



OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

MEMORANDUM FOR: James Arthur Jemison II, Principal Deputy Assistant Secretary for Community Planning and Development, D

THROUGH: Kevin J. Bush, Deputy Assistant Secretary for Grant Programs, DG

FROM: Tennille Smith Parker, Director
Disaster Recovery & Special Issues Division, DGBD

SUBJECT: Environmental Assessment and Finding of No Significant Impact Under the National Environmental Policy Act for the Issuance of Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG-DR Consolidated Waivers and Alternative Requirements Notice [FR-6303-N-01]

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Date: 2022.01.31 09:22:49 -0500

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It is the finding of this Office that issuance of the attached notice does not constitute a major Federal action having an individually or cumulatively significant effect on the human environment and, therefore, does not require the preparation of an environmental impact statement.

On October 29, 2021, HUD allocated over \$2 billion in Community Development Block Grant Disaster Recovery (CDBG-DR) funds appropriated by the Disaster Relief Supplemental Appropriations Act, 2022 (Pub. L. 117-43). The attached notice governs the use of these funds and imposes HUD’s CDBG-DR Consolidated Notice (“Consolidated Notice”) (Appendix B) and any amendments to the Consolidated Notice on CDBG-DR grants for disasters occurring in 2020. The Consolidated Notice, as amended by this Allocation Announcement Notice, includes waivers and alternative requirements, relevant regulatory requirements, the grant award process, criteria for action plan approval, and eligible disaster recovery activities.

The attached notice describes grant requirements and procedures, including waivers and alternative requirements, applicable to the \$2,051,217,000 of CDBG-DR grants allocated in the notice. The clarifying guidance, waivers and alternative requirements are not inconsistent with the overall purpose of title I of the Housing and Community Development Act of 1974 (HCDA). While the attached notice also includes waivers and alternative requirements that are unrelated to environmental considerations (e.g., deadlines for submission and review of action plans and amendments, maintaining public website, recordkeeping, etc.), the list below only includes those waivers that are related to environmental considerations.

1. *Certifications waiver and alternative requirement.* Sections 104(b)(4), (c), and (m) of the HCDA (42 USC 5304(b)(4), (c) & (m)), sections 106(d)(2)(C) & (D) of the HCDA (42 U.S.C. § 5306(d)(2)(C) & (D)), and section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced. Each grantee receiving a direct allocation under the notice must make the certifications outlined in the notice, including a certification of compliance with environmental requirements at 24 CFR Part 58.
2. *Direct grant administration and means of carrying out eligible activities (state grantees only).* Requirements at 42 U.S.C. 5306(d) are waived to the extent necessary to allow each grantee to use its CDBG-DR grant directly to carry out CDBG-DR eligible activities, rather than distribute all funds to local governments. Pursuant to this waiver, the standard at 24 CFR 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the grantee carries out directly. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489(g) and (h), and subparagraph III.A.1.a.(2)(a) of the Consolidated Notice relating to conflicts of interest, and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.
3. *Consultation (state grantees only).* HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b)(2), and 24 CFR 91.110, and imposing an alternative requirement that states receiving an allocation of CDBG-DR funds consult with all disaster-affected local governments (including any CDBG-entitlement grantees), Indian tribes, and any public housing authorities in determining the use of funds. This approach ensures that a state grantee sufficiently assesses the recovery needs of all areas affected by the disaster.
4. *Housing-related eligibility waivers.* 42 U.S.C. 5305(a)(24) is waived and replaced to allow (1) homeownership assistance for households earning up to 120 percent of the area median income; and (2) down payment assistance for up to 100 percent of the down payment. In addition, 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) is waived and alternative requirements adopted to the extent necessary to permit new housing construction, and to require Green and Resilient Building standards for new construction and reconstruction of housing with CDBG-DR funds as part of activities eligible under 42 U.S.C. 5305(a).
5. *Elevation standards for new construction, repair of substantial damage, or substantial improvement.* This notice sets forth elevation standards applicable to new construction, repair of substantial damage, or substantial improvement of structures located in an area delineated as a flood hazard area or equivalent in FEMA's data source identified in 24 CFR 55.2(b)(1). All Critical Actions must be elevated or floodproofed per the requirements in the Notice. Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements will be followed.
6. *Buyout activities.* HUD is waiving 42 U.S.C. 5305(a) and establishing an alternative requirement only to the extent necessary to create a new eligible activity for buyouts. The

term “buyouts” means the acquisition of properties located in a floodway, floodplain, or other Disaster Risk Reduction Area that is intended to reduce risk from future hazards.

7. *Safe Housing incentives for disaster-affected communities.* The limitation on eligible activities in section 42 U.S.C. 5305(a) is waived and HUD is establishing the following alternative requirement to establish safe housing incentives as an eligible activity. A safe housing incentive is any incentive provided to encourage households to relocate to suitable housing in a lower risk area or in an area promoted by the community’s comprehensive recovery plan.
8. *Alternative requirement for housing rehabilitation—assistance for second homes.* HUD is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a)(4) as follows: properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance or safe housing incentives. This prohibition does not apply to acquisitions that meet the definition of a buyout.
9. *Construction standard alternative requirement for elevation of nonresidential structures.* The notice requires nonresidential structures in a floodplain be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 100-year floodplain. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2)-(3) or successor standard) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation.
10. *Requirements for flood control structures.* Grantees that use CDBG-DR funds to assist flood control structures (i.e., dams and levees) are prohibited from using CDBG-DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed before the disaster event, without obtaining pre-approval from HUD and any Federal agencies that HUD determines are necessary based on their involvement or potential involvement with the levee or dam.
11. *Reimbursement of pre-application costs of homeowners, renters, businesses, and other qualifying entities.* Grantees are permitted to charge to grants the pre-award and pre-application costs of homeowners, renters, businesses, and other qualifying entities for eligible costs these applicants have incurred in response to an eligible disaster. A grantee may not charge such pre-award or pre-application costs to grants if the grantee cannot meet all requirements at 24 CFR part 58. Under CDBG-DR authorizing legislation and HUD’s environmental regulations in 24 CFR part 58, the CDBG-DR “recipient” (as defined in 24 CFR 58.2(a)(5), which differs from the definition in 2 CFR part 200) is the responsible entity that assumes the responsibility for completing environmental reviews under Federal laws and authorities. The responsible entity assumes all legal liability for the application, compliance, and enforcement of these requirements. Pre-award costs are also allowable when CDBG-DR assistance is provided for the rehabilitation, demolition, or reconstruction of government buildings, public facilities, and infrastructure. However, in such instances, the environmental review must occur before the underlying activity

(e.g., rehabilitation of a government building) begins. Grantees are also required to consult with the State Historic Preservation Officer, Fish and Wildlife Service, and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) when designing a reimbursement program.

12. *Alternative requirement for the elevation of structures when using CDBG-DR funds as the non-Federal match in a FEMA-funded project.* The Secretary finds good cause to establish an alternative requirement for the use of an alternative, FEMA-approved flood standard instead of the elevation requirements established in section II.B.2.c. and II.C.2. of the Consolidated Notice. The alternative requirements apply when: (a) CDBG-DR funds are used as the non-Federal match for FEMA assistance; (b) the FEMA-assisted activity, for which CDBG-DR funds will be used as match, commenced before HUD's obligation of CDBG-DR funds to the grantee; and (c) the grantee has determined and demonstrated with records in the activity file that implementation costs of the required CDBG-DR elevation or flood proofing requirements are not reasonable costs, as that term is defined in the applicable cost principles at 2 CFR 200.404.
13. *Duplication of benefits.* To comply with Section 312 and the requirement that all costs are necessary and reasonable, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has disaster recovery needs that have not been fully met. Accordingly, grantees must comply with the requirements of the Federal Register notice published on June 20, 2019 entitled, "Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees" (2019 DOB Notice) (84 FR 28836).
14. *Environmental requirements.* Section IV.D. of the Consolidated Notice includes requirements and clarifications on the following provisions: 1) Clarifying note on the process for environmental release of funds when a state carries out activities directly; 2) Adoption of another agency's environmental review; 3) Historic preservation reviews; and 4) Tiered environmental reviews. These requirements and clarifications are further outlined later in this document.
15. *Flood insurance.* Funds used for existing residential buildings in the Special Flood Hazard Area must follow Federal laws and regulations related to both flood insurance and floodplain management and additional requirements outlined in the notice. When grantees use CDBG-DR funds to rehabilitate or reconstruct existing residential buildings in a Special Flood Hazard Area (or 100-year floodplain), the grantee must comply with applicable Federal, state, local, and tribal laws and regulations related to both flood insurance and floodplain management. The grantee must comply with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) which mandates the purchase of flood insurance protection for any HUD-assisted property within a Special Flood Hazard Area. Therefore, a HUD-assisted homeowner for a property located in a Special Flood Hazard Area must obtain and maintain flood insurance in the amount and

duration prescribed by FEMA's National Flood Insurance Program. Additionally, the Consolidated Notice institutes alternative requirements to 42 U.S.C. 5305(a)(4) limiting the use of CDBG-DR assistance for rehabilitation/reconstruction of houses located in a floodplain at the time of the disaster in certain instances outlined in the Consolidated Notice.

a. Prohibition on flood disaster assistance for failure to obtain and maintain flood insurance. Grantees must comply with section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which prohibits flood disaster assistance in certain circumstances. No Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. A grantee may not provide disaster assistance for the repair, replacement, or restoration of a property to a person who has failed to satisfy the Federal requirement to obtain and maintain flood insurance and must implement a process to verify and monitor for compliance with section 582 and the requirement to obtain and maintain flood insurance. Grantees are reminded that CDBG-DR funds may be used to assist beneficiaries in the purchase of flood insurance to comply with this requirement, subject to the requirements of cost reasonableness and other federal cost principles.

b. Prohibition on flood disaster assistance for households above 120 percent of AMI for failure to obtain flood insurance. When a homeowner located in the floodplain allows their flood insurance policy to lapse, it is assumed that the homeowner is unable to afford insurance and/or is accepting responsibility for future flood damage to the home. Higher income homeowners who reside in a floodplain, but who failed to secure or decided to not maintain their flood insurance, should not be assisted at the expense of lower income households. To ensure that adequate recovery resources are available to assist lower income homeowners who reside in a floodplain but who are unlikely to be able to afford flood insurance, the Secretary finds good cause to establish an alternative requirement. The alternative requirement to 42 U.S.C. 5305(a)(4) is as follows: Grantees receiving CDBG-DR funds are prohibited from providing CDBG-DR assistance for the rehabilitation/reconstruction of a house, if (i) the combined household income is greater than either 120 percent of AMI or the national median, (ii) the property was located in a floodplain at the time of the disaster, and (iii) the property owner did not obtain flood insurance on the damaged property, even when the property owner was not required to obtain and maintain such insurance.

c. Responsibility to inform property owners to obtain and maintain flood insurance. Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) is a statutory requirement that property owners receiving disaster assistance that triggers the flood insurance purchase requirement have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance and to maintain such written notification in the documents evidencing the transfer of the property, and that the transferring owner may be liable if he or she fails to do so. A grantee or subrecipient receiving CDBG-DR funds must notify property owners of their responsibilities under section 582.

16. *Federal accessibility requirements.* Grantees are reminded that the use of CDBG-DR funds must meet accessibility standards, including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act.

Assistance under the CDBG program is subject to the environmental review requirements of 24 CFR Part 58. Grantees are responsible for completing environmental reviews on specific projects in accordance with Part 58. If the grantee determines that the environmental review is satisfactory, the grantee must request and receive a release of funds from HUD, if applicable, before it can commit funds or take any choice limiting action with respect to a project.

In accordance with the Appropriations Act, grant recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, 408(c)(4), or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit. The grant recipient must notify HUD in writing of its decision to adopt another agency's environmental review. Environmental requirements include historic preservation reviews. To facilitate expedited historic preservation (Section 106) reviews, HUD strongly encourages grantees to allocate administrative funds to retain a qualified historic preservation professional and support the capacity of the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) to review disaster recovery projects. As appropriate, grantees may use provisions in existing Section 106 Programmatic Agreements (PAs) to expedite Section 106 reviews.

In addition, the Appropriations Act allows the Secretary, upon a receipt of a Request for Release of Funds and certification, to immediately approve the release of funds for an assisted activity or project if the recipient has adopted an environmental review, approval or permit from another Federal agency or if the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). For these grants, HUD will allow a grantee to also carry out activities directly, in addition to distributing funds to subrecipients. Thus, per 24 CFR 58.4, when a grantee carries out activities directly, the grantee must submit the Certification and Request for Release of Funds to HUD for approval. Grantees receiving an allocation of funds under the notice are encouraged to participate in an expedited and unified interagency review process as one means of expediting the implementation of disaster recovery projects.

Tiered environmental reviews, as described at 40 CFR 1508.1(ff) and 24 CFR 58.15, are a means of making the environmental review process more efficient by allowing parties to “eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review” (40 CFR 1501.11(a)). Tiering is appropriate when a responsible entity is evaluating a single-family housing program with similar activities within a defined local geographic area and timeframe (e.g., rehabilitating single-family homes within a city district or county over the course of one to five years) but where the specific sites and activities are not yet known. Public notice and the Request for Release of Funds (HUD-Form 7015.15) are processed at a broad level, eliminating the need for publication at the site-specific level. However, funds

cannot be spent or committed on a specific site or activity until the site-specific review has been completed and approved. HUD encourages grantees as Responsible Entities to develop a tiered approach to streamline the environmental review process for whenever the action plan contains a program with multiple, similar activities that will result in similar impacts.

Issuance of the notice does not constitute approval of any proposed projects. Any impacts arising from program activities would be localized and addressed in the appropriate environmental reviews prior to any choice-limiting actions. Accordingly, the issuance of the notice is deemed not to be a major Federal action having a significant impact on the human environment.

Concurrences:

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 Lauren McNamara Date
 Acting Departmental Environmental Clearance Officer

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 Christopher H. Hartenau Date
 Environmental Clearance Officer
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Approve:

JAMES JEMISON Digitally signed by JAMES JEMISON
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 James Arthur Jemison II Date
 Principal Deputy Assistant Secretary
 for Community Planning and Development

Attachment

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