



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

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

Special Attention of:

All CPD Division Directors

Grantees and Program Managers of the following Community Planning and Development (CPD) programs: Community Development Block Grant Coronavirus (CDBG-CV); Entitlement Community Development Block Grant (Entitlement CDBG, State CDBG, Nonentitlement CDBG Grants in Hawaii, and Insular Area CDBG); CDBG Disaster Recovery (CDBG-DR)

Notice: CPD-21-03

Issued: February 24, 2021

Expires: This Notice is effective until it is amended, superseded or rescinded

Cross References: 24 CFR 570.3 for the Entitlement program.

SUBJECT: Unemployment Insurance Benefits Under the CARES Act, 2021 Appropriations Act, and Presidential Memorandum

I. Purpose

This Notice provides guidance to grantees in determining whether unemployment insurance benefits received by individuals under the CARES Act, 2021 Appropriations Act, and a recent Presidential Memorandum are “income” under CDBG regulations. This Notice reflects similar guidance from other HUD programs regarding such benefits and is consistent with the treatment of income under CDBG regulations.

II. Background

a. CARES Act

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) confirmed the first case in the United States of a coronavirus known by several names, including novel coronavirus, and SARS-CoV-2, and which causes the disease commonly referred to as COVID-19. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136) (CARES Act) was enacted and included three provisions to strengthen and extend unemployment benefits:

- Pandemic Unemployment Assistance (PUA) for individuals who are self-employed, seeking part-time employment, or otherwise would not qualify for regular unemployment insurance (UI). This program provides up to 39 weeks of benefits and is available starting with weeks of unemployment beginning on or after January 27,

2020 and ending on or before December 31, 2020. PUA funds are administered according to the same regulations that apply to the Disaster Unemployment Assistance program (20 CFR part 625), which is funded under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) (“Stafford Act”).

- Pandemic Emergency Unemployment Compensation (PEUC) allows regular unemployment compensation recipients to receive up to 13 weeks of additional benefits (this extends UI from 26 weeks to 39 weeks in total). States must offer flexibility in meeting PEUC eligibility requirements related to “actively seeking work” if an applicant’s ability to do so is impacted by COVID-19.
- Federal Pandemic Unemployment Compensation (FPUC) provided eligible individuals who are collecting certain UI benefits, including regular unemployment compensation, to receive an additional \$600 in federal benefits per week for weeks of unemployment that ended on or before July 31, 2020 (18 weeks).

b. August 8 Presidential Memorandum

On August 8, 2020, President Trump issued a Presidential Memorandum entitled “Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019” (“PM”). Section 4 of the PM authorizes the Secretary of Homeland Security “to make available other needs assistance for lost wages, in accordance with section 408(e)(2) of the Stafford Act (42 U.S.C. 5174(e)(2)).” Under the PM, the Secretary of Labor shall approve a lost wages assistance program whereby the state provides \$400 per week to eligible recipients: a \$300 Federal contribution plus a \$100 state contribution.

c. 2021 Appropriations Act

On December 27, 2020, the Consolidated Appropriations Act, 2021 (Public Law 116-260) (2021 Appropriations Act) was enacted and extended and partially modified the PUA, PEUC, and FPUC programs as follows:

- For PUA benefits: (1) the assistance is available to a covered individual who was unemployed, partially unemployed or unable to work ending on or before March 14, 2021; (2) the duration of PUA benefits was changed from a maximum of 39 weeks to 50 weeks; and (3) in cases where an individual received PUA which they were not entitled to, the state shall require the individual to repay the benefits, except that the state may waive repayment under certain circumstances.
- For PEUC benefits, (1) the assistance shall be phased out beginning April 5, 2021; (2) the assistance applies to weeks of unemployment ending on or before March 14, 2021; and (3) in cases where the individual has not yet exhausted their PEUC benefits as of March 14, 2021, the amended PEUC provisions may allow the states to continue providing the individual PEUC benefits, not to exceed April 5, 2021.
- FPUC benefits were extended for unemployment beginning after December 26, 2020 and ending March 14, 2021, with FPUC benefits reduced from a prior amount of \$600 per week to \$300 per week.

d. CDBG Definition of “Income”

The regulation at 24 CFR 570.3 provides three definitions of “income” for entitlement grantees to choose from for the purpose of determining whether a family or household is of low and moderate income.¹ The first definition is “[a]nnual income’ as defined under the Section 8 Housing Assistance Payments program (HAP) at 24 CFR 813.106...” The other two definitions of “income” are “[a]nnual income as reported under the Census long-form for the most recent available decennial Census” and “[a]djusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.” This Notice addresses only the first definition.

Although the first definition of “income” refers to 24 CFR 813.106, that regulation no longer exists. In 1996, HUD consolidated certain regulations for public housing, Indian housing, Section 8 housing, and other assisted housing programs and created a new subpart F to 24 CFR part 5. In doing so, HUD removed 24 CFR part 813 and set forth the definition of “annual income” at 24 CFR 5.609.² CPD never changed its definition in part 570 to conform to the change, so 24 CFR 570.3 cites the outdated 24 CFR 813.106. HUD has allowed grantees to use the definition at 24 CFR 5.609 despite the outdated citation because it is clearly the definition applicable “under the Section 8 Housing Assistance Payments program.”

III. Treatment of Unemployment Income

a. Treatment of Unemployment Insurance Benefits

The Office of Public and Indian Housing (PIH), which administers the Section 8 Housing Assistance Payments (HAP) program, published guidance that public housing agencies (PHAs) should consider PUA and PEUC benefits as annual income in calculating income to determine eligibility for applicable programs.³ PUA and PEUC benefits mirror regular unemployment insurance payments, which are included as “annual income” under 24 CFR 5.609(b)(5) (“[p]ayments in lieu of earnings, such as unemployment and disability compensation...”). The PIH guidance also states that PHAs should not consider FPUC benefits as annual income because such benefits are “temporary and likely non-recurring.” Under 24 CFR 5.609(c)(9), “[t]emporary, nonrecurring or sporadic income” is not included as “annual income.”

Therefore, CDBG grantees that use the first definition of income at 24 CFR 570.3 should treat PUA and PEUC benefits as income but should exclude FPUC benefits from the income calculation.

¹ The State CDBG program regulations do not contain a definition of “income.” States are free to develop their own definition of “income” and can follow the CDBG Entitlement regulations (24 CFR 570.3) and this Notice for interpretive guidance. States may also use the definitions of “family” and “household” from the Entitlement regulations as interpretive guidance.

² See 61 FR 54492 (October 18, 1996).

³ https://www.hud.gov/sites/dfiles/PIH/documents/COVID_FAQsRound5.pdf (see page 18). The Federal Housing Administration has published similar guidance at https://www.hud.gov/sites/dfiles/Housing/documents/HUD_Multifamily_Corona_QA_FINAL.pdf (see page 11).

b. Treatment of PM Unemployment Income

CDBG grantees should exclude PM benefits from the calculation of annual income. PM benefits are temporary income resulting from a Presidentially declared emergency pursuant to the Stafford Act. The \$300 Federal contribution is excluded because 24 CFR 5.609(c)(17) excludes from the “annual income” definition “[a]mounts specifically excluded by any other Federal statute...,” which includes the Stafford Act.⁴ The \$100 state contribution is also excluded from the definition of “annual income.” Although the source of the 25% state portion may be unknown and differ among states, the PM directed the Federal Emergency Management Agency (FEMA) to assist in providing additional unemployment benefits through the Lost Wages Assistance Program. Therefore, HUD will treat the state portion as excluded income based on the PM authorizing FEMA to provide assistance through the Stafford Act.

c. Treatment of Other Payments in the CARES Act and 2021 Appropriations Act

Certain tax filers (up to \$75,000 adjusted gross income (AGI) for individuals and up to \$150,000 AGI for married couples filing joint returns) are eligible for Economic Impact Payments from the Internal Revenue Service (IRS) under both the CARES Act and 2021 Appropriations Act. These payments function as a federally refundable tax credit and are, therefore, not included as income. The IRS has confirmed in its FAQs that the “payment...will not affect a household’s or individual’s income for purposes of determining eligibility for federal government assistance or benefit programs.”⁵

IV. Additional Resources

The Department has technical assistance providers that are available to assist grantees in their carrying out of CDBG- and CDBG-CV-funded activities to prevent, prepare for, and respond to coronavirus. Please contact your local CPD Field Office Director to request technical assistance from HUD staff or a TA provider.

- Submit your questions to: CPDQuestionsAnswered@hud.gov
- CPD COVID-19 Grantee Guidance: https://www.hud.gov/program_offices/comm_planning/covid-19
- CPD Program Guidance and Training: <https://www.hudexchange.info/program-support/>

If you have any questions regarding this Notice, please contact your CPD Field Office. Field Offices should contact Benjamin Schwartz, Deputy Director, State and Small Cities Division, Office of Block Grant Assistance, 451 7th Street SW, Room 7282, Washington, D.C. 20002. Mr. Schwartz’s phone number is (202) 402-4105.

⁴ See 79 FR 28939 (May 20, 2014).

⁵ <https://www.irs.gov/newsroom/economic-impact-payment-information-center-topic-j-reconciling-on-your-2020-tax-return>; <https://www.irs.gov/coronavirus/second-eip-faqs>