



U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Secretary's Representatives
All Regional Directors for CPD
All CPD Division Directors
Continuums of Care (CoC)
Recipients and Subrecipients of the Continuum of Care (CoC) Program
Recipients and Subrecipients of the Emergency Solutions Grants (ESG) Program
Recipients and Subrecipients of the Youth Homelessness Demonstration Program (YHDP)
Grantees and Project Sponsors of the Housing Opportunities for Persons With AIDS (HOPWA) Program

Notice: CPD-22-09

Issued: June 15, 2022

Expires: March 31, 2023

Cross Reference: 24 CFR Part 578, 42 U.S.C. 11381, *et seq.*, 24 CFR Part 576, and 42 U.S.C. 11371, *et seq.*, 24 CFR Part 574, 42 U.S.C. 12901 *et seq.*)

Subject: Expedited Regulatory Waivers for the Emergency Solutions Grants, Continuum of Care, Youth Homelessness Demonstration Program, and Housing Opportunities for Persons With AIDS Programs

A. Purpose

This Notice advises recipients of ESG, CoC, YHDP, and HOPWA Program funds that they may apply for certain regulatory waivers through an expedited process to help recipients and subrecipients prevent the spread of COVID-19 and to facilitate assistance to eligible communities and households economically impacted by COVID-19. HUD will expeditiously respond to these waiver requests. Recipients must utilize the process set out by this Notice to submit waiver requests and justification of good cause to trigger the expedited HUD review.

The use of this expedited waiver process only applies to waivers explicitly stated in Section D.1 of this Notice. Recipients may continue to request other regulatory waivers as necessary to operate their programs; however, they will not be subject to the expedited process. If a recipient requests waivers under the expedited process and the general process simultaneously, HUD may respond first to the waiver request covered by the expedited process and then to the remaining waiver requests covered by the general process.

Note: for HOPWA program purposes, the term "recipient" includes the HOPWA grantee, and the term "subrecipient" includes the project sponsor.

B. Background

On March 31, 2020, CPD began issuing waivers of regulatory authority available on a nationwide basis with a simplified opt-in process to help recipients prevent and mitigate the spread of COVID-19. Between March 31, 2020, and December 30, 2021, CPD published eight memoranda announcing nationwide availability of regulatory waivers. On December 30, 2021, CPD published a memorandum, “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,” which extended the availability of some of the waivers until March 31, 2022¹, and made clear that would be the last extension of availability of those waivers to all recipients on an opt-in basis with a simplified notification process.

Recipients who continue to need regulatory flexibility must submit a regulatory waiver request pursuant to 24 CFR 5.110. Each waiver request must identify the regulation from which relief is sought and present good cause justification pursuant to 24 CFR 5.110. Requests for the specific types of regulatory waivers that are described in Section D.1 may use the expedited waiver process described in Section D.2. Other requests for waivers under the authority provided by 24 CFR 5.110 will be considered using the process outlined in Section E of this Notice.

As a general matter, HUD does not have the authority to waive statutory requirements; therefore, recipients should not send statutory waiver requests to HUD as they will not be approved.

C. Housing Quality Standards – Inspection of Units – CoC/YHDP/HOPWA

Throughout the pandemic, recipients have streamlined and enhanced their programs to effectively deliver services remotely using existing regulatory flexibilities. This section describes operational flexibility recipients of CoC, YHDP, and HOPWA Program funds may use without a waiver from HUD as it relates to virtual Housing Quality Inspections.

Unlike previous Notices issuing waivers that HUD made available to respond to COVID-19, this Notice does not provide for expedited processing of waivers of physical inspection requirements to ensure compliance with applicable housing quality standards (HQS) under 24 CFR 578.75(b)(1) and (b)(2) (for CoC and YHDP grants) and 24 CFR 574.310(b)(2) (for HOPWA grants). After further consideration, HUD has determined that in some circumstances, recipients and subrecipients may be able to satisfy the applicable physical inspection requirements through the use of a proxy who conducts a physical inspection on behalf of the recipient or subrecipients with the assistance of technology. CPD is currently developing guidance to clarify the physical inspection requirements under these regulations. However, prior to the effective date of CPD’s forthcoming guidance, HUD will consider physical inspections of units for compliance with HQS that are conducted on behalf of a recipient or subrecipient by a proxy (the proxy can be a landlord, property representative, tenant, or any adult associated with the eventual tenancy of the unit) using video streaming technology pursuant to a written agreement, kept on file by the subrecipient and recipient, to satisfy the physical inspection requirement applicable to CoC, YHPD, and HOPWA grants under 24 CFR 578.75(b)(1), 24 CFR 578.75(b)(2), and 24 CFR 574.310(b)(2).

¹ https://www.hud.gov/sites/dfiles/CPD/documents/Additional_Waivers_CPD_COVID19_December_2021.pdf

Recipients and subrecipients that incorporate technology in their processes should also ensure the proxy has the equipment necessary to complete the HQS inspection, including:

- a. Tape measure;
- b. Lighting device, i.e., a flashlight;
- c. Circuit analyzer to test the low-voltage operation of electrical lines;
- d. Means to test smoke and carbon monoxide detectors;
- e. Temperature device for displaying the internal unit temperature;
- f. Smartphone or tablet that is fully charged and with a reliable internet connection.

Regardless of the use of technology to facilitate the HQS inspection, the recipient and subrecipient of the applicable program funds remain responsible for the conduct of the inspection, and any judgements made about whether a condition is a violation of HQS must be made by the recipient or subrecipient of the applicable funds. There may be some circumstances where the application of technology provides insufficient information or evidence to the recipient or subrecipient to allow them to make an appropriate determination. Recipients and subrecipients that incorporate technology into their processes must have policies and procedures in place on how to handle those limitations.

Use of an alternative inspection process as discussed in this notice does not relieve the recipient or subrecipient from exercising due care under the circumstances or from complying with any other requirements that may apply under state, local or federal law.

D. Expedited regulatory waiver requests

Given the persistence of the pandemic and its disproportionate economic and health impacts on people who are experiencing or at risk of homelessness or people living with HIV HUD has determined that relief from some of the regulations addressed in the December 30, 2021 memorandum for CPD Grant Programs to Prevent the Spread of COVID-19 and Mitigate Economic Impacts Caused by COVID-19 may continue to be necessary to expand the availability of housing for people experiencing homelessness and people living with HIV in tight rental markets, minimize the time needed to rehouse people experiencing homelessness, and permit the continued provision of supportive services to maintain housing stability for program participants. Accordingly, this Notice establishes an expedited waiver process for certain regulatory requirements, listed in Section D.1.

A CoC, ESG, YHDP, or HOPWA recipient may request waivers of requirements listed in Section D.1 utilizing the process described below in Section D.2, which HUD may approve under 24 CFR 5.110. A recipient must state a justification of good cause for each waiver requested. The good cause justification must be consistent with HUD's reasons for expediting the waiver review under this Notice (i.e., to help recipients and subrecipients prevent the spread of COVID-19 and to facilitate assistance to eligible communities and households economically impacted by COVID-19) and must include each of the following:

1. why the recipient needs the waiver;
2. the impact on the recipient's ability to help people experiencing homelessness (or for a HOPWA waiver, people living with HIV) obtain or maintain housing if the waiver is not provided; and

3. the proposed waiver duration, which may not exceed March 31, 2023, unless otherwise stated below for a specific waiver.

Examples of good cause may include:

- Insufficient staffing levels to carry out activities due to the pandemic's impact on the community or jurisdiction.
- Potential negative impacts of the pandemic on providing assistance to program participants, including the delay of identifying housing or the onset of housing instability.
- Local pandemic-specific delays or limitations (e.g., social distancing requirements, delays in obtaining necessary paperwork due to office closures or staffing shortages, low vaccination rates or high hospitalization rates of people experiencing homelessness or people living with HIV).
- Local data related to the pandemic's impact that supports the waiver flexibility, the number of unassisted households living in units with more than two persons per room in the geographic area).

1. Expedited Regulatory Waiver Requests Allowed under this Notice

Recipients may request expedited review of waivers under this Notice only for the regulatory requirements listed below.

Waiver requests must be received by HUD on or before July 31, 2022, to be designated for expedited processing as provided by this Notice. Unless otherwise stated below for a specific waiver, the expedited process under this Notice will only be used for approving waivers with an effective end date that is not later than March 31, 2023.

Each waiver request must also specify the grant number of each grant to which the recipient wants the waiver flexibility to apply. HUD will not approve any waivers using this expedited process for grants awarded with funds from FY 2023 or later. HUD's approval of these waivers will not change the period of performance or approved budget period for any grant, and these waivers cannot be used to assist individuals or families beyond the period of performance/budget period end date(s) for the grant(s) for which a waiver is made.

a. CoC/YHDP - Suitable Dwelling Size and Housing Quality Standards – Permanent Housing – Rapid Re-housing Projects

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.

This notice provides for expedited processing of recipient requests to waive the regulatory requirements at 24 CFR 578.75(c), suitable dwelling size, and 24 CFR 982.401(d)(2)(ii) as required by 24 CFR 578.75(b) so that recipients carrying out Permanent Housing – Rapid Re-housing projects are able to assist program participants to move into housing with more than two persons per room. Recipients should balance the use of this waiver with the recommendations of public health officials to limit community spread and reduce the risks to high-risk populations

consistent with the *Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners*.

This waiver is only made available with respect to recipients providing Permanent Housing-Rapid Re-housing assistance for leases and occupancy agreements executed by recipients and subrecipients between the effective date of the HUD-approved waiver and March 31, 2023. Assisted units with leases and occupancy agreements signed during this period of time 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, 2023.

b. CoC/YHDP - Fair Market Rent for Individual Units and Leasing Costs

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.

This notice provides for expedited processing of recipient requests to waive the regulatory requirement at 24 CFR 578.49(b)(2) and use grant funds to pay for rent above FMR when leasing individual units under leases executed before the expiration of this Notice, so long as the rent paid for individual units meets the rent reasonableness standard at 24 CFR 578.49(b)(2).

This waiver is only made available with respect to leases of individual units between the effective date of the HUD-approved waiver and March 31, 2023, although the recipient may request that the waiver remain applicable to a lease of an individual unit in which a program participant is assisted during that time period may continue to benefit from this waiver through until the earlier of the end of the lease or the end of the period of performance/approved budget period(s) for the recipient's grant(s) covered by the waiver.

c. CoC/YHDP – One - Year Lease Requirement

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 at least one year that is renewable and terminable for cause.

This notice provides for expedited processing of recipient requests to waive the regulatory requirements at 24 CFR 578.3 and 24 CFR 578.51(l)(1) that recipients execute a lease that is for a term of less than one year, so long as the initial term of the lease is at least one month.

d. CoC/YHDP - Permanent Housing Rapid Re-housing Limit to 24 Months of Rental Assistance

24 CFR 578.37(a)(1)(ii) and 24 CFR 578.51(a)(1)(i) defines medium term rental assistance as 3-24 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.

This notice provides for expedited processing of recipient requests to waive the regulatory requirements at 24 CFR 578.37(a)(1)(ii), 24 CFR 578.37(a)(1)(ii)(C), and 24 CFR 578.51(a)(1)(i) in permanent housing rapid-rehousing projects for program participants who will have reached their 24-months of rental assistance between the publication of this Notice and March 31, 2023 and who will not be able to afford their rent without additional rental assistance. Program participants who have reached their 24-months of rental assistance during this time will be eligible to receive additional rental assistance from the effective date of a HUD-approved waiver until March 31, 2023.

e. CoC/YHDP Disability Documentation for Permanent Supportive Housing

24 CFR 578.103(a) requires recipients 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).

This notice provides for expedited processing of recipient requests to waive the regulatory requirements at 24 CFR 578.103(a) and 24 CFR 578.103(a)(4)(i)(B) that staff-recorded observation of disability be confirmed and accompanied by other evidence no later than 45 days from the application for assistance documentation until the expiration of this Notice. Note that 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 the expiration of this Notice.

f. ESG – Assisting Program Participants with Subleases

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 that program participants sublease or lease from a person other than the owner or the owner’s agent.

This notice provides for expedited processing of recipient requests to waive the regulatory requirements in 24 CFR 576.105 and 576.106 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, provided that the recipient is able to assure HUD that:

- i) The waiver will be used only when the program participant chooses to rent a unit through a legally valid sublease with the primary leaseholder for the unit; and
- ii) The recipient has developed written policies to apply the requirements of 24 CFR 576.105, 24 CFR 576.106, 24 CFR 576.409, and 24 CFR 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 primary leaseholder.

In addition, to be considered for expedited processing, the waiver request must specify the period during which the recipient needs to house program participants using this flexibility, and that period must not extend beyond March 31, 2023, although the recipient may request that the waiver remain applicable to any sublease approved during that period until the earlier of the end of the program participant's otherwise allowable term of assistance or the end of the period of performance/approved budget period(s) for the recipient's grant(s) covered by the waiver.

g. ESG - Durational Limits on Housing Relocation and Stabilization Services

24 CFR 576.105(a)(5) prohibits a program participant from receiving more than 24 months of utility payments under ESG during any three-year period. 24 CFR 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 housing. 24 CFR 576.105(c) limits the total amount of time a program participant may receive services under 24 CFR 576.105(b) to 24 months during any 3-year period.

This notice provides for expedited processing of recipient requests to waive one or more of the 24-month limits under 24 CFR 576.105(a)(5), 24 CFR 576.105(b)(2), and 24 CFR 576.105(c) for program participants who continue to need assistance beyond the 24-month limit(s) to maintain housing stability. Additionally, this notice provides for expedited process of recipient requests to waive 24 CFR 576.105(b)(2) to allow recipients to pay for housing stability case management for up to 60 days while the program participant is seeking housing.

h. ESG - 24-Month Limit on Rental Assistance

24 CFR 576.106(a) limits the total amount of time a program participant may receive rental assistance to 24-months during a 3-year period.

This notice provides for expedited processing of recipient requests to waive the 24-month limit on rental assistance under 24 CFR 576.106(a) for program participants who have received 24-months of rental assistance over a 3-year period, but will not be able to afford their rent without additional rental assistance.

i. ESG - Restriction of Rental Assistance to Units with Rent at or Below FMR

24 CFR 576.106(d)(1) provides that 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.

This notice provides for expedited processing of recipient requests to waive the FMR-based limitation in 24 CFR 576.106(d)(1), so that a recipient can provide rental assistance to program participants in units that are above FMR, so long as the rent is reasonable when compared to other similar unassisted units.

However, to be considered for expedited processing, the waiver request must specify the period during which the recipient needs to house program participants using this flexibility, and that period must not extend beyond March 31, 2023, although the recipient may request that the waiver remain applicable to any unit in which a program participant is assisted during that time period may continue to benefit from this waiver through until the earlier of the end of the program participant's otherwise allowable term of assistance or the end of the period of performance/approved budget period(s) for the recipient's grant(s) covered by the waiver.

j. HOPWA – Time Limits for Short-Term Housing Facilities and Short-Term Rent, Mortgage, and Utility Payments

24 CFR 574.330(a)(1) limits the total amount of time an eligible individual or family can reside in a short-term supported housing facility to no more than 60 days during any six-month period. It also limits the Short-Term Rent, Mortgage, and Utility (STRMU) payments to prevent the homelessness of the tenant or mortgagor of a dwelling to no more than 21 weeks in any 52-week period.

This notice provides expedited processing of grantee requests to waive the 21-week and 60-day limitations in 24 CFR 574.330(a)(1). The waiver requests must meet the following criteria for expedited processing:

- i) The grantee or project sponsor documents, on an individual household basis, that a good faith effort has been made to assist the household to achieve housing stability within the time limits specified in the regulations, but that financial needs or health and safety concerns have prevented the household from doing so; and
- ii) The grantee or project sponsor has written policies and procedures outlining efforts to regularly re-assess the needs of assisted households, as well as processes for granting extensions based on documented financial needs or health and safety concerns.
- iii) The waiver request must specify the alternative limits to be used in place of the 21-week and 60-day limit as applicable, and those limits must not exceed 52 weeks and 120 days, respectively.
- iv) The waiver request must specify the period during which the grantee needs to provide assistance consistent with this waiver, and that period must not extend beyond March 31, 2023.

Also, although waivers of the 60-day limit may be requested for all HOPWA grants, including grants funded under the CARES Act, HUD does not intend to consider waivers of the 21-week STRMU time limit for HOPWA grants covered by Notice CPD-20-05, which provides special flexibility as authorized by the CARES Act for grants funded under the CARES Act and for the portion of a grantee's FY 2020 formula funds that have been approved under its Annual Action Plan (AAP) for allowable activities to prevent, prepare for, and respond to the COVID-19 pandemic as described in section V. of Notice CPD-20-05.

k. HOPWA – Space and Security

24 CFR 574.310(b)(2)(iii) provides that in all housing assisted under § 574.300(b) (3), (4), (5), and (8), each resident must be afforded adequate space and security for themselves and their belongings.

This notice provides expedited processing of requests to waive this requirement, so that grantees and project sponsors operating housing facilities and shared housing arrangements can place more than two people in a room or reconfigure rooms, common areas and other appropriate spaces for temporary quarantine services of eligible individuals and families affected by COVID-19. Grantees and project sponsors must justify in the waiver request why the grantee or project sponsor cannot provide adequate space and security in accordance with the standard provided at 24 CFR 574.310(b)(2)(iii). The waiver request must also specify the period during which the grantee needs to use this waiver, and to be considered for expedited processing under this Notice, that effective period must not extend beyond March 31, 2023.

I. HOPWA – Self-Certification of Income and Credible Information on HIV Status

24 CFR 574.530 requires HOPWA grantees and project sponsors to maintain records to document compliance with HOPWA requirements, which includes determining the eligibility of a family to receive HOPWA assistance. Eligibility is restricted to a low-income person living with HIV and their family.

This notice provides expedited processing of requests to waive the requirement at 24 CFR 574.530 to have source documentation of HIV status at the time of the determination of eligibility. Grantees and project sponsors would be able to utilize written certification of HIV status and income to document eligibility of an individual or family seeking assistance if the grantee or project sponsor agrees to obtain source documentation of HIV status and income eligibility within 90 days of obtaining the written certification. Grantees and project sponsors must provide justification as to why source documentation cannot be acquired at the time of the eligibility determination. The waiver request must also specify the period during which the grantee is requesting to use this waiver, and to be considered for expedited processing under this Notice, that effective period must not extend beyond March 31, 2023.

2. Instructions for submitting expedited regulatory waiver for items in Section D.1 above

This section explains the process for submitting expedited waiver requests and provides directions to recipients on how to submit requests for processing. A recipient may request a waiver of the HUD requirements listed above and must include a justification of why the waiver is needed. No waiver(s) requested may be implemented unless written approval from HUD has been obtained. To ensure expedited processing, recipients should email their waiver requests to SNAPSinfo@hud.gov with a copy to their local field office CPD Director. Each request should include:

- a. An email subject line of: “Expedited Pandemic Regulatory Waiver Request”; and
- b. The following information in the body of the email:

- Recipient information, including the name of recipient and name and contact information of a person within the organization to contact with questions about the waiver request;
- The grant number(s) the recipient is requesting the waiver of regulatory requirements apply to;
- Specific waiver flexibilities requested, including requested effective period and other conditions under which grantee proposes to use the waiver, consistent with the specific conditions for expedited waiver processing discussed in Section D.1.; and
- A specific justification for each waiver that shows good cause consistent with HUD's reasons for expediting the waiver review under this Notice (i.e., to help recipients and subrecipients prevent the spread of COVID-19 and to facilitate assistance to eligible communities and households economically impacted by COVID-19) and including the required information identified in the waiver's description in Section D.1.

Requests that do not include each of the above, or do not include information specifically required for expedited processing of a particular waiver as stated in Section D, will still be considered, but may not receive expedited processing as provided in this Notice. A template has been provided in Appendix A of this Notice that recipients may use to provide the required information. Using this template to submit your waiver request is optional.

Following submission, CPD will reply via email confirming that the request has been received. The CPD Program Office will prepare a final determination for approval by its Principal Deputy Assistant Secretary, and recipients will receive a signed response to the waiver request via email.

E. General process for waiver requests (that are not expedited)

Recipients may initiate regulatory waiver requests with the appropriate field office. Each regulatory waiver request must identify the regulation from which relief is sought and present a good cause justification pursuant to 24 CFR 5.110. The general process for non-expedited waiver requests is as follows:

1. The recipient submits the request for a waiver identifying the grant number(s) the waiver would apply to and with good cause justification pursuant to 24 CFR 5.110 to the CPD Director at its Field Office;
2. The Field Office submits the request with its recommendation to HUD Headquarters;
3. The CPD Program Office prepares a final determination for approval by its Assistant Secretary; and
4. Recipients receive the signed response to its waiver request by email.

HUD may request additional information from the recipient when preparing its final determination.

Keep in mind, as a general matter, HUD does not have the authority to waive statutory requirements; therefore, recipients should not send statutory waiver requests to HUD as they will not be approved.

Appendix A
Optional Template for Submitting Expedited Waiver Requests Under Section D.1 of this Notice

Complete the following information using one template for each of the waiver flexibilities being requested.

Recipient Name:	
Recipient Contact Name:	
Recipient Contact Email Address:	
Waiver Flexibilities Requested, including conditions under which the waiver will be used:	
Timeframe for Which Waiver Flexibility is Requested:	
Grant Number(s) for Which Waiver Flexibility is Requested:	
Good Cause Justification: (attach any additional information, as necessary)	