



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

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

MEMORANDUM FOR: State of Texas for Disasters Occurring in 2021 and 2024
(Allocation Announcement Notices 87 FR 31636 published on May 24, 2022; 88 FR 3198 published on January 18, 2023; and 90 FR 4759 published on January 16, 2025); Community Planning and Development Field Office Directors, Deputy Directors, Regional Directors, and Program Managers.

FROM: Bryan W. Horn, Acting Principal Deputy Assistant Secretary for Community Planning and Development, D

SUBJECT: Standardized Area Median Income Waiver and Use of Upper Quartile or Exception Criteria for Non-Entitlement Counties Waiver (State of Texas Only)

APPLICABILITY DATE: December 8, 2025

PURPOSE

This memorandum provides new waivers and alternative requirements to allow the State of Texas to: 1) set the minimum area median income (AMI) requirement to the state's annual AMI in disaster-impacted counties that have an AMI below the statewide AMI; and 2) apply exception criteria in non-entitlement counties in which fewer than one quarter of the block groups within their jurisdiction have 51 percent or more LMI residents.

This applies to the following CDBG-DR grants allocated to the State of Texas:

- 1) CDBG-DR allocation for a disaster occurring in 2021 funded by P.L. 117-43 and P.L. 117-180 and subject to the requirements published in 87 FR 31636 on May 24, 2022; 88 FR 3198 on January 18, 2023; and Memorandum 22-01 on December 7, 2022; and
- 2) CDBG-DR allocation for disasters occurring in 2024 funded by P.L. 118-158 and subject to the requirements published in 90 FR 4759 on January 16, 2025; 90 FR 1754 on January 8, 2025; Memorandum 2025-02 published on March 19, 2025; and Memorandum 25-03 published on March 31, 2025 (collectively, the "Prior Notices").

WAIVER AND ALTERNATIVE REQUIREMENT AUTHORITY

With certain exceptions, the Appropriations Acts cited above authorize 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 grant funds. In particular, the Appropriations Acts waiver and alternative requirement authority does not extend to requirements related to fair housing, nondiscrimination, labor standards, and the environment. The Department of Housing and Urban Development (HUD) (the "Department") may also exercise its regulatory waiver authority under 24 CFR 5.110,

91.600, and 570.5.

The Appropriations Acts also authorizes the Secretary to publish any waiver or alternative requirement either via the *Federal Register* or the Department's website no later than five days before the effective date of such waiver or alternative requirement. HUD is exercising its authority to publish this memorandum on the Department's website: [CDBG-DR Laws, Regulations, and Federal Register Notices](#).

All waivers and alternative requirements authorized in this memorandum are based upon a determination by the Secretary that good cause exists, and the waiver and alternative requirement is not inconsistent with the overall purposes of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCDA). The basis for each waiver and alternative requirement is summarized in this notice.

Standardized Area Median Income Waiver (State of Texas only)

Background

The Department received a request from the State of Texas for a waiver and alternative requirement to use the state's AMI as the minimum AMI in disaster-impacted counties that have an AMI below that of the state, to apply a consistent standard for determining LMI eligibility. In disaster impacted counties that have an AMI above the state AMI, county-level AMI would continue to be used.

Per 42 U.S.C. 5301(c), the aggregate use of CDBG-DR funds shall principally benefit LMI persons in a manner that ensures at least 70 percent (or another percentage permitted by HUD in a waiver) of the grant is expended for activities that benefit such persons. Per 42 U.S.C. 5302(a)(20)(A), low- and moderate-income persons are defined as families or individuals whose income does not exceed 80 percent of the median area income of the area involved, as determined by the Secretary with adjustments for smaller and larger families.

According to data compiled by the state, income levels vary significantly from county to county. For example, FY25 AMI for a family of four in Dimmit County is \$38,100, while FY25 AMI for a family of four in Kendall County is \$144,700. The state reports that their FY25 statewide median family income is \$98,800, with 206 out of 254 counties having an AMI below the state AMI. While there are large income variations between counties, the state reports construction costs to be comparable across counties. The state affirms that this type of income variation, with fixed construction costs, has unintended consequences for participation in their CDBG-DR funded home rehabilitation program, as well as other recovery programs.

As the State seeks to primarily serve LMI individuals and areas in the disaster-impacted counties, the variation between county-level AMI limits the participation of families and individuals in the State's recovery programs in those counties with very low AMI, because these families and individuals have incomes that are at or above 80 percent of the AMI in the respective county even though their incomes are less than 80 percent of the statewide median income.

Under the authority of 42 U.S.C. 5302(a)(20)(B), the State requests the Department to allow use of state AMI as the minimum AMI for all disaster-impacted counties that have an AMI below that of the state, while maintaining county-level AMI only for counties that have an AMI above that of the state. This will allow the state to apply consistency in making LMI determinations across the MID areas based on a determination that the incomes of families and individuals are below 80 percent of statewide median income.

HUD's Determination

After reviewing this request, the Department finds there is good cause to waive 42 U.S.C. 5302(a)(20)(A) to the extent necessary to allow the Secretary to enable the State of Texas to make LMI determinations based on 80 percent of state AMI, instead of otherwise applicable county-level AMI, in disaster-impacted counties with a county-level AMI that is below the state AMI (as published by HUD). In such areas the State may also use state AMI to calculate 120 percent of statewide median income (as published by HUD), and to use 120 percent of state AMI as a substitute for 120 percent of AMI.

Approving this waiver will also allow the State to coordinate recovery efforts across their grant portfolio, as the standardized annual median income waiver was already approved for previous CDBG-DR and CDBG-MIT allocations in the State of Texas, as published in 85 FR 60821 on September 28, 2020.

This waiver is provided for the purpose of assisting the most at-risk populations in need of recovery assistance in the MID areas, as identified by HUD and the State. As such, in granting this flexibility for Texas' CDBG-DR funds for disasters occurring in 2021 and 2024, the Department will not consider any requests to lower the overall benefit requirement, which provides that at least 70 percent of funds allocated must be expended for activities that benefit LMI persons.

Upper Quartile Exception Criteria Waiver (State of Texas only)

Background

The Department received a request from the State of Texas for a waiver to apply exception criteria in non-entitlement counties to determine that an activity qualifies as meeting the LMI area benefit national objective when the area contains fewer than 51 percent of LMI persons, based on the "upper quartile" data methodology outlined in 24 CFR 570.208(a)(1)(ii). Section 105(c)(2)(A) of the HCDA allows for this exception when "the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income."

The State is requesting this waiver and alternative requirement for only those non-entitlement counties in which fewer than one quarter of the block groups within their jurisdiction have 51 percent or more LMI residents. According to data compiled by the State, there are 79 counties impacted by the 2021 and/or 2024 disasters that would be eligible to use the upper

quartile methodology based on exception criteria. These counties could then use “exception percentages,” as calculated by HUD, as the threshold for determining area benefit eligibility.

Certain recovery activities identified in the State’s action plans, such as infrastructure projects, best lend themselves to use area benefit when determining LMI eligibility. However, the State cites challenges with meeting LMI area benefit in disaster-impacted counties. According to the State, for the 2021 disaster, only 29 percent of non-entitlement block groups (1,614 block groups out of 5,481) meet the 51 percent threshold, and for the 2024 disaster, only 27 percent of block groups (748 block groups out of 2,781) meet the 51 percent threshold. Using this waiver would allow the State to serve an additional 216 block groups in the 2021 disaster-impacted counties, and an additional 122 block groups in the 2024 disaster-impacted counties.

Under the authority of Section 105(c)(2)(A) of the HCDA, the State requests HUD to permit the use of the upper quartile methodology for the 79 counties impacted by the 2021 and/or 2024 disasters and that are under 51 percent LMI. This will allow the State to implement disaster recovery activities that use LMI area benefit and serve a greater number of impacted communities in the MID areas.

HUD’s Determination

After reviewing this request, the Department finds there is good cause to waive section 105(c)(2)(A) of the HCDA to the extent necessary to allow the Secretary to enable the State of Texas to apply exception criteria for use of the upper quartile methodology for LMI area benefit determinations in non-entitlement counties. In areas where this waiver applies, the calculated percentages, or “exception percentages,” for such areas will be posted on [HUDuser.gov](https://www.huduser.gov) and updated by HUD. The exception percentages for each qualifying county will represent the new area benefit threshold for qualifying block groups in those counties under the LMI area benefit national objective criteria.

Approving this waiver will also allow the State to coordinate recovery efforts across their grant portfolio, as the standardized annual median income waiver was already approved for previous CDBG-DR and CDBG-MIT allocations in the State of Texas, as published in 85 FR 60821 on September 28, 2020.

This waiver is provided for the purpose of assisting the most at-risk populations in need of recovery assistance in the MID areas, as identified by HUD and the State. As such, in granting this flexibility for Texas’ CDBG-DR funds for disasters occurring in 2021 and 2024, the Department will not consider any requests to lower the overall benefit requirement, which provides that at least 70 percent of funds allocated must be expended for activities that benefit LMI persons.

FOR FURTHER INFORMATION CONTACT

Gerilee W. Bennett, Acting Director, Office of Disaster Recovery, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708– 3587 (this is not a toll-free number). 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. Email inquiries may be sent to Disaster_Recovery@hud.gov.