



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 Arthur Jemison II, Principal Deputy Assistant Secretary, D

SUBJECT: Waiver of Community Planning and Development (CPD) Grant Program and Consolidated Plan Requirements to Allow for Virtual Public Hearings in the Preparation of FY 2021 Consolidated Plans and Annual Action Plans

PURPOSE:

This memorandum explains the availability of a waiver of certain statutory and regulatory requirements associated with several CPD grant programs to prevent the spread of COVID-19 and to facilitate grantee compliance with consolidated planning citizen participation requirements. This memorandum covers consolidated plan requirements for the following CPD formula programs:

- Community Development Block Grant (CDBG),
- HOME Investment Partnerships (HOME),
- Housing Trust Fund (HTF),
- Emergency Solutions Grant (ESG), and
- Housing Opportunities for Persons with AIDS (HOPWA).

BACKGROUND:

In March 2020, the World Health Organization declared the coronavirus outbreak a pandemic. The President issued an emergency declaration, pursuant to Section 501(b) of the Stafford Act, on March 13, 2020. All 50 states, the District of Columbia, and four territories have been approved for major disaster declarations to assist with additional needs identified under the nationwide emergency declaration for COVID-19. This emergency has resulted in most states shutting down large gathering places and limiting the movement of their residents. The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) and related HUD notices provided statutory and regulatory relief to CPD recipients facing difficulties in effectively carrying out CPD programs and meeting CPD citizen participation requirements, while also striving to contain the virus, during recipients' 2019 and 2020 program years.

NOTIFICATION PROCESS:

Recipients may use the waiver described in this memorandum for as long national or local health authorities recommend social distancing and limiting public gatherings for public health reasons and while the grantee or participating jurisdiction is preparing its Consolidated Plan or Annual Action Plan for FY 2021. Any affected grantee or participating jurisdiction taking advantage of this waiver shall document in writing the conditions giving rise to the need to use this waiver and shall maintain such documentation for HUD's review. This waiver authority is only in effect until August 16, 2021.

WAIVER AUTHORITY:

Several recipients have inquired about the availability of a waiver of CPD program consolidated planning citizen participation requirements in subsequent program years to further facilitate citizen participation 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. These regulatory provisions provide HUD the authority to make waiver determinations for the consolidated planning requirements for all CPD formula programs. Note that HUD does not have waiver authority for any fair housing or civil rights requirements, including but not limited to those articulated at 24 CFR 5.105.

WAIVER AVAILABILITY:

To enable CPD recipients to fulfill citizen participation requirements in a timely manner and prevent the spread of COVID-19 during this ongoing nationwide emergency, I find that good cause exists pursuant to 24 CFR 5.110 and 24 CFR 91.600 to provide the regulatory waiver set forth below. To use the 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.

Requirement: Public hearings, as set forth in a local government, State, HOME program consortium, State non-entitlement area, or insular area citizen participation plan.

Citations: 24 CFR 91.105(e)(1) and (2), 24 CFR 91.115(b)(3)(i), 24 CFR 91.401, and 24 CFR 570.431, 570.441, and 570.486(a)(5)

Explanation: Public hearings, as set forth in a CPD recipient's citizen participation plan, provide the opportunity for citizens to comment on the housing and community development needs of a jurisdiction. They also allow a recipient to obtain citizens' views and respond to proposals and questions. At least one such hearing must be held before a proposed consolidated plan is published for comment.

Justification: HUD recognizes that efforts to contain COVID-19 require limiting public gatherings, such as those often used to obtain citizen views and respond to proposals and questions. Therefore, HUD waives provisions found at 24 CFR 91.105(e)(1) and (2), 24 CFR 91.115(b)(3)(i), 24 CFR 91.401, and 24 CFR 570.431, 570.441, and 570.486(a)(5) to the extent necessary to establish the following alternative requirement: For as long as national or local health authorities recommend social distancing and limiting public gatherings for public health reasons, CDBG, ESG, HOME, HTF, and HOPWA grantees, units of general local government receiving CDBG funds from state, or insular area CDBG grantees, may hold virtual hearings in lieu of in-person public hearings to fulfill public hearing requirements imposed by 42 USC 12707(a)(3) and the regulations at 24 CFR part 91 and 24 CFR part 570, or by the grantee's citizen participation plan for the preparation of FY2021 Consolidated Plans, Action Plans and any substantial amendments thereto or to prior year plans.

For each virtual hearing, a grantee shall provide reasonable notification and access for citizens in accordance with the grantee's certifications, timely responses from local officials to all citizen questions and issues, and public access to all questions and responses. Therefore, grantees may use online platforms to hold virtual hearings that provide public access to questions and responses and provide timely responses from local officials.

Additionally, grantees must take appropriate actions to encourage the participation of all residents, including the elderly, minorities, persons with limited English proficiency, as well as persons with disabilities, consistent with the jurisdiction's citizen participation plan. Grantees may use online platforms such as Zoom, Slack, Facebook Live, Google Meet, and Microsoft Teams to hold virtual hearings that facilitate public access to all questions and responses and provide timely responses from local officials, so long as such platforms ensure equal access and opportunity for all residents to participate in the process. Grantees should be aware of the difference in functionality with respect to the various types of technology available in order to ensure that any online hearings comply with fair housing and civil rights requirements. For example, Zoom may have functionality that provides greater accessibility compared to other platforms. Grantees should also consider other practices and protocols that expand upon the procedures set forth in the citizen participation plan, which may be necessary to ensure access to the citizen participation process. Such practices include the preparation and distribution of accessible and appropriate language versions of any prepared materials in advance of a virtual hearing.

Applicability: This authority is in effect through August 16, 2021.