



OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

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

Special Attention of:

All CPD Division Directors
HUD Field Offices
HUD Regional Offices
All CDBG Grantees
All HOME Participating Jurisdictions
All ESG Recipients
ALL HOPWA Grantees

NOTICE: CPD-17-06

Issued: June 1, 2017

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until amended, superseded, or
rescinded.

Subject: Using Community Planning and Development Program (CPD) funds for Disaster Response
and Recovery

PURPOSE

The Department of Housing and Urban Development (HUD) is encouraging CPD formula grantees to undertake comprehensive pre-disaster planning and use their grant funds for both immediate disaster response and long term recovery. This Notice provides guidance to grantees on how to use CPD formula grant programs to carry out disaster response and recovery activities.

Note regarding applicability:

This Notice uses the term “grantee” generically, to include jurisdictions that are direct recipients of funds under these programs and to also include HOME participating jurisdictions (PJ), except where the term appears in discussions explicitly limited to one of the covered funding programs. Provisions of this Notice covering the Entitlement CDBG program also apply to Insular Area CDBG grantees and CDBG nonentitlement county grantees in Hawaii, as the Entitlement CDBG program regulations also apply to their CDBG funds.

PRE-DISASTER PLANNING

Effective pre-disaster planning allows a grantee to easily access its grant funding following a disaster. Accordingly, grantees are encouraged to prepare for future events by reviewing and updating their citizen participation plans, addressing the possibility of a disaster in their consolidated plans and annual action plans, and proactively managing their compliance with CDBG’s low and moderate income benefit requirement.

Citizen Participation and Consolidated Plan Process

Grantees should review their citizen participation plans’ policies and procedures and consolidated plan process to ensure that their plans address the potential use of CPD grant funds in

the event of a disaster. Under 24 CFR 91.505, HUD requires grantees to amend their approved plans whenever grantees make one of the following decisions:

- to make a change in allocation priorities or a change in the method of distribution of funds;
- to carry out an activity, using funds from any program covered by the consolidated plan, not previously described in the action plan; or
- to change the purpose, scope, location, or beneficiaries of an activity.

Addressing the potential use of grant funds in the event of a disaster allows grantees to carry out disaster recovery activities faster and reduce the amount of time needed to revise their consolidated and annual action plans.

Grantees should also review their citizen participations plans. Some grantees may have chosen to adopt additional citizen participation requirements beyond those required under 24 CFR 91.105 and 91.115. These additional citizen participation requirements may result in unnecessary delays in accessing CPD grant funds for disaster response and recovery. To address this, grantees should consider revising their citizen participation requirements to streamline local citizen participation processes to more efficiently address needs in the event of a disaster.

Grantees should make disaster response and recovery a priority in their consolidated plans and annual action plans. In doing so, grantees can also ensure that these plans are aligned with their citizen participation plans, and all plans address disaster recovery. If a grantee fails to address disaster response and recovery activities in its annual action plan, the grantee may not be able to charge pre-award costs under 24 CFR 570.200(h), 24 CFR 92.212 and 2 CFR 200.458 for response and recovery activities not covered in an approved action plan.

As part of the consolidated planning process under 24 CFR 91.215, §91.315, and §91.415, a grantee should specifically state in its strategic plan:

- how funds may need to be reallocated in the case of a disaster;
- how reallocation decisions will be made; and,
- how CPD funds could be used.

Under §91.220, §91.320, and §91.420, a grantee should indicate in its annual action plan the resources that are reasonably expected to be made available and activities expected to be undertaken to address the disaster needs identified in the strategic plan section of the consolidated plan.

Under §91.320(k)(1)(i) and §570.490(a)(2), a state CDBG grantee must describe its method of distribution as a part of its action plan. Some states provide a set-aside for use in responding to emergency needs in their communities. States may use the method of distribution to provide for flexibility of reordering funding categories in the event of a disaster occurring within the state. If a state establishes a set-aside for disaster recovery, it must designate a process for how localities would apply for funds, including local government requirements for citizen participation as described at §570.486.

Overall Benefit

A CDBG grantee can further prepare for future disaster events by proactively managing its certification with the low and moderate income benefit requirement. Under §570.200(a)(3) and §570.484 grantees must certify that not less than 70 percent of the aggregate of CDBG expenditures shall be for activities that benefit low and moderate income persons under §570.208(a), §570.208(d)(5) or (6), or §570.483(b). Grantees have the option of choosing a one, two or three-year certification period. The period selected by the grantee is documented in the CDBG certification submitted with the consolidated plan and annual action plan. Grantees expecting to use CDBG funds for urgent need and slum and blight activities because of disaster events should consider using a three-year certification period to allow for greater flexibility. Regardless of the period selected, the grantee should always be aware of how much flexibility it has in utilizing national objectives that will not assist it in meeting the overall benefit requirement.

DUPLICATION OF BENEFITS

The Federal government provides disaster relief primarily through the Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA) to meet emergency, short-term recovery needs. The most appropriate use of CPD funds is generally for longer term needs of affected areas. FEMA provides temporary housing and non-housing needs such as food and clothing, grants toward infrastructure and public building reconstruction, and improvements to prevent damage from future disasters. The SBA provides loans to businesses and individuals for impacted property not covered by insurance. Before making assistance available, a grantee must verify that a proposed CPD activity will not be funded by FEMA or the SBA and that advance payments from these or other sources will not duplicate the CPD assistance.

Grantees should be cautious of potential duplication of benefits and the resulting penalties that could occur when administering any program or activity to provide financial assistance to address losses that result from a major disaster or emergency. Section 312 (42 U.S.C. 5155) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 et seq.) prohibits duplication of benefits for programs that provide financial assistance to people or entities suffering losses because of a major disaster or emergency. Duplication of benefits occurs when Federal disaster recovery funding is provided for the same costs paid by any other source, or for costs to repair or replace losses that have or will be paid by private insurance, and the total amount received exceeds the total need for those costs.

For example, if a family's damaged home costs \$100,000 to repair and the homeowner received \$100,000 in insurance proceeds for structural loss, the homeowner could not also receive federal disaster recovery funds to repair the home. Any additional federal assistance would duplicate the assistance already provided which fully addressed the recovery need. If a family receives \$80,000 in insurance proceeds for structural loss, and the repair costs are \$100,000, the family could receive \$20,000 of additional recovery resources without duplicating benefits. Insurance payments can take time to process. Grantees must reduce assistance by the amount of anticipated insurance or other sources of assistance, or provide assistance on a temporary basis that can be recovered when the beneficiary receives insurance proceeds or other assistance for the same purpose.

Grantees should also consider how they will work closely with other entities to best serve residents and to avoid duplication of benefits. HUD assistance is intended to supplement, not replace, other public, private, and nonprofit sector resources that have already been provided for the same need or loss. Prior to providing CPD program assistance to address losses that result from a major disaster or emergency, a grantee should review and document a household's eligibility, financial resources, support networks, and other assistance available or reasonably anticipated for the same purpose as the CPD program assistance. For example, in addition to other federal programs offering short-term assistance, insurance may cover temporary housing while a home is being repaired.

ELIGIBLE USE OF CPD FUNDS FOR DISASTER RELIEF

After the immediate clean up and restoration of services, a much longer period of recovery begins. CPD program funds may play a larger role at this point, particularly in low and moderate income neighborhoods where residents and businesses may not have the resources to fully recover without additional assistance. When determining how best to help a community recover from a major disaster, it is advisable to develop a plan of action that considers the long-term housing, economic development, and infrastructure needs of the community. Typical disaster recovery programs include:

- housing rehabilitation,
- housing reconstruction,
- homebuyer programs replacing disaster damaged residences,
- acquisition programs that purchase properties in floodplains,
- infrastructure improvements,
- demolition of buildings,
- reconstruction or replacement of public facilities,
- small business grants and loans, and
- relocation assistance for people moved out of floodways.

CDBG Funds for Post-Disaster Community Needs

Grantees may elect to use their CDBG funds for emergency, short term assistance when such activities are not fully funded by FEMA, SBA, or other sources. Typical activities that may not be fully covered by FEMA and SBA, such as debris removal or an immediate repair to publicly-owned utilities, would often qualify as an interim assistance activity under the CDBG program. Interim assistance activities under §570.201(f)(2) can be undertaken to alleviate emergency conditions. The chief executive officer must determine that emergency conditions exist that threaten the public health and safety and require immediate resolution.

CDBG funds can also be used to pay for the deductible amount of a homeowner's hazard insurance after a storm as a public service activity. Under 570.207(b)(4), emergency grant payments may be made directly to the insurance provider on behalf of an income-eligible individual or family. If there is no duplication of benefit, this assistance is likely to be a one-time payment and grantees should be aware this activity would be subject to the public services cap as set forth at §570.201(e).

CDBG funds can also be used for other public service activities that would assist those impacted by the disaster. While the general rule is that CDBG funds may not be used for income payments, such as rent and security deposits, food, and utilities, CDBG funds may be used as emergency grant payments over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

Section 108 Loan Guarantees for Post-Disaster Community Needs

The Section 108 Loan Guarantee program is another source of assistance for redevelopment of affected areas. Entitlement communities can receive loan guarantees that do not exceed five times their CDBG allocations. Communities in non-entitlement areas may apply through the state and can receive loan guarantees that do not exceed five times the state's allocation under the CDBG program. States can also apply for assistance directly on behalf of non-entitlement communities. When an application is submitted by a non-entitlement community or a state, the state must be willing to pledge its CDBG funds as security for loan guarantees provided to the non-entitlement community. All borrowers are required to pledge security beyond available CDBG funds to ensure repayment of guaranteed obligations. The additional security generally includes assets financed by the guaranteed loan, but other types of security can be accepted.

The Section 108 Loan Guarantee program can add flexibility to a community's recovery. The maximum loan repayment period is up to 20 years, which can spread the cost of recovery. Grantees that have received guarantees in the past for activities that have yet not materialized may also amend their applications and request that HUD approve the use of those funds for disaster-related activities. A grantee may apply for a loan guarantee at any time, if HUD has not exceeded its commitment authority to make such guarantees for the year, the activity is eligible for assistance, and the community has not already reached its maximum guarantee level under the program.

Section 108 loan guarantees can be used to finance a range of activities that can enhance recovery, including acquisition of real property (including related public improvements, clearance and relocation), rehabilitation of publicly owned real property (including infrastructure such as streets), housing rehabilitation, public facilities, and economic development activities.

CDBG National Objective Requirements

All CDBG activities, including those used for disaster response and recovery, must meet a national objective. While the primary objective of the program is to benefit low- and moderate-income persons, a grantee may be able to undertake activities under the slum/blight or urgent need national objectives to address disaster response and recovery needs. For example, a grantee may provide housing rehabilitation assistance or emergency public services to individuals or households that do not qualify as low- or moderate-income. The area impacted by the disaster event may not qualify as a principally low to moderate income neighborhood; a city may need to carry out disaster recovery activities citywide. A grantee may need to undertake demolition or rehabilitation of commercial or industrial buildings.

The slum/blight national objective may be met on either an area or spot basis under §570.208(b) and §570.483(c). An activity will be considered to address prevention or elimination of slums or blight in an area if the delineated area meets a definition of a slum, blighted, deteriorated or deteriorating area under state or local law and the area also meets the required conditions under the regulation. Documentation must be maintained by the grantee on the boundaries of the area and the conditions and standards used that qualified the area at the time of its designation. The grantee must also establish definitions of the conditions listed at §570.208(b)(1)(ii)(A) or §570.483(c)(1), and maintain records to substantiate how the area met the slums or blighted criteria as required at §570.208(b)(1)(iii) and §570.483(c)(1)(iv).

If an area has not previously been designated a slum/blighted area, if the grantee does not have the time to make such a determination, or if damage is widely scattered across the jurisdiction, selecting the slum or blight national objective on a spot basis (SBS) may be more practical when responding to a disaster event. Under §570.208(b)(2) and §570.483(c)(2), certain activities may be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area. Activities eligible under the SBS national objective are limited to acquisition, clearance, relocation, historic preservation, remediation of environmentally contaminated properties, or rehabilitation of buildings or improvements. Rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

CDBG funds may also be used under the urgent need national objective to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community. In the absence of substantial evidence to the contrary, under §570.208(c) and §570.483(d), the grantee must document that the existing conditions are of recent origin or which recently became urgent, that the grantee is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be of recent origin if it developed or became critical within 18 months preceding the certification by the grantee.

HOME Funds for Disaster Relief

HOME funds are a potential financing source for long-term housing recovery efforts. Unlike CDBG, HOME funds cannot be used to assist in immediate clean up or restoration of services in the aftermath of a disaster. HOME funds can be used to repair, rehabilitate or rebuild properties damaged by a disaster or to construct new housing to meet post-disaster housing needs. If appropriate, a HOME grantee may opt to provide direct homeownership assistance to households affected by a disaster to enable them to purchase a new home. While provision of tenant based rental assistance (TBRA) to households displaced by a disaster is an eligible HOME activity, this should only be considered for households that cannot receive FEMA assistance. HOME TBRA can only be used to rent housing units. It may not be used for hotels or other temporary shelter that does not constitute housing.

ESG Funds for Disaster Relief

The Emergency Solutions Grant (ESG) Program may be used for assistance to both homeless persons and persons at risk of homelessness after a disaster. A person is considered homeless if they meet the definition of homeless at 24 CFR 576.2. This definition would include persons who:

- have left their home or are afraid to go home because a violent storm or disaster has made their home dangerous or life-threatening;
- have no other residence; and,
- lack the resources or support networks (e.g. family, friends, faith-based or other social networks) to obtain other permanent housing.

If an individual or family who is displaced was receiving homeless assistance or rapid re-housing assistance under the ESG or the Continuum of Care Program when the disaster occurred, the individual or family would not need to re-qualify as homeless to receive ESG assistance in the aftermath of the disaster.

Duplication of benefit requirements apply to the ESG Program as well. ESG funds may be used to address many short-term disaster response needs. Eligible ESG program components include street outreach, emergency shelter, homelessness prevention, and rapid re-housing. Under the rapid re-housing and homelessness prevention components of §576.103-§576.106 of the ESG Interim Rule, an eligible household may receive short-term or medium-term rental assistance; financial assistance for costs such as rental application fees, security deposits, last month's rent, utility deposits, utility payments, moving costs; and services costs such as housing search and placement, housing stability case management, mediation, and legal services. ESG rapid re-housing and homelessness prevention funds cannot be used to purchase clothing or to purchase furnishings for program participants.

For long term recovery efforts, ESG funds may be used to rehabilitate an emergency shelter damaged during the disaster. Often insurance will cover necessary repairs and rehabilitation. However, if the shelter does not have insurance or there is a gap in funding to repair the shelter, ESG funds may be used in accordance with the requirements at §576.102. All other resources available to repair the facility, including FEMA or other HUD assistance, must be exhausted prior to the use of ESG funding. Documentation that other available resources were applied for must be maintained.

HOPWA Funds for Disaster Relief

HOPWA funds may be used to address both the short term and long term housing and service needs of low income persons living with HIV/AIDS and their families impacted by a disaster event. Eligible HOPWA activities for disaster relief may include the construction of community residences or single room occupancies (SROs), rehabilitation of existing structures to provide emergency, transitional or permanent housing, operating expenses for facility based housing, leasing of entire facilities or master leasing of individual scattered site units, tenant based rental assistance, payment of security deposits and utility hookup fees to secure permanent housing, Short-term Rent Mortgage and Utility Assistance (STRMU) for up to 21 weeks of assistance in a

52 week period; housing information services to assist with locating available housing; and supportive services.

Duplication of benefits requirements apply to the HOPWA program as well. Under §574.310(a)(2), a grantee should ensure that grant funds will not be used to make payments for health services for any item or service to the extent that payment has been made or can reasonably be expected to be made for an item or service under any state compensation program, under an insurance policy, or under any Federal or State health benefits program; or by an entity that provides health services on a prepaid basis.

When considering the use of HOPWA funds for disaster relief and recovery, grantees should familiarize themselves with the Office of HIV/AIDS Housing's rental assistance and STRMU guidance. The guidance provides information on both STRMU program restrictions and on the different types of rental housing that can be provided through the HOPWA program, including the compared advantages and disadvantages of each housing activity.

REGULATORY AND STATUTORY RELIEF

A Presidentially-declared disaster is a FEMA major disaster declaration. CPD grantees may designate funds from existing or future grants to address damage in a Presidentially-declared disaster area. A grantee may ask HUD to suspend CDBG and HOME statutory requirements (with some exceptions) and waive regulatory requirements governing CPD programs to make grant funds available for disaster recovery activities. These disaster suspension and waiver requests should be submitted to HUD field offices and include a well-documented justification citing the good cause for the suspension or waiver being requested (e.g., why it is necessary for disaster relief/recovery). Field offices will expedite the forwarding of these requests, together with field office reviews and recommendations, to HUD headquarters.

The following are examples of statutory and regulatory requirements that HUD has suspended or waived in the past in the event of a disaster. This list is not exhaustive. HUD will consider any suspension and waiver requests provided they meet the criteria for suspensions and waivers.

CPD Program Requirements

CPD consolidated plan provisions that have been suspended or waived respectively in the past include:

- extension of the deadline for submitting the annual performance report (CAPER) when the disaster delays its completion (§91.520(a)); and,
- reduction of the public comment period for substantial amendments to an action plan (§91.105(c)(2) and (k), §91.115(c)(2) and (i), §91.401).

CDBG Program

HUD may suspend CDBG statutory requirements to facilitate the use of CDBG funds for disaster recovery and waive CDBG regulatory requirements for good cause. However, provisions related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and requirements that activities benefit persons of low- and moderate-income cannot be suspended. Section 122 of the Housing and Community Development Act of 1974, as amended (42 USC 5321), authorizes the suspension of statutory requirements for use of CDBG funds in disaster areas.

CDBG statutory and regulatory requirements that have been suspended or waived respectively in the past include:

- extension of length of time or change in period within which to meet the 70 percent low and moderate income benefit requirement (24 CFR 570.200(a)(3) and 570.484);
- elimination of prohibitions on new housing construction (§570.207(b)(3));
- removal of restrictions on the repair or reconstruction of buildings used for the general conduct of government (§570.207(a)(1));
- modification of the limitation on the amount of CDBG funds used for public services (§570.201(e)); and,
- elimination of other limitations that are not required by statute.

HOME Program

HUD may suspend certain HOME statutory requirements and waive regulatory requirements to facilitate the use of HOME funds for disaster recovery. However, provisions related to affordability, income targeting, environmental standards, and labor standards cannot be suspended. Section 290 of the HOME Investment Partnerships Act [42 U.S.C. 12840] provides suspension authorization to address the damage in an area for which the President has declared a disaster.

Under the authority of Section 290 and 24 CFR 92.4, common HOME statutory and regulatory suspensions and waivers include:

- waiver of the requirements governing the operation of a TBRA program to allow for rapid re-housing of displaced tenants, including the consolidated plan certification requirement, tenant selection procedures, maximum subsidy limitations, housing quality standards, the definition of security deposit, and program operation (Section 212(a)(3) (Act); §92.209(b), (c), (h), (i), (j) and (k));
- waiver of the requirement to use source documentation for initial income determination for program beneficiaries. Instead, participating jurisdictions may use self-certifications (§92.203(a)(1)(ii));
- waiver of the requirement limiting the amount of HOME funds that a PJ may use for administrative and planning costs to 10 percent of its allocation, plus program income received, to enable the PJ to expend up to 20 percent (Section 212(c) (Act), §92.207);

- waiver of the match requirements specified in §92.218 by up to 100 percent for PJs for the fiscal year in which the declaration of major disaster is made and for the following fiscal year (Section 220 (Act), §92.222(b));
- waiver of the requirement that an owner of rental housing assisted with HOME funds adopt written tenant selection policies and procedures and provide tenants with a one-year lease (Section 225 (Act), §92.253(d));
- waiver of the requirement that 15% of each HOME allocation be used for housing owned, developed or sponsored by community housing development organizations (CHDOs) (Section 231 (Act), §92.300(a)(1));
- waiver of the requirement that the sales price or maximum after-rehabilitation value of HOME-assisted housing not exceed 95% of area median sales price (Section 215(b)(1) (Act), §92.254(a)(2));
- waiver of the maximum per-unit subsidy amount of HOME funds for disaster-damaged properties (Section 212 (Act), §92.222(b)); and
- waiver of the requirement that disaster-damaged units be rehabilitated to meet property standards to meet critical housing needs (§92.251). The lead housing safety regulations established in 24 CFR Part 35 cannot be waived.

HOPWA and ESG Program

HUD may also waive HOPWA and ESG regulatory requirements for good cause to facilitate the use of funds for disaster recovery.

Common HOPWA regulatory waivers include:

- waiver of source documentation for income and HIV status determinations to permit grantees and project sponsors to rely on self-certification of income and credible information of HIV status (§574.530);
- waiver of the fair market rent standard limit for tenant based rental assistance (§574.320(a)(2); and
- waiver of property standard requirements for tenant based rental assistance provided that grantee ensures housing meets state and local health and safety codes within 30 days (§574.310(b));

Common ESG regulatory waivers include:

- extension of the use of program funds beyond the current 24-month deadline (§576.203(b));
- extension of the 24-month limits on rental assistance and housing relocation and stabilization services (§576.105(a)(5), (b)(2), (c) and §576.106(a); and,
- waiver of the fair market rent restriction units for which rental assistance can be provided (§576.106(d)(1) for eligible households in assisted units.

Reporting Suspensions and Waivers

When suspensions or waivers are granted by HUD, they will be for a specified period and have limited applicability depending on the justification. The suspensions or waivers will be granted to states only for those projects that take place in the areas that were included in the disaster declaration. When suspensions are granted, the activities being carried out with the designated funds will be spent in accordance with different requirements than the regular CDBG and HOME, programs. Therefore, the grantee is required to annotate its grantee performance report (CAPER) in such a way that activities for which suspensions have been granted are distinguishable from regular program activities.

ENVIRONMENTAL REVIEW PROCESS DURING EMERGENCIES AND FOLLOWING DISASTERS

Emergency activities for temporary or permanent improvements that do not alter environmental conditions and that are limited to protection, repair, or restoration activities necessary only to control or arrest the effects of the disaster may be considered exempt from the environmental review process (24 CFR 58.34(a)(10)). Grantees should contact their HUD environmental officer for guidance on activities that may be considered exempt and the required documentation.

Emergency activities that fall under an Environmental Assessment or categorically excluded subject to 24 CFR 58.5 (CEST) may receive expedited processing. Under §58.33(b), if funds are needed on an emergency basis and adherence to separate comment periods would prevent the provision of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the responsible entities can publish the combined Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF) simultaneously with the submission of the RROF. The notice must state that funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The notice must also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice. By combining these comment periods, the comment period obligations of §58.45 and §58.74 can be met simultaneously over 15 days.

CONTACT INFORMATION:

Grantees should direct questions regarding this guidance to their HUD CPD Field Office Representative. Field Offices should direct inquiries and comments to the appropriate program office at HUD Headquarters: The Office of Affordable Housing at 202-708-2684, the Entitlement Communities Division in Headquarters at 202-708-1577, the Office of Special Needs Assistance Programs at 202-708-4300, or the Office of HIV/AIDS Housing at 202-708-1934.