Usage of Waiver: Assisting Program Participants with Subleases

**ESG Program**

On December 30, 2021, the Department of Housing and Urban Development issued a memorandum “Availability of Additional Waivers of Community Planning and Development (CPD) Grant Program and Consolidated Plan Requirements to Prevent the Spread of COVID-19 and Mitigate Economic Impacts Caused by COVID-19. The memorandum outlined waivers of ESG Program grant requirements available to recipients of FY2021 ESG grants.

On June 15, 2022, HUD issued a memorandum that allows recipients and subrecipients to request an expedited regulatory waiver from rules that restrict program participants from receiving assistance in units they sublease from the primary leaseholder, provided that the recipient is able to assure HUD that:

The waiver will only be used when the program participant chooses to rent a unit through a legally valid sublease with the primary leaseholder for the unit and;

The recipient has developed written policies in accordance with the CoC’s Quality Assurance Standards and 24 CFR Sections 576.105, 576.106., 576.409, and 576.500(h) in order to apply the terms “owner” and “housing owner” to the primary leaseholder and the term “lease” to apply to the participant’s sublease or lease with the primary leaseholder.

* Use of Waiver before March 31, 2022: [RECIPIENT NAME] notified the HUD San Francisco Regional Office of our intent to implement the Assisting Program Participants with Subleases waiver on [DATE].
* Requested Non-Expedited Regulatory Waiver after June 15, 2022: [RECIPIENT NAME] submitted a non-expedited waiver request for this regulatory requirement from the HUD San Francisco Regional Office identifying the grant number(s) the waiver would apply to with a good cause justification to implement the Assisting Program Participants Waiver on [DATE]. [RECIPIENT NAME] received approval from HUD by email on [DATE]
* Requested Expedited Regulatory Waiver after June 15, 2022: [RECIPIENT NAME] submitted an expedited regulatory waiver request to [SNAPSinfo@hud.gov](mailto:SNAPSinfo@hud.gov) on [DATE]. CPD replied on [DATE] that the request was received. [RECIPIENT NAME] received approval from HUD on [DATE].

Note that this waiver is similar to a waiver provided in Notice CPD-21-08, which applied to FY2020 and CARES Act ESG funds but did not require notice to the Field Office.

|  |
| --- |
| **Assisting Program Participants with Subleases** |
| **The prohibition against providing ESG rental assistance to participants in units that are subleased or leased from someone other than the owner or their agent is waived** for participants who enter into a legal sublease between December 30, 2021 and March 31, 2022. This waiver can be used only if necessary to help the participant reduce their risk of contracting COVID-19 by obtaining or maintaining housing. ESG rental assistance payment may continue through the end of the participant’s allowable term of assistance.  As of June 15, 2022, recipients and subrecipients can request a waiver for the prohibition against providing ESG rental assistance to participants in units that are subleased or leased from someone other than the owner or their agent. This flexibility, if approved, can be applied to a period that does not extend beyond March 31, 2023, although the recipient may request that the waiver remain applicable to any sublease approved during that period until the earlier of the end of the program participant’s otherwise allowable term of assistance or the end of the period of the performance/ approved budget period for the recipient's grant covered by the waiver. |

# Instructions

This form documents the request of the Assisting Program Participants with Subleases waiver. The waiver may only be used when necessary to help participants reduce their risk of COVID-19 infection by obtaining or maintaining housing, in accordance with the CoC’s Quality Assurance Standards and [RECIPIENT/SUBRECIPIENT NAME]’s written policies. Complete this form and insert into the client file every time this waiver is requested:

1. Complete the “Documentation Checklist” section of this form to ensure that all necessary additional documentation is included in the client’s file, along with this completed form.
2. Complete the “Justification for Use of Waiver” section of this form.
3. Insert this form (and all documentation listed in the Documentation Checklist) in the client’s file.

# Documentation Checklist:

**Client name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Address of Unit:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| **The following additional documentation is included in the client’s file:** | **Checklist** |
| A copy of the participant’s legally valid sublease, containing all lease provisions required under the ESG Program Interim Rule. |  |

# Good Cause Justification for Use of Waiver

Explain why it is necessary for the program to assist a client in a subleased unit, in order to help the participant reduce their risk of COVID-19 infection by obtaining or maintaining housing. The explanation must be specific to this client’s situation and the local conditions at this time (for example, heightened risk of contracting COVID-19 if the participant has to seek shelter in a congregate setting). The good cause justification must include: why the recipient needs the waiver, the impact on the recipients ability to help people experiencing homelessness to obtain or maintain housing if the waiver is not provided, and the proposed waiver duration. The explanation must be related to HUD’s reasons for expediting the waiver request which include preventing the spread of COVID-19 and facilitate assistance to communities and households economically impacted by the pandemic.

|  |
| --- |
|  |