



HUD Waiver Guidance for ESG and CoC Projects

COVID-19 Waivers Issued in 2020

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Office of Housing and Community Development
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OVERVIEW

On April 1, 2020, May 22, 2020 and again on September 30, 2020, the U.S. Department of Housing and Urban Development (HUD) made a number of waivers available to grantees to alleviate a number of programmatic requirements for Emergency Solutions Grant (ESG) and Continuum of Care (CoC) projects in response to the public health crisis (COVID-19). As grantee for all CoC and ESG projects, the City of New Bedford's Office of Housing and Community Development (OHCD) filed notification with HUD advising them of its intent to utilize these waivers on behalf of its subrecipients.

Notice was sent to all participating subrecipient agencies with ESG and CoC funding as to the availability of these waivers once the HUD required 48 hour timeframe from OHCD notification to HUD had elapsed.

Use of any of these waivers by subrecipients are to be undertaken only on an as-needed basis after filing the request to utilize such waiver/s with the OHCD. The use of any/all waivers necessitates that appropriate documentation be maintained in client and agency files indicating rationale for use as further defined in this guidance.

The official notice from HUD released on April 1st is available at:

<https://files.hudexchange.info/resources/documents/Availability-of-Waivers-of-CPD-Grant-Program-and-Consolidated-Plan-Requirements-to-Prevent-the-Spread-of-COVID-19-and-Mitigate-Economic-Impacts-Caused-by-COVID-19.pdf>

The official notice from HUD released on May 22nd is available at:

https://www.hud.gov/sites/dfiles/CPD/documents/Additional_Waivers_for_CPD_Grant_Programs_to_Prevent_COVID-19_Spread_and_Mitigate_COVID-19_Economic_Impacts.pdf

The official notice from HUD released on September 30th is available at:

<https://www.hud.gov/sites/dfiles/CPD/documents/CPD-COVID-19-Waiver-3-Final-Clean.pdf>

HUD WAIVERS for COC PROGRAMS

HUD has issued a "Mega-Waiver" opportunity for a number of programs it funds in response to the COVID-19 pandemic. This guidance is intended to provide you with what you need to know about this as it may provide some relief for you with respect to the operation of your CoC program.

The Mega-Waiver is simply an aggregated term identifying a series of multiple separate waivers from some regulatory requirements that grantees may request from HUD to ease and mitigate against the administrative and economic impacts caused by COVID-19. Because the City of New Bedford is the grantee for CoC funding, the city, acting through its Office of Housing & Community Development

(OHCD), is the entity that must request the waivers prior to their activation. That said, the OHCD has already notified HUD and is now authorized to utilize the available CoC waivers.

There are seven available waivers that may be helpful in the midst of this public health crisis:

- **Fair Market Rent for Individual Units and Leasing Costs.** HUD regulations require that rent payments for individual units with leasing dollars may not exceed Fair Market Rent (FMR). The available waiver eliminates the limit on using grant leasing funds to pay above FMR for individual units above FMR, though not greater than the reasonable rent; doing so will assist recipients in locating additional units to house individuals and families experiencing homelessness and reduce the spread and harm of COVID-19. This means the FMR restriction is waived for any lease executed by a subrecipient to provide permanent supportive housing during the six month period beginning March 31, 2020. *Please note that as subrecipient you must still ensure that rent paid for individual units leased with CoC Program leasing dollars meet the rent reasonableness standard in 24 CFR 578.49(b)(2).*
- **Disability Documentation for Permanent Supportive Housing (PSH).** PSH programs must serve individuals and families where one member of the household has a qualifying disability (though for dedicated projects and DedicatedPlus projects that individual must be the head of household). Subrecipients are responsible for documenting a qualifying disability of one of the household members; when documentation of disability is the intake worker's observation, the regulation requires the subrecipient to obtain additional confirming evidence within 45 days. Subrecipients must also document disability for those meeting the chronically homeless definition (including intake staff recorded observations of disability that, no later than 45 days from the application for assistance, is confirmed and accompanied by evidence cited in the regulations). The available waiver eliminates the requirement to obtain additional evidence. This means subrecipients do not have to provide additional evidence 45 days from the date of application for assistance for a six month period running from March 31, 2020 to September 30, 2020. For those housed in PSH from March 31, 2020 until public health officials determine no additional special measures are necessary to prevent the spread of COVID-19, a written certification by the individual seeking assistance indicating that they have a qualifying disability is considered acceptable documentation approved by HUD.
- **Limit on eligible Housing Search and Counseling Services.** CoC Program funds may pay for housing search and counseling services, specifically to services with respect to program participants' debts is limited to the costs of credit counseling, accessing a free personal credit report and resolving personal credit issues in order to help eligible program participants locate, obtain and retain suitable housing. While these are eligible costs, payment of rental or utility arrears is not an eligible cost nor are many supportive service costs related to housing search and counseling activities. The available waiver removes the limitation on eligible housing search and counseling activities so that CoC Program funds may be used for up to 6 months of a program participant's utility arrears and up to 6 months of a program participant's rent arrear when those arrearages make it difficult for them to obtain housing. This waiver would be in effect one year, from March 31, 2020- March 30, 2021.
- **Permanent Housing Rapid Re-Housing Monthly Case Management.** Subrecipients must require program participants of permanent housing and rapid rehousing projects to meet with a case manager at least monthly. This waiver eliminates the monthly case management requirement

and allows subrecipients to provide case management on an as-needed basis to reduce the possible spread and harm of COVID-19 for a period of two months running March 31, 2020 – May 31, 2020.

- **Housing Quality Standards (HQS) – Initial Physical Inspection of Unit.** Recipients are required to physically inspect any unit supported with leasing or rental assistance funds to assure the unit meets HQS before any assistance may be provided on behalf of a program participant. The available waiver eliminates the need for a physical initial inspection requirement to help prevent the spread of COVID-19. This waiver runs for 6 months (March 31, 2020 – September 30, 2020) provided as subrecipient you can meet the following criteria: that you are able to visually inspect the unit using technology such as video streaming to ensure the unit meets HQS before any assistance is provided *and* that as subrecipient you have written policies to physically re-inspect the unit within 3 months after health officials determine special measures to prevent the spread of COVID-19 are no longer necessary.
- **HQS Re-inspection of Units.** At least annually, subrecipients must inspect all units for which leasing or rental assistance funds are used to ensure they continue to meet HQS. The available waiver relaxes the requirement by waiving the annual re-inspection during the public health crisis for one year beginning March 31, 2020.
- **One-Year Lease 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. The available waiver eliminates the one year lease requirement for 6 months (March 31, 2020 – September 30, 2020) so long as the initial lease term of all leases is for more than one month.

If you are interested in using one or more of these seven waivers to assist affected project participants/eligible households to prevent the spread of COVID-19 please complete the required CoC Waiver Request Form and submit it via email to the OHCD office *prior* to using the waiver.

HUD WAIVERS for ESG PROGRAMS

HUD has issued a "Mega-Waiver" opportunity for a number of programs it funds in response to the COVID-19 pandemic. This guidance is designed to provide ESG subrecipients with what they need to know about this as it may provide some relief for with respect to the operation of ESG programs.

The Mega-Waiver is simply an aggregated term identifying a series of multiple separate waivers from some regulatory requirements that grantees may request from HUD to ease and mitigate against the administrative and economic impacts caused by COVID-19. Because the City of New Bedford is the grantee for the ESG funding you receive, the city, acting through its Office of Housing & Community Development (OHCD), is the entity that must notify HUD regarding its intent to utilize the waivers prior to their activation. That said, the OHCD has already sought the appropriate authorization for the available ESG waivers on behalf of its funded ESG programs/subrecipients.

There are three available waivers that may prove helpful in the midst of this public health crisis:

- **Re-evaluations for Homeless Prevention Assistance.** Homeless prevention (HP) assistance requires the re-evaluation of each program participant's eligibility need for assistance not less than once every three months. The available waiver changes the frequency of re-evaluations for

HP assistance and waives it for up to 2 years beginning as of March 31, 2020 so long as the subrecipient conducts the required re-evaluations not less than once every 6 months. So rather than re-evaluating every 3 months, the waiver permits re-evaluating every 6 months (for the purpose/period noted here).

- **Housing Stability Case Management.** Program participants receiving HP or rapid re-housing (RRH) assistance are required to meet monthly with a case manager (except under certain statutory prohibitions). The available waiver allows case managers to provide case management on an as needed basis for two months (March 31-May 31) in order to reduce the possible spread and harm of COVID-19.
- **Restriction of Rental Assistance to Units with Rent at or Below FMR.** Rental assistance can only be provided when total rent is equal to or less than the published current FMR and complies with the reasonableness standard. Under the waiver, the FMR restriction is waived for those receiving HP or RRH assistance who executes a lease for a unit during the 6 month period beginning on March 31, 2020 although the rent reasonableness standard must still be met. (This particular waiver may present unique challenges given 12 month leases and this only extending for a 6 month period; subrecipients must use particular caution in the use of this waiver).
If you are interested in using one or more of these three waivers to assist affected project participants/eligible households to prevent the spread of COVID-19 please complete the attached ESG Waiver Request Form and submit it via email to the OHCD office prior to using the waiver.

HUD WAIVERS ISSUED IN MAY for ESG and CoC PROGRAMS

On May 22nd, HUD issued another "Waiver" request opportunity for a number of programs it funds in response to the COVID-19 pandemic. Similar to the "Mega-Waiver" notice and guidance the OHCD previously issued, this second round of waivers may also provide relief for certain projects with respect to the operation of ESG and/or CoC programs.

As was the case with the Mega-Waiver, because the City of New Bedford is the grantee for the ESG / CoC funding you receive, the city, acting through its Office of Housing & Community Development (OHCD), is the entity that must formally notify HUD as to its intent to use the waivers prior to their activation. That said, the OHCD has already sent the appropriate notification to HUD and the waivers are available for your use effective May 29th.

Please remember, those seeking to utilize the waivers must first provide the OHCD with the completed form indicating what waiver/s you will need for what program just as was the case in the first round of waivers. Once the required material (ESG & CoC Waiver Request Forms) is completed, it/they may be emailed to Jose.Maia@newbedford-ma.gov. Programs are also expected to maintain all relevant case documentation in your client files justifying the use of the waiver you are using.

There are three (3) available waivers (1 ESG and 2 CoC):

- **ESG: Housing Stability Case Management Requirement.** HUD has released an additional waiver for the monthly case management requirement. Effective May 22, 2020, the waiver to allow recipients to provide case management on an as needed basis and reduce the possible spread and harm of COVID-19 is in effect for an additional **three months** beginning on May 22, 2020.

- **CoC: Assistance Available at Time of Renewal.**

HUD currently 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.

HUD has issued the following: 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.

- **CoC Permanent Housing & Rapid Re-Housing Monthly Case Management.**

HUD has released an additional waiver for the monthly case management requirement. Effective May 22, 2020, the waiver to allow recipients to provide case management on an as needed basis and reduce the possible spread and harm of COVID-19 is in effect for an additional **three months** beginning on May 22, 2020.

HUD WAIVERS ISSUED IN SEPTEMBER for ESG and CoC PROGRAMS

On September 30th, HUD again issued a "Waiver" request opportunity for a number of programs it funds in response to the COVID-19 pandemic. Similar to the waiver notice and guidance the OHCD previously issued, this third round of waivers may also provide relief for certain projects with respect to the operation of ESG and/or CoC programs.

As was the case with the previous waivers, because the City of New Bedford is the grantee for the ESG / CoC funding you receive, the city, acting through its Office of Housing & Community Development (OHCD), is the entity that must formally notify HUD as to its intent to use the waivers prior to their activation. That said, the OHCD has already sent the appropriate notification to HUD and the waivers are available for your use effective November 6, 2020.

Please remember, those seeking to utilize these waivers must first provide the OHCD with the completed form indicating what waiver/s you will need for what program just as was the case in the first round of waivers. Once the required material (ESG & CoC Waiver Request Forms) is completed, it/they may be emailed to Jose.Maia@newbedford-ma.gov. Programs are also expected to maintain all relevant case documentation in your client files justifying the use of the waiver you are using.

There are eleven (11) available waivers (1 ESG and 10 CoC) that are either new or extensions of previously-issued waivers:

- **ESG: Homeless Definition—Temporary Stays in Institutions of 90 Days or Less.**

The definition of homeless includes individuals exiting an institution where he/she stayed for 90 days or less and has resided in an emergency shelter or place not meant for human habitation immediately before entering that institution. Because people are residing in institutions for longer periods of time because of COVID-19, an individual may qualify as homeless under this same section as long as he/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 is in effect until March 31, 2021.**

- **CoC: Third Party Documentation of Income.**

HUD specified income evaluation forms demonstrating back up documentation are required where a program participant pays rent or an occupancy charge in accordance with 24 CFR 578.77, 24 CFR 578.103(a)(7). The backup documentation must be either (1) source documents for the assets held by the program participant and income received before the date of the evaluation; (2) if source documents are unobtainable, a written statement by the relevant third party or the written certification of the subrecipient's intake staff of the relevant third party's oral verification of the income the program participant received; 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 three month period following evaluation.

HUD is waiving the requirement that the 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; instead, Subrecipients can document annual income with the written certification by the program participant of the amount of income the program participant is reasonably expected to receive over the three month period following the evaluation, *even if source documents and third party verification are obtainable*. The availability of this waiver is in effect **from September 30th until December 31, 2020**.

- **CoC: Housing Quality Standards – Initial Inspection of Unit.**

Units supported with leasing or rental assistance funds must be physically inspected to assure that the unit meets housing quality standards (HQS) before assistance may be provided. HUD waived the physical inspection requirement in lieu of a visual inspection using technology to ensure the unit met HWS between March 31-September 30th (6 months). This new waiver continues the initial waiver provided the following criteria can be met: that the owner certifies they have no reasonable basis to have knowledge that life-threatening conditions exist in the unit/units in question and that the subrecipient has written policies to physically inspect the unit within three (3) months after the health officials determine special measures to prevent the spread of COVID-19 are no longer necessary. This waiver is in effect **until December 31, 2020**.

- **CoC: Suitable Dwelling Size and Housing Quality Standards.**

Units funded with CoC program funds must have at least one bedroom for each two persons. This requirement is waived for recipients providing Permanent Housing-Rapid Rehousing assistance for leases and occupancy agreements executed by subrecipients between September 30th.2020 and extending only **until the later of (1) the end of the initial term of the lease or occupancy agreement or (2) December 31, 2020**.

- **CoC: Coordinated Entry -- Annual Ongoing Planning and Stakeholder Consultation.**

CoCs must comply with HUD requirements relative to soliciting feedback at least annually from participating projects and households that participated in coordinated entry to evaluate the quality and effectiveness of the entire coordinated entry experience. This requirement is waived for one year **from September 30, 2020 to September 30, 2021**.

- **CoC: Homeless Definition – Temporary Stays in Institutions of 90 Days or Less.**
 The definition of homeless includes individuals exiting an institution where he/she stayed for 90 days or less and has resided in an emergency shelter or place not meant for human habitation immediately before entering that institution. Because people are residing in institutions for longer periods of time because of COVID-19, an individual may qualify as homeless under this same section as long as he/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 is in effect until March 31, 2021.**
- **CoC: Assistance Available at Time of Renewal.**
 HUD is waiving its requirement that grant agreement amendments are reflected dollar for dollar in renewal budgets such that application must be made for budgets as amended. The waiver permits subrecipients to shift budget line items (in accordance with existing amendment requirements) in response to the COVID-19 pandemic without changing the original design of the project. This means HUD will consider any grant agreement amendment executed between March 31, 2020 and December 31, 2020 to move funds between budget line items in response to the COVID-19 pandemic as notification to HUD.
- **CoC: Permanent Housing & Rapid Re-Housing Monthly Case Management.**
 Although first introduced for a two month period in March and again in May for a three month period, HUD has again released an additional waiver for the monthly case management requirement. The waiver to allow recipients to provide case management on an as needed basis and reduce the possible spread and harm of COVID-19 is **in effect through December 31, 2020.**
- **CoC: Fair Market Rent for Individual Units and Leasing Costs.**
 HUD regulations require that rent payments for individual units with leasing dollars may not exceed Fair Market Rent (FMR). The available waiver means the FMR restriction is waived for any lease executed by a subrecipient to provide permanent supportive housing during an additional six month period that initially began March 31, 2020 but will not be **in effect through December 31, 2020.** *Please note that as subrecipient you must still ensure that rent paid for individual units leased with CoC Program leasing dollars meet the rent reasonableness standard in 24 CFR 578.49(b)(2).*
- **CoC: Disability Documentation for Permanent Supportive Housing (PSH).**
 PSH programs must serve individuals and families where one member of the household has a qualifying disability (though for dedicated projects and DedicatedPlus projects that individual must be the head of household). A waiver first made available from HUD in March 2020 eliminated the requirement to obtain additional confirming evidence. This means subrecipients do not have to provide additional evidence 45 days from the date of application for assistance for an additional period **extending to December 31, 2020.** For those housed in PSH from March 31, 2020 until public health officials determine no additional special measures are necessary to prevent the spread of COVID-19, a written certification by the individual seeking assistance indicating that they have a qualifying disability is considered acceptable documentation approved by HUD.

- **CoC: One Year Lease 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. The available waiver extends the period during which the one year lease requirement for leases may be waived from September 30th **through December 31, 2020** so long as the initial lease term of all leases is for more than one month.

Questions relative to this guidance can be directed to the OHCD at 508.979.1500 or via email to staff: Jennifer.Clarke@newbedford-ma.gov or Jose.Maia@newbedford-ma.gov.