Exceptions to 24 CFR §578.49 Subpart D Leasing

Guidance for Seeking Exceptions to Leasing/Ownership Statutory Regulations

Revised November 30.2023

Office of Housing and Community Development

OVERVIEW

This guidance is published in response to subrecipient requests for clarification relative to the U.S. Department of Housing and Urban Development's (HUD's) statutory language under the CoC Program that prohibits the use of leasing funds for payment of units or structures owned by the recipient, subrecipient and other related organizations as described in the statute. This prohibition results in the need for subrecipients to secure units that they have no relation to and/or ownership in. The only way in which this prohibition can be alleviated is through HUD's authorization of an exception for good cause.

This guidance provides the applicable statutory language under 24 CFR 578 Subpart D (§ 578.49 Leasing) along with an overview of steps a subrecipient can take in seeking such a HUD exception.

Title 24 Housing and Urban Development
578 CoC Program
Subpart D Program Components and Eligible Costs

§578.49 Leasing[1]

(a) *Use.*

(1) Where the recipient or subrecipient is leasing the structure, or portions thereof, grant funds may be used to pay for 100 percent of the costs of leasing a structure or structures, or portions thereof, to provide housing or supportive services to homeless persons for up to 3 years. Leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership, where the partnership owns the structure, unless HUD authorized an exception for good cause.

(2) Any request for an exception must include the following:

(i) A description of how leasing these structures is in the best interest of the program;

(ii) Supporting documentation showing that the leasing charges paid with grant funds are reasonable for the market; and

(iii) A copy of the written policy for resolving disputes between the landlord and tenant, including a recusal for officers, agents, and staff who work for both the landlord and tenant.

1 https://www.govinfo.gov/content/pkg/CFR-2017-title24-vol3/xml/CFR-2017-title24-vol3-part578.xml#seqnum578.49

FILING FOR AN AUTHORIZED EXCEPTION

Based on the regulations, HUD does entertain requests for exceptions to this rule for good cause. Based on practice, such *requests should only be made under extraordinary circumstances. Absence of available units in a community does not, itself, rise to the level of extraordinary circumstance*. All such requests must be processed through the City of New Bedford's Office of Housing & Community Development (OHCD) as grant recipient. Once satisfied with the content and rationale behind the request, the OHCD will then submit the exception to HUD for review and determination.

The three key elements of such a request are specifically outlined in §578.49 (a) (2) (i-iii). **The subrecipient agency seeking such an authorized exception should present its request in the form of a letter on agency letterhead signed by the agency's authorized signer on record with the OHCD.** The applicable grant including grant number should be included. A compelling statement and indication of extraordinary circumstances as to the request, inclusive of those items specified in the statute, must be included in the letter. Additional information referenced in the statute highlighted within the sidebar should also be addressed.

HUD *may* grant an exception if:
(1) The sale or disposition of the property used for the project results in the use of the property for the direct benefit of very low-income persons;
(2) All the proceeds are used to provide transitional or permanent housing that meet the requirements of this part;
(3) Project-based rental assistance or operating cost assistance from any federal program or an equivalent State or local program is no longer made available and the project is meeting applicable performance standards, provided that the portion of the project that had benefitted from such assistance continues to meet the tenant income and rent restrictions for low-income units under section 42(g) of the Internal Revenue Code of 1986; or
(4) There are no individuals and families in the Continuum of Care geographic area who are homeless, in which case the project may serve individuals and families at risk of homelessness.

Other aspects of Leasing to keep in mind

- When leasing a structure…
  - Rent paid when must be reasonable in relation to rents being charged in the area for comparable space.
  - Rent paid may not exceed rents currently being charged by the same owner for comparable unassisted space.
- When leasing an individual housing unit…
  - Rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size, type, quality, amenities, facilities, and management services.
  - Rents may not exceed rents currently being charged for comparable units, and the rent paid may not exceed HUD-determined fair market rents.
- If electricity, gas, and water are included in the rent, these utilities may be paid from leasing funds. If utilities are not provided by the landlord, these utility costs are an operating cost, except for supportive service facilities.
- If the structure is being used as a supportive service facility, then these utility costs are a supportive service cost.

Questions relative to this guidance can be directed to the OHCD at 508.979.1500 or via email to staff: Jennifer.Clarke@newbedford-ma.gov or Jose.Maia@newbedford-ma.gov.