

Community Development Block Grants, Coronavirus (CDBG-CV)

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Administering Agency: HUD’s Office of Community Planning and Development (CPD)

Population Targeted: Households with income less than 80% of the area median income (AMI)

Funding: \$ 5 billion

The regular Community Development Block Grant (CDBG) program is a federal program intended to strengthen communities by providing funds to improve housing, living environments, and economic opportunities, principally for persons with low- and moderate-income. At least 70% of CDBG funds received by a jurisdiction must be spent to benefit people with low- and moderate-income (less than 80% of the AMI). For more about the regular CDBG program see Chapter 8, *Community Development Block Grant Program*.

THE CARES ACT

The “CARES Act” provided up to \$5 billion in CDBG supplemental funding to be used to prepare for, prevent, and respond to the coronavirus. Of that amount, \$2 billion was distributed on April 1 to states and entitlement jurisdictions (“grantees”) using the same statutory formula used to distribute the regular, annual FY20 CDBG allocations. In addition, grantees could reallocate unused regular CDBG funds from FY19 and FY20 through the CDBG Substantial Amendment process.

A second distribution of an additional \$1 billion was to be allocated to states and insular areas “to prevent, prepare for, and respond to coronavirus within the state or insular area, including activities within entitlement and nonentitlement communities.” The “CARES Act” required this \$1 billion to be allocated based on public health needs, risk of transmission of coronavirus, number of coronavirus cases compared to the national average, and economic and housing

market disruptions, and other factors as determined by the Secretary, using the best available data.” These funds were allocated on May 11.

CPD established a method for distributing funds to states based on the three factors in the CARES Act. For public health needs, the count of low-income elderly people received 50% of the weight in the formula, and the count of children in poverty received 10%. For economic and housing market disruptions, 40% of the weight went to the aggregate count of unemployment insurance claims over the six-week period ending April 25, minus the count during the same period the year before. For risk of transmission and number of coronavirus cases compared to the national average, CPD used the per capita rate of confirmed cases as of May 3, adjusted by up to 15% more for places with rates of cases above the national average.

CPD posted on September 11, the third (final) round allocations of \$1.988 billion from the \$5 billion supplemental CDBG-CV appropriation. The “CARES Act” required HUD to allocate the \$2 billion final round directly to states or local governments at HUD’s discretion according to a formula based on factors to be determined by HUD, prioritizing risk of transmission of coronavirus, number of coronavirus cases compared to the national average, and economic and housing market disruptions resulting from coronavirus. The “CARES Act” allowed third round allocations to be made on a rolling basis based on the best available data at the time of allocation; however, HUD allocated the final round all at once.

The method for allocating the final round of CDBG-CV targeted three categories of communities: communities with a high proportion of individuals in industries with high job loss in states with high unemployment; communities with a high proportion of

businesses in industries with high job loss in states with high unemployment; and communities with households most at risk for transmission and risk of eviction, with higher amounts for states with high rates of coronavirus.

Streamlined Consolidated Plan, Annual Action Plan, and Substantial Amendment Processes

The “CARES Act” allowed CDBG grantees to amend their citizen participation plans to establish expedited procedures to draft, propose, or amend Consolidated Plans (ConPlans), Annual Action Plans, and Substantial Amendments to those plans. The streamlined procedures must provide at least five days for public notice and a reasonable opportunity to comment.

In addition, in-person public hearings are not required. Grantees may meet the public hearing requirements with virtual public hearings if health authorities recommend social distancing and limited public gatherings and if virtual public hearings provide reasonable notification and access for the public, provide timely responses from local officials to public concerns, suggestions, and questions, and the public has access to the local officials’ responses.

The deadline to submit Annual Action Plans or updates to ConPlans for FY20 was extended to August 16, 2021.

Temporary Suspension of the 15% Cap on Use of CDBG for Public Services

The CARES Act suspended the CDBG law’s 15% cap on the amount of a jurisdiction’s annual grant (and any program income) that is obligated in a program year for “public services.” The act limited the exemption from the 15% cap to “activities to prevent, prepare for, and respond to the coronavirus.” The suspension of the 15% cap applied not only to CDBG-CV funds, but also to any FY19 and FY20 CDBG reprogrammed allocations.

In the regular CDBG program, public services include those for people experiencing homelessness or elderly people, and services related to employment, crime prevention, childcare, health, drug abuse, education, fair

housing counseling, and energy conservation. CDBG funds may be used to pay for labor, supplies, and material as well as to operate and/or maintain the portion of a facility in which the public service is located. This includes the lease of a facility, equipment, and other property needed for the public service.

Importantly, the CDBG Entitlement program regulations allow jurisdictions to choose to spend CDBG for rental assistance or utility assistance to households for up to three months. This provision is found in the “Ineligible Activities” section of the Entitlement regulations at 24 CFR part 570.207(b)(4):

“(4) Income payments. The general rule is that CDBG funds may not be used for income payments. For purposes of the CDBG program, ‘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, **but excludes emergency grant payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.**”

The State CDBG program has separate regulations which do not include such a provision. HUD sub-regulatory guidance in “*Basically CDBG for States*” makes very clear a number of times, however, that although a state must follow the text of the Housing and Community Development Act, a state may use the CDBG Entitlement regulations as a “safe harbor.”

On August 20, CPD issued a waiver extending the period a household could receive emergency assistance to six consecutive months. However, later in the year grantees learned that lead hazard rules require an inspection of any housing receiving any form of HUD assistance for more than 100 days – 80 days short of six consecutive months. The extra time and expense required to comply with the lead hazard rule dissuaded grantees from taking full advantage of the six-month extension. NLIHC requested CPD waive the rule to extend it to 180 days; as of the date

Advocates' Guide went to press, a decision was not announced.

CPD posted a single “Q and A” on December 7 explaining how CDBG-CV funds may be used to make emergency utility payments to a public utility provider on behalf of a household. The one-page item explains that a utility owned by a city or county receiving CDBG-CV must ensure that the per-unit cost of delivering a utility to a household is reasonable. If a grantee-owned utility does not have an excess of revenue over expenses (does not make a profit), a fee billed to a household may be used to support the “reasonableness test” and CDBG-CV may be provided to the publicly owned utility on behalf of a household unable to pay the utility due to coronavirus. If a utility is operated in a manner that is intended to earn a profit, the grantee must calculate the per unit cost for residential customers based on the actual costs of providing the service and an allocation base that results in an equitable allocation to the grant.

Duplication of Benefits

The CARES Act required CPD to ensure that adequate procedures are in place to prevent any duplication of benefits as required by the “Robert T. Stafford Disaster Relief and Emergency Assistance Act.” Duplication of benefits (DOB) was first discussed by CPD in a *CDBG-CV COVID-19 Fact Sheet* dated July 10 and posted to CPD’s COVID-19 webpage on July 15.

A duplication of benefits occurs when a person, household, business, government, or other entity receives financial assistance from multiple sources for the same purpose, and the total assistance received for that purpose is more than the total need for assistance. Question 7 of the *Fact Sheet* adds that grant funds may not be used to pay for a particular cost if another source of financial assistance is available to *fully* pay for that same cost (emphasis added).

Question 8 states that CDBG-CV grantees must have policies and procedures in place to prevent duplication of benefits with Stafford Act FEMA funds and other “CARES Act” programs (e.g., Emergency Solutions Grant, ESG-CV funds).

Grantees may not use CDBG-CV funds for costs already *fully* covered by other programs (emphasis added). However, CPD is not saying that grantees should avoid the same uses as other CARES Act programs if unmet need exists. Rather, CPD is advising grantees to be strategic in designing programs to align funding sources with local needs.

CDBG-CV funds cannot be used to cover costs that have already been paid for or that will be paid for by another federal program, insurance, or other sources. If this occurs, the grantee will have to repay that amount to its CDBG-CV account.

Before CDBG-CV assistance is provided, a grantee must verify that subrecipients, assisted individuals or families, businesses, and other entities have not previously received or will not receive duplicative assistance from another source. The *Fact Sheet* indicates this DOB analysis may be accomplished in various ways, offering two examples:

- Requiring entities or beneficiaries to provide a self-certification indicating that they have not received a duplicative benefit.
- Requiring entities or beneficiaries to fill out a questionnaire listing potentially duplicative assistance that they have already received, or reasonably anticipate receiving.

Based on such analysis, a grantee should only use CDBG-CV funds for unmet needs or costs not met by other sources of assistance. A grantee must also require a subgrantee, individual or family, business, or other entity to agree to repay the grantee if they subsequently receive a duplicative benefit. A CDBG-CV grantee may allow payment of a cost that will be or is likely to be paid by another source in the future if the person or entity receiving the assistance enters into an agreement to repay CDBG-CV funds when the other source of assistance is received.

CPD provided additional guidance in a Memorandum dated July 13 and posted on July 29. In addition to information in the *Fact Sheet*, the Memorandum noted that because a grantee may need more than one funding source for an

activity to meet all local needs, CPD wrote that grantees may provide CDBG-CV assistance to meet needs that remain after considering other financial assistance for an activity. CPD urged grantees to strategically consider the appropriate uses of available funding sources as well as the timing of the availability of various sources for the same or similar purposes.

CPD published [CDBG-CV regulation waivers](#) on August 20 that reiterated the guidance from the *Fact Sheet* and Memorandum.

CPD sent a HUD Exchange email on December 4 announcing a [Duplication of Benefits Quick Guide](#) for CDBG-CV grantees. The *Quick Guide* was not on the [CDBG-CV webpage](#), but was on the [HUD Exchange CDBG COVID-19 webpage](#). There is little that is new in the *Quick Guide*. It reiterates information already provided in either a CDBG-CV *Fact Sheet*, the Memorandum, and the Waiver notice. The *Quick Guide* does offer two simple examples, one of which uses CDBG-CV for emergency rental assistance to cover three months of rent arrears and two months of current and future rent.

CDBG-CV WAIVERS

CPD published [CDBG-CV regulation waivers](#) on August 20. In addition to extending the ability of grantees to provide emergency rental assistance and utility assistance beyond three months to six consecutive months, the waivers addressed income targeting, length of time to spend CDBG-CV, immigration status, reporting, and duplication of benefits (see above).

Income Targeting. The CDBG statute requires 70% of a jurisdiction's CDBG funds be used to benefit low- and moderate-income households (LMI), which are households with income up to 80% of the area median income (AMI). For CDBG-CV, the notice retained the 70% LMI requirement. However, the notice stated that for CDBG-CV, the calculation of overall LMI benefit is separate from the regular annual formula CDBG calculation of overall LMI benefit. In other words, 70% of a grantee's CDBG-CV must be spent for activities that benefit LMI households – not 70% of their CDBG-CV + regular annual formula CDBG.

Length of Time to Spend CDBG-CV. Grantees must spend all CDBG-CV funds within a six-year “period of performance” established by the CDBG-CV grant agreement between CPD and the grantee. Grantees must spend at least 80% of all CDBG-CV funds by the end of the third year of the period of performance. Also, the CARES Act requires grantees to submit their CDBG-CV Action Plan and their annual Action Plan for FY19 and FY20 CDBG funds by August 16, 2021.

Immigration Status. With one exception, the notice was consistent with guidance from the National Housing Law Project that CDBG does not have any specific immigration restrictions (“Eligibility for Assistance Based on Immigration Status” [[English](#)] and [[Español](#)]). The exception has to do with employment. The Department of Homeland Security and the U.S. Citizenship and Immigration Services state that the Immigration Reform and Control Act prohibits employers from hiring and employing an individual knowing that the individual is not authorized with respect to employment. This generally applicable law applies to CDBG grantees and their subrecipients and/or contractors/subcontractors (including employees recruited under Section 3).

Reporting. The “CARES Act” required grantees to submit a quarterly report within ten days of the end of the calendar quarter. The report must include: amount of funds received; amount of funds obligated or expended for each project or activity; a detailed list of all projects or activities, including a description of the project or activity; and detailed information about any subcontracts or subgrants awarded by the grantee. The CARES Act did not require the report to contain information about race, disability, family status, or any other “Fair Housing Act” protected class. Nor was there any requirement to report the income of those assisted.

Income and race is to be reported in a CDBG grantee's Consolidated Annual Performance and Evaluation Report (CAPER). However, CAPER information is presented in the aggregate, not by individual activity. Furthermore, the notice postpones CAPER reporting until 180 days after the end of a grantee's program year (up from 90

days) – which is too late for advocates to rectify uses that they think do not meet the CDBG law or regulations, or that do not meet community priorities.

FORECAST FOR 2021

As the year progresses, CPD may issue more guidance and waivers. Check the Community Development Block Grant (CDBG) Programs COVID-19 Grantee Guidance webpage, <https://bit.ly/2Lza4l5>.

FOR MORE INFORMATION

NLIHC, 202-662-1530, www.nlihc.org.

NLIHC Fact Sheet, *Community Development Block Grants – Coronavirus (CDBG-CV)*, on NLIHC's COVID-19 website, <https://nlihc.org/coronavirus-and-housing-homelessness>.

CPD's Community Development Block Grant (CDBG) Programs COVID-19 Grantee Guidance webpage, <https://bit.ly/2Lza4l5>.

The HUD Exchange CDBG COVID-19 webpage, <https://bit.ly/2Kgulex>.