**

To provide additional flexibility to communities to prevent the spread of COVID-19 and better assist individuals and families, including those experiencing homelessness infected with the virus or economically impacted by the virus, I hereby find good cause to provide the regulatory waivers below. To use each waiver, each recipient must follow the notification process described above and update its program records to include written documentation of the specific conditions that justify the recipient's use of the waiver, consistent with the justifications and applicability provisions below. Provisions that are not specifically waived remain in full effect.

### **CONTINUUM OF CARE PROGRAM and YOUTH HOMELESSNESS DEMONSTRATION PROGRAM**

Unless otherwise specified in the waiver, the following waivers are available to CoC Program and YHDP recipients.

#### **1. Third-Party Documentation of Income**

- Requirement:** Where a program participant pays rent or an occupancy charge in accordance with 24 CFR 578.77, 24 CFR 578.103(a)(7) requires recipients and subrecipients to keep on file an income evaluation form specified by HUD along with one of the following types of back-up documentation: (1) source documents for the assets held by the program participant and income received before the date of the evaluation; (2) to the extent that source documents are unobtainable, a written statement by the relevant third party or the written certification of the recipient's or subrecipient's intake staff of the relevant third party's oral verification of the income the program participant received over the most recent period; or (3) to the extent that source documents and third-party verification are unobtainable, the program participant's own written certification of income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.
- Citation:** 24 CFR 578.103(a)(7)(iv)
- Explanation:** 24 CFR 578.103(a)(7) requires the recipient or subrecipient to keep records of the program participant's income and the back-up documentation they relied on to determine income. The regulation establishes an order of preference for the type of documentation that recipients can rely upon. Only if source documents and third-party verification are unobtainable is a written certification from the program participant acceptable documentation of income. HUD is waiving "To the extent that source documents and third-party verification are unobtainable" in 578.103(a)(7)(iv).
- Justification:** HUD understands that documentation may be difficult to obtain as a result of COVID-19 pandemic; therefore, waiving the requirement that source documents and third-party documentation be unobtainable in order for recipients or subrecipients to rely on a program participant's own certification of their income will help recipients and subrecipients house program participants more quickly and determine the appropriate rent contribution or occupancy charge. Moving people experiencing homelessness more quickly into housing enables social distancing, and helps prevent the spread of COVID-19.
- Applicability:** The waiver of the requirement at 24 CFR 578.103(a)(7)(iv) that the recipient or subrecipient may only rely on program participant self-certification of income if the other permitted types of documentation are unobtainable when conducting the initial or subsequent rent or occupancy charge calculations is in effect from the date of this memorandum until December 31, 2020. During this time, 24 CFR 578.103(a)(7)(iv) is waived to the extent necessary to allow recipients or subrecipients to document annual income with the written certification by the program participant of the amount of income that the program participant is reasonably expected to receive over the 3-month period following the evaluation, even if source documents and third-party

verification, are obtainable.

## 2. Housing Quality Standards – Initial Inspection of Unit

- Requirement:** Recipients are required to physically inspect any unit supported with leasing or rental assistance funds to assure that the unit meets the housing quality standards (HQS) before any assistance will be provided on behalf of a program participant.
- Citation:** 24 CFR 578.75(b)(1)
- Explanation:** 24 CFR 278.75(b)(1) requires that recipients or subrecipients physically inspect each unit to assure that it meets HQS before any assistance will be provided for that unit on behalf of a program participant.
- Justification:** On March 31, 2020, HUD waived the physical inspection requirement at 24 CFR 578.75(b)(1) for 6-months so long as recipients or subrecipients were able to visually inspect the unit using technology to ensure the unit met HQS before any assistance was provided and recipients or subrecipients had written policies in place to physically reinspect the unit within 3 months after the health officials determined special measures to prevent the spread of COVID-19 are no longer necessary. However, this standard still relies on program participants or landlords having the technology to carry out this virtual inspection. Waiving the initial inspection requirement at 24 CFR 578.75(b)(1) as further specified below will allow recipients to move people from the streets and shelters into housing more quickly, which enables social distancing, and helps prevent the spread of COVID-19.
- Applicability:** This waiver of the requirement in 24 CFR 578.75(b)(1) that the recipient or subrecipient physically inspect each unit to assure that the unit meets HQS before providing assistance on behalf of a program participant is in effect from the date of this memorandum until December 31, 2020 for recipients and subrecipients that are able to meet the following criteria:
- a. The owner certifies that they have no reasonable basis to have knowledge that life-threatening conditions exist in the unit or units in question; and
  - b. The recipient or subrecipient has written policies to physically inspect the unit within 3 months after the health officials determine special measures to prevent the spread of COVID-19 are no longer necessary.

## 3. Suitable Dwelling Size and Housing Quality Standards

- Requirement:** Units funded with CoC Program or YHDP funds must have at least one bedroom or living/sleeping room for each two persons.

- Citation:** 24 CFR 578.75(c) and 24 CFR 982.401(d)(2)(ii) as required by 24 CFR 578.75(b)
- Explanation:** 24 CFR 578.75(c), suitable dwelling size, and 24 CFR 982.401(d)(2)(ii) as required by 24 CFR 578.75(b), Housing Quality Standards, requires units funded with CoC Program funds to have at least one bedroom or living/sleeping room for each two persons.
- Justification:** Households experiencing homelessness are often unable to afford the limited supply of affordable housing in many jurisdictions across the country and this has been made even more challenging due to the economic impact of COVID-19. Additionally, moving to housing instead of congregate shelter reduces the spread of COVID-19. Waiving this requirement will allow households to obtain permanent housing that is affordable and that they assess is adequate. Consistent with the *Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners*, grantees should balance use of this waiver with the recommendations of public health officials to limit community spread, and reduce risks to high-risk populations. For example, a large unit with rooms can be partitioned for privacy and distancing, or the waiver can be applied for units that will house only one family household.
- Applicability:** The requirement that the each unit assisted with CoC Program funds or YHDP funds have at least one bedroom or living/sleeping room for each two persons is waived for recipients providing Permanent Housing-Rapid Re-housing assistance for leases and occupancy agreements executed by recipients and subrecipients between the date of this memorandum and December 31, 2020 and extending only until the later of 1) the end of the initial term of the lease or occupancy agreement; or 2) December 31, 2020. As a reminder, recipients are still required to follow State and local occupancy laws.

#### **4. CoC Program Only: Coordinated Entry – Annual Ongoing Planning and Stakeholder Consultation**

- Requirement:** 24 CFR 578.7(a)(8) requires CoCs to comply with any requirements established by HUD by Notice regarding the centralized or coordinated assessment system. One Notice provision states the CoC must solicit feedback at least annually from participating projects and households that participated in coordinated entry to evaluate the quality and effectiveness of the entire coordinated entry experience.
- Citation:** 24 CFR 578.7(a)(8) and Section II.B.15 of the Notice CPD-17-01 Establishing Additional Requirements for a Continuum of Care Centralized or Coordinated Assessment System.

- Explanation:** Section II.B.15 of the Notice Establishing Additional Requirements for a Continuum of Care Centralized or Coordinated Assessment System requires CoCs to facilitate ongoing planning and stakeholder consultation concerning the implementation of coordinated entry by soliciting feedback at least annually from participating projects and from households that participated in coordinated entry during that time period.
- Justification:** CoCs are reporting limited staff capacity as staff members are home for a variety of reasons related to COVID-19 (e.g., quarantining, children home from school, working elsewhere in the community to manage the COVID-19 response). Waiving the annual coordinated entry planning and stakeholder consultation process as provided below will allow recipients to focus their limited staff capacity on activities related to preventing the spread of COVID-19 and helping program participants remain housed during the subsequent economic downturn.
- Applicability:** 24 CFR 578.7(a)(8) is waived to the extent it is necessary to lift the requirement in Section II.B.15 of the Notice Establishing Additional Requirements for a Continuum of Care Centralized or Coordinated Assessment System for 1-year beginning on the date of this memorandum.

## 5. Homeless Definition – Temporary Stays in Institutions of 90 days or Less

- Requirement:** The definition of homeless in 24 CFR 578.3 includes under paragraph (1)(iii) an individual who is exiting an institution where he or she resided for 90 days or less and has resided in an emergency shelter or place not meant for human habitation immediately before entering that institution, which is an interpretation of §103(a)(4) of the McKinney-Vento Act which includes an individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she *temporarily* resided (*emphasis added*).
- Citation:** 24 CFR 578.3, definition of “homeless,” (1)(iii)
- Explanation:** An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution are considered homeless per 24 CFR 578.3, definition of “homeless.”
- Justification:** Recipients are reporting that program participants are residing in institutions for longer periods of time as a result of COVID-19 (e.g., longer time in jail due to a postponed court dates due to court closings or courts operating at reduced capacity and longer hospital stays when infected with COVID-19). Allowing someone who was residing in an emergency shelter or place not meant for human habitation prior to entering the institution to maintain their

homeless status while residing in an institution for longer than 90 days is necessary to prevent the spread of COVID-19 by expanding housing options for people who were experiencing homelessness and institutionalized for longer than traditionally required due to COVID-19. This waiver is in effect for 6-months beginning on the date of this memorandum.

**Applicability:** An individual may qualify as homeless under paragraph (1)(iii) the homeless definition in 24 CFR 578.3 so long as he or she is exiting an institution where they resided for 120 days or less and resided in an emergency shelter or place not meant for human habitation immediately before entering that institution. This waiver is in effect for 6-months beginning on the date of this memorandum.

## 6. Assistance Available at Time of Renewal

**Requirement:** 24 CFR 578.33(c) provides that assistance for each year of a renewal period may be for up to 100 percent of the amount available for supportive services and HMIS costs in the final year of the prior funding period, up to 100 percent of the amount for leasing and operating in the final year of the prior funding period adjusted in proportion to changes in FMR for the geographic area, and for rental assistance up to 100 percent of the result of multiplying the number and unit size(s) in the grant agreement by the number of months in the grant agreement and the applicable FMR.

**Citation:** 24 CFR 578.33(c)

**Explanation:** 24 CFR 578.33(c) requires that budget line item amounts a recipient is awarded for renewal in the CoC Program Competition will be based on the amounts in the final year of the prior funding period of the project.

**Justification:** HUD originally waived this requirement for grant agreement amendments signed between March 31, 2020 and October 1, 2020 to allow recipients to move funds between budget line items in a project in response to the COVID-19 pandemic and still apply for renewal in the next FY CoC Program funding cycle based on the budget line items in the grants before they were amended. Recipients continue to report needing to shift budget line items to respond to the COVID-19 pandemic (e.g., providing different supportive service necessitated by the pandemic or serving fewer people because the layout of the housing does not meet local social distancing recommendations) without changing the original design of the project when it is not operating in a public health crisis and can resume normal operations.

**Applicability:** The requirement that the renewal grant amount be based on the budget line items in the final year of the grant being renewed is further waived for all projects that amend their grant agreement between October 1, 2020 and December 31, 2020 to move funds between budget line items in a project in

response to the COVID-19 pandemic. Recipients may then apply in the next FY CoC Program funding cycle based on the budget line items in the grants before they were amended.

**Notification:** Recipients utilizing this waiver flexibility do not need to follow the notification process outlined in Attachment #1. Instead, HUD will consider any grant agreement amendment executed between March 31, 2020 and December 31, 2020 to move funds between budget line items in response to the COVID-19 pandemic as notification to HUD.

## 7. Permanent Housing-Rapid Re-housing Monthly Case Management

**Requirement:** Recipients must require program participants of permanent housing – rapid re-housing projects to meet with a case manager at least monthly.

**Citation:** 24 CFR 578.37(a)(1)(ii)(F)

**Explanation:** The CoC Program interim rule at 24 CFR 578.37(a)(1)(ii)(F) requires program participants to meet with a case manager not less than once per month to assist them in ensuring long-term housing stability. The project is exempt from this requirement already if the Violence Against Women Act of 1994 or Family Violence Prevention and Services Act prohibits the recipient carrying out the project from making its shelter or housing conditional on the participant's acceptance of services.

**Justification:** HUD originally waived this requirement for 2-months on March 31, 2020 and subsequently for 3-month on May 22, 2020. Recipients are continuing to report limited staff capacity as staff members are home for a variety of reasons related to COVID-19 (e.g., quarantining, children home from school, working elsewhere in the community to manage the COVID-19 response). In addition, not all program participants have capacity to meet via phone or internet. Waiving the monthly case management requirement as specified below will allow recipients to provide case management on an as needed basis and reduce the possible spread and harm of COVID-19.

**Applicability:** The requirement in 24 CFR 578.37(a)(1)(ii)(F) that projects require program participants to meet with case managers not less than once per month is waived for all permanent housing- rapid re-housing projects from the date of this memorandum until December 31, 2020.

## 8. Fair Market Rent for Individual Units and Leasing Costs

**Requirement:** Rent payments for individual units with leasing dollars may not exceed Fair Market Rent (FMR)

**Citation:** 24 CFR 578.49(b)(2)

- Explanation:** The CoC Program regulation at 24 CFR 578.49(b)(2) prohibits a recipient from using grant funds for leasing to pay above FMR when leasing individual units, even if the rent is reasonable when compared to other similar, unassisted units.
- Justification:** HUD originally waived this requirement for 6-months on March 31, 2020. Extending this waiver on the limit on using grant leasing funds to pay above FMR for individual units, but not greater than reasonable rent will assist recipients in locating additional units to house individuals and families experiencing homelessness and reduce the spread and harm of COVID-19.
- Applicability:** The FMR restriction continues to be waived for any lease executed by a recipient or subrecipient to provide transitional or permanent supportive housing from the date of this memorandum until December 31, 2020. The affected recipient or subrecipient must still ensure that rent paid for individual units that are leased with leasing dollars meet the rent reasonableness standard in 24 CFR 578.49(b)(2).

## 9. Disability Documentation for Permanent Supportive Housing (PSH)

- Requirement:** A recipient providing PSH must serve individuals and families where one member of the household has a qualifying disability (for dedicated projects and DedicatedPLUS projects that individual must be the head of household). Further, the recipient must document a qualifying disability of one of the household members. When documentation of disability is the intake worker's observation, the regulation requires the recipient to obtain additional confirming evidence within 45 days.
- Citation:** 24 CFR 578.103(a) and 24 CFR 578.103(a)(4)(i)(B)
- Explanation:** 24 CFR 578.103(a) requires recipients to maintain records providing evidence they met program requirements and 24 CFR 578.103(a)(4)(i)(B) establishes the requirements for documenting disability for individuals and families that meet the "chronically homeless" definition in 24 CFR 578.3. Acceptable evidence of disability includes intake-staff recorded observations of disability that no later than 45 days from the date of application for assistance, is confirmed and accompanied by evidence in paragraphs 24 CFR 578.103(a)(4)(i)(B)(1), (2), (3), or (5). HUD is waiving the requirement to obtain additional evidence to confirm intake staff-recorded observations of disability.
- Justification:** On March 31, 2020 HUD waived the requirement to obtain additional evidence within 45 days and instead allowed recipients up to 6-months from the date of application for assistance to confirm intake staff-recorded observations of disability with other evidence because recipients were

reporting difficulty obtaining third-party documentation of a disability in the middle of a pandemic, impacting their ability to house potential program participants quickly. However, recipients are still reporting difficulty obtaining third-party documentation because of the continuing pandemic, so HUD is now entirely waiving the requirement at 24 CFR 578.103(a)(4)(i)(B) that recipients obtain additional evidence to verify intake staff-recorded observations of disability to allow recipients' until the end of the pandemic. This will permit intake staff to house people quickly by relying on intake-staff recorded observation of a disability.

**Applicability:** The requirement that intake staff-recorded observation of disability be confirmed and accompanied by other evidence no later than 45 days from the application for assistance documentation requirement is waived from publication of this waiver until public health officials determine no additional special measures are necessary to prevent the spread of COVID-19.

**Note:** A written certification by the individual seeking assistance that they have a qualifying disability will be acceptable documentation approved by HUD under 24 CFR 578.103(a)(4)(i)(B)(5) until public health officials determine no additional special measures are necessary to prevent the spread of COVID-19.

## 10. One-Year Lease Requirement

**Requirement:** Program participants residing in PSH must be the tenant on a lease for a term of at least one year that is renewable and terminable for cause.

**Citation:** 24 CFR 578.3, definition of permanent housing, 24 CFR 578.51(l)(1)

**Explanation:** The CoC Program regulation at 24 CFR 578.3, definition of permanent housing, and 24 CFR 578.51(l)(1) requires program participants residing in permanent housing to be the tenant on a lease for a term of one year that is renewable and terminable for cause.

**Justification:** HUD originally waived this requirement for 6-months on March 31, 2020 to help recipients more quickly identify permanent housing for individuals and families experiencing homelessness, which is helpful in preventing the spread of COVID-19. Extending this waiver is necessary because recipients continue to need to help program participants identify housing quickly to help prevent the spread of COVID-19.

**Applicability:** The one-year lease requirement is waived for leases executed between the date of this memorandum and December 31, 2020, so long as the initial term of all leases is at least one month.

## EMERGENCY SOLUTIONS GRANTS PROGRAM

Unless otherwise noted, the following waivers are made available with respect to all ESG grants, whether funded under the CARES Act or annual ESG appropriations.

### 11. Homeless Definition – Temporary Stays in Institutions of 90 Days Less

- Requirement:** The definition of homeless in 24 CFR 576.2 includes under paragraph (1)(iii) an individual who is exiting an institution where he or she resided for 90 days or less and has resided in an emergency shelter or place not meant for human habitation immediately before entering that institution, which is an interpretation of §103(a)(4) of the McKinney-Vento Act which includes an individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she *temporarily* resided (*emphasis added*).
- Citation:** 24 CFR 576.2, definition of “homeless,” (1)(iii)
- Explanation:** An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution are considered homeless per 24 CFR 576.2, definition of “homeless.”
- Justification:** Recipients are reporting that program participants are residing in institutions for longer periods of time as a result of COVID-19 (e.g., longer time in jail due to a postponed court dates due to court closings or courts operating at reduced capacity and longer hospital stays when infected with COVID-19). Allowing someone who was residing in an emergency shelter or place not meant for human habitation prior to entering the institution to maintain their homeless status while residing in an institution for longer than 90 days is necessary to prevent the spread of COVID-19 by expanding housing options for people who were experiencing homelessness and institutionalized for longer than traditionally required due to COVID-19. This waiver is in effect for 6-months beginning on the date of this memorandum.
- Applicability:** An individual may qualify as homeless under paragraph (1)(iii)the homeless definition in 24 CFR 576.2 so long as he or she is exiting an institution where they resided for 120 days or less and resided in an emergency shelter or place not meant for human habitation immediately before entering that institution. This waiver is in effect until March 31, 2021.

**Attachment #1 to Memorandum:**

**Procedure for Using Available Waivers of Program and Consolidated Plan Requirements to Prevent the Spread of COVID-19 and Mitigate Economic Impacts Caused by COVID-19**

This attachment provides further information on the process that grantees must follow to use the waiver flexibility provided in the memorandum.

Grantees must mail or email notification to the Community Planning and Development Director of the HUD Field Office serving the grantee.

The email notification must be sent two days before the grantee anticipates using waiver flexibility, and include the following details:

- Requestor's name, title, and contact information;
- Date on which the grantee anticipates first use of the waiver flexibility; and
- A list of the waiver flexibilities the grantee will use:
  1. CoC/YHDP: Third-Party Documentation of Income
  2. CoC/YHDP: Housing Quality Standards – Initial Inspection of Unit
  3. CoC/YHDP: Suitable Dwelling Size and Housing Quality Standards
  4. CoC: Coordinated Entry – Annual Ongoing Planning and Stakeholder Consultation
  5. CoC/YHDP: Homeless Definition – Temporary Stays in Institutions of 90 days or Less
  7. CoC/YHDP: Permanent Housing-Rapid Re-housing Monthly Case Management
  8. CoC/YHDP: Fair Market Rent for Individual Units and Leasing Costs
  9. CoC/YHDP: Disability Documentation for Permanent Supportive Housing (PSH)
  10. CoC/YHDP: One-Year Lease Requirement
  11. ESG: Homeless Definition – Temporary Stays in Institutions of 90 Days or Less