



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, Principal Deputy Assistant Secretary, D **JOHN GIBBS** Digitally signed
by JOHN GIBBS
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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:

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

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. 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 spread of COVID-19. This memorandum extends to March 31, 2021 select waivers from these earlier waivers set to expire on December 31, 2020.

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: On September 30, 2020, HUD waived the requirement to attempt to document that third-party verification of income was unobtainable in order for recipients and subrecipients to a program participant's own self-certification of income until December 31, 2020 because that documentation may be difficult to obtain as a result of COVID-19 pandemic and housing program participants quickly was important to prevent the spread of COVID-19. It continues to be important to move people into their own housing quickly to enable social distancing and prevent the spread of COVID-19; 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.

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 until March 31, 2021. 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. On September 30, 2020 HUD waived the physical inspection requirement at 24 CFR 578.75(b)(1) until December 31, 2020 so long as recipients and subrecipients could meet certain criteria outlined in the waiver. Recipients and subrecipients are still reporting difficulty in conducting the initial inspection of units due to social distancing guidelines; therefore, HUD is 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, 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 until March 31, 2021 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:** 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. Recipients continue to report that households experiencing homelessness remain 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. 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. 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 than 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 March 31, 2021 and extending only until the later of 1) the end of the initial term of the lease or occupancy agreement; or 2) March 31, 2021. As a reminder, recipients are still required to follow State and local occupancy laws.

4. 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. HUD again waived this requirement for all grant agreements signed from October 1, 2020 until December 31, 2020. 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 January 1, 2021 and March 31, 2021 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 March 31, 2021 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 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. On May 22, 2020 HUD again waived this requirement for an additional 3 months and on September 30, 2020 HUD once again waived this requirement until December 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:** 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 until March 31, 2021.

6. 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. 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 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 until March 31, 2021. 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).

7. 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 and again until December 31, 2020 on September 30, 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 March 31, 2021, so long as the initial term of all leases is at least one month.

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
 5. CoC/YHDP: Permanent Housing-Rapid Re-housing Monthly Case Management
 6. CoC/YHDP: Fair Market Rent for Individual Units and Leasing Costs
 7. CoC/YHDP: One-Year Lease Requirement