



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE DEPUTY SECRETARY
WASHINGTON, DC 20410-0050**

MEMORANDUM FOR: CDBG-DR Grantees for Disasters Occurring in 2020 and 2021 (Grantees announced in the February 2022 Notice and the May 2022 Notice); Community Planning and Development Field Office Directors, Deputy Directors, and Program Managers.

FROM: Adrienne Todman, Deputy Secretary, SD 

THROUGH: Marion M. McFadden, Principal Deputy Assistant Secretary for Community Planning and Development, D

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SUBJECT: Replacement of the Alternative Requirement on Privately-Owned Utilities at Section III.G.3. of the CDBG-DR Consolidated Notice (87 FR 6388) and (87 FR 31663) for Disasters Occurring in 2020 and 2021

APPLICABILITY DATE: December 12, 2022

PURPOSE

This memorandum governs Community Development Block Grant disaster recovery (CDBG-DR) funds appropriated pursuant to the Disaster Relief Supplemental Appropriations Act, 2022 for major disasters occurring in 2020 and 2021.

WAIVER AUTHORITY

The Disaster Relief Supplemental Appropriations Act, 2022 (Pub. L. 117-43) approved September 30, 2021 (the "Appropriations Act"), made available \$5,000,000,000 in CDBG-DR funds. These CDBG-DR funds are for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCDA) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the "most impacted and distressed" areas resulting from a qualifying major disaster in 2020 or 2021.

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD may also exercise its regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

The alternative requirement included below is based upon a determination by the Secretary that good cause exists, and that the alternative requirement is not inconsistent with the overall purposes of Title I of the HCDA.

The Appropriations Act authorized the Secretary to publish any waiver or alternative requirement via a *Federal Register* notice or on the Department's website, no later than 5 days before the effective date of such waiver or alternative requirement. For the alternative requirement included below, HUD is exercising its authority to publish on the Department's website.

PUBLIC LAW 117-43 ALTERNATIVE REQUIREMENTS

In October 2021, HUD allocated \$2,051,217,000 in CDBG-DR funds from the Appropriations Act to assist disaster-related needs from disasters occurring in 2020. On February 3, 2022, HUD published a *Federal Register* notice governing the use of those funds (87 FR 6364) ("February 2022 Notice"). In March 2022, HUD allocated an additional \$722,688,000 in CDBG-DR funds from the Appropriations Act for disasters occurring in 2020 and \$2,213,595,000 in CDBG-DR funds from the Appropriations Act for disasters occurring in 2021. On May 24, 2022, HUD published a *Federal Register* notice governing the use of those funds (87 FR 31636) ("May 2022 Notice").

Both *Federal Register* notices included the Consolidated Notice as Appendix B and made the Consolidated Notice applicable to the grants announced in those notices. Paragraph III.G.3. of the Consolidated Notice imposes the following alternative requirement: "*Prohibiting assistance to private utilities*. HUD is adopting the following alternative requirement to section 105(a) and prohibiting the use of CDBG-DR funds to assist a privately-owned utility for any purpose."

REPLACEMENT OF THE ALTERNATIVE REQUIREMENT ON PRIVATE UTILITIES FOR 2020 AND 2021 DISASTERS

The Continuing Appropriations Act, 2023 (Public Law 117-180), approved on September 30, 2022, appropriated an additional \$2,000,000,000 for 2021 and 2022 disasters. The funds under Public Law 117-180 are available "for the same purposes and under the same terms and conditions" as funds appropriated under Public Law 117-43 with a few exceptions. One of the exceptions is that amounts made available under Public Laws 117-180 and 117-43 "may be used by a grantee to assist utilities as part of a disaster-related eligible activity under section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a))."

To comply with this new provision governing assistance to utilities, HUD is adding the alternative requirement described below in the February 2022 Notice and the May 2022 Notice and modifying those notices to make inapplicable the paragraph III.G.3. of the Consolidated Notice for 2020 and 2021 disasters. While it is possible that not every CDBG-DR assisted utility will serve predominantly LMI populations, HUD recognizes that LMI populations would benefit especially from the increased resilience and recovery of private utilities. HUD also recognizes that privately-owned, for-profit utilities have a means of obtaining private investment or otherwise recapturing costs from ratepayers. Therefore, HUD's alternative requirement below includes basic safeguards that HUD has determined are necessary to ensure that costs comply with the certification to give

maximum feasible priority to activities that benefit low- and moderate-income persons and that costs are necessary and reasonable and do not duplicate other financial assistance. The modified alternative requirement also makes clear that assistance to utilities is subject to all other requirements that apply to the use of funds, consistent with the requirement in Public Law 117-180 that funds must be for an “eligible activity under section 105(a).” If a grantee needs to submit a substantial amendment to add any activity based on these new alternative requirements, they must follow section III.C.6.a. in the Consolidated Notice.

For CDBG-DR grants made in response to 2020 and 2021 disasters, paragraph III.G.3. of the Consolidated Notice is made inapplicable and the following alternative requirement is added as paragraph IV.A.4. to the February 2022 Notice and May 2022 Notice:

“IV.A.4. Assistance to Utilities: A grantee may assist private for-profit, non-profit, or publicly owned utilities as part of disaster-related activities that are eligible under section 105(a) of the HCDA, or otherwise made eligible through a waiver or alternative requirement, provided that the grantee complies with the following:

1. The funded activity must comply with applicable CDBG-DR requirements, including the requirements that the assisted activity will meet a national objective, the activity will address an unmet recovery need or a risk identified in the grantee’s mitigation needs assessment, and if the assistance is provided to a for-profit entity for an economic development project under section 105(a)(17), the grantee must first comply with the underwriting requirements in section II.D.6. of the Consolidated Notice.
2. Each grantee must carry out the grant consistent with the grantee’s certification that

‘With respect to activities expected to be assisted with CDBG-DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.’

To fortify compliance with the existing certification, if the grantee carries out activities that assist privately-owned, for-profit utilities, the grantee must prioritize assistance to for-profit utilities that will benefit areas where at least 51 percent of the residents are low- and moderate-income persons and demonstrate how assisting the private, for-profit utility will benefit those areas.

3. The grantee must determine that the costs of the activity to assist a utility are necessary and reasonable and that they do not duplicate other financial assistance. To fortify these requirements and achieve a targeted use of funds and to safeguard against the potential over-subsidization when assistance is used to carry out activities that benefit private, for-profit utilities, the grantee must document that the level of assistance provided to a private, for-profit utility addresses only the actual identified needs of the utility. Additionally, the grantee must establish policies and procedures to ensure that the CDBG-DR funds that assist private, for-profit utilities reflect the

actual identified financing needs of the assisted businesses by establishing a mix of financing terms (loan, forgivable loan, and/or grant) for each assisted private, for-profit utility, based on the business's financial capacity, in order to ensure that assistance is based on actual identified need."

FOR FURTHER INFORMATION CONTACT

Tennille Smith Parker, Director, Disaster Recovery & Special Issues Division, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202-708-3587. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Facsimile inquiries may be sent to Ms. Parker at 202-708-0033. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to Disaster_Recovery@hud.gov.