



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

PRINCIPAL DEPUTY ASSISTANT SECRETARY  
FOR COMMUNITY PLANNING AND DEVELOPMENT

MEMORANDUM FOR: All CDBG Entitlement Grantees and All CPD Field Office Directors

FROM: James Arthur Jemison II, Principal Deputy Assistant Secretary, D

SUBJECT: Community Development Block Grant (CDBG) Entitlement Program  
Restarting the Corrective Actions Process for Untimely Expenditure

This memorandum will provide explanatory background and a temporary change in process for the application of corrective actions for untimely expenditure in the CDBG Entitlement Program. HUD's goal, through the implementation of this process, is to address the expenditure challenges that many grantees are facing right now and to lessen the administrative burdens on HUD personnel in Headquarters and the Field.

Background:

On September 30, 2021, the corrective action suspension for violations of the CDBG timeliness standard ended. Section IV.B. *Flexibilities, Waivers, and Alternative Requirements* of Federal Register Notice FR-6218-N-01, ***Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs***, (hereinafter, the "CDBG-CV Notice"), dated August 17, 2020, provided a number of flexibilities, waivers, and alternative requirements for the administration of fiscal year 2019 and 2020 CDBG grants. First among these was Section IV.B.1. *Timeliness*, that recognized the extenuating circumstances under which many local governments were operating due to coronavirus and that suspended, effective January 21, 2020, all corrective actions, sanctions, and informal consultations for timeliness for fiscal year 2020. Based on government restrictions, closures, shelter-in-place orders, and social distancing guidance related to coronavirus, HUD determined that all entitlement grantees had factors beyond their reasonable control that, to HUD's satisfaction, impacted the carrying out of CDBG-assisted activities in a timely manner. As a result, HUD determined that corrective actions related to timeliness for fiscal year 2020 were not appropriate. HUD advised grantees that this suspension did not eliminate the timely expenditure requirements set forth in 24 CFR 570.902. HUD continued to run expenditure reports and notified grantees of deficiencies when their grant fund balances exceeded the regulatory standard. HUD subsequently extended this suspension, by memoranda issued quarterly, through the end of the 2021 fiscal year.

Responding to the COVID-19 pandemic and resulting economic crisis has had an impact on local governments nationwide. This situation requires a measured and deliberate approach in

the restart of the timeliness corrective actions process. This memorandum sets forth a policy change that fulfills HUD's statutory obligation, acknowledges the unprecedented amounts of funding grantees are struggling to spend, and lessens the administrative burdens on HUD Community Planning and Development (CPD) HQ and Field personnel.

### The Timeliness Requirement - HUD's Statutory Obligation

In accordance with Section 104(e)(1) of the Housing and Community Development Act of 1974, as amended, HUD must determine on at least an annual basis whether a grantee is carrying out its program in a timely manner. The regulation at 24 CFR 570.902 implements this statutory requirement. A grantee must have a line of credit ratio of 1.50 (or less) times its most recent entitlement grant 60 days prior to the end of its program year to be considered timely (2.00 or less for insular areas). In November 2001, HUD established the following two-step corrective actions process for grantees that failed to meet the 1.50 timeliness standard:

- For first time violations of the standard, HUD sends a warning letter to the grantee, usually with a request for a workout plan that describes how the grantee will be timely by its next test date.
- For violations of the standard for a second consecutive year or more, HUD invites the grantee, in accordance with 24 CFR 570.911, to an informal consultation at HUD Headquarters. In this meeting, the Department provides the grantee the opportunity to demonstrate to HUD's satisfaction that the lack of timeliness is due to circumstances beyond its reasonable control. After the consultation, if HUD maintains its finding that the grantee is untimely, HUD may reduce the grantee's next year grant by the amount it exceeds the standard.

### Change to the CDBG Timeliness Corrective Action Policy

Because of the unprecedented funding levels available to grantees through the 2023 fiscal year, HUD is revising its corrective action process to make it more progressive.

The timeliness test date for January 1 program year start date grantees is November 2<sup>nd</sup>. Accordingly, the corrective action suspension took effect after the test date for some grantees for FY2020. If a grantee was determined untimely in FY2020, before the suspension took effect, HUD will consider the grantee's FY2020 status when determining the appropriate corrective action for a grantee who is again untimely in FY2022. HUD will not consider the timeliness status in FY2021.

For all other grantees, to determine the appropriate corrective action for a grantee who is untimely in FY2022 or FY2023, HUD will consider the grantee's timeliness status on January 21, 2020, for FY2019, as if FY2019, FY2022, and FY2023 are consecutive years. HUD will not consider the timeliness status of grantees for FY2020 and FY2021.

The new policy is as follows:

- A grantee that was timely in FY2019, or FY2020, if the test date occurred before the suspension, and is untimely for the first time in FY2022 or FY2023, will receive a warning letter from the field office.
- A grantee that was untimely for the first time in FY2019 or FY2020, if the test date occurred before the suspension, and is untimely a second consecutive year in FY2022, receives a letter from the field office requiring it to submit an acceptable workout plan demonstrating that it will be timely by its next test date.
- A grantee that was untimely for the second consecutive year in FY2019, or FY2020, if the test date occurred before the suspension, and is untimely for three consecutive years or more in FY2022, receives an invitation to an informal consultation at HUD Headquarters.

The table below illustrates the new policy for grantees whose timeliness test occurs on February 1<sup>st</sup> or later:

**CDBG Timeliness Status Table (2/1/2020 Test Date or later)**

<b>Grantee timeliness status in FY19 on its test date</b>	<b>Action taken if untimely in FY 2022</b>	<b>Action taken if still untimely in FY2023</b>
Timely	Sent warning letter	Required to submit workout plan
Untimely for the first time	Required to submit workout plan	Invited to informal consultation
Untimely for the second consecutive year or more	Invited to informal consultation	Invited to informal consultation

This change to the CDBG Timeliness policies and procedures will remain in effect for a two-year period beginning October 1, 2021, the start of the 2022 fiscal year, and conclude on September 30, 2023, the end of the 2023 fiscal year. HUD will continue to monitor a grantee's line of credit adjusted ratio (including program income) in the application of this policy.

#### Potential for, and General Issues Related to, Grant Reductions

A grantee invited to an informal consultation at HUD Headquarters will still have the opportunity to make its case for an exception to the timeliness standard based on circumstances beyond its reasonable control. The burden on a grantee will be to clearly demonstrate with

compelling information how factors beyond its reasonable control caused significant delays in program implementation and affected its timely performance. A grantee should not delay improving its drawdown ratio on the basis that it may meet this burden. If a grantee fails to demonstrate that the untimeliness was due to factors beyond its reasonable control, HUD's determination following the meeting may result in reducing the grantee's next grant up to and including the amount exceeding the 1.50 timeliness standard. For example, if a grantee's annual grant is \$1 million and the 60-day adjusted ratio is 1.57, the maximum amount of the reduction is \$70,000 ( $1.57 - 1.50 = .07 \times \$1 \text{ million} = \$70,000$ ). HUD may also grant an exception to the standard based on the circumstances set forth by the grantee as beyond its reasonable control. HUD will not reduce a grant or sanction a grantee more than the amount of its next year's grant from HUD.

Any grant reduction will affect the amount of CDBG funds available for planning and administration. By law, no more than 20% of any grant may be used for these purposes. If there is a significant grant reduction or a reduction to zero of a new grant, there will be limited or zero CDBG funds to pay the grantee's administrative staff.

### Conclusion

The Department expects that this more progressive corrective action process will not only provide relief to grantees struggling to spend extra dollars but also lessen the burden on its field office personnel monitoring the expenditure of these extra dollars. Nevertheless, HUD does want to remind grantees of certain obligations regarding funds under their control and implications for the management of those funds.

The policy set forth in this memo does not extend to the timely expenditure of CDBG-CV funds. The period of performance obligations set forth in Section III.B.7.(a.) *Period of Performance* of the CDBG-CV Notice still apply to CDBG-CV funds. CDBG-CV funds have been excluded [see Section III.B.7.(b.) of the CDBG-CV Notice] from the CDBG Timeliness adjusted ratio calculation. Nevertheless, HUD reminds grantees that any program income generated from the use of CDBG-CV funds accrues to the grantee's annual formula CDBG program adjusted line of credit. Grantees should consider this and other factors in their program design decisions for the use of CDBG-CV dollars.

Grantees may direct questions about how this policy specifically affects their community to their assigned local HUD field office. HUD field office staff may direct general questions about this policy to C. Duncan Yetman, Deputy Director, Entitlement Communities Division, at [c.duncan.yetman@hud.gov](mailto:c.duncan.yetman@hud.gov).