



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

PRINCIPAL DEPUTY ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

MEMORANDUM FOR: The Honorable Adrienne Todman, S

THRU: Marion McFadden, Principal Deputy Assistant Secretary
Office of Community Planning and Development, D

On behalf of
PDAS Signed
by Claudette
Fernandez

FROM: Tennille Parker, Director
Office of Disaster Recovery, DGR

JENNIFER
CARPENTER
on behalf of

Kera Package, Deputy Assistant Secretary
Office of Grant Programs, DG

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SUBJECT: Environmental Assessment and Finding of No Significant Impact Under
the National Environmental Policy Act for the Implementation of the
Common Application, Waivers, and Alternative Requirements for the
Community Development Block Grant Disaster Recovery (CDBG-DR)
Grantees: The Universal Notice [FR-6489-N-01]

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.

HUD is establishing a revised process for CDBG-DR grants for qualifying disasters whereby HUD will incorporate applicable provisions of HUD's CDBG-DR Universal Notice (the "Universal Notice"), to the extent they are consistent with future appropriations acts, in a Federal Register notice that announces allocations of the appropriated CDBG-DR funds (the "Allocation Announcement Notice"). The Allocation Announcement Notice (AAN) will impose the waivers and alternative requirements of the Universal Notice for the subject CDBG-DR grants. The AAN will also add or modify requirements of the Universal Notice as necessary to comply with statutory provisions.

Note, the Universal Notice has no legal effect on a CDBG-DR grant until funds are appropriated by Congress and the appropriation authorizes the HUD Secretary to waive or specify alternative requirements for the assistance, and the AAN that incorporates appropriate provisions of the Universal Notice is published by the Department and goes into effect.

The attached notice is consistent with the overall purpose of title I of the Housing and Community Development Act of 1974 (HCDA) and describes grant requirements, procedures, waivers and alternative requirements. This notice will be applicable to CDBG-DR grant allocations beginning with disasters occurring in February of 2023 and future disasters. While the attached notice also includes procedures that are unrelated to environmental considerations (e.g., submission deadlines, action plan review, public website requirements, recordkeeping, etc.), the list below only includes those waivers that are related to

environmental considerations.

1. *Certifications.* 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 of 1990, as amended (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the alternative requirement to complete the certifications outlined in Section I.B.5 of the Universal Notice.
2. *Direct grant administration and means of carrying out eligible activities (state grantees only).* 42 U.S.C. 5306(d) is waived to the extent necessary to allow each State grantee to use its CDBG-DR allocation directly to carry out state-administered activities eligible under the Universal Notice, rather than distribute all funds to local governments. Pursuant to this waiver and alternative requirement, 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 state carries out directly.
3. *Consultation (state grantees only).* 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 are waived with an alternative requirement for States that receive a CDBG-DR allocation to 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.
4. *Homeownership assistance.* 42 U.S.C. 5305(a)(24) is waived with an alternative requirement to allow homeownership assistance for households at or below 120 percent of the area median income. Homeownership assistance is direct assistance to facilitate and expand homeownership, including mortgage principle and interest rate subsidies, mortgage guarantees, down payments (up to 100%), and reasonable closing costs.
5. *New Housing Construction.* 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) are waived to the extent necessary to permit new housing construction, and as an alternative requirement, 24 CFR 570.202, applies to all new construction and rehabilitation assistance. Grantees are required to adhere to green and resilient building standards, minimum energy efficiency standards, and broadband requirements in Sections III.D.5.b. through III.D.5.c of the Universal Notice when carrying out activities to construct, reconstruct, or rehabilitate residential structures with CDBG-DR funds as part of activities eligible under 42 U.S.C. 5305(a).
6. *FFRMS.* The Federal Flood Risk Management Standard (FFRMS) expands the 100-year floodplain both horizontally and vertically to a newly defined “FFRMS floodplain” that is based on future flood risk. FFRMS requires that newly constructed or substantially improved structures within this newly defined floodplain be elevated or floodproofed to this higher FFRMS floodplain elevation based on a three-tiered data standard and whether the project includes a critical action.
 - a. *Residential.* For residential structures, the lowest floor (or FEMA-approved equivalent) must be designed using the elevation of the FFRMS floodplain as the baseline standard for elevation (except where higher elevations are required by Tribal, State, or locally adopted code or standards, in which case those higher elevations apply). Residential buildings (including multi-family) that have no dwelling units below the FFRMS floodplain and that are not critical actions shall be designed, either with the lowest floor (including basement) elevated to or above the elevation of the FFRMS floodplain or with the structure floodproofed at least up to the elevation of the FFRMS floodplain (using floodproofing

standards as outlined in FEMA regulations found in 44 CFR 60.3(c)(3)(ii) and (c)(4)(i), or successor standard).

- b. *Nonresidential.* Non-residential buildings undergoing new construction or substantial improvements shall be designed, either with the lowest floor (including basement) elevated to or above the elevation of the FFRMS floodplain or with the structure floodproofed at least to the elevation of the FFRMS floodplain (using floodproofing standards as outlined in FEMA regulations found in 44 CFR 60.3(c)(3)(ii) and (c)(4)(i), or successor standard).
7. *FEMA Match.* When using CDBG-DR as the non-federal match in a FEMA-funded project, an alternative requirement allows for the use of FEMA-approved building codes instead of the green and resilient building and energy standards in section III.D.5.b.(i).
8. *Buyout activities.* 42 U.S.C. 5305(a) is waived to the extent necessary to create a new eligible activity for buyouts. The term “buyouts” for CDBG-DR purposes means the voluntary acquisition of properties located in a floodway, FFRMS floodplain, or other Disaster Risk Reduction Area that is intended to reduce risk from future hazards. Acquisition projects that meet the definition of buyouts are subject to post-acquisition land use restrictions and grantees must develop an open space management plan, or equivalent, before implementation.
9. *Safe Housing Incentives.* U.S.C. 5305(a) is waived to establish 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.
10. *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.
11. *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 necessarily based on their involvement or potential involvement with the levee or dam.
12. *Reimbursement of disaster recovery expenses.* Pre-award costs are defined in 2 CFR 200.458 and are allowed in instances in which the CDBG-DR grantee anticipated an allocation and incurred an eligible cost prior to the award. Grantees are also permitted to charge to grants the pre-application costs of homeowners, renters, businesses, and other qualifying entities for otherwise allowable costs incurred on or after the incident date of the qualifying disaster as identified in a grantees’ applicable AAN.
 - a. *Pre-award Costs.* Grantees may reimburse themselves or their subrecipients for otherwise allowable costs incurred on or after the incident date of the qualifying disaster, if the 24 CFR 58 environmental review is completed and all other cross-cutting requirements are met before the underlying activity (e.g., rehabilitation of a government building) begins. The provisions at 24 CFR 570.200(h)(1)(i), (v), and (vi) are waived; however, the rest of the provisions at 24 CFR 570.200(h) will continue to apply to state and local governments. Additionally, HUD is establishing the following alternative requirement: the provisions at 24 CFR 570.489(b) are

applied to all CDBG-DR grantees to permit states and local governments to allow subrecipients to incur costs before the establishment of a formal grant relationship between the grantee and the subrecipient. As an alternative requirement, grantees must include any pre-award activities in their Action Plan, including eligible activities that were funded with short-term subsidized loans (e.g., bridge loans) that the grantee intends to reimburse or otherwise charge to the grant, consistent with applicable program requirements.

- b. *Pre-application costs.* Pre-application costs are costs incurred by an applicant to CDBG-DR funded programs on or after the incident date of the qualifying disaster but before the time of application to a grantee or subrecipient (this may be before or after the grantee signs its CDBG-DR grant agreement). For all pre-application costs, compliance with 24 CFR part 58 must be completed prior to the commitment of funds (i.e., prior to the grantee or subrecipient committing to reimburse the qualifying entity for costs incurred). Grantees may only charge costs to the grant that meet the following requirements: 1) Grantees may only charge the costs incurred for disaster relief payments (see section III.D.5.h.) and rehabilitation, demolition, and reconstruction of single family, multifamily, and nonresidential buildings, including commercial properties, owned by private individuals and entities, before the owner or renter applies to a CDBG-DR grantee, recipient, or subrecipient for CDBG-DR assistance (and if the cost was incurred within two years after the applicability date of the grantee's AAN; 2) For rehabilitation and reconstruction costs, grantees may only charge costs for activities completed within the same footprint of the damaged structure, sidewalk, driveway, parking lot, or other developed area; 3) As required by 2 CFR 200.403(g), costs must be adequately documented; and 4) Grantees must complete a duplication of benefits (DOB) check before providing assistance pursuant to Appendix C.

13. *Duplication of benefits.* To comply with Section 312 of the Stafford Act (42 U.S.C. 5155(a)) and the requirement that all costs are necessary and reasonable, each grantee must ensure that each activity assists a person or entity only to the extent that the person or entity has disaster recovery needs that have not been fully met. Grantees must follow the requirements in Section III.B.16 of the Universal Notice on steps grantees must take to prevent a duplication of benefit.
14. *Environmental requirements.* Section III.B.10 of the Universal Notice includes the following clarifications: 1) If a State carries out activities directly, including through subrecipients that are not local governments, then they must submit the Certification and Request for Release of Funds to HUD for approval; 2) When a state grantee distributes funds to subrecipients that have Responsible Entity authorities under Part 58, the state must exercise HUD's responsibilities in accordance with 24 CFR 58.18 on their behalf; 3) The adoption of another Federal agency's environmental review, without review or public comment, is allowed so long as the actions covered by the existing environmental review, approval, or permit and the actions proposed for the CDBG-DR supplemental funds are substantially the same. When permitted by the applicable appropriations acts, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary or a state may, upon receipt of a RROF and Certification, immediately approve the release of funds for an activity or project assisted with CDBG-DR funds if the recipient has adopted an environmental review, approval, or permit under this section, 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.) (NEPA); 4) The responsible entity must comply with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108).; and 5) tiered environmental reviews, as described at 40 CFR 1508.1(oo), 40 CFR 1501.11, and 24 CFR 58.15, are allowed to eliminate repetitive discussions of the same issue, for example: rehabilitating

single-family homes within a jurisdiction but where the specific sites and activities are not yet known.

15. *Flood insurance.* When CDBG-DR funds are used for acquisition, rehabilitation, or construction to buildings in a Special Flood Hazard Area (SFHA), 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 in the amount and duration prescribed by FEMA's National Flood Insurance Program. Grantees must also 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 for repair, replacement, or restoration for damage in instances where the property owner received Federal flood disaster assistance in the past that was conditioned on obtaining and maintain flood insurance and the person has subsequently failed to do so. (Section 582 further imposes a duty to notify any transferee of the requirement to obtain and maintain flood insurance).

The Universal Notice includes an alternative requirement to 42 U.S.C. 5305(a)(4) 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.

16. *Disaster relief for LMI persons.* 42 U.S.C. 5305(a) is waived only to the extent necessary to establish that CDBG-DR funds may be used to provide disaster relief payment assistance for low- and moderate-income persons for items such as food, clothing, housing (rent or mortgage), utilities or medical care related to the qualifying disaster for a period of up to six consecutive months. Disaster relief payments must be made to the provider of such items or services on behalf of an individual or family, and not directly to an individual or family in the form of income payments, debit cards, or similar direct income payments.
17. *Buildings for the general conduct of government assistance.* 42 U.S.C. 5305(a)(2) and associated regulations at 24 CFR 570.207(a) are waived to allow the use of CDBG-DR funds as the non-Federal match to any other Federal program providing funds for the construction, reconstruction, and rehabilitation of public improvements or facilities for the general conduct of government, (the facility must provide services year around and not be used exclusively as an emergency operations center).
18. *Expand shelter use to privately owned facilities.* The ownership requirements outlined in Section 105(a)(2) of the HCDA, and 24 CFR 570.200(b) are waived to allow assistance to be provided to qualified privately owned shelter facilities to increase shelter access when public shelters are already at capacity. Under this waiver and alternative requirement, grantees are prohibited from assisting casinos or sports arenas.
19. *Assistance to Private 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 provisions in Section III.D.6.g of the Universal Notice.

Assistance under the CDBG-DR program is subject to the environmental review requirements of

24 CFR 58; grantees and subrecipients that are states or units of general local government 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 (or the state, if the state is acting as HUD under 24 CFR 58.18), if applicable, before it can commit funds or take any choice limiting action with respect to a project.

The appropriations acts may state that they allow grant recipients of Federal funds that use such funds to supplement Federal assistance to adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency so long as the actions covered by the existing environmental review, approval, or permit and the actions proposed for the CDBG-DR supplemental funds are substantially the same. 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.

In addition, the appropriations acts may allow 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(oo), 40 CFR 1501.11, 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(b)). 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 both the broad level and 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 whenever the action plan contains a program with multiple similar activities that will result in similar impacts.

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.

Issuance of this notice does not constitute approval of any proposed projects. Before actions that could have a physical impact or limit the choice of alternatives may be taken, there will be an environmental review done under 24 CFR Part 58 by a responsible entity that will assess the potential environmental impacts in a local setting before the impacts or any choice limiting activities may take place. Accordingly, it is determined that the issuance of this notice does not qualify as a major Federal action having a significant impact on the human environment.

Concurrences:

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on behalf of

Brian Schlosnagle
Environmental Clearance Officer
Disaster Recovery
Community Planning and Development

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on behalf of

Christopher H. Hartenau
Environmental Clearance Officer
Office of General Counsel

Date

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12/26/24

on behalf of

Kristin L Fontenot
Departmental Environmental Clearance Officer

Date

Approve:



The Honorable Adrienne Todman

12/30/24
Date

Attachment