**Narrative Version of Ed Gramlich’s (NLIHC) Presentation**

**HJN Emergency Rental Assistance Working Group Zoom**

April 30, 2020

(This is an extended narrative version of my shorter outline.)

**Overview of Potential CARES Act Funding Available for Rental Assistance**

**CARES Act $5 billion CDBG Appropriation**

The CARES Act provides up to $5 billion in CDBG supplemental funding.

Of that amount, allocations of **$2 billion** were announced on April 1.

It was distributed to states and entitlement jurisdictions using the same statutory formula used to distribute the regular, annual FY20 CDBG allocations.

While the opening lines of the Act’s text are not a clear as I would like it, informal CPD communication indicated that this first tranche of $2 billion must be used to address coronavirus-related needs.

During a webinar hosted by Enterprise Community Partners on April 29, CPD said this money must be tied to needs created by the pandemic. CPD said on that webinar that it is “reading” this broadly. Jurisdictions merely need to explain how their use of CDBG addresses a pandemic need. CPD will be providing more “tools” addressing this and other issues.

The CARES Act requires an additional **$1 billion** to be allocated 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. This $1 billion is to be distributed based on public health needs, the risk of transmission of coronavirus, the number of coronavirus cases compared to the national average, economic and housing market disruptions, and other factors **as determined by HUD**, using the best available data.” HUD has 45 days (from March 27) to allocate this $1 billion.

The remaining **$2 billion** of the $5 billion is to be distributed directly to a state or unit of local government, **at HUD’s discretion**, **according to a formula based on factors to be** **determined by HUD,** **prioritizing** the risk of coronavirus, the number of coronavirus cases compared to the national average, and economic and housing market disruptions resulting from coronavirus."  These allocations can be made on a rolling basis based on available data.

**OTHER CDBG CARES ACT PROVISIONS**, *next page*

**OTHER CDBG CARES ACT PROVISIONS**

* These allocations may be used to cover or reimburse costs consistent with the purposes of the CARES Act regardless of the date the costs were incurred. This applies also to FY19 and FY20 allocations.
* The 15% public services cap is eliminated or not only the CARES Act allocations but also for FY19 and FY20 allocations. (More to follow).

**CPD Memorandum**

On April 9, CPD posted a Memorandum on HUDExchange (not on the CPD Coronavirus webpage). The Memorandum stated that HUD will publish a *Federal Register* notice describing the requirements for the CARES Act CDBG grants, now referred to as “CDBG-CV” grants. The notice will also include waivers for the CDBG-CV and the FY19 and FY20 CDBG allocations.

The Memorandum states that grantees ***may*** use CDBG-CV and FY19 and FY20 CDBG funds to prevent, prepare for, and respond to the pandemic.

The Memorandum states that the CARES Act suspension of the 15% public service cap is implemented immediately.

**Short-Term Rental and Utility Assistance**

The CARES Act eliminates the CDBG law’s 15% cap on the amount of a jurisdiction’s grant (and any program income) that is **obligated** in a program year for “public services.

The removal of the 15% cap applies not only to CDBG-CV, but also to any FY19 and FY20 CDBG allocations.

Importantly, the CDBG Entitlement program regulations have long allow jurisdictions to choose to spend CDBG or 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**.

More about rental assistance and the State CDBG program, *next page*

The State CDBG program has separate regulations which do not include such a provision. However, HUD subregulatory guidance in “[*Basically CDBG for States*](https://www.hudexchange.info/resource/269/basically-cdbg-for-states/)”

makes very clear a number of times 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.”

I obtained informal confirmation from CPD regarding both the Entitlement regs and the “Basically CDBG for States” guidance several weeks ago. (There is also ample confirmation regarding the Entitlement Jurisdiction use of CDBG for short-term rental assistance in “[Basically CDBG for Entitlements](https://www.hudexchange.info/resource/19/basically-cdbg-training-guidebook-and-slides/)”.)

On April 29, Jesse Handforth Kome (a long-time, trustworthy CPD career staffer) “officially” confirmed all of this on a national webinar hosted by Enterprise Community Partners.

On an [NLIHC national call](tinyurl.com/y6v32pfb) (with about 2,000 people on the call), Acting Assistant CPD Secretary John Gibbs said that CPD is considering a waiver that would extend the short-term rental assistance to six months.

Advocates at the local and state level will have to encourage their local or state government to use money available from CDBG-CV and FY19 and FY20 CDBG allocations to provide three months of CDBG for rental assistance.

**Regarding ConPlans (and Annual Action Plans)**

Grantees may adopt and use expedited procedures to prepare, propose, modify, or amend Action Plans for amounts made available by the CARES Act ***as well as*** CDBG funds made available in FY19 and FY20.

Grantees do not need to hold in-person public hearings, but must provide the public with at least five days’ notice and reasonable opportunity to comment. They can have **virtual public hearings**, as long as the public is given reasonable notice and access. Grantees must still provide timely responses to questions and issues raised by the public, as well as access to all responses.

**DUPLICATION OF BENEFITS**

I started getting questions about this early on. I scoured the CDBG regs, subregulatory guidance (“Basically CDBG”, CPD Notices going back to 1992, and CPD Memoranda going back to 1986”. I scoured 24 CFR part 200, especially subpart E which replaced OMB circular A-87 (which I scoured anyway).

I wrote a trusted, long-time CPD career staffer – the only one left since I came to DC in 1980. The staffer confirmed that there is no formal guidance. This CPD staffer informally, via email, said:

“We know DOB is the beast. We are working on DOB products for both CDBG-CV and ESG-CV that will start posting as soon as early next week (The email was on April 24). Grantees must have procedures for preventing duplications of benefit. What we are saying so far about the FEMA PA, ESG-CV, and CDBG-CV overlaps is to be strategic.” Also, note that the Treasury guidance that came out on April 22 for the local government program seems to allow payment for some of the same costs.”

Enterprise Community Partners held a webinar on April 29. On the webinar, Jessie Handforth Kome (the long-time CPD career staffer) said CPD is working with Enterprise to create a tool to provide guidance regarding duplication of benefits.

Jessie said jurisdictions need to be strategic with how they use their CDBG and ESG funds. Don’t use CDBG or ESG to pay for costs that can be covered by other sources.

Use CDBG only if there isn’t another source. Think of using CDBG to fill gaps that other sources are not allowed to cover, such as FEMA. The aim is to maximize the use of all sources. (She didn’t say that a project could not receive CDBG and ESG.)

**HOME PROGAM TENAT-BASED RENTAL ASSISTANCE (TBRA) WAIVERS**

The CARES Act did not have any provisions for the HOME program. However, HUD is using its authority under HUD regs [24 CFR 5.110] to waive a number of statutory and regulatory provisions. HUD’s Office of Affordable Housing Programs (OAHP), within CPD, administers the HOME Investment Partnerships Program (HOME).

There is $1.35 billion for HOME in FY20 alone. The HOME waivers apply to any year’s HOME allocation.

On April 10 OAHP posted a Memorandum that had set of waivers to the HOME Tenant-Based Rental Assistance (TBRA) program regulations.

“[Suspensions and Waivers to Facilitate Use of HOME-Assisted Tenant-Based Rental Assistance (TBRA) for Emergency and Short-term Assistance in Response to COVID-19 Pandemic](https://files.hudexchange.info/resources/documents/Suspensions-and-Waivers-to-Facilitate-Use-of-HOME-Assisted-TBRA-COVID-19.pdf)”

 Continues, *next page*

**HOME TBRA WAIVERS**, *continued*

The stated intent of the waivers is to facilitate use of TBRA to meet urgent housing assistance needs for households experiencing financial hardship due to the coronavirus pandemic. The waivers are intended to make it easier for Participating Jurisdictions (PJs) to use HOME funds for TBRA for households experiencing financial hardship as a result of the pandemic by:

1. Providing immediate rental assistance to household seeking housing,
2. Assisting households that have housing but face reduced or lost wages, and
3. Assisting existing TBRA households who need additional assistance due to reduced or lost wages.

A few other key key waivers include:

**For PJs in Presidentially Declared Major Disaster Areas**

Tenant Selection and Targeted Assistance

HUD is waiving the requirement that a PJ establish or revise existing written tenant selection criteria for its TBRA program, enabling a PJ to assist households requiring immediate housing assistance as a result of the pandemic.

**Waivers Available to All PJs**

Household Self-Certification That They Are Income-Eligible

Allows a household to self-certify that they are income-eligible to receive TBRA.

(Based on “anticipated annual income”.) The self-certification has to indicate how a tenant’s financial situation has changed, (i.e., job loss or reduced wages).

Maximum Amount of Monthly Rental Assistance

The Memorandum notes that as a household experiences financial hardship, the amount of TBRA assistance required to ensure that a household remains housed will often exceed the PJ’s payment standard. In addition, households may be unable to pay the PJ’s minimum required rent contribution. The waiver allows PJs to y provide up to 100% subsidy for rent, security deposit payments, and utility bills paid by tenants.

(The maximum amount of monthly assistance a PJ may pay to, or on behalf of, a household cannot exceed the difference between the PJ’s rent standard and 30% of the household’s monthly adjusted income.)

(PJ’s must have a minimum household contribution toward rent, and a rent standard based on local market conditions or a PHA’s payment standards.)

Utility Payments, next page

Utility Payments

Allows a PJ to pay the full cost of monthly utilities in addition to rental assistance and security deposit payments for new and existing TBRA households. The waiver also eliminates the need for a PJ to establish utility allowances for different types and sizes of units for its TBRA program. A PJ may make utility payments directly to a tenant or utility company based on utility bills submitted for the assisted unit either by mail or electronically.

OAHP TBRA resources are at:

<https://www.hudexchange.info/programs/home/topics/tbra/#policy-guidance-and-faqs>

**CORONAVIRUS RELIEF FUND (CRF)**

Congress appropriated $150 billion for the Coronavirus Relief Fund (CRF). CRF is to be used to make payments for specified uses to States, certain local governments, and Tribal governments.

The CARES Act provides that payments from the “Fund” may only be used to cover costs that:

1. Are necessary expenditures incurred due to the public health emergency;

1. Were not accounted for in a State or local government’s budget most recently approved as of March 27, 2020; and
2. Were incurred between March 1, 2020 and December 30.

The Treasury Department issued Guidance on April 22. It discusses each of the three requirements in fairly broad terms.

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

For the purpose of our discussion, the key is a list of “nonexclusive examples of eligible expenditures”. They include:

1. Various medical expenses
2. Public health expenses
3. Payroll expenses for public safety, public health, health care
4. Expenses to facilitate compliance with coronavirus-related public health measures, one of which is expenses for care of homeless populations to mitigate coronavirus effects and enable compliance with coronavirus public health precautions.
5. Expenses associated with the provision of economic support
6. Any other expenses reasonably necessary to the function of government.

My NLIHC colleague, Sonya Acosta, has been working with the National League of Cities. NLIHC and NLC conclude that emergency rental assistance would fall under

“Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency”, even though the examples in the Treasury guidance all have to do with grants to small businesses, meeting government payrolls, and unemployment-related costs.