



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

PRINCIPAL DEPUTY ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

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

FROM: James A. Jemison, II, Principal Deputy Assistant Secretary, Office of Community Planning and Development, 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 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, including for grants that have not yet been awarded (e.g., funds awarded under the FY 2021 Appropriations Act):

- Continuum of Care (CoC);
- Youth Homelessness Demonstration Program (YHDP);
- Emergency Solutions Grants Program; and
- Housing Opportunities for Persons With AIDS (HOPWA).

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

Despite the availability of COVID-19 vaccinations and the reopening of schools and local businesses, many CPD recipients are continuing to face challenges in ensuring appropriate shelter and housing options are available for program participants experiencing and at risk of homelessness as well as those living with HIV. COVID-19 has been shown to rapidly spread in shelter settings¹. Recent studies also show that people experiencing homelessness with confirmed COVID-19 were more likely to be hospitalized and have more severe COVID-19 outcomes than those with COVID-19 in the general population². At the same time, a Centers for Disease Control and Prevention (CDC) [study](#)³ released this month found that people experiencing homelessness had significantly lower vaccination coverage compared to residents living in the same geographic areas. Further, in a recent study, people living with HIV experienced poorer COVID-related outcomes relative to persons living without HIV and HIV diagnosis was associated with higher rates of severe disease requiring hospitalization.⁴

Low vaccination rates and poorer health outcomes, compounded by the increased risk for COVID-19 infection in congregate settings,⁵ such as emergency shelters, speak to the ongoing, critical need to provide regulatory relief to CoC, YHDP, ESG, and HOPWA Program recipients to expedite program participants' transition from homelessness to housing and to ensure adequate assistance is available to prevent a return to homelessness. Additional regulatory flexibility is needed to expand the availability of housing in tight rental markets nationwide, minimize the time needed to rehouse people experiencing homelessness, and permit the continued provision of supportive services to maintain housing stability.

In accordance with 24 CFR 5.110, HUD may, upon a determination of good cause and subject to statutory limitations, waive regulatory provisions.

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. On September 30, 2020, CPD issued its third set of waivers of regulatory authority to prevent and mitigate the

¹ (Bagget et al., 2020; Imbert et al., 2020)

² (Cha et al., 2021; Han et al., 2021; Hsu et al., 2020; Leifheit et al., 2021)

³ Montgomery MP, Meehan AA, Cooper A, et al. *Notes from the Field: COVID-19 Vaccination Coverage Among Persons Experiencing Homelessness — Six U.S. Jurisdictions, December 2020–August 2021*. *MMWR Morb Mortal Wkly Rep* 2021;70:1676–1678. DOI: <http://dx.doi.org/10.15585/mmwr.mm7048a4>

⁴ Tesoriero, J. M., Swain, C. E., Pierce, J. L., Zamboni, L., Wu, M., Holtgrave, D. R., Gonzalez, C. J., Udo, T., Morne, J. E., Hart-Malloy, R., Rajulu, D. T., Leung, S. J., & Rosenberg, E. S. (2021). COVID-19 Outcomes Among Persons Living With or Without Diagnosed HIV Infection in New York State. *JAMA network open*, 4(2), e2037069. <https://doi.org/10.1001/jamanetworkopen.2020.37069>

⁵ Self JL, Montgomery MP, Toews KA, et al.; COVID-19 Homelessness Response Team. Shelter characteristics, infection prevention practices, and universal testing for SARS-CoV-2 at homeless shelters in 7 US urban areas. *Am J Public Health* 2021;111:854–9. <https://doi.org/10.2105/AJPH.2021.306198external icon PMID:33734836external icon>

spread of COVID-19. On December 30, 2020, CPD issued its fourth set of waivers of regulatory authority to prevent and mitigate the spread of COVID-19. On January 7, 2021, CPD issued a fifth waiver of requirements related to the Point-in-Time Count to prevent and mitigate the spread of COVID-19. On March 31, 2021, CPD issued a sixth set of waivers of regulatory authority to prevent and mitigate the spread of COVID-19. On July 1, 2021, CPD issued a seventh set of waivers of regulatory authority to prevent and mitigate the spread of COVID-19. This memorandum extends select waivers from these earlier waivers set to expire on December 31, 2021 and re-introduces previously expired waivers providing flexibility to recipients in conducting Housing Quality Inspections (HQS).

CPD anticipates that this is the last time it will offer extensions of these waivers to all recipients on an opt-in basis where recipients notify HUD and document specific conditions consistent with HUD's stated justifications for these waivers. Recipients who will need continued regulatory flexibility must submit a regulatory waiver request pursuant to 24 CFR 5.110. Each regulatory request must identify the regulation from which relief is sought and present a good cause justification pursuant to 24 CFR 5.110. These requests must be submitted to the recipient's local HUD field office.

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. 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. On September 30, 2020, HUD waived the physical inspection requirement at 24 CFR 578.75(b)(1) until December 31, 2020, which HUD then extended until March 31, 2021 and again until June 30, 2021 and again until September 30, 2021, so long as recipients and subrecipients could meet certain criteria outlined in the waiver. Since the original waiver flexibility expired on September 30, 2021, recipients report that it is challenging to physically inspect units for HQS because of staffing shortages and program participants being uncomfortable with other people entering their units out of fear of contracting COVID-19. Due to the increased risk of COVID-19 infection, low vaccination rates and poorer health outcomes of people experiencing homelessness if they contract COVID-19, it continues to be important to move people quickly into their own housing to enable social distancing and prevent the spread of COVID-19. Additionally, recipients need time to prepare staff to inspect (and re-inspect as discussed below) units for HQS. Therefore, HUD is again waiving the initial inspection requirement at 24 CFR 578.75(b)(1) as further specified below to allow recipients to move people from the streets and shelters into housing more quickly.

- 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 until March 31, 2022 for recipients and subrecipients that are able to meet the following criteria:
- a. The recipient 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 recipient or subrecipient has written policies that require physical inspection of the units not previously physically inspected by June 30, 2022.

2. 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:** On September 30, 2020, HUD waived the requirements at 24 CFR 982.401(d)(2)(ii) and 24 CFR 578.75(c) to allow households experiencing homelessness to obtain permanent housing that is affordable and that they assess is adequate. HUD extended these flexibilities on December 30, 2020 to the later of 1) the end of the initial term of the lease or occupancy agreement; or 2) March 31, 2021. HUD again extended these flexibilities on March 31, 2021, to the later of 1) the end of the initial term of the lease or occupancy agreement; or 2) June 30, 2021. HUD again extended these flexibilities on July 1, 2021, to the later of 1) the end of the initial term of the lease or occupancy agreement; or 2) December 31, 2021. As of the date of this memorandum, there continues to be a 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. Further, low vaccination rates and poorer health outcomes, compounded by the increased risk for COVID-19 infection, require that we expedite program participants' transition from homelessness to housing. Therefore, HUD is waiving the requirements at 24 CFR 982.401(d)(2)(ii) and 24 CFR 578.75(c) as further specified below to reduce the spread of COVID-19 by allowing households to move into housing instead of staying in congregate shelter. However,

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 that 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 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 March 31, 2022. Assisted units with leases of occupancy agreements signed during the waiver period may have more than two persons for each bedroom or living/sleeping room until the later of 1) the end of the initial term of the lease or occupancy agreement; or 2) March 31, 2022. As a reminder, recipients are still required to follow State and local occupancy laws.

3. 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. On September 30, 2020 HUD again waived this requirement until December 31, 2020. On December 30, 2020, HUD again waived this requirement until March 31, 2021. On March 31, 2021, HUD again waived this requirement until June 30, 2021. On July 1, 2021, HUD again waived this requirement until December 31, 2021. Extending this waiver of 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 in tight rental markets. This is necessary due to the increased risk of COVID-19 infection, the low vaccination rates and poorer health outcomes from COVID-19 experienced by individuals and families experiencing homelessness when compared to the general population. Permanent housing allows for social distancing and reduces the risk of COVID-19 infection.

Applicability: The FMR restriction continues to be waived for any lease executed by a recipient or subrecipient to provide transitional or permanent supportive housing until March 31, 2022. 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).

4. One-Year Lease Requirement

Requirement: Program participants residing in permanent housing (including Rapid Re-housing and Permanent Supportive Housing) 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, again until December 31, 2020 on September 30, 2020, again until March 31, 2021 on December 30, 2020, again on March 31, 2021 until June 30, 2021, and again on July 1, 2021 until December 31, 2021 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 report challenges in identifying housing for program participants in tight rental markets due to the economic impact of COVID-19. Additionally, helping program participants move into housing quickly will continue to decrease the risk of people experiencing homelessness of contracting COVID-19 even after special measures are no longer necessary to prevent the spread of COVID-19 since people experiencing homelessness are at increased risk of COVID-19 infection, show lower rates of vaccination and poorer health outcomes from COVID-19 when compared to the general population.

Applicability: The one-year lease requirement is waived for leases executed between the date of this memorandum and March 31, 2022, so long as the initial term of all leases is at least one month.

5. HQS – Re-Inspection of Units

Requirement: Recipients and subrecipients must inspect all units for which leasing or rental assistance funds are used, at least annually to ensure they continue to meet HQS.

Citation: 24 CFR 578.75(b)(2)

Explanation: 24 CFR 578.75(b)(2) requires that recipients or subrecipients are required to inspect all units supported by leasing or rental assistance funding under the CoC and YHDP Programs at least annually during the grant period to ensure the units continue to meet HQS.

Justification: HUD originally waived the requirement for 1-year on March 31, 2020 to help recipients and subrecipients prevent the spread of COVID-19. On March 31, 2021, HUD extended the waiver until June 30, 2021. On July 1, 2021, HUD extended the waiver until September 30, 2021. Since the original waiver flexibility expired on September 30, 2021, recipients report that it is challenging to physically re-inspect units for HQS because of staffing shortages and program participants being uncomfortable having other people enter their units out of fear of contracting COVID-19. It continues to be important to maintain housing for people to enable social distancing and prevent the spread of COVID-19. Therefore, HUD is again waiving the requirement to inspect all units supported by leasing and rental assistance funds at least annually as described below.

Applicability: The requirement at 24 CFR 578.75(b)(2) is waived until March 31, 2022 for recipients and subrecipients that are able to visually re-inspect the unit using technology, such as video streamlining, to ensure the unit meets HQS.

6. 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 is considered homeless per 24 CFR 578.3, definition of "homeless."

Justification: HUD originally waived this requirement on September 30, 2020, until March 31, 2021 to keep housing options open for individuals who otherwise would have been homeless but were reporting longer stays in institutions as a result of COVID-19 (e.g., longer time in jail due to a

postponed court dates due to courts closings or courts operating at reduced capacity and longer hospital stays when infected with COVID-19). HUD again waived this requirement on March 31, 2021 until June 30, 2021 and again on July 1, 2021 until December 31, 2021. 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 and respond to COVID-19 by expanding housing options for people who were experiencing homelessness and institutionalized for longer than traditionally required due to COVID-19. Recipients continue to report potential program participants are staying in institutions for longer periods of time due to COVID-19. Additionally, since people experiencing homelessness are at higher risk of COVID-19 infection, showing lower vaccination rates and poorer health outcomes when compared to the general population it is important that they be able to exit to permanent housing when they exit an institution to allow for social distancing and prevent the spread of COVID-19. Therefore, HUD is extending this waiver to allow 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.

Applicability: An individual may qualify as homeless under paragraph (1)(iii) of 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 until March 31, 2022.

7. 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 3-24 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 24 CFR 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: HUD originally waived this requirement on May 22, 2020 until 3 months after a state or local public health official has determined special measures are no longer necessary to prevent the spread of COVID-19. Recipients

continue to report program participants are experiencing difficulty affording rent even after receiving 24 months of rental assistance. On July 1, 2021, HUD established an end date of this waiver of December 31, 2021. However, continuing to waive 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. Because COVID-19 has been shown to rapidly spread in shelter settings, which is where many individuals and families will reside if they lose their housing, this will reduce the number of people who become homeless again due to the economic impact of COVID-19 and thus decrease the risk of COVID-19 infection.

Applicability: The 24-month rental assistance restriction is waived for program participants in permanent housing rapid re-housing project who will have reached 24 months of rental assistance until March 31, 2022. 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 March 31, 2022.

8. 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 recipient 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 no later than 45 days from the date of application for assistance, which 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 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 disability in the middle of a pandemic, impacting their ability to house potential program participants quickly. On September 30, 2020, HUD waived, in its entirety, the requirement to obtain additional evidence to verify intake staff-recorded observations of disability until public health officials determine no additional special measures are necessary to prevent the spread of COVID-19. On July 1, 2021, HUD extended this waiver until December 31, 2021. Many communities continue to experience substantial rates of COVID-19 and hospitalizations and resulting in staff shortages for non-COVID related concerns. As a result of this and of reduced hours of agencies and providers that can provide disability documentation, recipients are reporting that obtaining documentation of a disability still takes longer than usual. Because of the increased risk of COVID-19 infection and poorer health outcomes from COVID-19 experienced by people experiencing homelessness when compared to the general population it remains important to house people quickly to allow for social distancing and decrease the risk of COVID-19 infection. Therefore, HUD is continuing this waiver flexibility until March 31, 2022.

Applicability: The requirement that 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 until March 31, 2022.

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 March 31, 2021.

EMERGENCY SOLUTIONS GRANTS (ESG) PROGRAM

The following waivers are made available to FY 2021 ESG funds, but do not apply to ESG grants funded under the CARES Act (ESG-CV) or FY 2020 or earlier fiscal year ESG grants. For waivers of the following ESG requirements that were already provided for ESG-CV funds and FY 2020 or earlier fiscal year ESG grants, see [Notice CPD-21-08: Waivers and Alternative Requirements for the ESG Program Under the CARES Act](#) (Notice CPD-21-08).

9. Homeless Definition – Temporary Stays in Institutions of 90 Days or 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 is considered homeless per 24 CFR 576.2, definition of “homeless.”
- Justification:** HUD originally waived this requirement on September 30, 2020 until March 31, 2021 to keep housing options open for individuals who otherwise would have been homeless but were reporting longer stays in institutions as a result of COVID-19. HUD waived this requirement again on March 31, 2021 until June 30, 2021. Additionally, this waiver flexibility was applied ESG-CV funds and FY 2020 annual ESG funds that are used to prevent, prepare for, and respond to coronavirus, subject to the requirements in Notice CPD-21-08: Waivers and Alternative Requirements for the ESG Program Under the CARES Act. 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 decrease the risk of COVID-19 infection by expanding housing options for people who were experiencing homelessness and institutionalized for longer than traditionally required due to COVID-19. Recipients continue to report potential program participants are staying in institutions for longer periods of time due to COVID-19. Additionally, since people experiencing homelessness are showing an increased risk of COVID-19 infection, lower vaccination rates and poorer health outcomes

when compared to the general population it is important that they be able to exit to permanent housing when they exit an institution to allow for social distancing and decrease the risk of COVID-19 infection. Therefore, permitting this waiver for FY 2021 ESG funds will allow 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. In addition, because FY2021 ESG grant funding will remain available for longer than ESG-CV funding and FY2020 and earlier fiscal year ESG grants, extending this waiver to FY2021 ESG grants will maximize the time and opportunities to facilitate stable housing outcomes for program participants who are housed through this regulatory waiver and may need a longer period of ESG assistance than the expenditure deadlines for ESG-CV and FY2020 and earlier fiscal year grants would allow.

Applicability: An individual may qualify as homeless under paragraph (1)(iii) of 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 for individuals whose homeless status is determined between the date of this memorandum and March 31, 2022.

10. Assisting Program Participants with Subleases

Requirement: With respect to rental assistance and certain housing relocations and stabilization services, the references to “owner” and “lease” in 24 CFR 576.105 and 576.106 restrict program participants from receiving assistance in units they sublease from a person other than the owner or the owner’s agent.

Citations: 24 CFR 576.105, 24 CFR 576.106

Explanation: The use of “owner” and “lease” in 24 CFR 576.105 and 576.106 restrict program participants from receiving rental assistance under 24 CFR 576.106 and certain services under 24 CFR 576.105 with respect to units program participants sublease or lease from a person other than the owner or the owner’s agent.

Justification: Notice CPD-21-08: Waivers and Alternative Requirements for the ESG Program Under the CARES Act allows ESG rapid re-housing and homelessness prevention assistance to be provided to program participants who are legally subleasing housing from a primary leaseholder. However, this waiver flexibility only applies to ESG-CV funds and FY 2020 and earlier fiscal year ESG grant funds that are used under the conditions provided in Notice CPD-21-08. HUD has determined good cause exists to

allow certain ESG recipients to use a similar waiver with respect to their FY 2021 ESG grant funding, because being able to offer ESG assistance beyond the expenditure deadlines for ESG-CV grants, FY2020 ESG grants, and earlier fiscal year ESG grants will improve recipients and subrecipients chances of helping more program participants move into housing quickly, and as explained in the general justifications provided at the beginning of this memorandum, quickly identifying housing in tight rental markets and helping people obtain or maintain housing during this critical time period is necessary to prevent the spread of COVID-19. In addition, because FY2021 ESG grant funding will remain available for longer than ESG-CV funding and FY2020 and earlier fiscal year ESG grants, extending this waiver to FY2021 ESG grants will maximize the time and opportunities to facilitate stable housing outcomes for program participants who are housed through this type of waiver and may need a longer period of ESG assistance than the expenditure deadlines for ESG-CV and FY2020 and earlier fiscal year grants would allow.

- Applicability:** To the extent that the references to “owner” and “lease” in 24 CFR 576.105 and 576.106 restrict program participants from receiving assistance in units they sublease from the primary leaseholder, that restriction is waived under the following conditions:
1. The recipient documents that it meets the conditions for applying this waiver to FY21 grants funds, consistent with the justification paragraph above;
 2. a program participant chooses to rent a unit through a legally valid sublease with the primary leaseholder for the unit; and
 3. the recipient has developed written policies to apply the requirements of 24 CFR 576.105, 24 CFR 576.106, 24 CFR 576.409, and 576.500(h) with respect to that program participant by reading the references to “owner” and “housing owner” to apply to the primary leaseholder and reading the references to “lease” to apply to the program participant’s sublease or lease with the primary leaseholder.

This waiver is only made available with respect to leases and subleases entered into between the date of this memorandum and March 31, 2022. However, unless HUD notifies the recipient otherwise, the recipient may continue to use its FY2021 ESG grant funds to assist program participants housed under this waiver through the end of their otherwise allowable term of assistance.

11. Helping Current Program Participants Maintain Housing – Housing Relocation and Stabilization Services.

Requirement: 24-month limits on housing relocation and stabilization services.

Citations: 24 CFR 576.105(a)(5), (b)(2) and (c).

Explanation: Section 576.105(a)(5) prohibits a program participant from receiving more than 24 months of utility payments under ESG during any three-year period. Section 576.105(b)(2) limits the provision of housing stability case management to 30 days while the program participant is seeking permanent housing and to 24 months during the period the program participant is living in permanent housing. Section 576.105(c) limits the total amount of time a program participant may receive services under section 576.105(b) to 24 months during any 3-year period.

Justification: [Notice CPD-21-08: Waivers and Alternative Requirements for the ESG Program Under the CARES Act](#) provides flexibility to provide housing relocation and stabilization services to program participants for more than 24-months during any 3-year period. However, that flexibility only applies to ESG-CV funds and FY 2020 and earlier fiscal year ESG grant funds that are used under the conditions provided in Notice CPD-21-08. HUD has determined good cause exists to allow certain ESG recipients to use a similar waiver with respect to their FY2021 ESG grant funding, for the following reasons: (1) Those residing in congregate settings, where many people who lose their housing reside after losing their housing, are at increased risk of COVID-19 infection; (2) Helping program participants maintain housing will therefore continue to decrease the risk of people experiencing and at risk of homelessness from contracting COVID-19; and (3) although this waiver flexibility can already be used with respect to ESG-CV and FY2020 and earlier FY funds, making this waiver flexibility applicable to the newer FY2021 ESG grant funds will minimize the chances that service providers will run out of usable ESG funds to help their existing program participants remain stably housed during these critical winter months when people are spending most of their time indoors and the risk of spread is at its highest

Applicability: For recipients that can document they meet the conditions for applying this waiver to FY21 grants funds, consistent with the justification paragraph above, the 24-month limits on housing relocation and stabilization services under 24 CFR 576.105(a)(5), (b)(2) and (c) are waived for program participants receiving rapid re-housing and homelessness prevention assistance who will have reached these 24-month limits between the date of this memorandum and March 31, 2022, as long as the assistance provided under this waiver does not extend beyond March 31, 2022 and is limited to program participants who will not be able to obtain or maintain housing without the benefit of this waiver.

12. Helping Current Program Participants Maintain Housing – Rental Assistance.

Requirement: Restriction of rental assistance to 24 months during any 3-year period.

- Citations:** 24 CFR 576.106(a).
- Explanation:** 24 CFR 576.106(a) limits the total amount of time a program participant may receive rental assistance to 24 months in a 3-year period.
- Justification:** [Notice CPD-21-08: Waivers and Alternative Requirements for the ESG Program Under the CARES Act](#) provides flexibility to provide rental assistance to program participants for more than 24-months during any 3-year period. However, that flexibility only applies to ESG-CV funds and FY 2020 and earlier fiscal year ESG grant funds that are used under the conditions provided in Notice CPD-21-08. HUD has determined good cause exists to allow certain ESG recipients to use a similar waiver with respect to their FY 2021 ESG grant funding, for the following reasons: (1) those residing in congregate settings, where many people who lose their housing reside after losing their housing, are at increased risk of COVID-19 infection; (2) helping program participants maintain housing will therefore continue to decrease the risk of people experiencing and at risk of homelessness from contracting COVID-19; and (3) although this waiver flexibility can already be used with respect to ESG-CV and FY2020 and earlier FY funds, making this waiver flexibility applicable to the newer FY2021 ESG grant funds will minimize the chances that service providers will run out of usable ESG funds to help their existing program participants remain stably housed during these critical winter months when people are spending most of their time indoors and the risk of spread is at its highest.
- Applicability:** For recipients that can document they meet the conditions for applying this waiver to FY21 grants funds, consistent with the justification paragraph above, the 24-month in a 3-year period restriction on rental assistance is waived for program participants receiving rapid re-housing and homelessness prevention assistance who will have reached their 24-month limit between the date of this memorandum and March 31, 2022, as long as the assistance provided under this waiver does not extend beyond March 31, 2022 and is limited to program participants who will not be able to obtain or maintain housing without the benefit of this waiver.

13. Restriction of Rental Assistance to Units with Rent at or Below FMR

- Requirement:** Restriction of rental assistance to units with rent at or below FMR.
- Citation:** 24 CFR 576.106(d)(1)
- Explanation:** Under 24 CFR 576.106(d)(1), rental assistance cannot be provided unless the total rent is equal to or less than the FMR established by HUD, as

provided under 24 CFR Part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.

Justification: HUD already provided a waiver of this requirement in Notice CPD-21-08: Waivers and Alternative Requirements for the ESG Program Under the CARES Act. However, that flexibility only applies to ESG-CV funds and FY 2020 and earlier fiscal year ESG grant funds that are used under the conditions provided in Notice CPD-21-08. HUD has determined good cause exists to allow certain ESG recipients to use a similar waiver with respect to their FY2021 ESG grant funding, because being able to offer ESG assistance beyond the expenditure deadlines for ESG-CV grants, FY2020 ESG grants, and earlier fiscal year ESG grants will improve recipients' and subrecipients' chances of quickly identifying housing in tight rental markets and helping people obtain or maintain housing during this critical period; and as explained in the general justifications provided at the beginning of this memorandum, quickly identifying housing in tight rental markets and helping people obtain or maintain housing during this critical time period is necessary to prevent the spread of COVID-19 among people experiencing homelessness. In addition, because FY2021 ESG grant funding will remain available for longer than ESG-CV funding and FY2020 and earlier fiscal year ESG grants, extending this waiver to FY2021 ESG grants will maximize the time and opportunities to facilitate stable housing outcomes for program participants who are housed through this type of waiver and may need a longer period of ESG assistance than the expenditure deadlines for ESG-CV and FY2020 and earlier fiscal year grants would allow.

Applicability: For recipients that can document they meet the conditions for applying this waiver to FY21 grants funds, consistent with the justification paragraph above, the FMR restriction is waived for any individual or family receiving Rapid Re-housing or Homelessness Prevention assistance who executes a lease for a unit during the period beginning on the date of this memorandum and ending on March 31, 2022. The ESG recipient or subrecipient must still ensure that the units in which ESG assistance is provided to these individuals and families meet the rent reasonableness standard.

This waiver is only made available with respect to leases and subleases entered into between the date of this memorandum and March 31, 2022. However, unless HUD notifies the recipient otherwise, the recipient may continue to use its FY2021 ESG grant funds to assist program participants housed under this waiver through the end of their otherwise allowable term of assistance.

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA)

The following waivers are made available with respect to all HOPWA grants, whether funded under the CARES Act, annual HOPWA formula allocations, or under a HOPWA Renewal Notice or competitive Notice of Funding Opportunity.

19. HOPWA – Property Standards

Requirement: Property Standards for HOPWA

Citation: 24 CFR 574.310(b)(2), Housing Quality Standards (HQS)

Explanation: Section 574.310(b)(2) of the HOPWA regulations provides minimum housing quality standards that apply to all housing for which HOPWA funds are used for 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 under 24 CFR 574.300(b)(3), (4), (5), or (8).

Justification: On March 31, 2020 HUD waived the physical inspection requirement for tenant-based rental assistance at 24 CFR 574.310(b) for one year so long as grantees or project sponsors were able to visually inspect the unit using technology to ensure the unit met HQS before any assistance was provided and grantees or project sponsors had written policies in place to physically reinspect the unit after health officials determined special measures to prevent the spread of COVID-19 were no longer necessary.

On May 22, 2020 HUD waived the physical inspection requirement for 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 for one year so long as grantees or project sponsors met the criteria outlined in the waiver. On March 31, 2021, HUD again waived this requirement for all applicable housing types until June 30, 2021. On June 30, 2021, HUD extended the waiver until September 30, 2021.

Since the original waiver flexibility expired on September 30, 2021, grantees report that it is challenging to physically inspect units for HQS because of stay-at-home orders for many grantee workplaces, staffing shortages, and program clients feeling uncomfortable with other people entering their units out of fear of contracting COVID-19. As people experiencing homelessness are at higher risk of COVID-19 infection, and people living with HIV experience disproportionately poor health outcomes and higher hospitalization rates due to COVID-19, it continues

to be important to move people living with HIV quickly into their own housing. Therefore, HUD is extending the waiver as described below.

Applicability: This waiver is in effect until March 31, 2022 for grantees and project sponsors that can meet the following criteria:

1. The grantee or project sponsor can visually inspect the unit using technology, such as video streaming, to ensure the unit meets HQS before any assistance is provided; and
2. The grantee or project sponsor has written policies that require physical reinspection of the units not previously physically inspected by June 30, 2022.

20. 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.

Justification: HUD originally waived the FMR rent standard requirement for tenant-based rental assistance for one year on March 31, 2020. On May 22, 2020, HUD waived this requirement for one year for all rental assistance types. On March 31, 2021, HUD again waived this requirement for all rental assistance types until June 30, 2021. On June 30, 2021, HUD again waived this requirement until December 31, 2021. As people experiencing homelessness are at higher risk of COVID-19 infection, and people living with HIV experience disproportionately poor health outcomes and higher hospitalization rates due to COVID-19, it continues to be important ensure people living with HIV can obtain and maintain housing. Extending this waiver of the FMR rent standard limit, while still requiring that the unit be rent reasonable in accordance with §574.320(a)(3), will assist grantees and project sponsors in ensuring low-income people living with HIV can obtain and maintain safe, stable housing in tight rental markets.

Applicability: The FMR requirement continues to be waived until March 31, 2022. Grantees and project sponsors must still ensure the reasonableness of rent charged for a unit in accordance with §574.320(a)(3).

21. HOPWA – Space and Security

Requirement: Adequate Space and Security

- Citation:** 24 CFR 574.310(b)(2)(iii), Space and Security
- Explanation:** This section of the HOPWA regulations provides that each resident must be afforded adequate space and security for themselves and their belongings.
- Justification:** When HUD originally waived this requirement on March 31, 2020, an end date was not established. Grantees and project sponsors operating housing facilities and shared housing arrangements still report need for flexibility to use optional appropriate spaces for quarantine services of eligible households affected by COVID-19. Optional spaces may include the placement of families in a hotel/motel room where family members may be required to utilize the same space not allowing for adequate space and security for themselves and their belongings. Therefore, HUD is continuing to offer this waiver flexibility, but is establishing an end date of March 31, 2022.
- Applicability:** This space and security requirement is waived until March 31, 2022, for grantees addressing appropriate quarantine space for affected eligible households during the allotted quarantined time frame recommended by local health care professionals.

Attachment #1 to Memorandum:

Procedure for Using Available Waivers of Program 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: Housing Quality Standards – Initial Inspection of Unit
 2. CoC/YHDP: Suitable Dwelling Size and Housing Quality Standards
 3. CoC/YHDP: Fair Market Rent for Individual Units and Leasing Costs
 4. CoC/YHDP: One-Year Lease Requirement
 5. CoC/YHDP: HQS-Re-inspection of Units
 6. CoC/YHDP: Homeless Definition – Temporary Stays in Institutions of 90 Days or Less
 7. CoC/YHDP: Permanent Housing Rapid Re-housing Limit to 24 Months of Rental Assistance
 8. CoC/YHDP: Disability Documentation for Permanent Supportive Housing (PSH)
 9. ESG: Homeless Definition – Temporary Stays in Institutions of 90 Days or Less
 10. ESG: Assisting Program Participants with Subleases
 11. ESG: Helping Current Program Participants Maintain Housing – Housing Relocation and Stabilization Services
 12. ESG: Helping Current Program Participants Maintain Housing – Rental Assistance
 13. ESG: Restriction of Rental Assistance to Units with Rent at or Below FMR
 14. HOPWA – Property Standards
 15. HOPWA – FMR Rent Standard
 16. HOPWA – Space and Security