

Using Annual Formula CDBG, FY 2019 and 2020 CDBG to prevent, prepare for, and respond to coronavirus, and CDBG-CV Funds for Rent or Mortgage and Arrearages Subsistence-Type Payments

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Subsistence-Type Payments of Rent or Mortgage and Arrearages

- Q. May annual formula CDBG funds be used to make rent or mortgage payments?
- A. In accordance with 24 CFR 570.207(b)(4), CDBG funds may **only** be used to make subsistence-type payments such as rent or mortgage directly to a service provider, such as a landlord or lender, on behalf of an individual or family, and these emergency payments may be made for a period of no more than three consecutive months. The regulation states that CDBG funds may not be used for income payments but provides an exception for emergency grant payments. Under the exception, emergency grant payments are eligible as a public service under the authority of 24 CFR 570.201(e).
- Q. What effect will providing this assistance have on a grantee's annual formula CDBG program?
- A. Providing rent or mortgage payments for up to three consecutive months is costly. Public services carried out with annual formula CDBG funds are subject to the 15 percent public services cap. This may mean that the grantee may not be able to continue to provide other public services at the level it was doing so previously.
- Q. Is this also the case if CDBG-CV funds and annual formula CDBG 2019 and 2020 funds used to prevent, prepare for, and respond to coronavirus are used to pay emergency rent/mortgage payments on behalf of individuals and families?
- A. No. The Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136) (CARES Act) suspended the 15 percent public services cap for public services carried out with Fiscal Year 2019 and 2020 annual formula CDBG funds and CDBG-CV funds that are used for activities that prevent, prepare for, and respond to coronavirus.
- Q. Does the requirement that the emergency payments continue for no more than three consecutive months apply to annual formula CDBG 2019 and 2020 and CDBG-CV funds used to prevent, prepare for, and respond to coronavirus?
- A. No. The CDBG-CV Federal Register Notice (FR-6218-N-01, effective August 7, 2020), states that emergency payments may be made on behalf of individuals and families for a period of no more than **six** consecutive months to prevent, prepare for, and respond to coronavirus.
- Q. May CDBG funds be used to pay arrearages?
- A. Yes. In the annual formula CDBG program, CDBG funds may be used to pay rent or mortgage arrearages on behalf of individuals and families for up to three consecutive months.
- When using FY 2019 and 2020 funds to prevent, prepare for, or respond to coronavirus, or CDBG -CV funds, the period for emergency payments has been extended from three consecutive to six consecutive months in the CDBG-CV Federal Register Notice. Moreover, to use the extended period of six consecutive months for expenditures for FY 2019 and 2020 funds, the use of funds requirement for prevent, prepare for, or respond to coronavirus and the guidance on the period is applicable.
- Q. Are there any issues or concerns that a grantee should take into consideration if it decides to use CDBG /CDBG-CV funds to pay rent or mortgage payments on behalf of individuals and families?

- A. Yes. As a major concern, this type of funding can be used to assist individuals/families who without this assistance may become homeless, a grantee should ensure that if rent/mortgage payments are made to bring them current that the individual/family also has the financial means to pay subsequent rent or mortgage payments. If the individual/family does not have the means, they could potentially be homeless in the immediate future, suggesting the need for a different program design.

A concern for annual formula CDBG funds if this activity is assisted using 2018 or earlier, or using 2019 or 2020 funds that do not prevent, prepare for, or respond to coronavirus, is compliance with the 15 percent public services cap. The 15 percent public services cap is statutory and cannot be waived. Exceeding the public services cap will result in the grantee being required to repay the amount spent over the cap with non-federal funds.

Grantees should also be aware that providing rental assistance beyond 100 days will trigger the lead-based paint visual inspection requirements. The last two Q&As in this document provide more detailed information on how this requirement is triggered.

- Q. May the grantee impose additional requirements on individuals and families seeking CDBG assistance for rent/mortgage payments?
- A. Yes. Although HUD advises simplicity, the grantee should create and implement policies and procedures for emergency grant payments. Beyond what is necessary to document the CDBG eligibility of the activity and national objective, the grantee may also impose requirements for documentation such as proof of seeking or loss of employment or credit counseling. The grantee should assist applicants in fulfilling the requirements outlined in its policies and procedures and any additional requirements must not contradict the CDBG programmatic requirements, including program-related civil rights and equal opportunity requirements.
- Q. May a grantee use annual formula CDBG or CDBG-CV funds to make rent/mortgage payments to anyone that requests such assistance?
- A. No. Each CDBG-assisted activity must meet a national objective, and the CARES Act and CDBG-CV Federal Register Notice did not suspend this requirement. Emergency payments are usually carried out under the low- and moderate-income national objective, so the grantee must include documentation covering each individual or family requesting assistance with rent/mortgage payments demonstrating they are income-eligible. According to 24 CFR 570.506(b), the grantee may document income in several ways, including collecting a verifiable certification from the assisted person that his or her family income does not exceed the applicable income limit established in accordance with the regulations.
- Q. What CDBG national objective does the provision of emergency, subsistence-type payments generally meet?
- A. This activity usually meets the low- and moderate-income limited clientele national objective provision at 24 CFR 570.208(a)(2) An activity which benefits a limited clientele, at least 51 percent of whom are low- or moderate-income persons. This can be accomplished by exclusively serving “presumed benefit” persons such as elderly, homeless, or severely disabled persons. Another way to qualify a limited clientele activity is to require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low- and moderate-income limit, or for the grantee’s policies to limit the activity exclusively to low- and moderate-income persons.
- Q. When does the emergency payments’ covered period begin?
- A. For each assisted individual or family, the three-month period (for CDBG) or six-month period (for CDBG-CV and FY19-20 CDBG funds used to prevent, prepare for, and respond to coronavirus) begins on the date the first payment is made to a provider on behalf of an individual or family.

- Q. Does the covered period of either up to three or six consecutive months cover all arrearages or just those within the timeframe?
- A. The emergency payments period begins when the payment is made, not when the individual's or family's arrearage began. The start of the period of three consecutive months for annual CDBG that is not being used in response to the coronavirus or of up to six consecutive months for 2019, 2020, and CDBG-CV funds used in response to the coronavirus is related to when payments are made from the grant, not the date of arrearages. If an individual or family is one or more months in arrears, a grantee may cover some or all the amount in arrears within the first month of assistance and continue through the applicable consecutive period of assistance. For example, for an individual four months in arrears on rent who applied for emergency payment assistance under CDBG-CV, the covered period may include the four months they are in arrears within the payment for the first month of assistance then continue for up to five more months to fulfill the up-to-six-consecutive-month-period allowance. The grantee must base the assistance on a need (for CARES Act, the need must be related to coronavirus preparation, response, and recovery) and cover necessary and reasonable costs. If a grantee chooses to implement subsistence payments covering arrears, the grantee's policies and procedures for the program should set clear parameters for the types, amounts, and timing for assistance for each individual or family.
- Q. What if the individual or family needs assistance with amounts they are in arrears to become current, though they may be able to skip a month within the period, would they still receive assistance for up to six consecutive months?
- A. Yes. The assistance is based on need and if CDBG funds are needed to cover the arrears within the first month of assistance and the individual or family may be able to cover the second month then need assistance for the third month, that is an acceptable method because it is within the period of up to three or six consecutive months (based on funding source and use). Also, this demonstrates that the assistance is based on need and covers necessary and reasonable costs. If a grantee chooses to implement subsistence payments using this method the policies and procedures for the program should outline clear parameters.
- Q. When does the requirement for a lead-based paint visual inspection come in?
- A. The 100-day emergency grace period begins at the time of payment going forward. Once the assistance period reaches 100 days, a visual lead-based paint inspection is required. If assistance is being provided to an individual or family that covers three months of arrears within the first month of assistance, the 100 days begins at the time of payment going forward. As an emergency payments assistance period approaches the end of the 100-day grace period, the grantee must undertake visual inspection if it wishes to continue FY2019 or FY2020 CDBG or CDBG-CV assistance.
- Q. Given the coronavirus, is it acceptable to do a remote visual lead-based paint inspection?
- A. For assistance to continue past 100 days, a visual inspection is required. Because of the coronavirus it may not be possible for an onsite visual inspection to occur. If the situation does not allow for an onsite visual inspection, the owner(s) or a surrogate may perform a remote visual inspection. Grantees are encouraged to develop policies and procedures that allow this method and the necessary documentation required for it.

Resources

The Department has technical assistance providers that may be available to assist grantees in their implementation of CDBG Funds for activities to prevent or respond to the spread of infectious disease. Please contact your local CPD Field Office Director to request technical assistance from HUD staff or a TA provider.

- CDBG-CV Federal Register Notice: https://www.hud.gov/sites/dfiles/CPD/documents/CDBG-CV_Note_Federal_Register_Publication_2002-08.pdf
- Submit your questions to: CPDQuestionsAnswered@hud.gov
- COVID-19 (“Coronavirus”) Information and Resources: <https://www.hud.gov/coronavirus>
- CPD Program Guidance and Training: <https://www.hudexchange.info/program-support/>