



U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Secretary's Representatives
All Regional Directors for CPD
All CPD Division Directors
Continuums of Care
Grantees of the Continuum of Care Program

Notice: CPD- 13-008

Issued: January 18, 2013

Expires: This Notice applies to the FY2012
CoC Program Competition only

Cross Reference: 24 CFR Part 578,
42 U.S.C. 11371, et seq.

**Subject: Notice on Appeals for the FY2012 Continuum of Care (CoC) Program
Competition**

I. BACKGROUND AND PURPOSE

The Continuum of Care (CoC) Program interim rule was published on July 31, 2012, and became effective August 30, 2012. Subpart C of the interim rule sets forth the Application and Grant Award Process for the CoC Program. Within Subpart C, Section 578.35 of this subpart provides appeal options to applicants.

On November 9, 2012, the Notice of Funding Availability (NOFA) for the Fiscal Year (FY) 2012 CoC Program Competition was posted on grants.gov and HUD.gov, officially commencing the first competition under the CoC Program. The application deadline for the competition is 7:59:59 p.m. eastern time, January 18, 2013. HUD anticipates awarding funding for Tier 1 renewal projects within 45 days of the application deadline. HUD will announce any additional Conditional Awards (new projects and Tier 2 renewals) after scoring is complete, depending on availability of funding.

This Notice provides guidance to CoCs and applicants of the CoC Program funds regarding the information that must be submitted to HUD in order to appeal one of the following decisions:

- A.** the project applicant believes that it was denied the right to participate in the CoC planning process in a reasonable manner; or
- B.** the applicant was denied CoC Program funds by HUD, or was awarded less funding than requested; or
- C.** the jurisdiction refused to sign the Consolidated Plan certification for the project.

For HUD to consider an appeal, the applicant must follow the applicable process set forth in this Notice.

Additionally, HUD is using this Notice to clarify the impact that solo applicant appeals will have on HUD signing grant agreements under the NOFA for the FY2012 CoC Program Competition. If HUD receives one or more solo applicant appeals from a CoC, then HUD will determine the amount of funding that the solo applicants have requested; and, HUD will delay signing grant

agreements for the awarded project(s) listed at the bottom of the CoC's priority listing that have requested funding equal to double the amount requested by the solo applicant(s). Please refer to the solo applicant appeal process set forth in this Notice for additional information about the solo applicant appeal process.

As this Notice was published close to the FY2012 CoC Program Competition deadline, HUD will consider waivers for the requirement that solo applicants submit a written notice of intent to appeal by the application deadline under 578.35(b)(2) and the requirement that an applicant appealing a jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan's submit a written appeal by the application deadline under 578.35(e)(2). In both cases, HUD will only consider waivers from applicants that submitted an application by the application deadline. Waivers must be submitted no later than January 24, 2013.

II. TYPES OF APPEALS

The regulation sets forth the following types of appeals:

Solo Applicants—a process for eligible project applicants that attempted to participate in their Continuum of Care planning process and were denied the right to participate in a reasonable manner.

Denied or Decreased Funding—a process for eligible applicants that are denied funds by HUD, or that requested more funds than HUD awarded to them.

Consolidated Plan Certification—a process for eligible applicants whose jurisdiction refused to provide a certification of consistency with the Consolidated Plan.

Competing CoCs—a process for eligible applicants of the lower scoring CoC to appeal HUD's decision to fund the competing CoC. This process is only available for applicants located in geographic areas claimed by more than one CoC. **In FY2012, there were no Competing CoCs, therefore, this Notice does not address the process for appealing HUD's decision to award the competing CoC.**

A. Solo Applicants

Eligible project applicants that attempted to participate in the CoC planning process in the geographic area in which they operate, that believe they were denied the right to participate in a reasonable manner may appeal the CoC decision not to include their project application in its CoC consolidated application. In order to appeal, the project applicant must have submitted a solo application for funding to HUD, in *e-snaps*, by the application deadline established in the NOFA. With the project application, the project applicant must have attached a written notice of their intent to appeal. The appeals process is as follows:

1. **Written Notice of Intent to Appeal.** With the project application that is submitted by the application deadline, the project applicant must also

submit a written notice of intent to appeal. The project applicant is now known as a solo applicant.

2. **Evidence Supporting Appeal.** No later than 30 days after the date that HUD announces the second announcement of conditional awards (new projects and Tier 2 renewals), the solo applicant must submit any evidence indicating that the CoC did not allow the solo applicant to participate in the CoC planning process in a reasonable manner. Solo applicants must submit all evidence by email, from the organization's email address, or by mail, on company letterhead to: HUD; the chair of the CoC's Board; and the authorized representative from the CoC's designated collaborative applicant; or if the CoC does not have a Board, then the solo applicant is only required to submit evidence to HUD and the authorized representative from the CoC's designated collaborative applicant.

Only one submission from the solo applicant will be considered. If HUD receives more than one submission from any solo applicant, HUD will only consider the first submission it receives and will not review any subsequent submissions.

The solo applicant should include all evidence that it believes supports its claim that it was not allowed to participate in the CoC planning process in a reasonable manner; however, at a minimum, the evidence submitted to support the appeal request must include the following information:

- (A) the notification process used by the CoC to provide public notification of all planning meetings;
- (B) the number of CoC planning meetings the solo applicant attended in 2012;
- (C) the role the solo applicant played as a member of its local CoC;
- (D) the project application submission process required by the CoC for the FY2012 CoC Program Competition, including the timeframe project applicants were given to review the rating and ranking criteria prior to submitting a project;
- (E) any opportunities given to project applicants to defend or present their project to the rating and ranking panel; and
- (F) any opportunities that were provided to appeal the decision of the CoC within the local process.

In the information submitted to HUD, the solo applicant must include documentation that identifies the person to whom within the CoC the evidence was sent and the date on which it was sent.

3. **CoC Response.** No later than 30 days after the date the authorized representative from the CoC's designated collaborative applicant receives the evidence from the solo applicant, the designated collaborative applicant must send a response to HUD, on behalf of the CoC, with a copy to the solo applicant. The collaborative applicant's authorized representative

must submit its written response by email, from the organization's email address, or by mail, on the organization's letterhead and signed by the authorized representative.

If HUD receives more than one written response, HUD will only consider the first response it receives and will not consider any subsequent responses.

The response must include information and documentation that addresses each of the solo applicant's claims. In the information submitted to HUD, the collaborative applicant's authorized representative must include documentation that the response was sent to the solo applicant and the date on which it was sent.

4. HUD Decision and Notification of Decision

- (A) HUD will review only the evidence submitted by the solo applicant and the written response from the collaborative applicant to determine whether the solo applicant was permitted to participate in the CoC's planning process in a reasonable manner. If the CoC fails to submit a written response, then HUD will consider the evidence submitted by the solo applicant to make its decision.
- (B) If HUD finds that the solo applicant was permitted to participate in the CoC's planning process in a reasonable manner, then the solo applicant will not receive funding for its project application.
- (C) If HUD finds that the solo applicant was not permitted to participate in the CoC's planning process in a reasonable manner, then HUD will review the project application to determine whether it meets the quality and eligibility thresholds set forth in the CoC Program NOFA. If the project meets all quality and eligibility thresholds, then the solo applicant will receive funding, directly from HUD, for the project. However, because a CoC may not receive more total funding than was awarded in the CoC Program Competition, HUD will reduce or eliminate funding for the awarded project(s) listed at the bottom of the CoC's priority listing in the FY2012 CoC Program Competition until the CoC's total FY2012 award amount, including the solo applicant's project, is within the total amount awarded originally.
- (D) HUD will provide written notification, by mail, of its decision to the chair of the CoC Board, the authorized representative from the CoC's designated collaborative applicant, and the solo applicant within 60 days of the date of the receipt of the collaborative applicant's response. Where the collaborative applicant did not submit a response on behalf of the CoC, HUD will provide written notification within 90 days of its receipt of the evidence submitted by the solo applicant. If HUD determines that the solo applicant will receive funding, then HUD will consider the project application

for funding in the respective FY CoC Program Competition in accordance with the review standards set forth in the NOFA. HUD will also provide the list of project(s) whose funding will be reduced or eliminated to accommodate the solo applicant's project in the notification sent to the chair of the CoC Board and the authorized representative from the CoC's designated collaborative applicant.

- (E) CoCs and applicants should also note that if HUD receives one or more solo applicant appeals from a CoC, then HUD will determine the amount of funding that the solo applicants have requested; and, HUD will delay signing grant agreements for the awarded project(s) listed at the bottom of the CoC's priority listing that have requested funding equal to double the amount requested by the solo applicant(s) until solo applicant appeals have been decided.

B. Denied or Decreased Funding

Eligible applicants, including project applicants and collaborative applicants, that submitted an application to HUD in response to the FY2012 CoC Program NOFA, that were either not awarded funds by HUD, or that requested more funds than HUD awarded, may appeal HUD's decision. Only those applicants with projects that were ranked within the CoC's maximum amount available and whose CoC's Application met the minimum score for having projects funded as set forth in the NOFA will be considered for funding or additional funding.

To appeal HUD's decision, the applicant must submit a written appeal request to HUD within 45 days of the date of the announcement of the award for the project, with a copy to the chair of the CoC Board and the authorized representative from the CoC's designated collaborative applicant. If the CoC does not have a Board, then evidence only needs to be submitted to HUD and the authorized representative from the CoC's designated collaborative applicant. The written appeal request must include evidence demonstrating HUD error.

The applicant must submit its written appeal request by email, from the organization's email address, or by mail, on the organization's letterhead and signed by the authorized representative. The appeals process is as follows:

1. Denied Funding.

- (A) Projects, including projects for CoC planning funds, could have been rejected by HUD because either:
 - (1) the individual project application did not meet eligibility and quality thresholds set forth in the NOFA; or
 - (2) HUD did not have sufficient funding to fund all eligible projects ranked within the CoC's maximum award amount.
- (B) For applicants that were fully denied funding for a grant, the applicant must provide evidence that demonstrates HUD error in

not awarding the grant. Documentation submitted by the applicant must include:

- (1) documentation that the CoC Consolidated Application with which the project was submitted met the minimum score set forth in the NOFA;
- (2) documentation that the project was ranked within the maximum award amount available to the CoC;
- (3) evidence from the project application supporting the applicant's claim that the project application met eligibility and quality thresholds set forth in the NOFA; and
- (4) evidence that the applicant believes HUD did not follow its selection priorities set forth in the NOFA which resulted in the project not being funded (e.g., selecting a lower-ranked similar project within the CoC or a similar project from a lower-scoring CoC).

2. Decreased Funding.

- (A) Projects, including projects for CoC planning funds, could have not been awarded the full amount for either:
 - (1) requesting more funds in the project application than indicated on the HUD-approved Grant Inventory Worksheet (GIW); or
 - (2) being ranked by the CoC in a position where 100 percent of the funds for the grant is not within the CoC's maximum award amount.
- (B) For applicants that requested more funds than HUD awarded, the evidence must demonstrate that it was HUD error that caused them not to be awarded the full amount of the grant requested.
Documentation submitted by the applicant must include:

- (1) documentation that the project was ranked fully within the maximum award amount available to the CoC; and
- (2) evidence that the budget requested in the project application is identical to the budget identified on the CoC's HUD-approved GIW or, if the GIW contained incorrect information, evidence that the budget requested in the project application matches the applicant's approved grant agreement, as amended.

3. HUD Decision and Notification of Decision

HUD will provide written notification, by mail, of its decision to the applicant with a copy to the chair of the CoC Board and the authorized representative from the CoC's designated collaborative applicant within

60 days of the date of the receipt of the applicant's appeal request. Where HUD determines that HUD error occurred, and the applicant should have been awarded additional funding, then HUD will provide funding from the next available funds.

C. Consolidated Plan Certification

An eligible collaborative applicant or a project applicant who has submitted a project application to the CoC covering the geographic area in which their project operates whose jurisdiction refused to provide a certification of consistency with the Consolidated Plan may appeal. The appeals process is as follows:

1. **Written Appeal Request.** With the project application that is submitted by the application deadline, the applicant must submit a written appeal. The applicant must also email, mail, or fax a copy of this appeal to the jurisdiction that denied the certification of consistency, with a copy to the CoC's Board chair and the authorized representative from the CoC's designated collaborative applicant. The written appeal must include the following information:
 - (A) a copy of the applicant's initial request to the jurisdiction for the certification of consistency with the Consolidated Plan;
 - (B) a copy of the jurisdiction's response stating the reasons for denial, including the reasons the proposed project is not consistent with the jurisdiction's Consolidated Plan;
 - (C) a statement of the reasons why the applicant believes its project is consistent with the jurisdiction's Consolidated Plan that addresses the criteria for consistency set forth in 24 CFR 91.510;
 - (D) any additional communication between the applicant and the jurisdiction regarding the request for certification of consistency; and
 - (E) documentation that identifies to whom within the jurisdiction the evidence was sent and date on which it was sent.
2. **Jurisdiction Response.** The jurisdiction will have 10 days after the receipt of the applicant's written appeal request to submit a written response to HUD, either by email or by mail on the organization's letterhead, with a copy to the project applicant, the chair of the CoC Board, and the authorized representative of the CoC's designated collaborative applicant that includes the following information:
 - (A) an explanation of the reasons originally given for refusing to provide the certification of consistency with the Consolidated Plan; and
 - (B) a written rebuttal to any claims made by the applicant in the written appeal.

3. HUD Decision and Notification of Decision

- (A) HUD will review whether the project is consistent with the jurisdiction's Consolidated Plan based on the test set forth in 24 CFR 91.510(c) and will provide written notification, by mail, of its decision to the applicant and the jurisdiction, with a copy to the chair of the CoC Board and the authorized representative from the CoC's designated collaborative applicant within 45 days of the date of the receipt of the project applicant's appeal request. HUD will consider whether the applicant submitted the request to the appropriate certifying jurisdiction and the reasonableness of the jurisdiction's refusal to provide the certificate during its review.
- (B) If HUD finds that the certifying jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan was reasonable by the test set forth in 24 CFR 91.510(c), then HUD will automatically reject the project application. If HUD finds that the certifying jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan was not reasonable according to the test set forth in 24 CFR 91.510(c), then HUD will consider the project application for funding in the respective FY CoC Program Competition in accordance with the review standards set forth in the NOFA.
- (C) If the jurisdiction did not comply with 24 CFR 91.510(c) in providing the reasons for the denial of the applicant's initial request for certification of consistency with the Consolidated Plan, then HUD will find in favor of the applicant, and will consider the project application for funding in the respective FY CoC Program Competition in accordance with the review standards set forth in the NOFA. HUD will provide written notification of this decision within 45 days of the application deadline set forth in the CoC Program NOFA.

III. APPEALS SUBMISSION

Project applicants, Continuums of Care, and collaborative applicants choosing any of the above appeal options should submit all information to HUD by either option below:

- A. Submission of Appeals by Mail.** Your appeal will be considered filed in a timely manner if your appeal is postmarked on or before 11:59:59 p.m. on the appropriate date described in the previous section, and received by HUD on or within 15 days of that date. Applicants and CoCs may use any type of mail service provided by the United States Postal Service (USPS), to have their appeal package delivered to HUD, to meet the timely submission requirements. Applicants and/or CoCs using the USPS must take their application to a post office to get a receipt of mailing that provides the date and time the package was submitted to the USPS. If the USPS does not have a receipt with a digital time stamp, HUD will accept a receipt showing USPS Form 3817, Certificate of Mailing with a dated postmark. The

proof of submission receipt provided by the USPS must show receipt no later than the appeal deadline. The Certificate of Mailing or other USPS receipt will be your documentary evidence that your appeal was timely filed. If your appeal is sent by overnight delivery or express mail, other than the United States Postal Service, your appeal will be timely filed if it is placed in transit with the overnight/express mail service on or before the appeal submission date. Applicants should retain a receipt from these services showing that it was submitted for delivery by the appropriate deadline date and time. Applicants and/or CoCs whose appeals are determined to be late, who cannot provide HUD with a receipt from the USPS or other mail carrier that verifies the package was submitted prior to the deadline date and time will not receive consideration. Appeals must be submitted to:

Ann Marie Oliva, Director
Office of Special Needs Assistance Programs
Department of Housing and Urban Development
451 7th Street SW, Room 7262
Washington, DC 20410
(202) 708-4300

- B. Submission of Appeals by Email.** Appeals may be submitted via email to snapsappeals@hud.gov. The subject line of your email must include the **CoC number**, “**Appeal Notice**,” and type of appeal, i.e., **Participation**, **HUD Error**, or **Consolidated Plan Certification**. Below is a sample email Subject line:

Subject: AL-101 – Appeal Notice – Consolidated Plan Certification