



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

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

May 22, 2020

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

FROM: John Gibbs, Assistant Secretary, Acting, D

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 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:

- Housing Opportunities for Persons with AIDS (HOPWA);
- 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. On March 31, 2020, CPD issued its first waivers of regulatory authority to help recipients prevent and mitigate the spread of COVID-19. This memorandum includes additional waivers for the ESG, CoC, YHDP, and HOPWA Programs.

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.

EMERGENCY SOLUTIONS GRANT PROGRAM

To the extent that funding provided under the CARES Act for the ESG program is subject to the same requirements in 24 CFR part 576 that apply to ESG funding provided through annual appropriations, the waivers made available on March 31, 2020 for ESG are made available with respect to the CARES Act funding for the same justifications and subject to the same conditions.

Additionally, the following housing stability case management waiver is made available with respect to all ESG grants, whether funded under the CARES Act or annual ESG appropriations.

1. Housing Stability Case Management

- Requirement:** Program participants receiving homelessness prevention or rapid re-housing assistance must meet with a case manager not less than once per month, unless certain statutory prohibitions apply.
- Citation:** 24 CFR 576.401(e)
- Explanation:** Under 24 CFR 576.401(e), the recipients or subrecipients must require program participants to meet with a case manager not less than once per month to assist them in ensuring long-term housing stability, unless the Violence Against Women Act of 1994 or Family Violence Prevention and Services Act prohibits the recipient or subrecipient from making its shelter or housing conditional on the participant's acceptance of services. As provided by the CARES Act, people experiencing homelessness cannot be required to receive treatment or perform any other prerequisite activities as a condition for receiving shelter, housing, or other services funded with ESG grants provided under the CARES Act. Accordingly, 24 CFR 576.401(e) does not apply to the extent the assistance is provided with CARES Act funding to people who qualified as homeless at the start of that assistance.
- Justification:** HUD originally waived this requirement for 2-months on March 31, 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:** This waiver is in effect for an additional three months beginning on the date of this memorandum.

CONTINUUM OF CARE PROGRAM and YOUTH HOMELESSNESS DEMONSTRATION PROGRAM

To the extent YHDP grants are subject to the same requirements in 24 CFR part 578 that apply to grants provided under the CoC Program, the same waivers made available on March 31, 2020 for grants provided under the CoC Program are made available to YHDP grants for the same justifications and subject to the same conditions. Additionally, the following waivers are available to CoC Program and YHDP recipients.

2. Permanent Housing Rapid Re-housing Limit to 24 Months of Rental Assistance

- Requirement:** CoC Program funds may be used to provide short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance.
- Citation:** 24 CFR 578.37(a)(1)(ii), 24 CFR 578.37(a)(1)(ii)(C), and 24 CFR 578.51(a)(1)(i)
- Explanation:** The CoC Program regulation at 24 CFR 578.37(a)(1)(ii) and 24 CFR 578.51(a)(1)(i) defines medium-term rental assistance as 3 to 24 months and 578.37(a)(1)(ii) and 24 CFR 578.37(a)(1)(ii)(C) limits rental assistance in rapid re-housing projects to medium-term rental assistance, or no more than 24 months.
- Justification:** Waiving the limit on using rental assistance in rapid re-housing projects to pay more than 24 months will ensure that individuals and families currently receiving rapid re-housing assistance do not lose their assistance, and consequently their housing, during the COVID-19 public health crisis and the subsequent economic downturn. This will reduce the spread and harm of COVID-19 by enabling affected program participants to continue to socially isolate in their housing.
- Applicability:** The 24-month rental assistance restriction is waived for program participants in a permanent housing rapid re-housing project who will have reached 24 months of rental assistance beginning on the date of this memorandum until a state or local public health official has determined special measures are no longer necessary to prevent the spread of COVID-19. Program participants who have reached 24 months of rental assistance during this time and who will not be able to afford their rent without additional rental assistance will be eligible to receive rental assistance until 3 months after a state or local public health official has determined that special measures are no longer necessary to prevent the spread of COVID-19.

3. Limit to be Eligible for DedicatedPLUS Project When Coming from Transitional Housing Being Eliminated

- Requirement:** To be eligible for a DedicatedPLUS project an individual or family must meet the criteria of DedicatedPLUS in the Notice of Funding Availability under which the grant was awarded. One of the possible criteria is residing in transitional housing *that will be eliminated* and meeting the definition of chronically homeless in effect at the time in which the individual or family entered the transitional housing project.
- Citation:** Section III.C.3.f.(2) of the FY 2018 CoC Program Competition NOFA and Section III.C.2.g.(2) of the FY 2019 CoC Program Competition NOFA.
- Explanation:** Section III.C.3.f.(2) of the FY 2018 CoC Program Competition NOFA and Section III.C.2.g.(2) of the FY 2019 CoC Program Competition NOFA

define a DedicatedPLUS project as a PSH project where 100 percent of the beds are dedicated to serve individuals and families residing in one of six places at intake, including residing in a transitional housing project that will be eliminated.

Justification: Waiving the requirement within the definition of DedicatedPLUS project that the transitional housing project is being eliminated will expand permanent housing options available for people moving out of transitional housing and will make more transitional housing beds available to others who need it. Expanding permanent housing options for persons in transitional housing will assist in preventing the spread of COVID-19 by allowing more people to move off the streets and into transitional housing.

Applicability: The definition of DedicatedPLUS project is waived for DedicatedPLUS projects funded in the FY 2018 and FY 2019 CoC Program Competitions to allow these projects to serve individuals and families residing in transitional housing, whether it is being eliminated or not, as long as the individual or family met the definition of chronically homeless upon entry to the TH.

4. Assistance Available at Time of Renewal

Requirement: With respect to renewing CoC Program awards, 24 CFR 578.33(c) requires that assistance for a renewal period will be 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 for the project.

Justification: Waiving the requirement that the renewal grant amount is based on the budget line items in the final year of the grant being renewed will allow recipients to amend their budgets temporarily to address the needs of its program participants in responding to COVID-19 (e.g., providing different supportive services necessitated by the pandemic or serving fewer people because of 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 waived for all projects that amend their grant agreement between March 31, 2020 and October 1, 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 Competition 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 October 1, 2020 to move funds between budget line items in response to the COVID-19 pandemic as notification to HUD.

5. 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 (42 U.S.C. 13925 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits the recipient carrying out the project from making its housing conditional on the participant's acceptance of services.

Justification: HUD originally waived this requirement for 2-months beginning March 31, 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: This 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 for an additional three months beginning on the date of this memorandum.

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA)

6. HOPWA – Time Limits for Short-Term Housing Facilities and Short-Term Rent,

Mortgage, and Utility Payments

- Requirement:** Time Limits for Short-Term Supported Housing
- Citation:** 24 CFR 574.330(a)(1), Time Limits
- Explanation:** A short-term supported housing facility may not provide residence to any individual for more than 60 days during any six-month period. Short-Term Rent, Mortgage, and Utility (STRMU) payments to prevent the homelessness of the tenant or mortgagor of a dwelling may not be provided for costs accruing over a period of more than 21 weeks in any 52-week period.
- Justification:** This waiver is required to prevent homelessness or discharge to unstable housing situations for households residing in short-term housing facilities or units assisted with STRMU if permanent housing cannot be achieved within the time limits specified in the regulation.
- Applicability:** On an individual household basis, grantees or project sponsors may assist eligible households for a period that exceeds the time limits specified in the regulations. A short-term supported housing facility may provide residence to any individual for a period of up to 120 days in a six-month period. STRMU payments to prevent the homelessness of the tenant or mortgagor of a dwelling may be provided for costs accruing up to 52 weeks in a 52-week period.
- This waiver is in effect for one year beginning on the date of this memorandum for grantees and project sponsors that are able to meet the following criteria:
- a. The grantee or project sponsor documents that a good faith effort has been made on an individual household basis to assist the household to achieve permanent housing within the time limits specified in the regulations but that financial needs and/or health and safety concerns have prevented the household from doing so; and
 - b. The grantee or project sponsor has written policies and procedures outlining efforts to regularly reassess the needs of assisted households as well as processes for granting extensions based on documented financial needs and/or health and safety concerns.

7. HOPWA – Property Standards

- Requirement:** Property Standards for HOPWA
- Citation:** 24 CFR 574.310(b), Housing Quality Standards
- Explanation:** This section of the HOPWA regulations provides that all housing assisted

with acquisition, rehabilitation, conversion, lease, or repair; new construction of single room occupancy dwellings and community residences; project or tenant-based rental assistance; or operating costs must meet the applicable housing quality standards outlined in the regulations.

Justification: This waiver is required to enable grantees and project sponsors to expeditiously meet the critical housing needs of the many eligible families that have been affected by COVID-19 while also minimizing the spread of coronavirus.

Applicability: This waiver is in effect for one year beginning on the date of this memorandum for grantees and project sponsors that are able to meet the following criteria:

- a. The grantee or project sponsor is able to visually inspect the unit using technology, such as video streaming, to ensure the unit meets HQS before any assistance is provided; and
- b. The grantee or project sponsor has written policies to physically reinspect the unit after the health officials determine special measures to prevent the spread of COVID-19 are no longer necessary.

8. HOPWA – FMR Rent Standard

Requirement: Rent Standard for HOPWA Rental Assistance

Citation: 24 CFR 574.320(a)(2), Rent Standard

Explanation: Grantees must establish rent standards for their rental assistance programs based on FMR (Fair Market Rent) or the HUD-approved community-wide exception rent for unit size. Generally, the rental assistance payment may not exceed the difference between the rent standard and 30 percent of the family's adjusted income.

Justification: This waiver of the FMR rent standard limit permits HOPWA grantees to establish rent standards, by unit size, that are reasonable, and based upon rents being charged for comparable unassisted units in the area, taking into account the location, size, type, quality, amenities, facilities, management and maintenance of each unit. Grantees, however, are required to ensure the reasonableness of rent charged for a unit in accordance with §574.320(a)(3).

This waiver is required to expedite efforts to identify suitable housing units for rent to HOPWA beneficiaries and HOPWA-eligible families that have been affected by COVID-19, and to provide assistance to families that must rent units at rates that exceed the HOPWA grantee's normal rent standard as calculated in accordance with §574.320(a)(2).

Applicability: Such rent standards may be used for up to one year beginning on the date of this memorandum.

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 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. ESG Program – Housing Stability Case Management
 2. CoC Program and YHDP - Permanent Housing Rapid Re-housing Limit to 24 Months of Rental Assistance
 3. CoC Program NOFA Requirement– Limit to be Eligible for DedicatedPLUS Project When Coming from Transitional Housing (TH) that TH Must be Being Eliminated
 5. CoC – Permanent Housing – Rapid Re-housing Monthly Case Management
 6. HOPWA – Time Limits for Short-Term Housing Facilities and Short-Term Rent, Mortgage, and Utility Payments
 7. HOPWA – Property Standards
 8. HOPWA – FMR Rent Standard