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

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

JAMES JEMISON Digitally signed by JAMES JEMISON Date: 2021.09.03 17:32:24 -04'00'

SUBJECT: Availability of Waivers of Community Planning and Development Grant Program and Consolidated Plan Requirements to Facilitate Recovery from Hurricane Ida

PURPOSE:

This memorandum explains the availability of suspensions and waivers of certain statutory and regulatory requirements associated with several Community Planning and Development (CPD) grant programs to address damage and facilitate recovery from Hurricane Ida in areas covered by a major disaster declaration under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), DR-4611-LA, dated August 29, 2021, and as may be amended (the "**declared-disaster areas**").

This memorandum covers the following CPD programs:

- Community Development Block Grant (CDBG)
- HOME Investment Partnerships (HOME)
- Housing Trust Fund (HTF)
- Housing Opportunities for Persons With AIDS (HOPWA),
- Emergency Solutions Grant (ESG), and
- Continuum of Care Program (CoC).

This memorandum also announces a simplified notification process for grantees of these programs to use the suspension and waiver flexibility of CPD statutory and regulatory requirements identified below to expedite the delivery of assistance. CPD Field Office Directors, Deputy Directors, and Program Managers are instructed to inform CPD grantees operating within their jurisdictions of the content of this memorandum.

SUPPORTING DOCUMENTATION AND NOTIFICATION PROCESS:

CPD grantees located in the counties included in the declared-disaster areas may use the statutory suspensions and regulatory waivers described in this memorandum to assist affected CPD program beneficiaries and CPD program-eligible families to address damage caused by the disaster. CDBG and HOPWA grantees may also use some of the waivers outside of declared-disaster areas, as explained in those program-specific sections below. The waiver flexibility made available under this memorandum must be used to assist only eligible families who have registered with the Federal

Emergency Management Agency (FEMA). The grantee must provide notification in writing, either through mail or e-mail, to the CPD Director of the HUD Field Office serving its jurisdiction no less than three days before the grantee anticipates using the suspension or waiver flexibility. Further directions on notifying HUD can be found in Attachment #1. Each recipient must also update its program records to include written documentation of the specific conditions that justify each use of a waiver, consistent with the justifications provided below.

WAIVER AUTHORITY:

Hurricane Ida caused substantial damage to communities in Louisiana, and is the subject of the major disaster declaration, DR-4611-LA, dated August 29, 2021 (the "disaster"). Consequently, many individuals and families residing in the declared-disaster areas have been displaced from their homes, including the current beneficiaries of various CPD programs, and families eligible to receive CPD program assistance. Some may be continuing to live in homes with habitability deficits, particularly related to potable water and electricity. CPD-funded grantees and subrecipients are in the process of locating these beneficiaries and CPD program-eligible families and placing them in available housing, facilities, and hotels and motels on an emergency basis, or assisting with emergency repairs. Some grantees and subrecipients have inquired about the availability of suspensions and waivers of various CPD program requirements to facilitate assistance to individuals and families.

Section 122 of the Housing and Community Development Act of 1974 (HCDA), as amended (42 USC 5321), and Section 290 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA), as amended (42 USC 12840), authorize HUD to suspend, respectively, certain CDBG and HOME statutory requirements to assist grantees of these programs in addressing the damage in areas for which the President has declared a disaster under title IV of the Stafford Act.

Upon determination of good cause, in accordance with 24 CFR 5.110, HUD may waive regulatory provisions subject to statutory limitations. Additional regulatory waiver authority is in 24 CFR 91.600 and 24 CFR 570.5. These provisions provide HUD the authority to make waiver determinations for the CDBG, HOME, HOPWA, ESG, and CoC programs. To adequately address damage caused by the disaster and disaster recovery needs among the affected jurisdictions in the declared-disaster areas, I hereby find good cause to provide the statutory suspensions and regulatory waivers of CPD grant program requirements as set forth below. Provisions that are not specifically suspended or waived remain fully effective.

ESG, COC, and HOPWA WAIVER AVAILABILITY: Unless otherwise provided in this Notice, the following waivers are available for existing grants under the ESG, CoC, and HOPWA Programs consistent with the terms of this Notice. Subject to funding availability, these waivers will apply to future grants to the same extent as provided for existing grants, unless otherwise prohibited or provided by HUD. Recipients are responsible for documenting that each waiver is used only under the circumstances and conditions permitted under this Notice.

Requirements for HOPWA Grantees Outside of the Declared-Disaster Areas: HOPWA grantees using funds outside of the declared-disaster areas may request waiver flexibility for (18) HOPWA - Self-Certification of Income and Credible Information on HIV Status to serve affected eligible families who have registered with the Federal Emergency Management Agency (FEMA). The grantee must provide notification to the CPD Field Office Director, including all the details listed in Attachment #1.

CONSOLIDATED PLAN REQUIREMENTS

1. <u>Citizen Participation Public Comment Period for Consolidated Plan Amendment</u>

Requirement: 30-day Public Comment Period for an Amendment to Consolidated Plan

Citations: 24 CFR 91.105(c)(2), and (k); 24 CFR 91.115(c)(2), and (i); and 24 CFR 91.401

Explanation: A CPD grantee may amend an approved consolidated plan in accordance with 24 CFR 91.505. Substantial amendments to the consolidated plan, such as the addition of new activities or a change in the use of grant funds from one eligible activity to another, are subject to the citizen participation process in the grantee's citizen participation plan. The citizen participation plan must provide citizens with 30 days to comment on substantial amendments.

Justification: While there is not yet an announcement of FY 2022 CPD formula allocations, with Congress still engaged in budget deliberations, several grantees in the declared-disaster areas will be interested in amending an approved consolidated plan to include or revise activities in response to the disaster. Given the need to expedite actions to respond to Hurricane Ida, HUD waives the 30-day public comment requirement of 24 CFR 91.105(c)(2), and (k), 91.115(c)(2), and (i) and 91.401 and reduces the public comment period for grantees preparing amendments to prior year plans to no less than seven days. In reducing the comment period to seven days, HUD is balancing the need to quickly assist families dealing with the aftereffects of Hurricane Ida while continuing to provide reasonable notice and opportunity for citizens to comment on the proposed uses of CDBG, HOME, HTF, HOPWA, and ESG funds.

Applicability: This authority is in effect through the end of the grantee's 2021 program year and is limited to facilitating preparation of FY 2021 Plan substantial amendments and substantial amendments to prior year plans.

2. <u>Citizen Participation Reasonable Notice and Opportunity to Comment</u>

Requirement: Reasonable Notice and Opportunity to Comment

Citations: 24 CFR 91.105(c)(2) and (k) and 24 CFR 91.115(c)(2) and (i)

Explanation: As noted above, the regulations at 24 CFR 91.105 (for local governments) and 91.115 (for States) set forth the citizen participation plan requirements for grantees. For substantial amendments to the consolidated plan, the regulations require the grantee to follow its citizen participation plan to provide citizens with reasonable notice and opportunity to comment. The citizen participation plan must state how reasonable notice and opportunity to comment will be given.

Justification: HUD recognizes the destruction wrought by Hurricane Ida, such as prolonged power outages, makes it difficult for impacted jurisdictions within the declared-disaster areas to provide notice to citizens in accordance with their citizen participation plans. Therefore, HUD waives 24 CFR 91.105(c)(2) and (k) and 24 CFR 91.115(c)(2) and (i) to allow these grantees to determine what constitutes reasonable notice and opportunity to comment given their circumstances.

Applicability: This authority is in effect through the end of the 2021 program year for grantees within the declared-disaster areas.

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

3. CDBG — New Housing Construction

Requirement: Prohibition on Use of Funds for New Housing Construction

Citations: Section 105(a) of the HCDA, 24 CFR 570.207(b)(3) (Entitlements)

Explanation: New housing construction is not generally an eligible activity under Section 105 of HCDA. It may be undertaken indirectly through CDBG assistance provided to Community Based Development Organizations or other nonprofit entities specified in Section 105(a)(15) of the HCDA.

Justification: HUD recognizes that Hurricane Ida caused damage and destruction to a large number of housing units within the declared-disaster areas. Allowing new housing construction will enable CDBG grantees to replace affordable housing units that were lost as a result of the hurricane and flooding. To expedite the rebuilding process, HUD suspends Section 105(a) of HCDA and waives 24 CFR 570.207(b)(3) to permit grantees to directly use CDBG funds for new housing construction activities to address damage from the hurricane. In addition to the flexibility provided by the suspension of the statute, grantees are encouraged to take advantage of the reconstruction provisions at Section 105(a)(4) of HCDA.

Applicability: This suspension and waiver will remain in effect through the end of the 2022 program year for all CDBG grantees in the declared-disaster areas.

4. CDBG – Suspension of Public Services Cap

Requirement: Cap on Public Services Expenditures

Citations: Section 105(a)(8) of the HCDA, 24 CFR 570.201(e)(1) or (2) (Entitlements)

Explanation: Section 105(a)(8) and 24 CFR 570.201(e) limit the amount of CDBG funds that may be used to provide public services to 15 percent of the grantee's most recent CDBG grant plus 15 percent of program income received.

Justification: HUD suspends the provision of Section 105(a)(8) of HCDA and waives 24 CFR 570.201(e) to permit CDBG grantees to exceed the 15 percent cap on public service expenditures.

The waiver will allow CDBG grantees to pay for additional support services related to the effects of Hurricane Ida on individuals and families. Anticipated services include, but are not limited to, the provision of food and bottled water, emergency shelter, case management and related services to help residents in the declared-disaster areas until long-term recovery resources become available. These costs are eligible under the public services provision of Section 105(a)(8) of HCDA and 24 CFR 570.201(e) of the regulations.

Applicability: This suspension and waiver shall be available to CDBG grantees assisting persons and families who have registered with FEMA in connection with the disaster. Grantees will be required to annotate their performance reports in such a way that activities for which waivers have been granted are distinguishable from regular program activities. Also, the grantee will be required to describe each activity in its annual action plan so the activity is clearly distinguishable as a designated disaster recovery activity.

This authority is in effect through the end of the grantee's 2022 program year. If at that time any grantee believes additional time is needed to carry out public service activities over the 15 percent public service cap or its exception percentage pursuant to 24 CFR 570.201(e)(2), then the Department is willing to consider an additional request for suspension of a grantee's public services cap.

5. <u>CDBG – Emergency Grant Payments for up to Six Months</u>

Requirement: Emergency Grant Payments

Citation: 24 CFR 570.207(b)(4) (Entitlements)

Explanation: The CDBG regulations at 24 CFR 570.207(b)(4) prohibit income payments, but permit emergency grant payments for three months. "Income payments" means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities. Emergency grant payments made over a period of up to three consecutive months to the providers of such items and services on behalf of an individual or family are eligible public services.

Justification: HUD waives the provisions of 24 CFR 570.207(b)(4) to permit emergency grant payments for items such as food, clothing, housing (rent or mortgage), or utilities for up to six consecutive months. While this waiver allows emergency grant payments to be made for up to six consecutive months, the payments must still be made to service providers as opposed to the affected individuals or families.

Many individuals and families have been forced to abandon their homes due to power outages, flooding, wind damage, and other damage associated with Hurricane Ida. The waiver will allow CDBG grantees, including grantees providing assistance to evacuees outside the declared-disaster areas, to pay for the basic daily needs of individuals and families affected by the disaster on an interim basis.

Applicability: This waiver is available to CDBG grantees, located within and outside of the declared-disaster areas, to assist persons and families who have registered with FEMA in connection with Hurricane Ida. This authority is in effect through the end of the grantee's 2022 program year. This waiver aligns with waivers currently in effect for CDBG coronavirus (CDBG-CV) grants. The six- month periods allowed by waiver for CDBG and CDBG-CV shall not be used consecutively for the same beneficiary.

HOME PROGRAM

6. HOME – Relief from Certification Requirements on Use of HOME Funds for Tenant-Based Rental Assistance (TBRA)

Requirement: Certification Related to Use of HOME funds for TBRA

Citations: Section 212(a)(3)(A)(i) of NAHA, 24 CFR 91.225(d)(1) (Local Governments), 24 CFR 91.325(d)(1) (States), 24 CFR 91.425(a)(2)(i) (Consortia) and 24 CFR 92.209(b) (Certifications)

Explanation: A participating jurisdiction that intends to use HOME funds to provide TBRA is required to certify that the provision of such assistance is an essential part of its consolidated plan.

Justification: This suspension and waiver is required to relieve participating jurisdictions of the administrative burden of determining and certifying needs that are obvious.

Applicability: The suspension of the TBRA certification requirements applies to the participating jurisdiction's FY 2021, FY 2022 and FY 2023 consolidated plan/annual action plans.

7. HOME- Suspension of the 10% Administration and Planning Cap

Requirement: Limitation on the Use of HOME Funds for Administrative Costs

Citations: Section 212(c) of NAHA and 24 CFR 92.207

Explanation: These provisions limit the amount of HOME funds that a participating jurisdiction may use for administrative and planning costs associated with its HOME program to 10 percent of its annual HOME allocation, plus any program income received. These provisions are suspended and waived to enable the participating jurisdiction to expend up to 20 percent of its FY 2021 and FY 2022 allocation and program income received for administrative and planning costs.

Justification: This suspension and waiver are required to provide the participating jurisdiction adequate funds to pay for the increased cost of administering HOME-related disaster relief activities, and to relieve the participating jurisdiction of the burden of identifying other general funds to pay these costs.

Applicability: This suspension and waiver apply to the FY 2021and FY 2022 HOME allocations of participating jurisdictions in the declared-disaster areas.

8. HOME – Suspension of Matching Contribution Requirements

Requirement: Match Contributions

Citations: 24 CFR 92.218 and 92.222(b)

Explanation: This provision requires all HOME participating jurisdictions to contribute throughout the fiscal year to housing that qualifies as affordable housing under the HOME program. The contributions must total no less than 25 percent of the HOME funds drawn from the participating jurisdiction's HOME Investment Trust Fund Treasury account. Reducing the match requirement for the participating jurisdiction by 100 percent for FY 2022 and FY 2023 will eliminate the need for the participating jurisdiction to identify match for HOME projects related to the damage caused by Hurricane Ida. The requirement that the participating jurisdiction must submit a copy of the Presidential major disaster-declaration is waived.

Justification: Given the urgent housing needs created by Hurricane Ida and the substantial financial impact the participating jurisdiction will face in addressing those needs, the approval of a match reduction will relieve the participating jurisdiction from the need to identify and provide matching contributions to HOME projects.

Applicability: This match reduction applies to funds expended by a participating jurisdiction located in the declared-disaster area from October 1, 2020, through September 30, 2023. The suspension also applies to State-funded HOME projects located in declared-disaster areas.

9. HOME- Suspension and Waiver of CHDO Set-aside

Requirement: Set-aside for Community Housing Development Organizations (CHDOs)

Citations: Section 231 of NAHA and 24 CFR 92.300(a)(1)

Explanation: These provisions establish a set-aside for CHDOs. The participating jurisdiction must use 15 percent of each annual allocation for housing owned, developed, or sponsored by CHDOs.

Justification: This suspension and waiver are required to relieve the participating jurisdiction of requirements that may impede the obligation and use of funds to expeditiously provide housing to displaced persons and repair properties damaged by Hurricane Ida.

Applicability: This requirement is reduced to zero percent for the FY 2021, FY 2022 and FY 2023 allocations of participating jurisdictions in the declared-disaster areas (including the state participating jurisdiction).

10. <u>HOME- Waiver of Property Standards for HOME-assisted Units</u>

Requirement: HOME Property Standards for Units Rehabilitated with HOME Assistance

Citations: 24 CFR 92.251

Explanation: This provision requires that housing assisted with HOME funds meet property standards based on the activity undertaken, i.e., homebuyer assistance, and state and local standards and codes or model codes for rehabilitation and new construction. Property standard requirements are waived for repair of properties damaged by Hurricane Ida. Units must meet State and local health and safety codes. The lead housing safety regulations established in 24 CFR Part 35 are not waived.

Justification: This waiver is required to enable the participating jurisdiction to meet the critical housing needs of families whose housing was damaged and families who were displaced by Hurricane Ida.

Applicability: This waiver applies only to housing units located in the declared-disaster areas which were damaged by the disaster and to which HOME funds are committed within two years of the date of this memorandum.

11. <u>HOME- Suspension and Waiver of Maximum Per Unit Subsidy Limit</u>

Requirement: Maximum Per Unit Subsidy Limit

Citations: Section 212(e) of NAHA, 24 CFR 92.250(a)

Explanation: The total amount of HOME funds that the participating jurisdiction may invest on a per unit basis may not exceed the per unit dollar limitations established under section 221(d)(3) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to an area in which the housing is located. As HUD has discontinued the section 221(d)(3) mortgage insurance program, HUD established an interim policy directing participating jurisdictions to use the Section 234-Condominium Housing basic mortgage limits, for elevator-type projects that apply to the area in which the housing is located. This interim policy and the underlying statutory and regulatory requirement are being suspended and waived.

Justification: Due to the damage caused by Hurricane Ida, many housing units may require substantial funding to either complete the renovation or reconstruction. In addition, the costs for new construction of affordable housing may escalate due to the demand for labor and materials. These high or escalating costs may exceed the established maximum per unit subsidy limits for HOME-assisted projects. Suspending the maximum per unit subsidy limit will provide the participating jurisdiction with the needed flexibility to assist affected low-income families.

Applicability: This suspension and waiver applies to projects in the declared-disaster areas that receive a commitment of HOME funds within two years of the date of this memorandum. The suspension and waiver also apply to State-funded HOME projects located in the declared-disaster areas.

12. <u>HOME- Suspension of Owner-Occupied Housing Maximum Value/Sales Price Limitation</u>

Requirement: Homeownership Housing Maximum Value/Sales Price Limitation

Citations: Section 215(b)(1) (NAHA), 24 CFR 92.254(a)(2)

Explanation: This provision requires that the sales price or maximum after-rehabilitation value of HOME-assisted homeownership housing not exceed 95 percent of the area median sales price.

Justification: This suspension and waiver is necessary to provide the participating jurisdiction with flexibility to assist affected low-income homeowners to repair damage to their homes caused by Hurricane Ida and low-income homebuyers to purchase available, standard housing in local market areas.

Applicability: This suspension and waiver applies to: 1) units damaged by the Hurricane Ida that are being rehabilitated or reconstructed with HOME funds; or 2) units being purchased by persons directly affected by the disaster (as evidenced by FEMA registration), to which HOME funds are committed within two years of the date of this memorandum. The suspension and waiver also apply to State funded HOME projects located in the declared-disaster areas.

13. <u>HOME- Suspension of Various TBRA Program Requirements</u>

Requirement: Tenant-Based Rental Assistance: Subsidy and program requirements

Citations: Section 212(a)(3)(A)(ii) of NAHA; 24 CFR 92.209(c), (e), (h)(1) and (i)

Explanation: Section 212(a)(3)(A)(ii) of NAHA requires a participating jurisdiction to establish written tenant selection policies and criteria for TBRA and 24 CFR 92.209(c) of the regulation requires those tenant selection policies and criteria to be based on the local housing needs and priorities established in the participating jurisdiction's consolidated plan.

Section 92.209(e) requires that the term of a HOME TBRA contract made with a landlord begin on the first day of the lease.

Section 92.209(h)(1) limits the subsidy that a participating jurisdiction may pay toward a TBRA recipient's rent to the difference between the participating jurisdiction's rent standard for the unit size and 30 percent of the family's monthly adjusted income.

Section 92.209(i) requires that units occupied by TBRA recipients meet the housing quality standards established in 24 CFR 982.401.

Justification: Suspending these provisions will provide the participating jurisdiction with greater flexibility to use tenant-based rental assistance as an emergency housing resource.

Applicability: The suspension of the requirements related to the content of the consolidated plan applies to the FY 2021, FY 2022 and FY 2023 consolidated plan/annual action plans of the participating jurisdiction.

The provision of 24 CFR 92.209(e) that the start date of a TBRA contract begin on the first day of the term of a tenant's lease is waived for TBRA contracts a participating jurisdiction executes for persons or families displaced by Hurricane Ida for a period of 24 months after the date of this memorandum. The other provisions of 24 CFR 92.209(e) are not waived.

The provision of 24 CFR 92.209(h)(1) imposing the maximum TBRA subsidy amount a participating jurisdiction may provide to a family under HOME TBRA is waived for TBRA recipients who are displaced by Hurricane Ida for a period of 24 months after the date of this memorandum. The other provisions of 24 CFR 92.209(h) are not waived.

The waiver of the housing quality standards requirements at 24 CFR 92.209(i) applies to units leased by TBRA recipients who were displaced by Hurricane Ida and are being assisted through a HOME TBRA program funded by the participating jurisdiction for a period of 24 months after the date of this memorandum. Units must meet any applicable State and local health and safety codes and requirements. The lead safe housing requirements of 24 CFR part 35, subpart M, made applicable to units leased by recipients of HOME TBRA by the HOME regulation at 24 CFR 92.355, are not waived.

14. <u>HOME- Income Documentation</u>

Requirement: Source Documentation for Income Determinations for HOME

Citations: 24 CFR 92.203(a)(1) and (2)

Explanation: These sections of the HOME regulation require initial income determinations for HOME beneficiaries by examining source documents covering the most recent two months. Many families whose housing was destroyed or damaged by Hurricane Ida will not have any documentation of income and will not be able to qualify for HOME assistance if the requirement remains effective.

Justification: This waiver permits the participating jurisdiction to use self-certification of income, as provided in §92.203(a)(1)(ii), in lieu of source documentation to determine eligibility for HOME assistance of persons displaced by Hurricane Ida.

Applicability: This waiver applies only to families displaced by the disaster (as documented by FEMA registration) whose income documentation was destroyed or made inaccessible by Hurricane Ida and remains in effect for six months from the date of this memorandum. The participating jurisdiction or, as appropriate, HOME project owner, is required to maintain: 1) a record of FEMA registration to demonstrate that a family was displaced by Hurricane Ida; and 2) a statement signed by appropriate family members certifying to the family's size and annual income and that the family's income documentation was destroyed or is inaccessible.

HOUSING TRUST FUND (HTF) PROGRAM

15. <u>HTF- Income Documentation</u>

Requirement: Source Documentation for Income Determinations for HTF

Citations: 24 CFR 93.151(c)

Explanation: This section of the HTF regulation requires initial income determinations for HTF beneficiaries by examining source documents covering the most recent two months. Many families whose homes were destroyed or damaged by Hurricane Ida will not have any documentation of income and will not be able to qualify for HTF assistance if the requirement remains effective.

Justification: This waiver permits the grantee to use self-certification of income, as provided in section 93.151(d)(2), in lieu of source documentation to determine initial eligibility of persons displaced by Hurricane Ida for HTF assistance.

Applicability: This waiver applies only to families displaced by the disaster (as documented by FEMA registration) whose income documentation was destroyed or made inaccessible by Hurricane Ida and remains in effect for six months from the date of this memorandum. The grantee or, as appropriate, HTF project owner, is required to maintain: 1) a record of FEMA registration to demonstrate that a family was displaced by Hurricane Ida; and 2) a statement signed by appropriate family members certifying to the family's size and annual income and that the family's income documentation was destroyed or is inaccessible.

HOUSING OPPORTUNITY FOR PERSONS WITH AIDS (HOPWA) PROGRAM

16. <u>HOPWA – Property Standards</u>

Requirement: Property Standards for HOPWA

Citation: 24 CFR 574.310(b)(2), Housing Quality Standards

Explanation: Section 574.310(b)(2) of the HOPWA regulations provides minimum housing quality standards that apply to all housing for which HOPWA funds are used for acquisition, rehabilitation, conversion, lease, or repair; new construction of single room occupancy dwellings and community residences; project or tenant-based rental assistance; or operating costs under 24 CFR 574.300(b)(3), (4), (5), or (8).

Justification: This waiver is required to enable grantees and project sponsors to expeditiously meet the critical housing needs of the many eligible families in the declared-disaster areas.

Applicability: The property standard requirements in 24 CFR 574.310(b)(2) are waived for units in the declared-disaster areas that are or will be occupied by HOPWA-eligible households, provided that the units are free of life-threatening conditions as defined in Notice PIH 2017-20 (HA). Grantees must ensure that these units meet HOPWA HQS within 60 days of the date of this memorandum.

17. <u>HOPWA – FMR Rent Standard</u>

Requirement: Rent Standard for HOPWA Rental Assistance

Citation: 24 CFR 574.320(a)(2), Rent Standard

Explanation: Grantees must establish rent standards for their rental assistance programs based on FMR (Fair Market Rent) or the HUD-approved community-wide exception rent for unit size.

Justification: This waiver is required to enable HOPWA grantees to expedite efforts to meet the critical housing needs of low-income people living with HIV and their families in the declared-disaster areas. Waiving the rent standard requirement, while still requiring that the unit be rent reasonable in accordance with §574.320(a)(3), will make more units available to HOPWA eligible individuals and families in need of permanent housing in the declared-disaster areas.

Applicability: The rent standard requirement is waived for any rent amount that takes effect during the two-year period beginning on the date of this memorandum for any individual or family who is renting or executes a lease for a unit in the declared-disaster areas. Grantees and project sponsors must still ensure the reasonableness of rent charged for units in the declared-disaster areas in accordance with §574.320(a)(3).

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

Requirement: Source Documentation for Income and HIV Status Determinations

Citation: 24 CFR 574.530, Recordkeeping

Explanation: Each grantee must maintain records to document compliance with HOPWA requirements, which includes determining the eligibility of a family to receive HOPWA assistance.

Justification: This waiver will permit HOPWA grantees and project sponsors, located within and outside of the declared-disaster areas, to rely upon a family member's self-certification of income and credible information on their HIV status (such as knowledge of their HIV-related medical care) in lieu of source documentation to determine eligibility for HOPWA assistance for individuals and families displaced by the disaster. Many individuals and families displaced by the disaster whose homes have been destroyed or damaged will not have immediate access to documentation of income or medical records and, without this waiver, will be unable to document their eligibility for HOPWA assistance.

Applicability: This waiver is available to HOPWA grantees, located within and outside of the declared-disaster areas, to assist displaced persons and families who have registered with FEMA in connection with Hurricane Ida. Grantees must require written certification of HIV status and income of such individuals and families seeking assistance and obtain source documentation of HIV status and income eligibility within six months of the date of this memorandum.

EMERGENCY SOLUTIONS GRANTS (ESG) PROGRAM

19. <u>ESG – Term Limits on Rental Assistance and Housing Relocation and Stabilization Services</u>

Requirement: Term limits on Rental Assistance and Housing Relocation and Stabilization Services

Citations: 24 CFR 576.106(a), 576.105(a)(5), and 576.105(b)(2)

Explanation: The ESG regulation at 24 CFR 576.106(a) prohibits a program participant from receiving more than 24 months of ESG rental assistance during any three-year period. Section 576.105(a)(5) prohibits a program participant from receiving more than 24 months of utility payments under ESG during any three-year period. Section 576.105(b)(2) limits the provision of housing stability case management to 30 days while the program participant is seeking permanent housing.

Justification: Waiving the 24-month caps on rental assistance, utility payments, and housing stability case management assistance will assist individuals and families, both those already receiving assistance and those who will receive assistance subsequent to the date of this memorandum, to maintain stable permanent housing in place or in another area and help them return to their hometowns, as desired, when additional permanent housing is available.

Applicability: The 24-month limits on rental assistance and housing relocation and stabilization services are waived for individuals and families who meet both of the following criteria:

1. The individual or family lives in a declared-disaster area or was displaced from a declared-disaster area as a result of Hurricane Ida; and
2. The individual or family is currently receiving rental assistance or housing relocation stabilization services or begins receiving rental assistance or housing relocation stabilization services within two years after the date of this memorandum.

For these individuals and families, ESG funds may be used to provide up to 36 consecutive months of rental assistance, utility payments, and housing stability case management, in addition to the 30 days of housing stability case management that may be provided before the move into permanent housing under 24 CFR 576.105(b)(2). HUD will also consider further waiver requests to allow assistance to be provided for longer than three years, if the recipient demonstrates good cause.

20. <u>ESG – Restriction of Rental Assistance to Units with Rent at or Below Fair Market Rent (FMR)</u>

Requirement: Restriction of rental assistance to units with rent at or below Fair Market Rent (FMR)

Citation: 24 CFR 576.106(d)(1)

Explanation: Under 24 CFR 576.106(d)(1), 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.

Justification: This waiver is required to enable ESG recipients to meet the critical housing needs of individuals and families whose housing was damaged or who were displaced as a result of Hurricane Ida. Waiving the FMR restriction will make more units available to individuals and families in need of permanent housing.

Applicability: The FMR restriction is waived for any rent amount that takes effect during the two-year period beginning on the date of this memorandum for any individual or family who is renting or executes a lease for a unit in a declared-disaster area. However, the affected recipients and their subrecipients must still ensure that the unit in which ESG assistance is provided to these individuals and families meet the rent reasonableness standard. HUD will consider requests to waive the FMR restriction for rent amounts that take effect after the two-year period, if a recipient demonstrates good cause.

21. <u>ESG – Housing Standards</u>

Requirement: Restriction of ESG Rapid Re-housing and Homelessness Prevention assistance for units that do not meet the minimum standards for permanent housing.

Citation: 24 CFR 576.403(c)

Explanation: If ESG funds are used to help a program participant remain in or move into housing, the housing must meet the minimum habitability standards provided in 24 CFR 576.403(c).

Justification: This waiver is needed to enable ESG recipients to expeditiously meet the critical housing needs of many eligible individuals and families in the declared disaster area.

Applicability: The ESG housing standards at 24 CFR 576.403(c) are waived for units in the declared disaster area that are or will be occupied by individuals or families eligible for ESG Rapid Re-housing or Homelessness Prevention assistance, provided that:

1. Each unit must still meet applicable state and local standards;
2. Each unit must be free of life-threatening conditions as defined in Notice PIH 2017-20 (HA); and
3. Recipients assure all units in which program participants are assisted meet the ESG housing standards within 60 days of the date of this memorandum.

22. ESG – Shelter Standards

Requirement: Restriction of using ESG funds to pay for emergency shelter operations or renovation costs for shelter facilities that do not meet the minimum shelter standards.

Citation: 24 CFR 576.403(b)

Explanation: If ESG funds are used for shelter operations costs, the shelter must meet the minimum safety, sanitation and privacy standards under 24 CFR 576.403(b). If ESG funds are used to convert a building into a shelter, rehabilitation a shelter, or otherwise renovate a shelter, the shelter must meet the minimum safety, sanitation, and privacy standards in 24 CFR 576.403(b) as well as applicable state or local government safety and sanitation standards.

Justification: This waiver is needed to enable ESG recipients to expeditiously meet the critical emergency shelter needs of many eligible individuals and families in the declared disaster area.

Applicability: The ESG shelter standards at 24 CFR 576.403(b) are waived for shelters in the declared disaster area that are or will be occupied by individuals and families eligible for ESG emergency shelter assistance, provided that:

1. Each shelter must meet applicable state and local standards;
2. Each shelter must be free of life-threatening conditions defined in Notice PIH 2017-20 (HA); and
3. Recipients must ensure that these shelters meet ESG shelter standards within 60 days of the date of this memorandum.

23. ESG – Limited Waiver of 24-Month Expenditure Deadline for Rapid Re-housing and Homelessness Prevention Assistance and Related Administrative and HMIS Costs

Requirement: A recipient's grant must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the recipient.

Citation: 24 CFR 576.203(b)

Explanation: Section 576.203(b) of the ESG regulations requires all expenditures under an ESG grant to be made within 24 months after the date HUD signs the grant agreement with the recipient. For purposes of this requirement, expenditure means either an actual cash disbursement for a direct charge for a good or service or an indirect cost, or the accrual of a direct charge for a good or service or an indirect cost.

Justification: Providing a limited waiver of the expenditure deadline as described in the applicability paragraph below will support recipients' ability to assist individuals and families as provided by waivers 19 and 20 above.

Applicability: The expenditure deadline is waived only for costs of providing homelessness prevention and rapid re-housing assistance to individuals and families under the flexibility by waivers 19 and 20 above and reasonable HMIS and administrative costs related to that assistance.

CONTINUUM OF CARE (COC) PROGRAM

24. CoC – Permanent Housing Rapid Re-housing Limit to 24 Months of Rental Assistance

Requirement: CoC Program funds may be used to provide short-term (up to 3 months) and/or medium-term (for 3-24 months) tenant-based rental assistance.

Citation: 24 CFR 578.37(a)(1)(ii), 24 CFR 578.37(a)(1)(ii)(C), and 24 CFR 578.51(a)(1)(i)

Explanation: The CoC Program regulation at 24 CFR 578.37(a)(1)(ii) and 24 CFR 578.51(a)(1)(i) defines medium-term rental assistance as 3 to 24 months and 24 CFR 578.37(a)(1)(ii) and 24 CFR 578.37(a)(1)(ii)(C) limits rapid re-housing projects to medium-term rental assistance, or no more than 24 months.

Justification: Waiving the 24-month cap on rapid re-housing rental assistance will assist individuals and families affected by Hurricane Ida and the flooding, including those already receiving rental assistance as well as those who will receive rental assistance within 2 years of the date of this memorandum, to maintain stable permanent housing in another area and help them return to their hometowns, as desired, when additional permanent housing becomes available. It will also provide additional time to stabilize individuals and families in permanent housing where vacancy rates are extraordinarily low due to the hurricane and flooding. Experience with prior disasters has shown us some program participants need additional months of rental assistance to identify and stabilize in housing of their choice, which can mean moving elsewhere until they are able to return to their hometowns.

Applicability: For two years from the date of this memorandum, the 24-month limit on rental assistance is waived for individuals and families who meet the following criteria:

1. The individual or family lives in a declared-disaster area or was displaced from a declared-disaster area as a result of Hurricane Ida; and
2. The individual or family is currently receiving rental assistance or begins receiving rental assistance within two years after the date of this memorandum.

25. One Year Lease Requirement

Requirement: Program participants residing in permanent housing, including Permanent Supportive Housing and RRH, must be the tenant on a lease for a term of at least one year that is renewable for terms that are a minimum of one month long and terminable only for cause.

Citation: 24 CFR 578.3, definition of permanent housing, 24 CFR 578.51(l)(1)

Explanation: The CoC Program regulation at 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 one year that is renewable and terminable only for cause.

Justification: Waiving the one-year lease requirement will allow program participants receiving PSH or RRH assistance under the CoC Program to enter into leases that have an initial term of less than one year, so long as the leases have an initial term of more than one month. While some program participants desire to identify new housing, many program participants displaced during the disaster desire to return to their original permanent housing units when repairs are complete because of proximity to schools and access to public transportation and services. Additionally, it will permit new program participants to identify permanent housing units in a tight rental market where many landlords prefer lease terms of less than one year and might not be willing to alter their policies regarding the length of lease terms when considering permanent housing applicants. Therefore, HUD had determined that waiving the one-year lease requirement will improve the housing options available to program participants in permanent housing projects.

Applicability: The one-year lease requirement is waived for two years beginning on the date of this memorandum, so long as the initial lease term of all leases is for more than one month, and the leases are renewable for terms that are a minimum of one month long and the leases are terminable only for cause.

26. <u>CoC - One-time Limit on Moving Costs</u>

Requirement: Recipients of supportive service funds may pay for moving costs one-time per program participant to provide reasonable moving assistance to that program participant.

Citation: 24 CFR 578.53(e)(2)

Explanation: The CoC Program regulation at 24 CFR 578.53(e)(2) limits recipients of supportive service funds to using those funds to pay for moving costs to provide reasonable moving assistance, including truck rental and hiring a moving company, to only one-time per program participant.

Justification: Waiving this provision will permit recipients to pay for reasonable moving costs for program participants more than once and will assist program participants affected by Hurricane Ida as well as those who become homeless in the areas impacted by Hurricane Ida to stabilize in housing locations of their choice. Many current program participants received assistance moving into their assisted units prior to being displaced by Hurricane Ida, and experience with prior disasters has shown us some program participants will need additional assistance moving to a new unit while others will need assistance moving back to their original units after repairs are completed. Further, until the housing market stabilizes, experience has shown many program participants will need to move more than once during their participation in a program to find a unit that best meets their needs.

Applicability: The one-time limit on moving costs is waived for two years beginning on the date of this memorandum.

27. CoC - Fair Market Rent (FMR) Cap on Rent Paid with Leasing Funds

Requirement: When leasing funds are used to pay rent for individual housing units, the rent paid must be reasonable in relation to rents being charged for comparable units, the rent must not exceed rents currently being charged for comparable units, and the rent paid must not exceed HUD determined FMR.

Citation: 24 CFR 578.49(b)(2)

Explanation: The CoC Program regulation at 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.

Justification: Waiving the limit on using leasing funds to pay above FMR for individual units above FMR, but not greater than reasonable rent, will provide recipients and subrecipients with more flexibility in identifying housing options for program participants in declared-declared areas. The rental markets in areas impacted by disasters are often more expensive after the disaster due to decreased housing stock and increased rents. These more expensive rents are not reflected in the HUD-determined FMRs.

Applicability: The FMR restriction is waived for any lease executed by a recipient or subrecipient to provide transitional or permanent supportive housing during the 2-year period beginning on the date of this memorandum. The affected recipient or subrecipient must still ensure that rent paid for individual units that are leased with CoC Program leasing dollars meet the rent reasonableness standard in 24 CFR 578.49(b)(2) meaning the rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size, type, quality, amenities, facilities, and management services.

ADDITIONAL INFORMATION:

Due to the ongoing coronavirus pandemic, HUD has already provided certain waivers, program flexibilities, and alternative requirements to all CPD grantees that Louisiana grantees may also take advantage of in preparation of their FY21 Consolidated Plans. First among these is the waiver of the public hearing requirement for all CPD grantees in preparation of their FY21 Consolidated Plans, Action Plans, and substantial amendments thereto or to prior year plans. HUD has established an alternative requirement allowing CPD grantees to hold virtual hearings in lieu of in-person public hearings. Further details may be found in the 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. To facilitate a grantee's ability to incur pre-award costs, HUD has also granted a waiver for HOME and CDBG grantees to allow the date of the grant agreement to be the program year start date or the date the consolidated plan is received, whichever is earlier. More details on this waiver provision may be found at Availability of Waivers of Community Planning and Development Grant Program Requirements to Facilitate the Ability to Incur Pre-Award Costs in FY 2021.

Grantees are encouraged to go to CPD's COVID-19 page and follow the links there to identify additional waivers and flexibilities and check it often for updates.

Grantees that are assisting CPD program beneficiaries and CPD program-eligible persons and their families displaced by the disaster may require additional relief from the CPD program requirements beyond the waivers described in this memorandum. If a grantee identifies such a need, it should contact the CPD Director in the appropriate HUD field office. Contact information for CPD field offices are available at: https://www.hudexchange.info/programs/cpd-field-office-directory/.

CPD Directors in receipt of notification from a grantee intending to use the waiver flexibilities listed in this memorandum should forward the grantee's mail or email notification to the appropriate CPD Headquarters program Office Director, noted below, within 14 days for statutory waiver-reporting purposes.

Contact the following persons regarding questions concerning the waivers and suspensions requested peculiar to the program office: regarding the citizen participation and CDBG waivers, James E. Höemann, Director, OBGA Entitlement Communities Division at (202) 708-1577; regarding the HOME and HTF waivers, Virginia Sardone, Director, OAHP at (202) 708-2684; regarding the HOPWA waivers, Rita Harcrow, Director, OHH at (202) 708-1934; and regarding the ESG waivers, Norm Suchar, Director, SNAPS at (202) 402-5015.

Attachment

Attachment #1 to Memorandum:
Availability of Suspensions and Waivers of CPD Grant Program and Consolidated Plan Requirements to Address Damage and Facilitate Recovery in the Declared-Disaster Areas

This attachment provides further information on the process that CPD grantees shall be instructed to follow when taking advantage of the suspension and waiver flexibility of CPD statutory and regulatory requirements addressed in the memorandum.

Grantees must send mail or email notification to the Community Planning and Development Director of the HUD Field Office serving the grantee.

The mail or email notification must be sent **three days** before the grantee anticipates using waiver flexibility, and include the following details:

- Requestor's name, title, and contact information;
- Declared-disaster area(s) where the waivers will be used;
- Date on which the grantee anticipates first use of the statutory suspension and/or waiver flexibility; and
- A list of the suspensions and waiver flexibilities the grantee will use:
  1. Consolidated Planning – Citizen Participation Public Comment Period for Consolidated Plan Amendment
  2. Consolidated Planning – Citizen Participation and Reasonable Notice and Opportunity to Comment
  3. CDBG – New Housing Construction
  4. CDBG – Suspension of Public Services Cap
  5. CDBG – Emergency Grant Payments for up to Six Months
  6. HOME – Relief from Certification Requirements on Use of HOME Funds for Tenant-Based Rental Assistance (TBRA)
  7. HOME – Suspension of the 10% Administration and Planning Cap
  8. HOME – Suspension of Matching Contribution Requirements
  9. HOME – Suspension and Waiver of CHDO Set-aside
  10. HOME – Waiver of Property Standards for HOME-assisted Units
  11. HOME – Suspension and Waiver of Maximum Per Unit Subsidy Limit
  12. HOME – Suspension of Owner-Occupied Housing Maximum Value/Sales Price Limitation
  13. HOME – Suspension of Various TBRA Program Requirements
  14. HOME – Income Documentation
  15. HTF – Income Documentation
  16. HOPWA – Property Standards
  17. HOPWA – FMR Rent Standard
  18. HOPWA – Self-Certification of Income and Credible Information on HIV Status
  19. ESG – Term Limits on Rental Assistance and Housing Relocation and Stabilization Services

20. ESG – Restriction of Rental Assistance to Units with Rent At or Below Fair Market Rent (FMR)
21. ESG – Housing Standards
22. ESG – Shelter Standards
23. ESG – Extended Expenditure Deadline for Rapid Re-housing and Homelessness Prevention Assistance and Related Administrative and HMIS Costs
24. CoC – Permanent Housing Rapid Re-housing Limit to 24 Months of Rental Assistance
25. CoC – One Year Lease Requirement
26. CoC – One-time Limit on Moving Costs
27. CoC – Fair Market Rent (FMR) Cap on Rent Paid with Leasing Funds