



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6164-N-04]

### Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2019

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Notice.

**SUMMARY:** Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly Federal Register notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous Federal Register notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2019 and ending on December 31, 2019.

**FOR FURTHER INFORMATION CONTACT:** For general information about this notice, contact Aaron Santa Anna, Acting Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410-0500, telephone 202-708-3055 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the fourth quarter of calendar year 2019.

## **SUPPLEMENTARY INFORMATION:**

Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;
2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;
3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the Federal Register. These notices (each covering the period since the most recent previous notification) shall:
  - a. Identify the project, activity, or undertaking involved;
  - b. Describe the nature of the provision waived and the designation of the provision;
  - c. Indicate the name and title of the person who granted the waiver request;
  - d. Describe briefly the grounds for approval of the request; and
  - e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which

a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from October 1, 2019 through December 31, 2019. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the fourth quarter of calendar year 2019) before the next report is published (the first quarter of calendar year 2020), HUD will include any additional waivers granted for the fourth quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: April 13, 2020.

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Jerome Compton,  
General Counsel.

Billing Code: 4210-67

## APPENDIX

### **Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development October 1, 2019 through December 31, 2019**

**Note to Reader:** More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

- I. Regulatory waivers granted by the Office of Community Planning and Development.
- II. Regulatory waivers granted by the Office of Housing.
- III. Regulatory waivers granted by the Office of Public and Indian Housing.

#### **I. Regulatory waivers granted by the Office of Community Planning and Development**

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

- **Regulation:** 24 CFR 92.205(e)(2) One-Year Extension of Project Completion.

**Project/Activity:** The city of Jersey City, New Jersey, requested a waiver of 24 CFR 92.205(e)(2) for Garden State Episcopal (Scattered Sites) NRP III to permit the project to be completed more than five years after the date of HOME commitment.

**Nature of Requirement:** The regulation at 24 CFR 92.205(e)(2) requires that a project be completed within four years of the date of commitment of HOME funds or the project is considered terminated and the participating jurisdiction must repay all HOME funds invested. The regulation also permits HUD to grant an extension of up to one year if the participating jurisdiction can demonstrate that the project will be completed within one year.

**Granted By:** David C. Woll Jr., Principal Deputy Assistant Secretary for Community Planning and Development.

**Date Granted:** December 17, 2019.

**Reason Waived:** The city requested, and HUD approved a one-year extension of the HOME four-year project completion deadline for the Garden State Episcopal (Scattered Sites) NRP III to November 14, 2019. However, the project could not be completed within five years of the date of the HOME commitment because the homebuyer requested re-inspection for radon testing. The reinspection and closing were scheduled after the deadline. This waiver permitted the city to complete the project, retain HOME units in its affordable housing inventory, and avoid repayment of HOME funds.

**Contact:** Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

- **Regulation:** 24 CFR 92.252(d)(1) Utility Allowance Requirements

**Project/Activity:** Contra Costa County, California, requested a waiver of 24 CFR 92.252(d)(1) to allow use of utility allowance established by local public housing agency (PHA) for a HOME-assisted project – Elaine Null and Riley Court Apartments.

**Nature of Requirement:** The regulation at 24 CFR 92.252(d)(1) requires participating jurisdictions to establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. However, participating jurisdictions are not permitted to use the utility allowance established by the local public housing authority for HOME-assisted rental projects.

**Granted By:** David C. Woll Jr., Principal Deputy Assistant Secretary for Community Planning and Development.

**Date Granted:** October 18, 2019.

**Reason Waived:** The HOME requirements for establishing a utility allowances conflict with Project Based Voucher program requirements. It is not possible to use two different utility allowances to set the rent for a single unit and it is administratively burdensome to require a project owner to establish and implement different utility allowances for HOME-assisted units and non-HOME assisted units in a project.

**Contact:** Virginia Sardone, Director, Office of Affordable Housing Programs, Office of Community and Planning Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7160, Washington, DC 20410, telephone (202) 708-2684.

## **II. Regulatory Waivers Granted by the Office of Housing – Federal Housing Administration (FHA)**

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

- **Regulation:** 24 CFR 219.220(b)(1995).

**Project/Activity:** Kenmore Gardens, FHA Project Number 042-44014T; and Kenmore Village, FHA Project Number 042-35589, Cleveland, OH. Kenmore Gardens Limited Partnership and Kenmore Village Limited Partnership (Owner) seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loans on the subject projects.

**Nature of Requirement:** The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Properties, states “Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.”

**Granted by:** Brian D. Montgomery, Assistant Secretary for Housing – Federal Housing Commissioner, H.

**Date Granted:** December 5, 2019.

**Reason Waived:** The owners requested and were granted waiver of the requirement to repay the Flexible Subsidy Operating Assistance Loans in full when they became due. Deferring the loan payments will preserve these affordable housing resources for an additional 30 years through the execution and recordation of a Rental Use Agreement.

**Contact:** Crystal Martinez, Senior Account Executive, Office of Field Management and Program Administrative Division, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 402-3718.

- **Regulation:** 24 CFR 219.220(b)(1995).

**Project/Activity:** Pierson Hills I Apartments, FHA Project Number 072-44015T, Peoria, IL. Upgrade Development Corporation (owner) seeks approval to defer repayment of the Flexible Subsidy Operating Assistance Loan on the subject project.

**Nature of Requirement:** The regulation at 24 CFR 219.220(b) (1995), which governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Properties, states “Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project.”

**Granted by:** Brian D. Montgomery, Assistant Secretary for Housing – Federal Housing Commissioner, H.

**Date Granted:** December 5, 2019.

**Reason Waived:** The owner requested and was granted waiver of the requirement to repay the Flexible Subsidy Operating Assistance Loan in full when it became due. Deferring the loan payment will preserve the affordable housing resource for an additional 20 years through the execution and recordation of a Rental Use Agreement.

**Contact:** Crystal Martinez, Senior Account Executive, Office of Field Management and Program Administrative Division, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 402-3718.

- **Regulation:** 24 CFR 232.7.

**Project/Activity:** Marjorie House FHA #113-22278, is an Assisted Living/Memory Care facility. The facility does not meet the requirements of 24 CFR 232.7 “Bathroom” of FHA’s regulations. The project location is McMinnville, Oregon.

**Nature of Requirement:** The regulation at 24 CFR 232.7 mandates in a board and care home or assisted living facility that not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

**Granted By:** Brian D. Montgomery, Assistant Secretary for Housing – Federal Housing Commissioner.

**Date Granted:** October 19, 2019.

**Reason Waived:** The project currently has a resident to shower ratio of 9:1. The memory care residents require assistance with bathing. These residents are housed in units in a secure, lock-down area, with a half-bathroom each and access to the shower rooms through a hallway. The project meets the State of Oregon licensing requirements for bathing and toileting facilities.

**Contact:** John Hartung, Director of Policy, Risk Analysis & Lender Relations, Office of Residential Care Facilities, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 1222 Spruce Street, 3rd Floor, St. Louis, MO 63103, Telephone (314) 418-5238.

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**Regulation:** 24 CFR § 881.205(c).

**Project/Activity:** Bryn Mawr Apartments, FHA Project Number 071-35760, Chicago, IL. Bryn Mawr Preservation Limited Partnership, an Illinois limited partnership (Proposed Owner) seeks approval to allow for new equity associated with the four percent tax credits and bonds from Illinois Housing Development Authority to be infused into the project to be considered as “owner initial equity” for the purpose of calculating distributions.

**Nature of Requirement:** The regulation at 24 CFR 881.205 (c) defines terms applicable to determining the allowable distribution, and under this section “an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification, unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.”

**Granted by:** Brian D. Montgomery, Assistant Secretary for Housing – Federal Housing Commissioner, H.

**Date Granted:** November 13, 2019.

**Reason Waived:** The proposed owner requested and was granted waiver of the requirement to allow for “new” equity infused by Tax Credits and bonds to be included in the calculation of the Owner’s Distribution to be considered under the allowable equity as described in section 24 CFR 881.205 (c). Granting this waiver is consistent with both programmatic objectives and the Secretary’s goal of maintaining affordable housing for low-income persons.

**Contact:** Crystal Martinez, Senior Account Executive, Office of Field Management and Program Administrative Division, Office of Housing, Department of Housing

and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 402-3718.

#### **IV. Regulatory Waivers Granted by the Office of Public and Indian Housing**

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

- **Regulation:** 2 CFR 200.311(c)(1).

**Project/Activity:** The New York City Housing Authority (NYCHA) requested that HUD grant it an exception from the requirement at 2 CFR 200.311(c)(1) to compensate HUD for HUD's percentage of participation in the costs of the Williams Plaza and Independence public housing properties. This request was made pursuant to a request by NYCHA to retain these properties (outside of public housing requirements) under 2 CFR 200.311. NYCHA (and these properties) are located in New York, NY.

**Nature of Requirement:** 2 CFR 200.311(c)(1) states that “[w]hen real property is no longer needed for the originally authorized purpose,” HUD must provide disposition instructions whereby a non-Federal entity (in this case, a Public Housing Agency (PHA)) can retain title after compensating HUD. “The amount paid to [HUD] will be computed by applying [HUD's] percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property.”

**Granted By:** R. Hunter Kurtz, Assistant Secretary, Public and Indian Housing, granted this exception pursuant to 2 CFR 200.102(b). Under this authority, HUD has the authority to grant requests to the compensation requirement of 2 CFR 200.311(c)(1) on a case-by-case basis.

**Date Granted:** November 18, 2019.

**Reason Waived:** NYCHA did not use public housing funds to acquire the Williams Plaza and Independence properties. HUD's percentage of participation in the cost of the Williams Plaza and Independence properties was 39.95% and 38.14%. NYCHA justified its request for the exception to compensate HUD on its intent to operate the properties as affordable housing outside of the public housing program. Specifically, NYCHA indicated it would add all units at these properties to a Section 8 project-based voucher (PBV) HAP that was executed on March 16, 2010 that was already in effect for others unit at the properties. HUD granted this request based on the continued future use of the properties as housing for low-income families through the PBV program and the relatively low percentage of HUD funds in these properties. HUD's approval required NYCHA to record a 40-year use restriction against the properties that required the properties to be operated as Section 8 PBV housing for low-income families.

**Contact:** Robert E. Mulderig, Deputy Assistant Secretary, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4130, Washington, DC 20410, telephone (202) 402-4780.

- **Regulation:** 24 CFR 905.314(c) and (d).

**Project/Activity:** The Housing Authority of the County of Lackawanna (HACL) requested that HUD grant a waiver on the requirement of 24 CFR 905.314(c) limiting the total development cost (TDC limit) of a new construction project and 24 CFR 905.314(d) limiting the

housing construction cost (HCC), both determined annually by the U.S. Department of Housing and Urban Development. This request was made due to the capital planning requirements of the Project in constructing all handicap-accessible units and the inability to achieve economies of scale on a project this small.

**Nature of Requirement:** 24 CFR 905.314(c) and (d) requires that Public Housing funds, including Capital Funds, may not be used to pay for Housing Construction Cost (HCC) and Community Renewal Costs in excess of the Total Development Cost (TDC) limit. Similarly, the regulation at 24 CFR 905.314(d) requires that a PHA not use Capital Funds to pay for HCC in excess of the amount determined under paragraph (d) (2) of that section.

**Granted By:** R. Hunter Kurtz, Assistant Secretary, Public and Indian Housing, granted this pursuant to 24 CFR 905.314(c) and (d). In accordance with 24 CFR 5.110, good cause was determined to waive the TDC and HCC limits due to the additional construction costs associated with the accessibility requirements of the project.

**Date Granted:** December 16, 2019.

**Reason Waived:** HACL submitted documentation by an engineering firm, based on the construction of accessible units, in which each unit required extra space for dimensional allowances for wheelchair occupants, accessible cabinets, tubs, handrails and ramps, and sidewalk modifications. Thus, the construction cost increased by \$157,600, exceeding the TDC and HCC limits, per the engineering firm. Good cause exists to waive TDC and HCC limits due to additional construction and the inability to economies of scale on a project this small.

**Contact:** Robert E. Mulderig, Deputy Assistant Secretary, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban

Development, 451 Seventh Street, SW, Room 4130, Washington, DC 20410, telephone (202) 402-4780.

- **Regulation:** 24 CFR 905.314(c).

**Project/Activity:** The Housing Authority of New Orleans (HANO) requested that HUD grant a waiver on the requirement of 24 CFR 905.314(c) limiting the total development cost (TDC limit) of a new construction project as determined annually by the U.S. Department of Housing and Urban Development.

**Nature of Requirement:** 24 CFR 905.314(c) and (d) requires that Public Housing funds, including Capital Funds, may not be used to pay for Housing Construction Cost (HCC) and Community Renewal Costs in excess of the Total Development Cost (TDC) limit.

**Granted By:** R. Hunter Kurtz, Assistant Secretary, Public and Indian Housing, granted this pursuant to 24 CFR 905.314(c). In accordance with 24 CFR 5.110, good cause was determined to waive the TDC limits and to accommodate the additional construction costs the site's redevelopment was divided into two phases to increase fundability.

**Date Granted:** December 27, 2019.

**Reason Waived:** HANO submitted a letter requesting a waiver which stated that if the Choice Neighborhoods funds used for acquisition were not included in the calculation for TDC, the TDC limit would not have exceeded amongst other items.

**Contact:** Robert E. Mulderig, Deputy Assistant Secretary, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4130, Washington, DC 20410, telephone (202)

402-4780.

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