
April 22, 2020

Submitted via e-mail to Consolidatedplan@hcd.ca.gov

Department of Housing and Community Development
2020 W. El Camino Avenue
Sacramento, CA 95833

Re: Public Comment on Draft Amendments to State of California 2015-2020 Consolidated Plan and State of California 2019-2020 Annual Action Plan

Dear Department of Housing and Community Development:

Disability Rights California (DRC) and The Kelsey, joined by the agencies signed below, submit this public comment letter in response to HCD's draft amendments to its 2015-2020 Consolidated Plan and 2019-2020 Annual Action Plan on the allocation of Community Development Block Grant (CDBG), Emergency Solutions Grant (ESG), and Housing Opportunities for Persons with AIDS (HOPWA) funds to non-entitlement jurisdictions through the CARES Act. DRC is a nonprofit organization that advocates for the rights of people with disabilities. As California's designated protection and advocacy agency, DRC fights discrimination by investigating incidents of abuse and neglect, providing legal representation, and engaging in statewide advocacy. The Kelsey advocates for and develops community-based housing that is inclusive of, affordable to, and accessible for people with disabilities. People with disabilities have been harmed in significant ways by the pandemic. This letter identifies the ways in which funding from the CARES Act can be used to address the needs of those who, like people with disabilities, remain marginalized and under-served in this time of crisis.

In response to the pandemic, HCD has identified four priority areas in which to use COVID-19 funds: 1) addressing and preventing homelessness; 2) increasing economic development opportunities; 3) maintaining or improving public facilities and infrastructure; and 4) maintaining or improving access to public services. These are indeed priority areas for COVID-19 response funding; but, within each category are specific issues that may need to take priority over others.

This letter identifies and discusses those specific issues within each category identified by HCD and makes recommendations on how HCD can use its authority to direct funds where they will make the greatest impact, including:

- Providing rental assistance broadly, with specific set-asides for:
 - People experiencing homelessness,
 - People exiting institutional facilities like jails and hospitals;
- Acquiring board and care facilities at risk of closure;
- Expanding the accessibility of buildings for people with disabilities;
- Providing hygiene supplies and sanitation facilities to homeless encampments;
- Improving shelter conditions;
- Providing life-sustaining services to recipients of IHSS; and
- Providing emergency public services that link people experiencing homelessness to comprehensive, long-term resources.

The pandemic has affected everyone, but not everyone has been affected equally. Unsurprisingly, the groups who have been hit the hardest by the pandemic and its ripple effects are the same groups that have long-struggled against systemic inequality.¹ These include people with disabilities, communities of color, people who identify as LGBTQIA+, immigrants, and farmworkers. HCD stated on its April 17, 2020 webinar that it has sought a waiver from the Governor on state regulations so that recipients can use the funds quickly and with broad discretion. To the extent that some of those regulations protect the interests of vulnerable populations, HCD should still hold recipients to a standard that ensures

¹ See e.g., Samantha Artiga, et al., “Communities of Color at Higher Risk for Health and Economic Challenges due to COVID-19,” Kaiser Family Foundation, April 7, 2020, available at: <https://www.kff.org/disparities-policy/issue-brief/communities-of-color-at-higher-risk-for-health-and-economic-challenges-due-to-covid-19/>; Rashawn Ray, “How to Reduce the Racial Gap in COVID-19 Deaths,” The Brookings Institution, April 10, 2020, available at: <https://www.brookings.edu/blog/fixgov/2020/04/10/how-to-reduce-the-racial-gap-in-covid-19-deaths/>.

these badly needed funds are used where and how they are needed most. And, in all of its decision-making, HCD should ensure that it continues to abide by its duty to affirmatively further fair housing.

One specific piece of de-regulation that HCD should reconsider is Housing Element compliance. HCD announced on its webinar that it intends to make funds available to jurisdictions regardless of whether they are in compliance with Housing Element law. Every jurisdiction should receive funds during this extraordinarily challenging time, but permitting continued noncompliance will only exacerbate the housing inequalities that make this pandemic so difficult to address. Rather than waiving compliance altogether, we recommend that HCD restrict the use of funds for out-of-compliance jurisdictions to assisting very low income (VLI) and extremely low income (ELI) households. HCD should further mandate that funds must be used to provide housing assistance.

Even for jurisdictions with Housing Elements that are in compliance, HCD should prioritize services to VLI and ELI households. These households have the fewest resources on which to rely and are therefore less able than others to weather the coronavirus storm. And, to the extent that household income has been shown to correlate to disability² and race³, focusing on VLI and ELI households also provides resources to historically underserved populations. Furthermore, non-entitlement jurisdictions are largely rural communities with limited access to resources. Ensuring that these funds address the most urgent needs of individuals in resource-scarce communities will likely result in improved public health and economic development outcomes.

I. Addressing and Preventing Homelessness

California has struggled to address its high rates of homelessness for years, and the pandemic has brought the humanitarian crisis of

² See e.g., Azza Altiraifi, “Advancing Economic Security for People with Disabilities,” available at: <https://www.americanprogress.org/issues/disability/reports/2019/07/26/472686/advancing-economic-security-people-disabilities/>; and Nanette Goodman, et al., “Financial Inequality: Disability, Race and Poverty in America,” National Disability Institute, February 8, 2017, available at: <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/02/disability-race-poverty-in-america.pdf>).

³ For example, Urban Institute found that in 2016 “white family wealth was seven times greater than black family wealth and five times greater than Hispanic family wealth.” Urban Institute, “Average Family Wealth by Race/Ethnicity, 1963-2016,” available at: <https://apps.urban.org/features/wealth-inequality-charts/>.

homelessness into sharp focus. One of the most pressing needs on this front is rental assistance, which is needed in a variety of forms. The unemployment rate has surged, leaving thousands unable to pay their rent. The need to physically distance from others has made many living arrangements untenable, further increasing the need for rental assistance. For example, people experiencing unsheltered homelessness may be eligible for motel/hotel vouchers, but only for a short period of time. Rental assistance could be used to extend their motel/hotel stay and possibly create a pathway to long-term housing. In addition, people leaving institutional settings like jails and hospitals are often unable to access shared living facilities due to fear that they may have been exposed to the virus while institutionalized. HCD should require that grant recipients set aside funding for specific populations like these who have few or no alternatives and are in dire need of safe housing.

A. People experiencing homelessness need rental assistance to obtain long-term stable housing.

Since the implementation of Project Roomkey,⁴ DRC has received many calls from people experiencing homelessness who were placed in motels/hotels for very short periods of time (often no more than a week or two) only to be forced back onto the street when local governments did not pay for longer stays. People experiencing unsheltered homelessness face a high risk of becoming ill and exposing others. Forcing them back onto the street during a pandemic is not only cruel and counter-productive, but also presents a missed opportunity to connect with a population that can be difficult to locate and serve. When people experiencing homelessness are able to rest and recover in a safe environment, it becomes easier to properly screen them for programs like Whole Person Care⁵ that include long-term housing services. Grant recipients could maximize the impact of CARES funding by using it to fund emergency services that create a

⁴ Project Roomkey is the initiative in which the State of California uses FEMA funds to secure motel/hotel rooms and provide essential supportive services to people experiencing homelessness who need to self-isolate during the pandemic. <https://www.gov.ca.gov/2020/04/03/at-newly-converted-motel-governor-newsom-launches-project-roomkey-a-first-in-the-nation-initiative-to-secure-hotel-motel-rooms-to-protect-homeless-individuals-from-covid-19/>.

⁵ Whole Person Care Pilots, Department of Health Care Services, available at: <https://www.dhcs.ca.gov/services/Pages/WholePersonCarePilots.aspx>.

pathway to long-term stability. This approach is consistent with updated guidance from the CDC to homeless service providers.⁶

B. People leaving jails and hospitals need rental assistance to transition into non-institutional housing.

Another circumstance where rental assistance is badly needed is for individuals leaving institutional settings like jails or hospitals. These congregate settings are particularly susceptible to the spread of COVID-19 because they limit the ability to practice appropriate social distancing. At the same time, we have received reports of individuals with disabilities being unable to re-enter shared living facilities—places where many people leaving institutions end up living—like board and care facilities or other types of group homes because the facility fears that the individual was exposed to coronavirus during the period of institutionalization. Without housing options, people may either risk not being discharged at all from an institutional setting or being discharged to the street. People with disabilities who are discharged under these circumstances are particularly vulnerable to homelessness and re-institutionalization. Advocates report that the lack of safe alternative housing is a major hurdle to overcome in arguing for the release of individuals from jails and hospitals. HCD should ensure that funding recipients prioritize the use of funds to provide shelter to people leaving institutional settings who do not have safe alternative housing.

C. CDBG, ESG, and HOPWA can be used for back-rent assistance.

On the April 17, 2020 webinar, HCD did not provide clear guidance on whether CDBG, ESG, and HOPWA funding may be used for back-rent assistance. HCD both can and should authorize the broad use of these grants for back-rent incurred during the state of emergency. Although the Judicial Council of California has adopted emergency rules to suspend most unlawful detainer proceedings, neither those rules nor Governor Newsom's Executive Orders is a true eviction moratorium. With very limited

⁶ Interim Guidance for Homeless Service Providers to Plan and Respond to Coronavirus Disease 2019 (COVID-19), Centers for Disease Control and Prevention, revised April 21, 2020 to include the following: "Depending on resources and staff availability, non-group housing options (such a hotel/motels) that have individual rooms should be considered for the overflow, quarantine, and protective housing sites. In addition, plan for how to connect clients to housing opportunities after they have completed their stay in these temporary sites." Available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/plan-prepare-respond.html> (accessed April 22, 2020).

local exceptions, landlords can still serve notices to quit and file unlawful detainer cases during the pandemic. More significantly, rental debt still accrues—even for tenants whose incomes have decreased or disappeared due to coronavirus. When the state of emergency ends, California will be left with a tidal wave of eviction cases with which to contend. Many of these will be for nonpayment of burdensome amounts of rent. Unless meaningful substantive protections are enacted by legislative bodies, there will be a significant statewide need for rental assistance.

1. CDBG regulations allow payment of back-rent as a public service activity.

HCD reported on its webinar that it anticipates receiving a waiver of all state regulations, leaving only federal regulations and CARES provisions as parameters. Under federal regulations, CDBG can be used for rental assistance if it is a one-time grant. HUD guidance says: “States must adhere to the [Housing and Community Development Act] statute and the state portion of the CDBG regulations; however, the CDBG regulations for entitlements may be used as a safe harbor.”⁷ Under the entitlement regulations, CDBG funds may not be used for income payments. But, “one time grants, emergency type grants, or loans for such purposes may be eligible under the category of public services.”⁸ HUD guidance on public services states that payment of rent is eligible if the income payments do not exceed three consecutive months and the payments are made directly to the service provider (i.e., the landlord).⁹ The regulations for entitlement jurisdictions, which states may use as guidance, further clarify that although CDBG funds may generally not be used for income payments, the definition of “income payments” expressly 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.”¹⁰ Based on this authority, we urge HCD to allow the use of CDBG funds to cover all of a tenant’s COVID19-related back-rent. HCD should request a waiver from HUD on this specific use if necessary.

⁷ “Basically CDBG for States,” section 1.1, page 1-3, July 2014, available at: <https://www.hudexchange.info/resource/269/basically-cdbg-for-states/>.

⁸ “Basically CDBG for States,” *supra* at section 1.5, page 1-12.

⁹ “Basically CDBG for States,” *supra* at section 7.1.2., page 7-3.

¹⁰ 24 C.F.R. 570.207(b)(4).

2. ESG regulations allow payment of back-rent as homelessness prevention and rapid re-housing activities.

HUD guidance expressly identifies rental assistance as an eligible cost under two ESG program components: homelessness prevention and rapid re-housing.¹¹ Under the homelessness prevention component, ESG funds may be used to provide housing relocation and stabilization services, as well as short- and medium-term rental assistance that is necessary to prevent the individual or family from becoming homeless.¹² Similarly, under the rapid re-housing component, ESG funds may be used to provide housing relocation and stabilization services, as well as short- and medium-term rental assistance that is necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing.¹³

3. HOPWA regulations allow payment of back-rent as STRMU assistance.

Short-term rent, mortgage, and utility (STRMU) assistance is an eligible activity under HOPWA. STRMU assistance is available for a period of up to 21 weeks in any 52-week period and is designed to prevent homelessness and increase housing stability.¹⁴ It can be used by tenants and authorized occupants to cover reasonable housing costs, though the amount of assistance is not limited to Fair Market Rents or “reasonable rent” limits.¹⁵ And, tenants are not required to pay 30% of their income towards rent.¹⁶

The regulations are clear that CDBG, ESG, and HOPWA can all be used for back-rent assistance. The pandemic has created an unprecedented need for rental assistance in a variety of forms. HCD should not only encourage grant recipients to use these funds for back-rent assistance, but should also direct the set-aside of certain amounts for especially vulnerable populations who have limited or no alternative resources to access.

¹¹ “ESG Basics for State Recipients,” Homelessness Programs Toolkit for State ESG Recipients, August 2018, available at: <https://files.hudexchange.info/resources/documents/Homelessness-Programs-Toolkits-for-State-ESG-Recipients-Basics.pdf>.

¹² 24 C.F.R. 576.103.

¹³ 24 C.F.R. 576.104.

¹⁴ “HOPWA Rental Assistance Guidebook,” January 2013, Attachment 2-1, available at: <https://files.hudexchange.info/resources/documents/HOPWARentalAssistanceGuidebook.pdf>.

¹⁵ Id.

¹⁶ Id.

II. Increase Economic Development Opportunities

The effects of the pandemic will continue to reverberate well beyond when the virus itself is controlled. A pressing issue of concern is the rapid closure of board and care facilities across the state, which began before the pandemic began and has continued to date. The closure of these facilities exacerbates the housing crisis for residents with disabilities, who may be forced into institutional settings if they are unable to find and maintain alternative independent housing that meets their needs. Funding from the CARES Act could and should be used to acquire facilities at risk of closure and convert them into permanent supportive housing, setting aside a certain percentage of beds for people with disabilities who are at risk of homelessness or institutionalization or who have lost their housing due to the pandemic. This use of funds enhances economic development goals by preserving the existing housing stock and keeping people with disabilities in the most integrated setting possible.

To the extent that CARES Act funds are used for new construction or renovation of existing buildings, it is important to continue to enforce existing development requirements to build units with accessible features and prioritize them for people with disabilities.¹⁷ People with disabilities continue to face barriers to fair housing because so much of the housing stock is inaccessible. It is important for grant recipients to ensure that physically accessible units are reserved for people with disabilities who need the accessible features in those particular units. When physically accessible units are occupied by renters who do not need the unit's accessibility features, it creates a mismatch of needs, leaving people with disabilities with few real housing options despite what may appear available on paper.

CARES Act funds should also be used to help people with disabilities make reasonable modifications to their homes. Under fair housing laws, a private landlord cannot prevent a person with a disability from making reasonable modifications to their home except under limited circumstances. These modifications include a range of accessible features like ramps and grab bars. But the burden of paying for those modifications in unsubsidized housing lies with the person with a disability. The cost of those

¹⁷ See e.g. 24 C.F.R. Part 8; 2010 ADA Standards for Accessible Design; Fair Housing Act Accessible Design Guidelines.

modifications can be astronomical to people with disabilities who are disproportionately represented among the low-income population. During this crisis, people are struggling to maintain the housing they have, and many others are forced to search for new housing. Using CARES Act funds for “grants for ramps” and similar programs furthers economic development goals by increasing the percentage of housing stock that is accessible to people with disabilities, thereby addressing the pervasive segregation that people with disabilities continue to face in housing.

III. Maintain or Improve Public Facilities & Infrastructure

Early in the pandemic, CDC issued guidance to local governments on the importance of leaving homeless encampments intact unless individual housing could be provided to the people experiencing homelessness.¹⁸ That guidance advised local governments to support social distancing in encampments by installing and maintaining sanitation facilities like portable showers, toilets, and handwashing stations. DRC has received reports from across the state that local governments have been slow to install these features. This leaves people experiencing homelessness in an especially vulnerable situation. HCD should require grant recipients to prioritize the needs of people experiencing homelessness by ceasing all encampment sweeps and using the available funds to provide sanitation facilities in compliance with CDC guidance.

Even when people experiencing homelessness are placed in congregate shelters or motels/hotels, the conditions in those facilities can be a source of concern. On the April 17, 2020 webinar, HCD reported that it may waive environmental and habitability inspections in order to maximize the efficiency with which individuals are placed in emergency shelters. We agree that these inspections could be streamlined or modified in a time of crisis, but under no circumstances should those measures be eliminated completely. If a shelter or motel/hotel is so uninhabitable that it creates or contributes to the occupants’ poor health, no positive public health outcome has been achieved. Instead, HCD should require that shelter providers and motel/hotel owners meet minimum health and safety guidelines that are appropriate to the type of shelter provided. HCD should also mandate the

¹⁸ Interim Guidance for Responding to Coronavirus Disease 2019 (COVID-19) Among People Experiencing Unsheltered Homelessness, Centers for Disease Control and Prevention, available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html> (accessed April 22, 2020).

creation of a procedure by which residents of the shelter can challenge the conditions of the housing if they are unsafe. Additionally, many people with disabilities report that the only shelters available in their area are not ADA compliant or otherwise accessible to their disabilities. HCD should require that recipients of funding ensure that there is a sufficient number of accessible housing options available for those who need them. This is especially important given the over-representation of people with disabilities in the state's homeless population.

IV. Maintain or Improve Access to Public Services

The lack of access to public services has been a significant issue for people with disabilities during the pandemic. The sudden scale-back and shutdown of important services has left people with disabilities with limited resources at a time when they need them most.

One major issue has been the unavailability of IHSS workers. Many people with disabilities have reported that their IHSS workers have refused to provide services due to fear of contracting coronavirus or have been forced to self-isolate due to possible exposure. Although funding from the CARES Act cannot be used to pay for interim IHSS workers, the funds could be used to pay for public services that people with disabilities need to access when their IHSS workers are unavailable. For example, a person who is unable to collect their medications from the pharmacy because their IHSS worker is not available to accompany them could access publicly funded medicine delivery services until their IHSS provider returns to work. Similarly, individuals who relied on their IHSS workers to shop for groceries and prepare their meals, and those who would ordinarily visit a food bank or the grocery store but are now forced to quarantine, could access grocery or meal delivery services to meet their needs.

Another crucial issue is the lack of public services for people experiencing homelessness, particularly in regards to implementation of Project Roomkey. Most jurisdictions have adopted priority guidelines that dictate who is eligible for individual housing units and in what order. Most of these guidelines prioritize the placement of people who have tested positive for coronavirus or who have a confirmed case of exposure. Practically speaking, that prioritization is problematic when testing among people experiencing homelessness has been sporadic and inconsistent. In addition, many jurisdictions report difficulty placing people into individual

housing units because they lack transportation to the housing site or do not have the funding for the social and supportive services that is supposed to accompany housing placement. Funding from the CARES Act could directly address this problem by providing resources for the public services that are necessary to fully implement Project Roomkey. These services include street medicine programs, mobile testing units, transportation, and meal delivery.

V. Conclusion

We acknowledge that efficiency and flexibility are of utmost importance in dealing with the unprecedented crisis of the COVID-19 pandemic. However, lack of oversight too often results in the perpetuation of systemic inequality that leaves the state's most vulnerable residents with inadequate resources to meet their most basic needs. Therefore, we urge HCD to develop and enforce funding requirements that will ensure the valuable resources provided by the CARES Act get to where they are needed most.

Sincerely,



Zeenat Hassan
Natasha Reyes
Navneet Grewal
Disability Rights California

Micaela Connery
Allie Cannington
The Kelsey

Ugochi L. Anaebere-Nelson
Public Law Center

Madeline Howard
Western Center on Law & Poverty

Housing Consortium of the East Bay