



**PRO HOUSING**

Pathways to Removing Obstacles



# PRO Housing

## Legal and Program Requirements

# PRO Housing grants

- \$85 million made available by Consolidated Appropriations Act, 2023 (Public Law 117-328, approved December 29, 2022)
- For the identification and removal of barriers to affordable housing production and preservation
- As with all CDBG assistance, the priority is to serve low- and moderate-income people.
- Eligible recipients include State and local governments, metropolitan planning organizations, and multijurisdictional entities



# Applicable requirements

All recipients of PRO grants are subject to the requirements of:

- Consolidated Appropriations Act, 2023
- FY23 PRO Housing Notice of Funding Opportunity (NOFO) (including appendices)
- CDBG regulations at 24 CFR part 570, unless modified

Note: Multijurisdictional entities and Metropolitan Planning Organizations are generally subject to the CDBG entitlement regulations



# National Objective

- Each proposed PRO Housing activity must meet a CDBG national objective pursuant to section 101(c) of the Housing and Community Development Act of 1974:
  - Benefiting low- and moderate-income persons,
  - Preventing or eliminating slums or blight, or
  - Meeting other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs

Note: As stated in Appendix A of the PRO-Housing NOFO, HUD will not consider waiver requests that seek to waive a national objective entirely. Although exceedingly rare, HUD may consider a regulatory waiver request to impose an alternative requirement modifying an existing national objective requirement.



# Eligible Activities

- Each activity must be eligible pursuant to 42 U.S.C. 3505(a) and applicable regulations at 24 CFR part 570, as applied and modified by the NOFO, or receive an eligibility waiver. (New construction of housing is permitted, subject to the requirements that apply to rehabilitation activities at 42 U.S.C. 5305(a)(4) and 24 CFR 570.202(b).)
- Eligible activities must identify and seek to remove one or more barriers to affordable housing production and preservation. Additionally, each proposed activity must do one or more of the following:
  - Further develop, evaluate, and implement housing policy plans
  - Improve housing strategies
  - Facilitate affordable housing production and preservation



# A note about ConPlan/Action Plan

- Any Applicant that receives funding under Title I of the HCDA (including any member(s) of a multijurisdictional entity), the entity(ies) must certify that the activities are consistent with the strategic plan in the State's or local jurisdiction's ConPlan
- For metropolitan planning organizations and multijurisdictional entities that are not recipients of other HUD funding, the ConPlan requirements at 24 CFR 91 are not applicable



# Timely expenditure

- HUD must obligate all funds on or before September 30, 2026
- Grantees must expend funds in a manner that meets all program requirements (including reporting) by the end of the period of the performance (**end of FY 2029**)
- Grantees may not draw down funds in advance of need (2 CFR 200.305)
- Any unexpended funds in a grantee's account will cancel on **September 30, 2031** (24 CFR 570.200(k); 570.480(h) for states)



# Overview of grant process

- **Public Participation:** Applicant conducts public participation in accordance with NOFO requirements. This includes at least 1 public hearing and at least 15 days for public comment
- **Submission:** Applicant responds to public comment and submits its application and certifications
- **Review:** HUD reviews and selects highest scoring applications
- **Awards:** If the application is selected for award, HUD sends a letter to awardee outlining next steps.





# Waivers

- **From the Appropriations Act:**

“The Secretary may waive or specify alternative requirements for any provision of such title I **except for requirements related to fair housing, nondiscrimination, labor standards, the environment, and requirements that activities benefit persons of low- and moderate-income**, upon a finding that any such waivers or alternative requirements are **necessary to expedite or facilitate the use of such amounts**”

- HUD has already waived certain requirements and provided alternatives where necessary
- Grantees may request additional waivers and alternative requirements as needed to address specific needs related to their activities (instructions at NOFO Appendix A)
- **The waivers and alternative requirements apply only to PRO Housing funds**
- **National Objective Waivers** - HUD will not consider waiver requests that seek to waive a national objective entirely. Although exceedingly rare, HUD may consider a waiver request to impose an alternative requirement modifying an existing national objective requirement.



# Grant Administration - Application

- The requirements for CDBG actions plans at 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR 91.220, and 91.320, are waived
- Instead, each Applicant must submit an application detailing the proposed use of funds and how they will identify and remove barriers to affordable housing production and preservation. **Only the funds described in the application and later approved by HUD will be obligated.**
- The application should include waivers anticipated to be necessary at the time of submission.
- Once an Applicant receives an award, the application (or approved components of it) becomes the basis for the PRO Housing Action Plan.



# Grant Administration – Application and Housing Action Plan

- Once the grantee receives **Disaster Recovery Grant Reporting (DRGR)** system access, the grantee will enter into DRGR the activities and information (including projected expenditures and anticipated outcomes)
- This information is the grantee's PRO Housing Action Plan
- The grantee must publish the PRO Housing Action Plan on its official website(s) in an accessible format and ensure access for individuals with disabilities
- HUD will monitor the grantee's activities and use of funds for consistency with its PRO Housing Action Plan and all other requirements, including performance and timeliness



# Performance Review and Reporting

- Requirements for submission of a performance report pursuant to 24 CFR 91.520 are waived
- Instead, HUD is requiring that grantees enter information in the DRGR system in sufficient detail to permit review of performance on an annual basis and to enable remote review of grantee data to allow HUD to assess compliance and risk
- The level of detail must be sufficient to serve as the basis for acceptable performance reports, permit HUD review of compliance requirements, and allow public understanding of progress



# Performance Review and Reporting

- Oversight and data use: DRGR and APR data will be used to:
  - provide reports to Congress and the public
  - monitor for anomalies or performance problems
  - reconcile budgets, obligations, funding draws, and expenditures
  - determine compliance with program caps and the overall benefit percentage
  - analyze the risk
- Program income: Grantees must also use the DRGR system to track program income receipts, disbursements, and revolving loan funds.
- APR: Each grantee must submit an APR through DRGR no later than 30 days following the end of the fiscal year. The first APR is due no later than 30 days following the end of the fiscal year in which award is made. When the program is completed and the criteria for closeout is met, there will be a final APR to complete reporting.



# Public Participation

- The usual public participation requirements that apply to CDBG formula grants are waived\*
- Instead, there are streamlined public participation requirements
  - At least 1 public hearing at the Applicant's level of government for the application and for each substantial amendment. This hearing must be in person, but the Applicant may also include a virtual option for public access
  - Reasonable notice (at least 15 days) and opportunity for public comment
  - Ongoing public access to information about the use of the funds
- Note that the public participation process is distinct from the stakeholder engagement rating criterion

*\* 42 USC 5304(a)(2) and (3), 24 CFR 570.486, 24 CFR 91.105(b) and (c), and 24 CFR 91.115(b) and (c) are waived*



# Streamlined Public Participation

- Publish the application/amendment for public comment
  - include prominent posting on the Applicant's official website(s) and
  - afford the public, affected local governments, and interested parties a reasonable opportunity to examine the plan or amendment's contents
- Hold at least one public hearing to solicit public comments
- Ensure that the public has equal access to information, including persons with disabilities and limited English proficiency (LEP)
- Provide reasonable time frame and method(s) for receiving comments. A summary of all comments must be submitted to HUD
- Meetings must be in facilities accessible to persons with disabilities.



# Public Participation: Amendments

- **Substantial amendments** are changes that affect the responses to the rating factors and include but are not limited to:
  - a change in program benefit, beneficiaries, or eligibility criteria;
  - the allocation or re-allocation of more than ten percent of the award; or
  - the addition or deletion of an activity.
- After award, a grantee may substantially amend the Application if it follows public participation, and HUD agrees in writing that the amended Application would still score in the fundable range.
- Public comment is not required for a non-substantial amendment, but non-substantial amendments require HUD acceptance in the DRGR system prior to taking effect.





# Public Participation: Post-Award requirements

- A CDBG grantee must update its public participation plan to reflect the requirements of the PRO Housing NOFO. This may occur simultaneously with application publication.
- Must satisfy 24 CFR 91.105 or 91.115, as applicable (except as provided for in the NOFO and notices providing waivers and alternative requirements).
- The Application and grant award information must be navigable by communities of the grantee (or relevant agency) homepage.
- Materials must be available on the grantee's website(s) and on request, and accessible to persons with disabilities and non-English-speaking persons.
- The grantee must provide a timely written response to every public complaint (15 working days of the receipt of the complaint, where practicable).



# Direct grant administration and means of carrying out eligible activities

- 42 U.S.C. 5306 has been waived in part so that States may carry out eligible activities directly (do not have to distribute funds to local governments)
- Eligible activities also may be carried out by a State's employees, through procurement contracts, or through subrecipient agreements or agreements with recipients in all geographic areas within the State's jurisdiction, so long as the State is consistent with its PRO Housing Action Plan
- For all grantees, activities made eligible at 42 U.S.C. 5305(a)(15) may only be undertaken by the eligible entities described in that section.



# Grant administration responsibilities and general administration cap

- **Responsibilities:** The grantee is accountable for the use of all funds. Grantees may not delegate or contract out any inherently governmental responsibilities related to management of the funds
- **General administration cap:** HUD is waiving caps for general administration, planning, and technical assistance that apply to CDBG
  - State CDBG grantees may use up to 10% of the award for general admin costs and technical assistance. Nonfederal match for admin costs is not required
  - Entitlement CDBG grantees may use up to 10% of the award for general admin costs and technical assistance. There is no limit on the amount of PRO Housing funds non-state grantees may use for planning activities



# For State grantees only

## Planning-only activities

- Requirements at 24 CFR 570.483(b)(5), (c)(3) are removed
- States must comply with 570.208(d)(4) when funding PRO Housing planning-only activities, or directly administering planning activities
- Types of planning activities States may fund or administer are expanded to be consistent with those of at 24 CFR 570.205.
- No restriction on the percentage of a PRO Housing award that grantees may spend on eligible planning activities.



# For State grantees only

## Distribution of funds

- States may distribute funds to local governments, including entitlement communities, and Indian tribes. Sections of the HCDA and the CDBG regulations that would prohibit or restrict a State from distributing CDBG funds to entitlement communities and Indian tribes under the CDBG program are waived

## Activities in entitlement jurisdictions

- States may, either directly or through units of general local government, use funds for activities located in entitlement areas without contribution from the entitlement jurisdiction. To allow this, 24 CFR 570.486(c) has been waived in part.



# For State grantees only

## Use of subrecipients

- States acting directly may use subrecipients. 24 CFR 570.502, 570.503, and 570.500(c) apply, but the requirements that specifically reference 2 CFR part 200 must be included in subrecipient agreements.
- Pursuant to 24 CFR 570.489(n) and 570.502, State grantees must ensure that all costs conform with 2 CFR 200 subpart E, whether activities are carried out directly or through a subrecipient.

## Change of use of real property

- To allow for the fact that States may carry out activities directly, all references to “unit of general local government” in 24 CFR 570.489(j) shall be read as “unit of general local government or State.”



# For State grantees only

## Responsibility for review and handling of noncompliance

- In conformance with the waiver allowing the State to carry out activities directly, 24 CFR 570.492 is waived
- Any State receiving a direct award shall make reviews and audits, including onsite reviews of any subrecipients, designated public agencies, and local governments, as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2), as amended, and as modified by the PRO Housing NOFO.
- In the case of noncompliance, the State shall act to prevent a continuance of the deficiency, mitigate any adverse effects, and prevent a recurrence.
- The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or local governments.



# Recordkeeping

- When a State carries out activities directly, **24 CFR 570.490(b) is waived**. Instead, the State shall establish and maintain such records as may be necessary to facilitate review and audit under 24 CFR 570.493.
  - The content of records shall be sufficient to enable HUD to make the applicable determinations described at 24 CFR 570.493 and compliance determinations.
  - For fair housing and equal opportunity purposes, and as applicable, records shall include data on racial, ethnic, and gender characteristics of persons who are Applicants for, participants in, or beneficiaries of the program.
- Local governments, MPOs, and multijurisdictional entities are subject to the recordkeeping requirements of 24 CFR 570.506.





# Program Income

- Program income rules at 42 U.S.C. 5304(j), 24 CFR 570.500(a) and (b), 570.504, and 570.489(e) are waived to the extent necessary to provide additional flexibility for PRO Housing
- For PRO Housing purposes, “program income” is gross income generated from the use of PRO Housing funds and received by a State, local government, or tribe, or a subrecipient of a State, local government, or tribe, unless excluded from the definition as described in the NOFO.
- When income is generated by an activity that is only partially assisted with PRO Housing funds, the program income to the PRO Housing grant shall be prorated to reflect the percentage of PRO Housing funds used.
- Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue activities, is treated as additional PRO Housing grant funds subject to the requirements of the NOFO and must be used in accordance with the grantee’s Action Plan.



# Reimbursement of expenses

- Per 24 CFR 570.489(b), a State may reimburse itself for otherwise allowable application-related costs incurred by itself or its subrecipients on or after the date of publication of the NOFO
- Entitlement grantees are subject to 24 CFR 570.200(h) but may reimburse themselves or subrecipients for otherwise allowable costs incurred on or after the publication date of this NOFO.
- HUD expects all grantees to include all pre-agreement activities in their applications. 24 CFR 570.200(h) and 570.489(b) apply to grantees reimbursing costs incurred prior to the execution of a grant agreement



# Environmental requirements

- Each activity must meet the applicable environmental requirements. After the Responsible Entity completes an environmental review(s) pursuant to 24 CFR part 58, as applicable, and receives an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds
- Note: When a State carries out activities directly, the State must submit the certification and request for release of funds for HUD approval.
- To facilitate expedited historic preservation reviews, HUD strongly encourages grantees to allocate general admin funds to support the capacity of the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) to review PRO Housing projects



# Procurement

- Per 24 CFR 570.489(d), a State must have fiscal and administrative requirements for expending and accounting for all funds, and, per 570.489(g), a State shall establish requirements for procurement policies and procedures for local governments based on full and open competition. All local governments receiving funds from a State through a method of distribution are subject to that State's procurement policies and procedures.
- A State may meet the above requirements by electing to follow 2 CFR part 200, as may be amended.
- Local governments receiving a direct grant from HUD will be subject to the procurement requirements of 2 CFR 200.318-327, as may be amended.



# Timeliness and capacity

- 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution are waived.
- HUD expects grantees to expeditiously obligate and expend all funds, and to carry out activities in a timely manner.
- HUD will evaluate timeliness in relation to each grantee's established expenditure plan. Absent substantial evidence to the contrary, a grantee is deemed timely if the schedule for carrying out its activities is substantially met.
- If HUD determines the grantee has not carried out its PRO Housing activities and certifications in accordance with the NOFO, HUD will undertake a further review to determine whether the grantee has the continuing capacity to timely carry out activities
- When evaluating capacity, HUD will consider: (1) the nature and extent of the grantee's performance deficiencies, (2) types of corrective actions the grantee has undertaken, and (3) the success or likely success of such actions.



# Corrective and remedial actions

- HUD may undertake corrective and remedial actions for States in accordance with subpart O or under subpart I of the CDBG regulations at 24 CFR part 570.
- As in the annual CDBG program, subpart O will apply to local governments receiving direct grants from HUD.
- Prior to a reduction, withdrawal, or adjustment of a grant, the recipient shall be notified and given an opportunity for an informal consultation. The Secretary may adjust, reduce, or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured.



# Certifications

- **24 CFR 91.325 and 91.225 are waived.** Instead, each State or local government applying for an award under this NOFO must make the certifications required by Appendix B and submit the certifications with its Application.
- Other applicants (MPOs, non-entitlement local governments, and multijurisdictional entities) must make the certifications required of them in Appendix B



# Questions?

