



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

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

Special Attention of:

All Regional Administrators
All CPD Division Directors
All CDBG-DR Grantees receiving
funds pursuant to P.L. 113-2

Notice: CPD-15-07

Issued: September 15, 2015

Expires: This Notice remains
in effect until amended, superseded or
rescinded.

Supersedes: Notice CPD-14-017

SUBJECT: Guidance for Charging Pre-Application Costs of Homeowners, Businesses, and
Other Qualifying Entities to CDBG Disaster Recovery Grants

INTRODUCTION

On July 30, 2013, HUD's Office of Community Planning and Development (CPD) issued a Notice providing guidance for charging pre-application costs of homeowners, businesses, and other qualifying entities to CDBG Disaster Recovery Grants (CPD 13-05). On November 14, 2014, CPD revised and reissued the guidance as CPD Notice 14-017. This Notice supersedes the 2013 Notice and the 2014 revision and further clarifies how federal cross-cutting requirements apply to Community Development Block Grant Disaster Recovery (CDBG-DR) activities described in this guidance. In particular, this revised guidance clarifies the applicability of the time limit on pre-application costs outlined in this Notice (one year after the date of the disaster) as it relates to environmental requirements and to grantee requests to charge costs that extend beyond the one year time limit.

This Notice establishes requirements, procedures, and deadlines to be followed with respect to CDBG-DR grants awarded under the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2, enacted January 29, 2013) (the Act).

Policy questions related to this guidance should be directed to the Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, U.S. Department of Housing and Urban Development, telephone number (202) 708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339 (this number is toll-free). In the alternative, questions may be submitted electronically to Disaster_Recovery@hud.gov.

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I. PURPOSE AND SCOPE

This document outlines procedures and deadlines to be followed by grantees providing Community Development Block Grant disaster recovery (CDBG-DR) funds to homeowners, businesses, and other qualifying entities for eligible costs they have incurred in response to a Presidentially-declared disaster. This guidance applies only to CDBG-DR funds provided under the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2, enacted January 29, 2013). Grantees with questions about reimbursement of costs under any other CDBG-DR appropriation should consult their CPD representatives.

A. Background and Authority

On December 26, 2013, the Office of Management and Budget published the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (78 FR 78590), superseding and consolidating requirements from several OMB circulars, including OMB Circular A-87 (previously codified at 2 CFR part 225). These uniform requirements are located in the Code of Federal Regulations at 2 CFR part 200. HUD amended 24 CFR part 85 to impose the requirements of 2 CFR part 200 through an interim final rule published December 19, 2014, (79 FR 75871). More information is available in HUD Notice SD-2015-01, *Transition to 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Final Guidance*.

The regulation at 2 CFR 200.458 defines pre-award costs as “those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.”

Consistent with this regulation, the *Federal Register* Notice published March 5, 2013, (78 FR 14329) (March 5 Notice), addressed the terms under which HUD permits CDBG-DR grantees to charge pre-award costs (also referred to as pre-agreement costs) of grantees and subrecipients to the grants awarded under the Act. Generally, the March 5 Notice applies the provisions of 24 CFR 570.489(b) and 570.200(h) to permit grantees to reimburse themselves for otherwise allowable costs incurred by grantees, recipients, subgrantees, or subrecipients (including public housing agencies) on or after the incident date of the covered disaster, with the expectation that grantees would include in their Action Plans all pre-award activities that were undertaken before the CDBG-DR grant agreement is signed. The terms of the March 5 Notice recognize that the entities carrying out CDBG-DR assistance programs have experience with federal cross-cutting requirements and may anticipate receiving CDBG-DR assistance.

Accordingly, these entities must comply with the cross-cutting requirements and other terms of the March 5 Notice, including the requirement to complete an environmental review (including Section 106 historic preservation compliance) before committing funds or beginning recovery activities (e.g., rehabilitation of a government building). The terms of the March 5 Notice, as supplemented by additional applicable Notices published by HUD in the *Federal Register*, which as of the date of this Notice include Notices published on April 19 (78 FR 23578), May 29, 2013, (78 FR 32262), July 29, 2013 78 FR 45551, August 2, 2013 (78 FR 46999), August 23, 2013 (78 FR 52560), November 18, 2013 (78 FR 69104), December 16, 2013 (78 FR 76154), March 27, 2014 (79 FR 17173), June 3, 2014 (79 FR 31964), July 11, 2014 (79 FR 40133), October 7, 2014 (79 FR 60490), October 16, 2014 (79 FR 62182), January 8, 2015 (80 FR 1039), April 2, 2015 (80 FR 17772), May 11, 2015 (80 FR 26942), and August 25, 2015 (80 FR 51589) apply to grants made pursuant to the Act.

The March 5 Notice did not address pre-application costs of beneficiaries of CDBG-DR grant funds. This CPD Notice sets forth the terms under which HUD is granting such permission, consistent with 2 CFR part 200.

B. Generally Applicable Terms

Subject to the terms of this CPD Notice, HUD will permit grantees to charge to grants the pre-application costs of homeowners, businesses, and other qualifying entities for eligible costs they have incurred in response to a Presidentially-declared disaster. For purposes of this CPD Notice, pre-application costs are costs incurred by an applicant to CDBG-DR-funded programs prior to the time of application to a grantee or subrecipient, which may be before (pre-award) or after the grantee signs its CDBG-DR grant agreement. In addition to the terms described in the remainder of this Notice, grantees may only charge costs to the grant that meet the following general requirements:

- Grantees may only charge the costs for rehabilitation, demolition, and reconstruction of single family, multifamily, and nonresidential buildings, including commercial properties, owned by private individuals and entities, incurred before the owner applies to a CDBG-DR grantee, recipient, or subrecipient for CDBG-DR assistance;
- 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;
- As required by 2 CFR 200.403(g), costs must be adequately documented;
- Grantees electing to provide assistance pursuant to this CPD Notice must review their Action Plans (particularly the definition of substantial amendment) to determine whether providing such assistance will change the eligible beneficiaries or otherwise require an Action Plan amendment; and
- Grantees must complete a duplication of benefits check before providing assistance pursuant to this CPD Notice.

II. TIMING AND NECESSARY EXPENSES

The Act provided funds for eligible CDBG activities that are “necessary expenses” of relief and recovery from Hurricane Sandy and other major disasters in calendar years 2011, 2012, and 2013. Grantees are required to ensure that all costs charged to grants made pursuant to the Act are necessary expenses related to recovery.

Response and recovery begins on the date of a disaster, before CDBG-DR assistance becomes available. This Guidance addresses the availability of necessary recovery assistance for private owners who used their own limited resources for short-term recovery-related costs after a disaster with no assurance of receiving CDBG-DR assistance. The terms of this CPD Notice are designed to ensure that short-term outlays do not impede long-term recovery. However, the terms are time-limited to ensure that CDBG-DR funds are expended only for necessary expenses of recovery.

Grantees may charge to CDBG-DR grants the eligible pre-application costs of individuals and private entities related to single- and multi-family residential structures and nonresidential structures, only if the person or private entity incurred the expenses within one year after the date of the disaster and before the date on which the person or entity applies for CDBG-DR assistance. HUD, at the request of a grantee, may provide that grantee with a written extension to this one year

limitation, for an amount of time established by HUD. Extensions will be provided on a case-by-case basis after the Department has made a determination of good cause based on its examination of the reasons for the request. Exempt activities as defined at 24 CFR §58.34, but not including 24 CFR §58.34(a)(12), and categorical exclusions as defined at 24 CFR §58.35(b), are not subject to the time limit on pre-application costs outlined in this Notice (one year after the date of the disaster). Actions that convert or potentially convert to exempt under 24 CFR §58.34(a)(12) remain subject to the Notice requirements.

For example, a person who incurred eligible expenses for rehabilitation in the wake of Hurricane Sandy, which made landfall on October 29, 2012, may be eligible to receive CDBG-DR assistance for costs incurred (i.e., documented rehabilitation costs) up until October 29, 2013. However, if that person or private entity applied to a grantee's CDBG-DR program on July 4, 2013, then only expenses incurred before July 4, 2013, would be eligible for reimbursement.

The "necessary expense" requirement is augmented by the necessary and reasonable cost principles applicable to State, local, and Indian tribal governments (described at 2 CFR 200.403). 2 CFR 200.403 states that, costs, "...to be allowable under Federal awards," must "be necessary and reasonable for the performance of the Federal award." Additional discussion of necessary and reasonable requirements is available at 2 CFR part 200, Subpart E. To ensure compliance with these requirements, grantees that elect to provide CDBG-DR assistance to eligible homeowners, businesses, and other qualifying entities in accordance with this CPD Notice must incorporate the basis for determining that the assistance provided under the terms of this Notice is necessary and reasonable into their policies and procedures.

III. FEDERAL CROSS-CUTTING REQUIREMENTS GUIDANCE

This section summarizes how each of the cross-cutting requirements applies to the CDBG-DR activities described in this guidance.

A. Environment

HUD is advising responsible entities (REs) that paying for incurred costs for limited classes of activities can occur in Presidentially-declared areas in receipt of CDBG-DR assistance under Pub. L. 113-2. In light of the circumstances of the local, state, and regional recovery efforts, and because of the high national priority as articulated by the President, Members of Congress, Governors of the States, and the public, HUD has developed a framework permitting the limited bypassing of federal program requirements for conducting environmental reviews in order to accelerate the process of rebuilding in these areas without further delay. This framework opens grant eligibility to certain rehabilitation and reconstruction activities that were initiated without obtaining prior environmental approval, or certification in the case of structures damaged by the disasters. Please note that the HUD environmental review process is most effectively implemented when it is performed early in the development process and integrated into program design. Under CDBG-DR authorizing legislation and HUD's environmental regulations in 24 CFR part 58, CDBG-DR recipients (REs) assume the responsibility for completing environmental reviews under Federal laws and authorities. Notwithstanding this guidance, the RE assumes all legal liability for the

application, compliance, and enforcement of these requirements.

This policy is applicable when the RE (a State, or unit of general local government that receives CDBG-DR funding directly from HUD or a State) is conducting an environmental review. It does not apply where an RE is adopting a review conducted by another federal agency. Furthermore, this policy is limited to a narrow range of recovery activities funded by the Act and covered by the terms of this Notice, and is not to be used as precedent for other HUD activities. These activities may be eligible to receive CDBG-DR reimbursement for the expenditure of non-HUD funds on a project prior to an environmental review being performed, subject to meeting several federal requirements. For detailed guidance, please see Appendix A, Applying the Environmental Review Framework.

Finally, please note that 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.

B. Davis-Bacon

Under section 110(a) of the Housing and Community Development Act of 1974, laborers and mechanics employed by contractors and subcontractors on construction work “financed in whole or in part” with CDBG assistance must be paid not less than wages determined to be prevailing on similar construction work in the locality by the Secretary of Labor in accordance with the Davis Bacon Act (40 U.S.C. 3141 et seq.). Davis-Bacon prevailing wage requirements do not apply to the rehabilitation, reconstruction, and demolition of residential property containing fewer than eight units, to prime contracts of \$2000 or less, to bona fide volunteers where procedures and requirements of 24 CFR part 70 are met, or to demolition that is not followed by construction. In addition, for the activities addressed by this Notice (i.e., rehabilitation, demolition, and reconstruction of single-family, multi-family, and non-residential buildings owned by private individuals and entities), the Davis-Bacon wage rates will not apply when:

- The grantee was not a party to the construction contract; and
- The construction work is fully complete before the owner applies for CDBG-DR assistance.

If construction work is ongoing when an application for reimbursement or financing of construction costs is submitted, then Davis-Bacon prevailing wage rates are applicable. Under regulations of the Department of Labor (DOL) at 29 CFR 1.6 (g), where Federal assistance is not approved prior to contract award (or the beginning of construction if there is no contract award), Davis-Bacon wage rates apply retroactively to the beginning of construction and must be incorporated retroactively in the contract specifications. However, if there is no evidence that the owner intended to apply for the CDBG-DR assistance prior to the contract award or the start of the construction HUD may request that DOL allow prospective, rather than retroactive, application of the Davis-Bacon wage rates.

DOL may allow prospective application of Davis-Bacon requirements where it finds that it is necessary and proper in the public interest to prevent injustice or undue hardship and it finds no intent to apply for the federal assistance before contract award or the start of construction. The grantee should contact a HUD Labor Relations Specialist for assistance if such a situation arises. The contact information for the Department's Labor Standards Enforcement staff is posted at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/la_borrelstf.

For activities that are subject to Davis-Bacon requirements, the grantee must carry out implementation, monitoring, enforcement, and reporting activities that are specified in HUD Handbook 1344.1 Rev 2, Chapter 1, Section 1-5.B. Chapter 1 can be found at <http://portal.hud.gov/hudportal/documents/huddoc?id=13441c1SECH.pdf>.

C. Civil Rights Requirements

All program-related civil rights requirements will apply. CDBG-DR funds are subject to the same nondiscrimination and equal opportunity requirements as other CDBG funds.

D. Lead-Based Paint

HUD's Lead Safe Housing Rule (24 CFR part 35, subparts B-R) implementing the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.), applies to all pre-1978 housing units assisted with CDBG funds, including single- and multi-family units, whether publicly- or privately-owned. The purpose of the Act and accompanying regulations is to reduce the threat of childhood lead poisoning in housing assisted by the Federal Government. Assistance provided for an applicant's pre-application-incurred demolition costs will be exempt from the Lead Safe Housing Rule under 24 CFR 35.115(a)(6)). Assistance provided for an applicant's incurred pre-application rehabilitation costs may be exempt from the Lead Safe Housing Rule if the unit falls within a regulatory exemption set forth at 24 CFR 35.115. A housing unit is likely to fall within an exemption if:

- The housing unit was constructed on or after January 1, 1978;
- The CDBG-DR applicant undertook CDBG-eligible activities that qualify as emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect the property from further structural damage due to natural disaster, fire or structural collapse. This exemption applies only "to repairs necessary to respond to the emergency" as provided in 24 CFR 35.115(a)(9). However, the Lead Safe Housing Rule would apply to any work undertaken subsequent to, or beyond, such emergency actions;
- The rehabilitation did not disturb any painted surface;
- The property meets the definition of "housing for the elderly," or the residential property is designated exclusively for persons with disabilities; but only if no child less than six years of age resides or is "expected to reside" in the dwelling unit (see

- definitions at 24 CFR 35.110);
- An inspection performed according to 24 CFR 35.1320(a) found the property contained no lead-based paint; or
 - According to documented methodologies, lead-based paint has been identified and removed, and the property has achieved clearance. This exemption does not apply where enclosure or encapsulation have been used as a method of abatement.

Many owners that apply for CDBG-DR assistance for rehabilitation costs they have incurred may be able to qualify their property under certain exemptions in the list above. Applicants may certify to the applicability of each of the first four exemptions in the list above (those covering post-1977 housing, emergency actions, non-disturbance of painted surfaces, and housing for elderly or exclusively for persons with disabilities). To ensure the accuracy of the certifications, the grantee should randomly perform on-site reviews of a portion of the assisted properties. If necessary (e.g., if none of the first four exemptions apply), the grantee may need to inspect the property according to HUD standards, and ensure all lead-based paint has been removed and the property has achieved clearance.

Note that commercial buildings are not subject to the Lead Safe Housing Rule, except for residential portions and common areas servicing the residential portions of mixed use pre-1978 buildings.

E. Uniform Relocation Act and Section 104(d)

Uniform Relocation Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, 42 U.S.C. 4601-4655, establishes uniform relocation assistance requirements with respect to the displacement of persons from real property occurring as a direct result of acquisition, rehabilitation or demolition of real property for a program or project with federal financial assistance. When federal financial assistance (including CDBG-DR funds) is used for any activity or in any phase of a project, planned or intended, and the activities are determined to be interdependent, the URA applies. Interdependence is best determined by whether or not one activity would be carried out if not for another. In such case, the URA may apply even though the displacing activity itself is not paid with federal funds.

When an owner of real property rehabilitates or demolishes that property and thereby causes a person to be displaced, whether the URA applies to the displacement depends upon whether the owner's rehabilitation or demolition is undertaken after federal financial assistance for the project is received or anticipated. (NOTE: Reconstruction is not a URA-triggering activity itself, but if it includes acquisition, rehabilitation or demolition, the URA may apply).

Displacement resulting from an owner's rehabilitation or demolition before an owner's submission of an application for CDBG-DR assistance is generally not considered to be undertaken for a program or project with federal financial assistance because the federal funds are not yet anticipated, meaning that the URA will not apply. On the other hand, displacement resulting from an owner's rehabilitation or demolition on or after the date of the owner's application submission (if subsequently approved) is generally considered to be subject to the URA because the federal financial assistance is anticipated at that point.

Please note, for the URA to apply, the displacement must be attributable to one of the three activities: acquisition, rehabilitation, or demolition. Section 414 of the Stafford Act relieves a person displaced from a residential unit from the requirement of actual occupancy to receive a replacement housing payment under the URA if the person has been unable to occupy the unit because of the disaster. Practically speaking, this means that an owner that will displace a tenant because of a URA-triggering activity after federal financial assistance is received or anticipated must consider whether the tenant would still have occupied the property until the time of displacement but for the disaster.

Additional URA resources and guidance, including contact information for HUD's Regional Relocation Specialists, are available on HUD's Real Estate Acquisition and Relocation website at <http://www.hud.gov/relocation>.

Section 104(d)

Section 104(d) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5304(d), provides an alternative set of relocation assistance requirements for the benefit of lower-income persons that are displaced from real property as a direct result of demolition or conversion of a lower-income dwelling unit in connection with a CDBG-assisted activity. Additionally, Section 104(d) requires that all occupied and vacant occupiable lower-income dwelling units demolished or converted to a use other than as lower-income dwelling units in connection with a CDBG-assisted activity must be replaced with comparable lower-income dwelling units.

In its March 5, 2013, *Federal Register* Notice, HUD waived the relocation provisions of section 104(d) with respect to CDBG-DR funds covered by this guidance. Homeowners, therefore, do not need to be concerned with section 104(d) relocation requirements when the only source of federal funds used to undertake rehabilitation, reconstruction, or demolition activities is CDBG-DR reimbursement funds discussed in this guidance.

Additionally, in the same March 5 Notice, HUD waived the one-for-one replacement requirement with respect to lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. Consequently, disaster-damaged housing that meets the definition of "not suitable for rehabilitation," which the March 5 Notice requires the grantee to define in its Action Plan, may be demolished or converted in connection with a CDBG-assisted activity without a replacement requirement. Grantees are responsible for ensuring that they are in compliance with this modified one-for-one replacement requirement. Unlike the URA, Section 104(d) only applies to lower-income dwelling units, defined as a dwelling

unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent for existing housing. In the case of an owner-occupied unit, the unit will be considered a lower-income dwelling unit if the unit would rent at or below FMR based on an appraisal or other appropriate rental market analysis of the rent that could be charged for the unit on the private market.

Grantees with questions about section 104(d) one-for-one replacement compliance are encouraged to contact HUD's Regional Relocation Specialists, whose contact information is available on HUD's Real Estate Acquisition and Relocation website at <http://www.hud.gov/relocation>.

APPENDIX A: Applying the Environmental Review Framework

Before any person or entity can be provided CDBG-DR assistance for costs they have incurred, an environmental review must be completed. The environmental review for an action that has already occurred is more limited because the physical action has already taken place. For projects that the RE has determined are exempt or categorically excluded and not subject to the related laws pursuant to §§58.34 and 58.35(b), the RE may provide CDBG-DR assistance to the entity undertaking the project after ensuring compliance with 24 CFR 58.6. HUD offers the following guidance to REs on the components of an environmental review when providing CDBG-DR assistance for costs incurred for the rehabilitation, demolition, or reconstruction of single-family, multi-family, or commercial properties.

HUD encourages REs to conduct a tiered programmatic environmental review that describes the scope of activities being funded and analyzes the impacts of funding the activities that have already occurred. The tiered programmatic environmental review will need to address the National Environmental Policy Act (NEPA) and all of the related laws and authorities at 24 CFR 58.5 and 58.6.

A. Applying NEPA

The RE may use a categorical exclusion, if appropriate, or conduct an environmental assessment (EA). If an EA is required, REs are encouraged to review and use guidance issued by the Council on Environmental Quality (CEQ) to conduct a concise and focused EA. See https://ceq.doe.gov/ceq_regulations/Emergencies_and_NEPA_Memorandum_12May2010.pdf

B. Related laws and authorities (24 CFR 58.5 and 58.6)

The RE must independently determine how and if compliance with the laws and authorities is achieved. The RE retains legal liability for the application, compliance, and enforcement of the environmental laws and authorities.

HUD advises REs that the following laws and authorities may be fully considered in the first tier (broad tier) of the tiered programmatic environmental review and do not require site specific review:

- Executive Order 11990- Wetland Protection;
- Section 7 of the Endangered Species Act;
- Sole Source Aquifers;
- Wild and Scenic Rivers;
- General conformity determinations under the Clean Air Act (CAA);
- Farmland Protection Policy Act;
- Executive Order 12898- Environmental Justice; and
- HUD's regulations and standards on Noise and Acceptable Separation Distances from explosives.

HUD offers more specific guidance on how the above laws and authorities can be considered in tier one of the tiered programmatic environmental review. The RE is the federal decision-maker and is responsible for making compliance determinations, but HUD offers the following rationales for making these determinations. Certain applicable requirements are also noted.

1. Eight step decision-making process for floodplain management: If the rehabilitation, reconstruction, modernization or improvement of a structure does not have an exception under 24 CFR 55.12 (e.g., minor rehabilitation or improvements of single family homes under 55.12(b)(2)), then an 8-step review process is required under 24 CFR part 55. The 8-step process must be performed at tier one of a tiered environmental review. All additional 24 CFR part 55 requirements, such as the floodway and Coastal High Hazard Area restrictions at 24 CFR 55.1(c), also apply. Site-specific reviews will be required to ensure compliance with HUD program requirements.
2. Eight step decision-making process for wetland protection: The RE should discuss how the impacts on wetlands will be minimal because the scope of activities is limited to the pre-storm building footprint.
3. Endangered Species: Section 7 Endangered Species Act (ESA) consultation may be required. Applicants may not receive assistance if a Section 10 permit under ESA was required and not obtained prior to the physical action. HUD may publish an addendum to this Notice that further clarifies these requirements.
4. Sole Source Aquifers: The total impervious area of a parcel will not be increased significantly, which is considered to be 30% for Safe Drinking Water Act purposes in Region II. This authority will not be triggered since these activities will not increase the preexisting footprint of structures, sidewalk, driveway, parking lot, or other developed area. The RE must comply with all laws, regulations, and industry standards.

5. Wild and Scenic Rivers: The Wild and Scenic Rivers Act does not apply since new construction activities and the acquisition or development of undeveloped lands are not eligible for CDBG-DR assistance and are not covered by this guidance.
6. Air quality: Any nonattainment area plans should have applied at the time of construction and compliance should be documented. The proposed action must not result in any new violations of Federal or State ambient air quality standards. The RE must supply a finding that the rehabilitation or construction activities are in compliance with Clean Air Act requirements.
7. Farmlands Protection: Since these activities should not occur outside of the existing structure's footprint, this authority should not apply.
8. Executive Order 12898- Environmental Justice: The grantee must consider mitigation or avoidance of adverse impacts from the project to the extent practicable. HUD may publish an addendum to this Notice that further clarifies these requirements.
9. Noise: HUD's noise policy at 24 CFR part 51 subpart B is not applicable to assistance that has the effect of restoring facilities substantially as they existed prior to the disaster. (See 51.101(a)(3)).
10. Acceptable Separation Distance: HUD's acceptable separation distance at 24 CFR part 51 subpart C is not applicable if the project is not adding density. If density is increased, 24 CFR part 51 subpart C applies. (See subpart C's definition of "HUD-assisted project" at 24 CFR 51.201).

C. Site-Specific Requirements

1. E.O. 11988- Floodplain Management and Elevation Requirements: All additional 24 CFR part 55 requirements, such as the floodway and Coastal High Hazard Area restrictions at 24 CFR 55.1(c), also apply. Site-specific reviews will be required to ensure compliance with HUD program requirements.

All substantial improvements and reconstruction activities in the 100-year floodplain or Coastal High Hazard Area on the latest FEMA map must also comply with the elevation requirements described at, "II. Applicable Rules, Statutes, Waivers, and Alternative Requirements, 1. Action Plan for Disaster Recovery criterion for approval—Elevation Requirements" in the *Federal Register* Notice published April 19, 2013, available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-04-19/pdf/2013-09228.pdf>.

2. **Mandatory Purchase of Flood Insurance:** CDBG-DR assistance provided for a structure located in the 100-year floodplain or Coastal High Hazard Area (as determined using the Flood Insurance Rate Map adopted in the community's flood ordinance) must require flood insurance to be obtained in the amount of the total project cost. The development or project cost is the total cost for rehabilitating, demolishing, and/or reconstructing the building following the disaster. The project cost includes both the federally-assisted and the non-federally assisted portion of the cost, including any machinery, equipment, fixtures, and furnishings. If the federal assistance includes any portion of the cost of any machinery, equipment, fixtures, or furnishings, the total cost of that item must also be covered by flood insurance.

HUD recommends, but does not require, that grantees design programs that require flood insurance for properties and contents outside of these Special Flood Hazard Areas (SFHA). Floods and storm surge occur outside of SFHAs, so requiring insurance will protect both the homeowner and the public investment should a future event occur.

3. **Historic Preservation:** To qualify for CDBG-DR assistance, a disaster recovery-related project must comply with Section 106 of the National Historic Preservation Act (NHPA). Generally, that means that the work did not adversely affect historic buildings, historic districts, or archeological sites. State Programmatic Agreements outline the process for after-the-fact review and list activities that are so unlikely to have adverse effects that they are exempt from Section 106 review (e.g., rehabilitation of buildings less than 45 years old, in-kind roof repair, replacement of electrical and heating systems). For other activities, the RE's qualified historic preservation professional will review and approve projects, or make a determination of adverse effect and try to resolve it through consultation with the State Historic Preservation Officer (SHPO) and/or development of proposed mitigation. The resolution of adverse effects must be acceptable to the SHPO in order to qualify a project for CDBG-DR assistance. Under Section 110(k) of the NHPA, applicants may not qualify for CDBG-DR assistance if they undertook prior work with the intent to avoid Section 106 review and it resulted in adverse effects. In the CDBG-DR program, owners of single-family, multi-family and small mixed-use properties are presumed to be in compliance with Section 110(k).
4. **Toxic Sites:** A statement must be made that the site (i) is not listed on an EPA Superfund National Priorities or a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) List, or equivalent State list; (ii) is not located within 3,000 feet of a toxic or solid waste landfill site; (iii) does not have an underground storage tank (which is not a residential fuel tank); and (iv) is not known or suspected to be contaminated by toxic chemicals or radioactive materials.

All multifamily properties, nonresidential properties, and properties that cannot make the above statement must also have a Phase I Environmental Site Assessment (ESA) or equivalent that shows the site has no potential Recognized Environmental Conditions (REC). If a potential REC appears in the Phase I, a Phase II ESA must be performed. If the Phase II ESA shows a REC, then the project must have a No Further Action letter from the state environmental agency indicating that the contamination will not affect the health and safety of the occupants or conflict with the intended utilization of the property.

5. Coastal Zone Management: All federal activities which directly affect a coastal zone must be consistent with the approved State Coastal Zone Management Plans. The RE must provide a consistency determination to the relevant State agency as early as possible, but no later than 90 days before final approval of the CDBG-DR assistance.
6. Runway Clear Zones: No construction or rehabilitation activities can be provided CDBG-DR assistance in runway clear zones.
7. Coastal Barrier Resources: No construction or rehabilitation activities can be provided CDBG-DR assistance in Coastal Barrier Resource Act units.