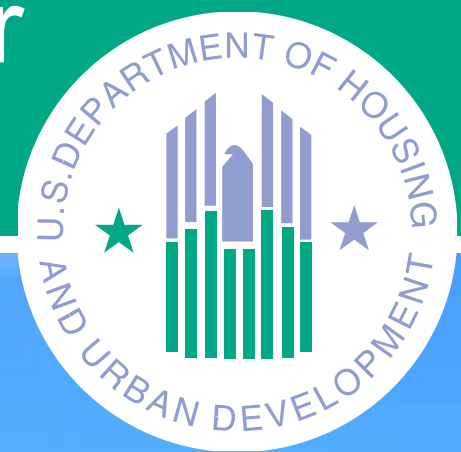




Community Development Block Grant Disaster Recovery (CDBG-DR)



Policy Guidance for Grantees 2019





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Cover Photos:

Top left: Ike Comes Ashore, Source: NASA

Hurricane Ike covered more than half of Cuba in this image, taken by the Expedition 17 crew aboard the International Space Station from a vantage point of 220 statute miles above Earth. The center of Ike was near 22.4 degrees north latitude and 82.4 degrees west longitude and moving 290 degrees at 11.7 miles per hour. Ike came ashore in Texas at 2:10 a.m. CDT, Sept. 13, 2008 and brought a wall of water over 20 feet high, sweeping through Galveston Island and onto the mainland. The storm made landfall with sustained winds near 110 mph, just 1 mph short of a Category 3 hurricane. One of the station's solar arrays is partially visible in the upper right corner.

Top right: New Orleans, Source: Alan Dooley, U.S. Army Corp of Engineers

A Texas Army National Guard Blackhawk deposits a 6,000 pound-plus bag of sand and gravel on target, Sunday, Sept. 4, 2005 as work progresses to close the breach in the 17th Street Canal. Note the patches of raised earth still covered with green grass; these were portions of the levee in back of the floodwall which were pushed up and back during the breach.

COMMON ACRONYMS

The acronyms below are frequently used throughout this guidebook and in the administration of CDBG-DR grants:

AMI	Area Median Income
CBDO	Community Based Development Organization
CDBG	Community Development Block Grant
CDBG-DR	Community Development Block Grant Disaster Recovery
CDE	Community Development Entity
CDFI	Community Development Financial Institution
CFR	Code of Federal Regulations
CO	Certifying Officer
COG	Council of Governments
CP	Citizen Participation required for Action Plans and amendments
CPD	HUD Office of Community Planning and Development
DFIRM	Digital Flood Insurance Rate Map
DOB	Duplication of Benefits
DRGR	Disaster Recovery and Grant Reporting System
DRSI	Disaster Recovery and Special Issues division of CPD
FEMA	U.S. Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map
FMR	Fair Market Rent
HCD Act	Housing and Community Development Act of 1974, as amended
HMGP	Hazard Mitigation Grant Program (administered by FEMA)
HUD	U.S. Department of Housing and Urban Development
IA	Individual Assistance (FEMA assistance to a private entity under the Stafford Act)
LMI	Low and moderate income
LMH	Low and moderate-income housing
LMJ	Low and moderate-income jobs

NFIP	National Flood Insurance Program
NMTC	New Market Tax Credit
NSP	Neighborhood Stabilization Program
OIG	HUD Office of Inspector General
OMB	U.S. Office of Management and Budget
PA	Public Assistance (form of FEMA assistance to a municipal or State entity under the Stafford Act)
RE	Responsible Entity
RFP	Request for proposal
SBA	U.S. Small Business Administration
SFHA	Special Flood Hazard Area
UGLG	Unit of general local government
URA	Uniform Relocation Act of 1970 as Amended
USACE	U.S. Army Corps of Engineers



Lakewood, Colo., Aug. 4, 2008

Fire crews from all over Denver area set up to protect homes from the Green Mountain fire.

Source: Michael Rieger/FEMA



CHAPTER 1

INTRODUCTION

In response to extraordinary impacts from disasters, Congress has from time to time appropriated additional funding to the Community Development Block Grant (CDBG) program. Unlike other recovery assistance programs administered by the U.S. Federal Emergency Management Agency (FEMA) and the U.S. Small Business Administration (SBA), Community Development Block Grant- Disaster Recovery (CDBG-DR) assistance is not permanently authorized. To meet disaster recovery needs, the statutes making CDBG-DR funds available have imposed additional requirements and authorized the U.S. Department of Housing and Urban Development or (HUD) to modify the rules that apply to the annual CDBG program.

To provide this flexibility, CDBG-DR appropriation statutes typically grant the Secretary the authority to waive statutes or regulations administered by the Secretary, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. Statutory requirements of CDBG-DR appropriations, recovery needs of grantees, and waivers granted by HUD may change from one disaster to the next. Thus, many grantees seek guidance as to what and how activities can be funded. This document seeks to address CDBG-DR questions that are common across disasters. The Community Development Block Grant was created by the Housing and Community Development Act of 1974 (HCD Act). CDBG funds can be used to create viable communities and are awarded annually to eligible state and local governments.



Hurricane Ike, New Iberia, La.

Coast Guard Jayhawk 6031 from Air Station Elizabeth City, N.C. flies over flooded areas in New Iberia, La., Sunday, Sept. 14, 2008.

Coast Guard helicopter crews began flying over flooded areas looking for signs of people in distress after Hurricane Ike reached the Gulf Coast, causing tremendous devastation to many areas in Louisiana and Texas.

Source: United States Coast Guard



GENERAL OVERVIEW OF CDBG-DR

Eligible Grantees

HUD typically allocates funds to states given their capacity to administer funds across damaged areas. A listing of active CDBG-DR grantees, recent CDBG-DR appropriations, and applicable Federal Register notices are available on the Department's website.

CDBG-DR Applicable Requirements

After Congress appropriates funding to the CDBG-DR program, HUD formally announces the CDBG-DR awards via press release and notices published in the Federal Register. These notices describe the rules that govern the specific CDBG-DR appropriation. The notices modify the HCD Act to reflect any requirements of the statute appropriating the CDBG-DR funds and any statutory and regulatory waivers and alternative requirements granted by HUD.

CDBG-DR grants are subject to Title I of the HCD Act, (42 U.S.C. § 5301 et seq.) which governs all CDBG programs. Grantees are also subject to the CDBG regulations at 24 CFR Part 570, unless modified by waivers and alternative requirements included in the applicable Federal Register Notice. CDBG-DR grantees must also comply with the applicable requirements of 2 CFR Part 200, which provides the Federal government's guidance on administrative requirements, cost principles, and audit requirements.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) ("Stafford Act") provides the framework for Federal disaster assistance and sets forth the process by which the President declares a major disaster. Although the Stafford Act is largely devoted to programs administered by FEMA, certain sections apply more generally to all disaster assistance. In particular, CDBG-DR grantees must adhere to section 312 of the Stafford Act, which prohibits duplication of benefits (addressed in detail later in this Guide).

To summarize, each CDBG-DR grantee is subject to:

- The requirements of the applicable statute appropriating CDBG-DR funds;
- The Federal Register Notice allocating funds to that grantee and any subsequent Notice providing additional waivers and alternative requirements;
- Title I of the HCD Act and the CDBG regulations at 24 CFR Part 570, unless modified by waivers and alternative requirements included in the applicable Federal Register Notice;
- 2 CFR Part 200, which provides the Federal government's guidance on administrative requirements, cost principles, and audit requirements;
- Section 312 of the Stafford Act.



Funds can only be spent to meet the recovery needs caused by the disaster specifically stated in the appropriation.

Eligible Geographic Areas

When funds are allocated directly to States, the CDBG-DR appropriation typically mandates that all funds must be spent to meet recovery needs in areas declared a major disaster area pursuant to the Stafford Act. Typically appropriations further limit use of funds to the “most impacted and distressed” areas resulting from a major disaster.

HUD uses damage estimates and other data from FEMA and SBA to determine the eligible grantees, geographical areas to be served or prioritized and allocation amounts. Based on this data, the Department may attach additional restrictions, e.g., units of general local government

(UGLG) in receipt of a direct award may only spend funds within that local government’s jurisdiction (not within the county at large). Eligible disasters and any geographic restrictions are identified in the Federal Register Notice that governs the use of funds.

National Objectives

To qualify for CDBG-DR funding, activities must meet one of three national objectives set forth in section 104(b)(3) of the HCD Act:

- Benefit low-and-moderate-income persons, or
- Aid in the prevention or elimination of slums or blight, or
- Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs (Urgent Need).

NOTE: Please see references to additional national objectives for Housing Incentives and Buyouts located in Chapters 3 and 4 of this guide.

Under applicable regulations or waivers and alternative requirements, general planning and program administrative costs are presumed to meet a national objective. As per 2 CFR §200.88, Simplified Acquisition Threshold, CDBG-DR funds expended by local government grantees for planning activities listed at 570.205 and program administrative costs described at 570.206 are considered to address the national objectives. Typically, HUD grants a waiver and alternative requirement to state CDBG-DR grantees to expand eligible planning activities to include those at 24 CFR 570.205, including non- project specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. By waiver and alternative requirement, HUD typically gives states the same flexibility that 24 CFR 570.208(d)(4) gives local governments to presume that general planning activities and program administrative costs meet national objectives.

Low- and Moderate-Income (LMI) Overall Benefit Requirements

When merited by the disaster and permitted by the appropriations statute, HUD has occasionally modified the requirement that at least 70 percent of the CDBG-DR funds benefit low- and moderate-income persons.



...prudent grantees should first seek to qualify an activity as low- and moderate-income.

Recently, HUD has reduced this overall benefit requirement in response to requests and justifications submitted by grantees. Sometimes, the standard for reducing the overall benefit percentage is statutory. Generally, the applicable Federal Register notices set out the method for submitting a waiver request.

To help ensure that this LMI overall benefit requirement is met, prudent grantees should first seek to qualify an activity as LMI. If LMI cannot be used, slum/blight or urgent need can be used so long as the grantee adequately documents the requirements of the national objective.

Entitlement Communities and the Exception Criteria to Document LMI Area Benefit

Section 105(c)(2)(A)(ii) of the HCD Act provides an exception that metropolitan cities and urban counties may use to qualify area benefit activities as principally benefiting persons of low and moderate income. These “exception criteria” are available when the area served by the activity is in the highest quartile of all areas within the jurisdiction in terms of degree of concentration of persons of low and moderate income.

Local governments receiving a direct CDBG-DR appropriation from the Department may rely on the exception criteria provided the grantee is an Entitlement community that receives an annual direct grant from HUD under the CDBG entitlement program, and meets the requirements at 24 CFR 570.208(a)(1)(ii).

When state CDBG-DR grantees provide funds to entitlement communities, the entitlements, by definition, must be a metropolitan city or urban county. As such, the state can allow the entitlement to use the exception criteria, when applicable to the entitlement as part of qualifying eligible activities under the LMI area benefit national objectives for CDBG-DR disaster recovery funds. Grantees should address any exception criteria questions they have with their HUD field office.

Documenting Urgent Need

CDBG-DR grantees can demonstrate the urgent need national objective criteria if, in the absence of evidence to the contrary, the entitlement certifies (or the UGLG certifies and State determines, as applicable) that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient (or UGLG) is unable to finance the activity on its own, and that other sources of funding are not available.

24 CFR 570.208(c) and 24 CFR 570.483(d) state that a condition will generally be considered to be of recent origin if it developed or became urgent within 18 months preceding the certification by the unit of general local government. In the past, HUD has extended this 18-month period for CDBG-DR grantees. Grantees must look to the Federal Register Allocation Notice for their funding to determine if this 18-month requirement has been extended for their award.



In addition, grantees must also look to the Notice for their award to determine for activities authorized under Title I of the HCD Act if any waivers or alternative requirements modify the documentation necessary to qualify an activity as meeting the urgent need national objective.

Use of CDBG-DR Funds

CDBG-DR grantees may only use funds for the purposes authorized by Congress in the appropriation statute. Generally, CDBG-DR appropriations make funds available for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in areas affected by hurricanes, floods, and other major disasters. These purposes – relief, recovery, restoration, and revitalization – all require a tie back to the qualifying event in that they respond to a need that arises from the disaster.

All CDBG-DR activities must meet an unmet recovery need and address an impact of the disaster for which funding was appropriated. Given the standard CDBG requirements, this means each activity must:

- Be CDBG-eligible (or eligible under a waiver or alternative requirement),
- Meet a national objective, and
- Meet an unmet recovery need that addresses a direct or indirect impact from an eligible disaster in a presidentially declared county.

Assessment of Unmet Needs - How Grantees Determine Which Programs and Activities will be Funded

CDBG-DR-funded activities and programs must respond to disaster-related impacts that are not fully addressed by other funding sources. Accordingly, since 2012¹ CDBG-DR grantees have been required by Notice to complete an assessment of unmet needs. To assist CDBG-DR grantees with this assessment, HUD has created the Disaster Impact and Unmet Needs Assessment Kit, which is available on the HUD Exchange at: <https://www.hudexchange.info/resource/2870/disaster-impact-and-unmet-needs-assessment-kit/>

Pre-award Implementation Plan - How Grantees Determine Staffing Capacity, Needs and Budgets for Administration, Planning and Program Performance

The grant terms and specific conditions of the award will reflect HUD's risk assessment of the grantee and will require the grantee to adhere to the description of its implementation plan submitted in its certification and risk analysis documentation. To enable HUD to assess risk as described in 2 CFR 200.205(c), the grantee may be required to submit an implementation plan to the Department. The plan must describe the grantee's capacity to carry out the recovery and how it will address any capacity gaps.

¹ Federal Register /Vol. 77, No. 73 /Monday, April 16, 2012 /Notices



The DR Notices are beginning to focus more on this requirement of grantees whereby they need to demonstrate their capacity to administratively manage and/or implement CDBG-DR programs through the development and submission of an Implementation Plan. This plan is time-sensitive and requires the grantee to develop it concurrent with conducting their Unmet Needs Assessment and draft Action Plan.

Grantees have many options when they consider their strategies for how the funds will flow to various types of projects. Typical models include: the grantee developing or expanding in-house capacity to directly administer the DR programs in all of the eligible impacted areas or distributing grant administration amongst peer State or Municipal agencies to administer programs in their typical sphere of operations, such as a housing agency administering housing programs and an environmental agency administering storm water management projects.

Other models include partnerships with sub-recipients to manage specific programs, direct procurement of contractors to manage specific portions of the scope and tasks to implement a grantee program, and formulaic sub-awards to sub-recipient UGLGs to further define and administer projects and programs at the local level.

However, all these methods require the CDBG-DR direct Grantee to provide core administrative, fiduciary and planning oversight and policy guidance. Even when working with UGLG sub-recipients and private contractors, the direct CDBG-DR grantee is responsible for critical tasks such as developing and refining policies and procedures, financial management, providing program oversight, responding to public inquiry and reporting to HUD.

The Implementation Planning process and outline requirements are developed to help grantees quickly determine what method might be most timely and cost-effective based on an assessment of their governance structures and the nature of the disaster(s), their regional impacts and the types of programs considered in the Action Plan.

The Implementation Plan and process developing it will also serve as an early administrative work plan outline to indicate where CDBG-DR grantees or sub-recipients may need additional support or prioritization. Implementation Planning can include identification of more specific challenges such as setting up a system of record, website and internal auditing function. The Implementation Plan should demonstrate an understanding and provide insight on how to track and allocate resources between administration, planning and activity delivery cost. Please see the FR Notice issued 11/21/16 for a sample outline and more details.

The Action Plan - How Grantees Communicate what Programs and Activities will be Funded

Prior to receiving funds, CDBG-DR grantees are required to develop and submit to HUD Action Plans for Disaster Recovery. The CDBG-DR Action Plan must describe how the grantee will use the CDBG-DR funds.

There are two types of CDBG-DR Action Plans — hard copy plans that the grantee submits detailing the programs or activities it plans to fund, and electronic plans submitted via the Disaster Recovery Grant Reporting System (DRGR), also known as DRGR Action Plans.

Hard copy CDBG-DR Action Plans are developed in response to the disaster-related impacts first identified by the grantee based on their unmet needs assessment process. Typically, they describe funded programs (e.g., infrastructure, housing rehabilitation, or economic revitalization) — and the general requirements applicable to each — such as the total amount dedicated to the program, eligibility criteria, maximum award amount and national objective compliance. The Federal Register Notice governing the allocation will describe the requirements of the CDBG-DR Action Plan.

After a grant agreement has been executed, the grantee will be required to enter portions of its hard copy Action Plan into the DRGR (e.g., descriptions of disaster impacts and recovery needs). Funds may be drawn from the CDBG-DR line of credit only for those activities that are established in DRGR. It must describe individual activities carried out under each program. Note that most grantees create “projects” in DRGR that align with the “programs” funded by their hard copy Action Plans (e.g., infrastructure).

Disaster Recovery Grant Reporting (DRGR)

The DRGR was developed by HUD’s Office of Community Planning and Development for the CDBG-DR program and other special appropriations. Data from the system is used by HUD staff to review activities funded under these programs and for required quarterly reports to Congress.

Grantees use the system to identify activities funded under their Action Plans and Amendments along with budgets and performance goals for those activities. Grantees also submit quarterly reports through DRGR that summarize obligation, expenditures, drawdowns, and accomplishments for all their activities. The DRGR Public Data Portal was developed to make DRGR reports and data available to the public at <https://drgr.hud.gov/public/>



Aerial photo of damaged homes along New Jersey shore after Hurricane Sandy.

Photo Credit: Greg Thompson/USFWS –Northeast Region

Amendments to Action Plan for Disaster Assistance after It is Adopted

Over time, recovery needs change. Thus, the Department encourages grantees to amend their hard copy Action Plans as often as necessary to best address their long-term recovery goals. As these plans typically describe broad programs/projects, changes or alterations to activities under these programs will not trigger an amendment, so long as the activity still complies with the requirements of the Action Plan and remains consistent with the language the grantee has adopted in its Action Plan.

Once the hard copy Action Plan is amended, the DRGR Action Plans must also be updated. For example, an activity's budget or performance measure may be reduced or increased, depending on the need for that particular activity.

The table below outlines the changes that may be made to both types of Action Plans. For the purpose of this table, assume the grantee's hard copy Action Plan allocates \$1,000,000 to homeownership assistance whereby only LMI households may be served.

Table 1: *Housing activities and national objectives*

Action	Amend Hard-Copy Plan?	Amend DRGR Plan?
Subrecipient obligates \$1,000,000 for homeownership assistance for fifty families. Only 45 families need assistance.	No	Yes
Grantee decides to serve households above 80 percent of the area median income.	Yes	Yes When funding activities are under separate national objectives, new activity must be set up

Substantial Amendments to the Hard Copy Action Plan

A change to an Action Plan is considered to be a substantial amendment if it meets certain minimum requirements described in either the applicable Federal Register Notice or in the grantee's adopted Action Plan for Disaster Assistance. The changes that trigger a substantial amendment can vary among the various CDBG-DR appropriations and corresponding Federal Register Notices. For PL 113-2, the Notice designates as a substantial amendment a change in program benefit or eligibility criteria; the allocation or re-allocation of more than \$1 million; or the addition or deletion of an activity. For PL 114-113, the Notices define a substantial amendment as a change in program benefit or eligibility criteria; the addition or deletion of an activity; or the allocation or reallocation of a monetary threshold specified by the grantee in their action plan.

A substantial amendment requires citizen participation (see below).

A non-substantial amendment does not.

Citizen Participation Requirements

The adoption of the CDBG-DR Action Plan as well as any Substantial Amendments to the Plan require citizen participation. Typically, the Federal Register Notices that announce the CDBG-DR allocation provide a waiver and alternative requirement to the regulatory citizen participation requirements, reducing the posting time and sometimes eliminating the need for a public hearing. Since this may not always be the case, it is important to check the Notice to determine the applicable requirements.

However, Federal Register Notices may provide for HUD's citizen participation alternative requirements with a longer comment period, and in some cases, a public hearing. Therefore, it is important to check the Notice requirements to determine the applicable requirements.

A non-substantial amendment does not require posting for citizen review. Rather, the grantee need only notify HUD five business days before the change is effective. If a grantee believes an amendment is non-substantial, the Department may still encourage it to seek citizen input depending on the nature of the change (i.e., if it is complex or possibly controversial).

Citizen Participation activities should also be mindful of crosscutting requirements including Affirmatively Furthering Fair Housing whereby an Analysis of Impediments process is considered. The draft Action Plan and any citizen meetings that are part of the unmet needs assessment information or public comment period should follow grantee policies to address accessibility and English as a second language. Further HUD guidance on language assistance plans is available on the HUD website at: https://www.hud.gov/program_offices/fair_housing_equal_opp/17lep





CHAPTER 2

GENERAL PROGRAM REQUIREMENTS

Stafford Act Requirements

As noted in Chapter 1, The Stafford Act provides the framework for Federal disaster assistance and sets forth the process by which the President declares a major disaster. Although the statute is largely devoted to programs administered by FEMA, certain sections apply more generally to all disaster assistance. In particular, CDBG-DR grantees must adhere to section 312 of the Stafford Act, which prohibits duplication of benefits (addressed below).

Tie to the Disaster

CDBG-DR activities must clearly address a direct or indirect impact of the disaster in a Presidentially-declared major disaster area for which funding was allocated. A disaster-related impact can be addressed through any eligible CDBG activity.

Damage or rebuilding estimates are often the most effective tool for demonstrating physical losses as a result of the disaster. For economic or other non-physical losses, post-disaster analyses or assessments may best document the relationship between the loss and the disaster. The tie to the disaster should be evidenced in every activity file.

Damage from Subsequent Disasters

In some instances, CDBG-DR grantees have been affected by subsequent disasters. Use of grant funds generally is limited to assist recovery from the disaster that qualified the grantee for the CDBG-DR award. However, these grantees may use funds appropriated for the original qualifying Presidentially-declared disaster for a recovery activity where the need from the qualifying disaster remained unmet at the time of the subsequent disaster, and the subsequent disaster exacerbated damage or loss caused by the original disaster.

For example, if an applicant's home flooded during the qualifying disaster for which the grantee received a CDBG-DR award, and flooding from a subsequent disaster exacerbated the original damage before repairs caused by the qualifying disaster could be completed, the CDBG-DR grant funds can be provided to complete the habilitation and address the unmet need as it currently exists.



However, CDBG-DR disaster recovery funds may not be used for activities that: (1) address a need arising solely from the subsequent disaster for which funds were not appropriated, or (2) address a need that has been met in full prior to the subsequent disaster. For example, if a subsequent disaster damaged a bridge that had gone unharmed during the qualifying disaster, CDBG disaster recovery funds could not be used to repair that bridge since the subsequent disaster was exclusively responsible for creating the need. Likewise, if the bridge were damaged in the qualifying disaster but completely repaired before the subsequent disaster, it would not be eligible for assistance under the CDBG-DR grant.

Keep in mind that CDBG-DR grant funds cannot be used for activities reimbursable by or for which funds are made available by FEMA or the U.S. Army Corps of Engineers (USACE). Therefore, before addressing exacerbated unmet need caused by a subsequent disaster, the grantee must determine whether FEMA funds are available to address the exacerbated need, and must always prevent the duplication of benefits, as discussed below. Additionally, grantees should review their action plans to determine whether addressing exacerbated unmet need caused by a subsequent disaster is a new or changed activity that necessitates an action plan amendment.

DUPLICATION OF BENEFITS (DOB)

Section 312 of the Stafford Act prohibits any person, business concern, or other entity from receiving financial assistance for any part of a loss resulting from a major disaster for which he has received financial assistance under any other program or from insurance or any other source. The duplication of benefits requirement in the Stafford Act applies to all Federal agencies administering a disaster recovery program providing financial assistance, including HUD and CDBG-DR. In order to comply with this law, grantees must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met.

The duplication of benefits requirement in the Stafford Act applies to all Federal agencies administering a disaster recovery program providing financial assistance, including HUD and CDBG-DR grants.

In addition to this section of the Stafford Act, which is typically referenced within CDBG-DR appropriations statutes, duplication of benefits inquiries are also required under the “necessary and reasonable” requirements in 24 CFR part 570 and in the cost principles at 2 CFR Part 200. It would not be necessary nor reasonable to use CDBG-DR funds to pay for repairs that an applicant had already received payment for from another source.

In general, an applicant must have spent all (or have available to expend) funds received from government sources, private insurance, the National Flood Insurance Program, and any other sources for the intended purpose(s), and must still have an unmet need before he or she qualifies for CDBG-DR funds. Because assistance to each person varies widely based on individual insurance coverage and eligibility for

Federal funding, grantees cannot comply with the Stafford Act without completing a duplication of benefit analysis specific to each applicant even if to report that no other benefits were received or are pending. A grantee may not make a blanket determination that a duplication of benefits does not exist for all beneficiaries or recipients under a disaster recovery program.



The Federal Register Notice entitled ***“Clarification of Duplication of Benefits Requirements under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees,”*** published 11/16/2011, (76 FR 71060) clarifies the duplication of benefits requirements under the Stafford Act for all active CDBG-DR grants, and all future CDBG-DR grants. However, a subsequent Federal Register Notice entitled ***“Updates to Duplication of Benefits Requirements under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees”*** was published 6/20/2019, (84 FR 28836 and 28848) further clarifies requirements for disasters declared between 2015 and 2021. The DOB information in this chapter is meant to provide additional clarification in areas where grantees have continued to have questions.

FEMA, USACE and DOB

To meet DOB requirements, CDBG-DR grantees must consider any and all funds an applicant receives from FEMA or USACE. FEMA is the federal agency that is responsible for coordinating the federal government’s response to disasters. USACE assists FEMA by coordinating federal public works and engineering-related support, as well as providing technical assistance, engineering expertise, and construction management to prevent, prepare for, respond to, and/or recover from domestic incidents.

FEMA’s Individual Assistance program can provide funds to households for home repair or replacement, as well as assist households with meeting other necessary expenses and serious needs caused by a disaster.

FEMA’s Public Assistance program provides grants to state, local, and federally recognized tribal governments and certain private non-profit entities to assist them with the response to and recovery from disasters. Specifically, the program provides assistance for debris removal, emergency protective measures, and permanent restoration of infrastructure.

FEMA’s Hazard Mitigation Grant Program (HMGP) provides grants to states and local governments to implement long-term hazard mitigation measures after a major disaster declaration. The purpose of the HMGP is to reduce the loss of life and property due to natural disasters and to enable mitigation measures to be implemented during the immediate recovery from a disaster.

To Meet the DOB Requirements, CDBG-DR Grantees must:

- Include in their policies and procedures a description of how they will collaborate with FEMA to verify FEMA assistance received by applicants; and verify whether FEMA funding is still available to provide new assistance or reimburse previously incurred recovery costs for a particular disaster.
- Analyze applicants on a case-by-case basis.
- Ask applicants whether FEMA assistance was received:
If yes — request a copy of the award determination letter; verify information with FEMA.
If no — ask whether applicant applied for FEMA assistance.



- If the applicant applied and was denied, request a copy of the award determination letter and verify this information with FEMA.
- If the applicant did not apply to FEMA, work with FEMA to determine whether FEMA assistance is still available for the applicable disaster. If FEMA assistance is available, grantees may encourage applicants to apply for FEMA funds but the applicant is not required to do so prior to receiving CDBG-DR funds.
- If FEMA assistance is no longer available, document this in the applicant's file. If FEMA assistance is no longer available, this determination can be used for all similarly situated applicants (i.e., a separate FEMA determination letter for each applicant is unnecessary).
- Use the Department's 11/16/2011 Notice and the grantee's policies and procedures to assess how any received FEMA assistance impacts the CDBG-DR for awards covered by the July 2013 Notice. For subsequent awards and FR Notices, use the 6/20/2019 Notices.

SBA Loans and DOB

The U.S. Small Business Administration (SBA) provides low-interest disaster loans to businesses of all sizes, private non-profit organizations, homeowners, and renters. SBA disaster loans can be used to repair or replace real estate, personal property, machinery and equipment, and inventory and business assets damaged or destroyed in a declared disaster. In some cases, SBA can refinance all or part of a previous mortgage when the applicant does not have credit available elsewhere, has suffered substantial disaster damage not covered by insurance, and intends to repair the damage.

HUD encourages but does not require CDBG-DR applicants to apply for SBA assistance as a prerequisite to receiving CDBG-DR assistance. Further, HUD does not require applicants who have applied for and been offered SBA assistance to accept the SBA assistance as a prerequisite to receiving CDBG-DR assistance. However, the grantees subject to the July 2013 guidance must demonstrate that providing CDBG-DR assistance to an applicant that has declined an SBA loan is necessary and reasonable. To demonstrate this, the grantee must develop policies and procedures which describe what circumstances and/or facts, such as the reason for the applicant's decision to decline the SBA loan offer, that the grantee will use. For 2015 through 2021 grantees Duplication of Benefits guidance published June 20, 2019, (84 FR 28836 and 28848) applies.

HUD's guidance on this topic directs grantees to assess each applicant's circumstance and prevent the duplication of benefits. Grantees must adopt an approach that adequately establishes the basis for CDBG-DR assistance and HUD anticipates that grantees will base their approach upon this guidance. Grantees are cautioned against providing 100 percent CDBG-DR grant assistance where an applicant has declined SBA assistance without fully documenting the basis for that level of subsidy. **Failure to institute an appropriate process to address these cases may open the grantee to programmatic sanctions.**

Please note PL 115-254 establishes new regulations regarding any loans. HUD issued new guidance reflecting application of this law published 6/20/2019, (84 FR 28836 and 28848).



HUD's minimum expectation in this situation is that grantees will incorporate policies and procedures that:

- Identify the circumstances under which the applicant declined the SBA assistance;
- Establish why CDBG-DR assistance is appropriate for the applicant; and
- Determine, most commonly through underwriting, the amount of CDBG-DR assistance that is necessary and reasonable to assist the applicant in achieving recovery to determine that CDBG-DR support is a necessary and reasonable recovery expense.

To collect uniform electronic data and streamline the application process, grantees may use standardized questions/forms to collect information from applicants. However, files must also document the grantee's assessment of that information, and how the applicant does, or does not, qualify for CDBG-DR assistance. Detailed guidance on SBA loans and DOB was issued by HUD on 7/25/13 and still applies to grantees receiving CDBG-DR before 2015. For Grantees from 2015 onward, the new guidance issued 6/20/19. The full text of the guidance for each can be found on the HUD Exchange at: <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>

Timing of Application and Subrogation

If CDBG-DR assistance is provided, the grantee's procedures must require that each applicant sign an agreement stating that any funds later received from any other source will be used to reimburse the grantee. This type of agreement is commonly known as a subrogation agreement. The Applicant's file should also be flagged to screen against FEMA and/or SBA data at a later date to confirm if any assistance was ultimately received. The grantee must identify a method to monitor compliance with the agreement for a reasonable period, and should articulate this method in its written administrative procedures. Please note that if additional need is established, subsequent funds would not be considered a duplication.

Insurance and DOB

The amount of money a household receives from insurance must be considered when determining CDBG-DR eligibility and award amount. CDBG-DR funds cannot duplicate assistance provided under an insurance policy.

If an applicant has insurance but at the time of application to the CDBG-DR program has not filed a claim with their insurance company, the grantee should advise the applicant to file a claim immediately. Grantees must not use CDBG-DR funds to duplicate other sources of assistance, including insurance, that are available for the same purpose. A benefit is available if a person or entity would receive it by acting in a "commercially reasonable manner" or has received it, and has legal control over it. Commercially reasonable efforts refer to efforts that use a standard of reasonableness defined by what a similar person would do as judged by the standards of the applicable community. Commercially reasonable efforts should be consistent with good-faith business judgments. If the grantee finds the applicant did not act in a commercially reasonable manner, the grantee must count the full amount of insurance coverage as duplicative when determining whether the applicant may receive CDBG-DR assistance.



Forced Mortgage Payoffs and DOB

As a condition of granting a mortgage, lenders usually require that they be named in the homeowner's policy and that the lender is a party to any insurance payments related to the structure. After a disaster, some lenders, in some states, have required a borrower to use some or all of their insurance proceeds to reduce or pay off the mortgage balance before releasing funds for rebuilding. Insurance payouts used for forced mortgage payoffs are not a DOB in rehabilitation or reconstruction scenarios because they are not available to the homeowner.²

Insurance, Personal Property Replacement and DOB

Insurance proceeds issued for personal property replacement are generally not included in a DOB analysis for home repair or voluntary acquisition programs. However, grantees must still ensure that all CDBG-DR awards meet the identified need in a necessary and reasonable manner. For example, if an applicant has used personal property funds to repair his/her roof, and then applies for a CDBG-DR rehabilitation grant, the CDBG-DR award should be based upon the need at the time of the application. This is the case except in instances where a Federal Register Notice authorizes reimbursement to homeowners. In these cases, repairs made by the homeowner prior to receiving a CDBG-DR award may be considered part of the need when determining CDBG-DR assistance.

HUD realizes there may be a time lag between submission of an application for assistance and payout of the award. Thus, grantees have the discretion to determine when (or if) a re-evaluation of the need must occur.

FLOOD INSURANCE REQUIREMENTS

When property in a Special Flood Hazard Area (SFHA)³ benefits from assistance funded by CDBG-DR there is a federal statutory requirement to maintain flood insurance on the property in perpetuity. Compliance with this requirement must be monitored by the grantee per the requirements listed at 24 CFR 58.6. Flood insurance is provided through the National Flood Insurance Program (NFIP).

For CDBG-DR properties located outside the SFHA, HUD cannot mandate that flood insurance be purchased and maintained, but a grantee could if they elected to be stricter than the Federal requirements.

If a person receives Federal disaster assistance conditioned on obtaining and maintaining flood insurance and fails to do so, the National Flood Insurance Reform Act of 1994 prohibits that property from receiving further Federal disaster assistance.

² The 2016 Federal Register Notice for PL 114-113 prohibits CDBG-DR funds from being used for a mortgage payoff. Please check the Notice for your specific disaster for any mortgage payoff restrictions.

³ A Special Flood Hazard Area is a high-risk area defined as any land that would be inundated by a flood having a one percent chance of occurring in any given year (also referred to as the base flood, or the 100-year floodplain).



Therefore, if a household located in a floodplain receives CDBG-DR assistance for repair, replacement, or restoration of the home, fails to maintain flood insurance, and is impacted by a subsequent disaster, they are ineligible for subsequent CDBG-DR funds.

In addition, the 1994 Act requires that should the property be sold or transferred the seller or transfer or is required to notify the buyer or transferee in writing that flood insurance must be obtained and maintained.

If a seller or transferor fails to provide this notification and all of the following occur:

- The transferee fails to obtain or maintain flood insurance in accordance with applicable Federal law with respect to the property,
- The property is damaged by a flood disaster, and
- Federal disaster relief assistance is provided for the repair, replacement, or restoration of the home as a result of such damage.

Then the seller or transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

The notification and mandatory purchase of flood insurance requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance has been provided for repair, replacement, or restoration of the property, provided such assistance was conditioned upon obtaining flood insurance.

Insurance Requirements for Grants and Loans Differ

For grants and other non-loan forms of financial assistance for acquisition or construction purposes, flood insurance coverage must be continued for the life of the building irrespective of the transfer of ownership (see 42 USC 4012a). The required coverage for the project, for acquisition or construction purposes, must be at least equal to the development or project cost (less estimated land cost) or to the maximum limit of coverage made available under the (NFIP), whichever is less.

For loans or loan guarantees, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. In some cases, loans may be repaid prior to the due date, or may be forgiven after a certain period of time (e.g., ten years). Generally, the flood insurance requirement will cease to exist when the loan is no longer in effect. However, grantees may not design loan programs to intentionally avoid the flood insurance requirement (e.g., loan forgiven after one year).

Self-Insurance for States

Self-insurance is a risk-management method in which a calculated amount of money is set aside to compensate for potential future loss. States can act as self-insurers with respect to facilities they own if a state adopts and maintains a FEMA-approved plan for self-insurance (see the FEMA regulations at 44 CFR 75.11). Self-insurance is not allowed for local governments, tribal governments, or private non-profits.



How to Determine if a Property is Located in a SFHA

A Digital Flood Insurance Rate Map (DFIRM) is used to determine whether flood insurance is required for a structure. If the structure is in an SFHA on a DFIRM, flood insurance is required for any acquisition, rehabilitation, construction, or contents financed by HUD. While the content of a DFIRM may vary based on the data available and/or developed for a particular flood study/mapping project, every DFIRM will contain certain standard features:

- A base map;
- The features shown on a printed Flood Insurance Rate Map (e.g., floodplain boundaries, Base Flood Elevations, regulatory floodways, etc.);
- Electronic Flood Insurance Study (FIS) report text, tables, and Flood Profiles; and
- Federal Geographic Data Committee-compliant metadata.

Flood insurance maps are usually on file in a community's town hall or county building, usually in the planning and zoning, or engineering offices. In addition, maps can be viewed online at: <https://msc.fema.gov/portal>. From time to time, FEMA updates flood maps. The adopted maps in place at the time of application processing should be used to determine if a property is located in an SFHA.

Hazard Insurance Requirements

Hazard insurance, also called homeowner's or property insurance, provides coverage for specific natural or manmade hazards, such as fire, wind, and vandalism. Without the purchase of additional coverage, hazard insurance does not typically cover damage from floods or earthquakes.

HUD does not require assisted households to purchase hazard or homeowner's insurance if they've received CDBG-DR funds to rehabilitate their home. However, from a policy perspective, HUD strongly encourages grantees to require assisted households to purchase and maintain some form of hazard or homeowner's insurance.

PROGRAM ADMINISTRATION

Administrative Costs

Laws appropriating CDBG-DR funds typically cap administrative expenditures at 5 percent of the total grant amount. The cap applies whether funds are used by the grantee (i.e. the state or local government), by entities designated by the grantee, by units of general local government, or by sub-recipients. CDBG-DR grantees may use a maximum of 20 percent of their total grant amount on a combination of planning and general administration costs. Additional information on the use of CDBG-funded expenditures for program administration can be found at 24 CFR 570.206 and 570.489.



Activity Delivery Costs (ADC)

General program administrative costs are costs incurred to support the administration of the CDBG-DR grant as a whole. ADCs are allowable costs incurred for implementing and carrying out eligible CDBG activities. All ADCs are allocable to a CDBG activity, including direct and indirect costs integral to the delivery of the final CDBG-assisted activity. ADCs include staff-time charges that add value or help advance the implementation of a specific CDBG-funded eligible project or activity. Unlike general administrative costs, there is no cap or limit on project delivery costs. ADCs should be included as part of the total activity budget.

Grantees must maintain adequate records and documentation in support of all costs, including ADCs. Additionally, the grantee's records should clearly show there is a consistent treatment of like costs under similar circumstances. This includes recordkeeping sufficient to support the allocation of costs to a specific activity.

Staff time allocable as ADCs represents the actual time spent on implementing and completing an eligible CDBG activity, as documented by the grantee. If that activity is not completed, or the activity does not meet a CDBG national objective, the up-front costs that are administrative in nature, such as staff costs for performing environmental reviews or housing relocation work, must be included as part of general program administrative costs because they cannot be associated with achieving a final cost objective. For additional information please refer to *"Notice CPD-13-07: Allocating Staff Costs Between Program Administration Costs vs. Activity Delivery Costs in CDBG"* that can be found at: <https://www.hudexchange.info/resources/documents/Notice-CPD-13-07-Allocating-Staff-Costs-Program-Administration-Delivery-Costs-CDBG.pdf>

Inter-agency Agreements or Memorandums of Understanding and Subrecipient Agreements

Direct grantees may need to work with staff at other agencies outside of their own to administer and/or implement various aspects of CDBG-DR programs or projects. Other public agencies, commissions, or authorities that are independent of the administering agency for the state are public agencies undertaking CDBG-DR-assisted activities and are subject to the same requirements as are applicable to the grantee subrecipients unless otherwise stated in a Federal Register Notice.

Therefore, inter-departmental agreements should include the same provisions as required in a Subrecipient Agreement. See **24 CFR 570.501**.

More detailed guidance is available within the *"Managing CDBG: A Guidebook for Grantees on Subrecipient Oversight"* located at: https://www.hud.gov/sites/documents/DOC_17086.PDF

FREQUENTLY ASKED QUESTIONS

Are units of local government, in receipt of CDBG-DR funds from a state grantee, considered recipients or subrecipients?

Under commonly granted CDBG-DR waivers, state grantees have flexibility in determining the treatment of local governments. Regardless of whether a state determines to treat these local governments as subrecipients or beneficiaries, they must uniformly apply the chosen requirements. Generally, when a state uses a method of distribution to allocate funds to local governments, that local governments then use to carry out programs of their own design (e.g., the State of Ohio makes allocations to three county governments based on damage estimates provided by FEMA), the local governments are considered the state's subrecipients. The local government, as the state's grant recipient, will be the responsible entity for an environmental review while the state will be responsible for the release of funds (instead of HUD). The local government makes certifications specified in the CDBG-DR Federal Register Notice(s) and carries out the activities it selected and applied to complete.

Records must be maintained at the state level that demonstrate that the state has conducted reviews of its state recipients and that the reviews were sufficient for the state to determine whether recipients are in compliance with the provisions of Title I of the HCD Act and other applicable laws. When a state takes advantage of a waiver to act directly (e.g., to design CDBG-DR programs), it may use subrecipients, including local governments, to carry out an activity or activities selected by the state. States have discretion in the selection of sub-recipients: such entities may be chosen by the state, or selected from a group of applications, to carry out a program of the state's own design. The local government, or nonprofit as the state's subrecipient, will be the responsible entity for an environmental review while the state will be responsible for the release of funds (instead of HUD). The local government makes certifications specified in the CDBG-DR Federal Register Notices(s) and carries out the activities it selected and applied to complete. The most recent Federal Register Notices impose certain requirements on states carrying out activities through subrecipients, including the requirements at 24 CFR 570.500(c), 570.502 and the subrecipient agreement requirements at 570.503 (except that states are not required to include references to 24 CFR Parts 84 or 85).

What is the difference between developers, subrecipients, and contractors?

A recipient of a Federal award may concurrently make awards to a subrecipient, a developer, and a contractor, depending on the substance of its agreements. Therefore, the recipient must make case-by-case determinations whether each agreement it makes for the disbursement of Federal Program funds casts the party receiving the funds in the role of a sub-recipient, a contractor, or a beneficiary (a developer, business owner, or homeowner). All of the characteristics listed below may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement. 2 CFR 200.330

Subrecipient

A subrecipient is typically a local government or a nonprofit that independently administers a program on behalf of the grant recipient. Specifically, a subrecipient is a public or private non-profit agency, authority, or organization, or a for-profit entity authorized under 570.201(o), receiving CDBG funds from the recipient or another sub-recipient to undertake activities eligible for such assistance 24 CFR 570.500. A subrecipient receives a sub-award from a pass-through entity to carry out part of a Federal program. A subrecipient is not an individual (entity) that is a beneficiary of such program 2 CFR 200.93.

CDBG-DR Policy Guide

Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

1. Determines who is eligible to receive what Federal assistance;
2. Has its performance measured in relation to whether objectives of a Federal program were met;
3. Has responsibility for programmatic decision making;
4. Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
5. In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity. 2 CFR 200.330(a)

Contractor

A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

1. Provides the goods and services within normal business operations;
2. Provides similar goods or services to many different purchasers;
3. Normally operates in a competitive environment;
4. Provides goods or services that are ancillary to the operation of the Federal program; and
5. Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons. 2 CFR 200.330 (b)



Source: @NYCBuildItBack, Twitter



Developer

The 2 CFR 200 regulations are silent on the term developer. The Neighborhood Stabilization Program (NSP) and CDBG programs consider a developer a beneficiary, much as an eligible household. The term is used frequently in the rehabilitation and new construction industries. A developer is a private entity with an ownership interest in the project (e.g., a for-profit or nonprofit entity). A community-based development organization carrying out a project can be a “developer”. However, a Public Housing Authority cannot be a developer. A grantee entrusts a developer with funds to complete a project. Developers must have site control (ownership or lease in some cases) and must plan, obtain permits, and manage the project from start to finish, assuming part of the risk of the project. A developer does not just serve as a contractor.

Selection or Procurement

A subrecipient may simply be selected from available local governments and bona-fide nonprofits. A Contractor is procured in accordance with all applicable federal, state and local laws and regulations. And, in accordance with the beneficiary’s or subrecipient’s policies and procedures, a developer is neither procured, nor simply selected. A developer, as a beneficiary, is selected according to established criteria in a fair and open process. The Department strongly encourages all selections include an evaluation of capacity, quality and cost. In addition, a beneficiary or subrecipient must follow their own applicable state and local procurement regulations.

Many questions arise concerning eligible fees and costs that may be charged to the grant for subrecipients, developers, and contractors. Subrecipients cannot charge a profit or other increment above actual costs to the grant, so they cannot charge a developer’s fee. However, subrecipients are eligible for general administrative costs incurred to administer grant programs (subject to the 5 percent cap). A subrecipient managing a single program (Housing Rehabilitation) or a project (storm water management improvements), are eligible for Activity Delivery costs, which are not subject to the 5 percent administration cap. Developers are not eligible for such program administrative costs, but in addition to payment of actual costs, they can receive a reasonable developer fee, which is considered compensation for the risk taken on by the developer as part of the development of a specific property. Entities procured to construct or rehabilitate a property are contractors, and can earn a profit that is negotiated as part of the procurement process, but cannot earn a fee beyond the payment negotiated as part of the procurement.

What types of nonprofits can receive CDBG-DR funds?

The type of nonprofit depends on the eligible activity.

If a nonprofit is a program beneficiary under 24 CFR 570.202(b)(1) (for units of local government) or Section 105(a)(4) of the HCD Act (states) and the nonprofit is provided assistance for its damaged building, it must meet the Grantee’s definition of a nonprofit.

If the nonprofit is a subrecipient administering funds for a grantee or subgrantee, grantees may look to state law definitions of nonprofit. A nonprofit need not be designated by the IRS as a 501(c)(3) charitable organization.

When local government CDBG-DR grantees provide assistance to a nonprofit “carrying out” an activity under 24 CFR 570.204, the nonprofit must meet the qualifications at 24 CFR 570.204(c) (note: for-profits may also qualify as CBDOs under this entitlement regulation).



CHAPTER 3

HOUSING ACTIVITIES

CDBG-DR-funded housing activities typically focus on rehabilitation or reconstruction of single-family or multifamily units damaged as a direct result of the disaster. New housing construction may also be carried out by a grantee or subrecipient when HUD has granted a CDBG-DR waiver or alternative requirement allowing it, and it clearly addresses a direct or indirect impact of the disaster. Properties that served as second homes at the time of the disaster are NOT eligible for CDBG-DR funded rehabilitation assistance, residential incentives or any Buyout program incentives or benefits beyond current fair market value. "Second homes" are defined in IRS Publication 936 (mortgage interest deductions), or in recent FR Notices simply as not a primary residence.

Housing Activities and National Objectives

When assisting households whose income is less than 80 percent of the Area Median Income (AMI), the Low- and moderate-income housing (LMH) national objective is met. Households above 80 percent AMI may be assisted under the urgent need or addressing slum and blight (slum/blight) national objective. HUD requires a certain percentage of CDBG-DR grant funds be spent to meet the low- and moderate-income (LMI) national objective (as specified in each Federal Register allocation notice and technical correction in FR Notice issued 12/27/17). Grantees must ensure all assistance is necessary and reasonable per 2 CFR Part 200.



Source: @NYCBuilditBack, Twitter

Table 2: Housing Activities and National Objectives

Activity	LMH	Urgent Need	S/B Spot Basis	S/B Area Basis
New construction	Yes	Yes	No	Yes
Rehabilitation	Yes	Yes	Yes	Yes
Reconstruction	Yes	Yes	Yes	Yes

NOTE: The restrictions at 24 CFR 570.483(c)(2) and 24 CFR 570.208(b)(2) prohibit new housing construction from meeting the National Objective of addressing slum and blight on a spot basis.

A buyout or acquisition program is often listed in an Action Plan under Housing Programs and can be considered a housing activity. However, buyout and acquisition programs qualify as eligible activities that can include the purchase of and services to other types of property such as commercial and vacant property. Please see Chapter 4 on Voluntary Purchases of Real Property (Buyouts and Acquisitions) for additional guidance and a listing of the additional national objectives these activities can achieve.

The most commonly met National Objectives for housing activities are LMI Housing or Urgent Need. A grantee may use slum/blight on an area basis provided the designated area in which the activity occurs meets the definition of a slum, blighted, deteriorated or deteriorating area under state or local law. Additionally, the area must meet the criteria listed at 24 CFR 570.208 (b). FEMA damage assessments will likely satisfy the documentation requirement that the area meets the definition of a slum, blighted, deteriorated or deteriorating area. In lieu of using FEMA data, grantees may also determine the standard(s) by which to evaluate the area's deterioration.

Please also note frequently recommended green building standards, certification programs and resilience strategies are eligible components of a CDBG-DR funded program and are often discussed or referenced the FR Notice(s). More information on these methods and programs are available through resources such as the Green Housing Development Guide and the Green Building Retrofit Checklist on the HUD Exchange, and Rebuilding Strategy available at: <https://archives.hud.gov/news/2013/HSRebuildingStrategy.pdf>

HOUSING REHABILITATION AND RECONSTRUCTION

Eligible Repairs, Eligible Expenses and Tie-Back to the Disaster

CDBG-DR funded home repairs are not limited to those components damaged directly by the disaster. For example, in a home that was flooded, a grantee could provide funds to repair the roof and ensure it is in compliance with the applicable codes and standards. "Disaster recovery" goes beyond just repairing damaged buildings. Once an activity is documented to be connected to a disaster-related impact, the grantee may assume additional costs so that the activity fully addresses the community's development objectives and long-term recovery. In all rehabilitation cases, an evaluation (e.g., work write-up) should document the substandard condition and estimate the cost of the rehabilitation.

Reconstruction is generally defined as the rebuilding of a structure on the same site in substantially the same manner. Deviations from the original design are permitted for reasons of safety, code requirements, homeowner association standards, or if otherwise impractical. The structure to be reconstructed may be residential or nonresidential, and either publicly or privately owned. For reconstruction involving housing, the number of housing units on a site may not be increased, but the number of rooms per unit may be increased or decreased.



Source: @NYCBuilditBack, Twitter

Insurance Deductibles

In certain circumstances, CDBG-DR funds can be used to pay for a homeowner's insurance deductible. If the household can demonstrate, to the grantee's satisfaction, that it cannot afford the deductible payment, CDBG-DR funds could be used for this purpose through a one-time payment or emergency grant payment program (24 CFR 570.207(b)(4)), or as a public service. Once insurance proceeds are received, the cost of the deductible may need to be reimbursed to the grantee, depending on the applicant's need. To ensure that CDBG-DR funds only meet needs unmet by other sources, all assisted households should sign a subrogation agreement or similar repayment agreement. For additional information on subrogation agreements, please see the "Timing of the CDBG-DR Application" section above.



Many notices will require that Action Plans identify the maximum amount of CDBG-DR assistance a beneficiary can receive within each program. This may include identifying whether multiple programs can be awarded to one applicant such as mortgage assistance and reconstruction. In particular FR Notice issued 1/18/17 identifies specific requirements that housing rehabilitation or reconstruction programs develop a process for establishing why such construction activity is cost reasonable in relation to alternative program options such as buyout or acquisition or infrastructure mitigation that can reduce the need to elevate.

Insurance Premiums

Hazard Insurance

As per 24 CFR 570.202 “Eligible rehabilitation and preservation activities”, for rehabilitation carried out with CDBG-DR funds, hazard insurance premiums are eligible, except in cases where the assistance is provided in the form of a grant.

Flood Insurance

Flood insurance premiums are an eligible expense for properties covered by the Flood Disaster Protection Act of 1973. Flood insurance premiums are eligible expenses regardless of the structure of the assistance.

Tax Liens

Generally, CDBG-DR funds cannot be used to pay tax liens filed against a property as part of a rehabilitation activity.

Program Structure

CDBG-DR funded Housing Assistance may be in the form of a grant or loan. If the assistance is a loan, it may be direct-pay or deferred, forgivable or non-forgivable, with interest or without. The term of the loan is set by the grantee and is often tied to any residency or occupancy requirement.

CDBG-DR funds may be provided directly to the homeowner, or directly to a contractor for the benefit of the homeowner (in which case the terms of the assistance would still apply to the homeowner). In all cases, the grantee must take reasonable measures to prevent fraud and ensure the funds are spent for the designated purpose in a reasonable time.

Many grantees design rehabilitation programs that have varying levels of assistance depending on the need of the applicant. For example, an applicant in need of \$10,000 for roof repairs may qualify for a “minor” rehabilitation grant. An applicant whose home is substantially damaged (and beyond repair) may qualify for reconstruction.



Reimbursement of Rehabilitation Expenses

Grantees are permitted to charge to grants the pre-award and pre-application costs of homeowners, businesses, and other qualifying entities for eligible costs they have incurred in response to an eligible disaster. However, a grantee may not charge such pre-award or pre-application costs to grants if the pre-award or pre-application action results in an adverse impact to the environment. Grantees are required to consult with the State Historic Preservation Officer, Fish and Wildlife Service and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and section 7 of the Endangered Species Act (16 U.S.C. 1536) when designing a reimbursement program. Grantees may 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 owned by private individuals and entities incurred for a certain period of time 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 substantially within the same footprint of the damaged structure, sidewalk, driveway, parking lot, or other developed area;
- As required by 2 CFR 200.403, costs must be adequately documented;
- Grantees electing to provide assistance for the reimbursement of expenses 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 reimbursement assistance.

For additional information, please refer to Notice CPD-15-07: ***Guidance for Charging Pre-Application Costs of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants*** located at: <https://www.hudexchange.info/resource/4777/notice-cpd-1507-guidance-for-charging-preapplication-costs-to-cdbg-disaster-recovery-grants/>

HOMEOWNERSHIP ASSISTANCE

Homeownership assistance is provided directly to an applicant or household for their use in purchasing a home. CDBG-DR funds may be used to:

- Provide up to 50 percent of the down payment required by the mortgagee on behalf of the purchaser (and often HUD will allow 100 percent down payment assistance via a waiver or alternative requirement);
- Pay any or all of the reasonable closing costs associated with the home purchase;
- Pay all or part of the premium for mortgage insurance required up-front by a mortgagee; and
- Provide a subordinate loan for a portion of the purchase price, reducing the amount of the first mortgage to an affordable level. This subordinate loan may be direct-pay or deferred, although a deferred payment loan is more common. Deferred loans may be due at the end of the term or forgiven.



New housing construction, when permitted by a waiver or alternative requirement, is often carried out by a non-profit or a for-profit developer. Additional CDBG-DR assistance, provided in the form of homeownership assistance, may or may not be provided to the household that will occupy the housing.

Developers are not providing specific goods or services back to the grantee. Developers must have site control (ownership or lease in some cases) and must plan, obtain permits, and manage the project from start to finish, not just serve as contractors. Developers may be chosen by grantees or subrecipients based on qualifications. They do not need to go through a competitive process, just as a household that receives a rehabilitation loan is not competitively procured. Grantees negotiate both a fee and a process with developers, which are solidified in a developer agreement, and the developer assumes part of the risk of the project.

Grantees (or sub-recipients) ensure that costs and developer fees are reasonable by underwriting the project. That is, they evaluate costs, estimate income and expenses, and weigh risks and rewards to determine the appropriate fees. However, it is ultimately a grantee's prerogative if it wishes to go through a procurement process to select a developer (see 2 CFR Part 200.318-326 for procurement guidance).

Eligible entities that are designated as developers are not required to follow certain CDBG regulations such as the program income, procurement and reporting rules that typically apply to grantees and subrecipients. As a result, if grantees or subrecipients would like to impose these requirements on developers, they must specify them in the developer agreement.

Incentive Programs

Incentive programs typically encourage households to relocate to a certain area (e.g., outside of the floodplain). On their own, or in combination with other forms of assistance, incentive programs can be a useful tool to ensure disaster-impacted families are moved to a safer location. Depending on the design of the program, incentive programs may be able to qualify as optional relocation assistance (in which case no waiver is necessary). Grantees need to carefully consider the unmet need and intent of the program and should work with HUD when designing an incentive program to determine if a waiver is necessary. For additional information on incentive programs and National Objectives, please refer to the 8/7/17 entitled "Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees" located at: <https://www.gpo.gov/fdsys/pkg/FR-2017-08-07/pdf/2017-16411.pdf>

Mobile and Manufactured Housing

Office of Manufactured Housing (MHS) administers the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act). This Act authorizes HUD to establish federal standards for the design and construction of manufactured homes to assure quality, durability, safety, and affordability. HUD standards may preempt state and local laws that do not conform to the HUD standards.

A manufactured home (formerly known as a mobile home) is built to the Manufactured Home Construction and Safety Standards (HUD Code) and displays a red certification label on the exterior of each transportable section. Manufactured homes are built in the controlled environment of a manufacturing plant and are transported in one or more sections on a permanent chassis.

Manufactured and mobile homes are not to be confused with recreational vehicles (RVs) or Park Trailers which are designed to be readily transportable. Most RVs are not eligible as homes for CDBG-DR assistance and the definition can sometimes come down to how the property in question is registered in each particular state.

Grantees need to be mindful of alternative requirements and program policies when addressing communities with concentrations of manufactured housing as rehabilitation and repair can be more difficult and the threshold for what warrants a replacement might be more flexible. Grantees should also consider that many manufactured housing “parks” can pose greater challenges whereby homeowners lease the land but own the home. Additional information and policy guidance is available on the HUD manufactured home website at: https://www.hud.gov/program_offices/housing/rmra/mhs/mhshome



NEW CONSTRUCTION

CDBG-DR funded new housing construction carried out by a grantee or sub-recipient is eligible when permitted by waivers and alternative requirements included in the applicable Federal Register Notice. All new construction must be tied to a disaster related impact. Programs can be designed to develop single-family housing, multifamily housing and mixed-use projects. They can also be designed to develop rental units, or as owner-occupied units, affordable, market-rate, or mixed income — depending on which national objective the activity will meet. Grantees (or sub-grantees) may implement these projects directly, or work with sub-recipients or developers (non-profit or for-profit).



AFFORDABLE RENTAL HOUSING

When providing funds for the rehabilitation or construction of rental properties, each activity must meet the national objective of LMH in order to count towards meeting the overall benefit requirement. This means that at least 51 percent of the units in an assisted property must be occupied by persons or households whose incomes are equal to, or less than, 80 percent AMI. In a one-unit project, the unit must be made available to an LMI tenant. In a two-unit project, one unit must be made available to an LMI tenant. In projects where there are three or more units, 51 percent of the assisted units (rounded up to the nearest whole number) must be made available to an LMI tenant (e.g., in a four-unit project, three units must be made available to LMI tenants).

Scattered site projects accomplished as a single undertaking shall take into consideration the individual properties when determining national objective compliance (e.g., a seven single-unit project on seven different sites shall all be occupied by an LMI tenant).

Mixed-income projects with affordable rental housing should follow a proportional funding method to determine how many units should be reserved as affordable based on the amount of CDBG-DR grant or loan funds committed. The proportion of units in the project that must be occupied by households whose incomes are at or below 80 percent of Area Median Income (AMI) may be set equal to the proportion of the total cost of the project as subsidized by CDBG-DR funds.

For example, if a proposed mixed-income project has a total development cost of \$1,000,000 and a development gap of \$100,000 to be funded by CDBG-DR, then one tenth of the units should be affordable at 80 percent AMI or below. The range of affordability and unit mix are subject to project needs and grantee policies that can be more restrictive.

For rental housing, CDBG Regulations state that occupancy by LMI households must be at affordable rents for the activity to qualify as an activity benefiting LMI persons. The grantee must adopt and make public its standards for determining “affordable rents” for this purpose or sometimes the affordable rents are established in the FR Notice(s). While the HOME Investment Partnerships Program regulations are not officially applicable to CDBG-DR, grantees may formally adopt the HOME rents as the standard for “affordability” under CDBG and apply them to CDBG-DR-funded rental activities. CDBG-DR may require that the initial rents be affordable as per the FR Notice(s). The most recent FR Notices have established affordability standards for rental developments but there are no specific requirements regarding rent increases over time or regarding rents charged to tenants who move into units that are vacated after initial occupancy. Grantees can adopt more stringent standards for CDBG rent affordability, especially if they are investing significant resources to acquire or rehabilitate the units.

Some Federal Register Notices contain minimum affordable rental housing or public housing investment requirements. Grantees may use new construction activities to meet any affordable rental housing thresholds found in the applicable Federal Register Notice.

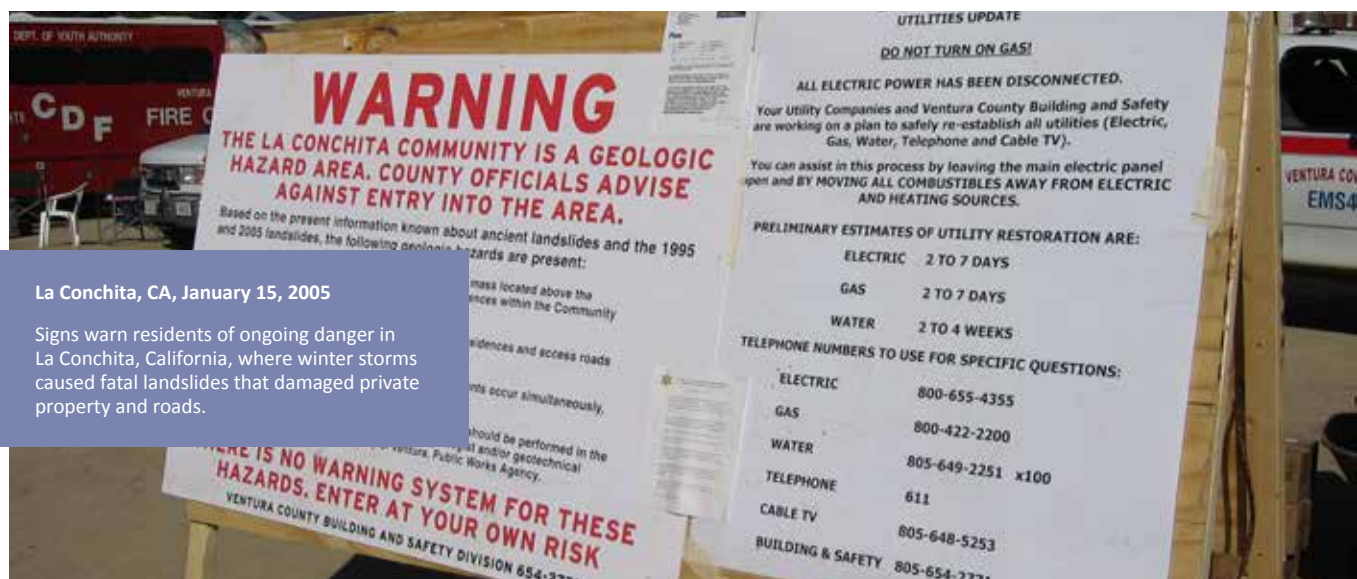
Long-Term Affordability in Affordable Rental Housing

The HCD Act provides that the LMI national objective for housing must be met at initial occupancy. Once there is documentation that at least 51 percent of the rental units are occupied by LMI households the CDBG requirements for affordability are satisfied. In cases where the Federal Register Notice does not address long term affordability requirements, CDBG-DR grantees are urged to establish their own requirements for offering units to other LMI households whenever the assisted unit becomes vacant.

Grantee programs and rental property owners need to agree to a period of affordability in terms of tenant income restrictions (limitations) and affordable rent limitations (controls) on all CDBG-DR funds that assist rental units serving LMI tenants. The period of affordability will depend on the amount and form of assistance (e.g. may range from 10-30 years). Long-term affordability requirements are secured through an agreement for covenants and restrictions that run with the assisted rental property owner's land. Programs must maintain the appropriate number of affordable rental units for this entire period of affordability.

Throughout the period of affordability, assisted rental property owners shall ensure that the appropriate number of rental units remains affordable to, and are occupied by, income eligible and verified LMI tenants. All assisted rental units shall be subject to the maximum rent limitations (by bedroom size) applicable to all assisted rental units for the entire period of affordability. Grantees must develop an affordability monitoring plan and staff that will be responsible for the long-term affordability requirements monitoring and oversight for all funded new construction multi-family (rental) projects.

In programs in which for-profit developers construct new multifamily housing, the developers may not be considered subrecipients, but beneficiaries, and thus are not bound to the change of use restrictions at 24 CFR 570.489(j). Thus, it is important for grantees to include any restrictions that it wants in the developer's contract. In the context of CDBG-DR where State CDBG regulations are applicable, change of use regulations only apply to real property within the control of a unit of local government, subrecipient, or the state.



La Conchita, CA, January 15, 2005

Signs warn residents of ongoing danger in La Conchita, California, where winter storms caused fatal landslides that damaged private property and roads.

John Shea / FEMA News Photo



Public Housing

The rehabilitation of disaster-affected public housing is a CDBG-DR eligible activity. Regulation 24 CFR 570.202(a)(2) allows the rehabilitation of “low-income public housing and other publicly owned residential buildings and improvements.” Thus, public housing damaged or destroyed by a disaster may receive CDBG-DR assistance that is necessary and reasonable to serve unmet needs as a result of the disaster.

Economic revitalization includes any activity that demonstrably restores and improves some aspect of the local economy.

In addition, new public housing complexes can be funded if:

1. HUD has granted the waiver allowing new construction,
2. CDBG eligibility and national objective criteria are met,
3. the construction is tied to a disaster-related impact, and
4. the project is approved by the Office of Public and Indian Housing.

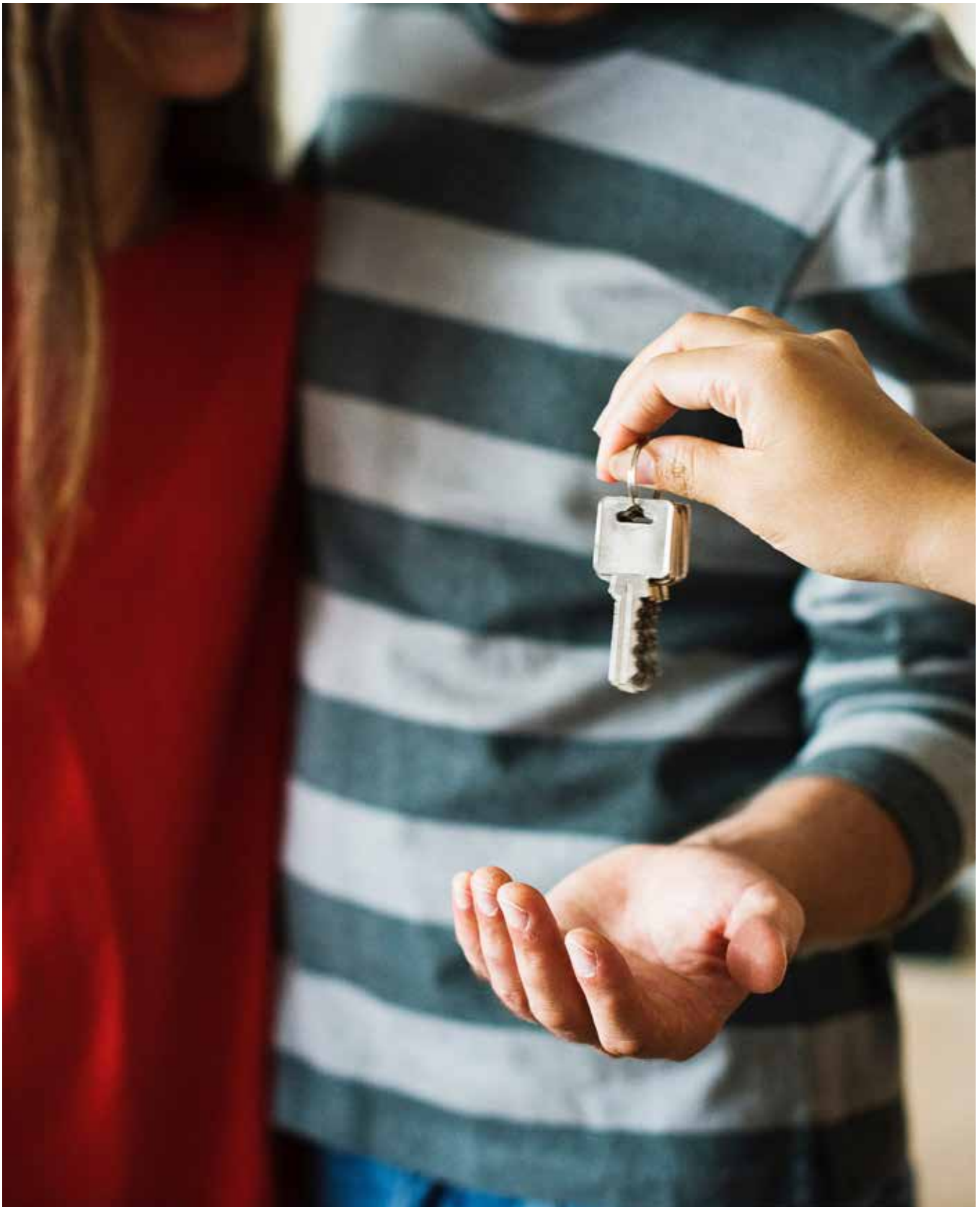
CDBG-DR funds may be used to modernize public housing so long as the modernization addresses a disaster-related impact (for example, as part of a project to rehabilitate public housing damaged by the storm).

FREQUENTLY ASKED QUESTIONS

What is the benefit of using a Community Development Financial Institution (CDFI) to assist single-family households under a repair/rehabilitation program?

The use of a CDFI may allow certain activities (that may not typically qualify as LMI activities) to help meet the overall benefit requirement. CDBG-DR grantees can outsource the implementation of their home repair program to a CDFI. Activities carried out by CDFIs receive special consideration under CDBG entitlement regulations regardless of whether or not the CDFI is actually receiving assistance from the CDFI fund. For a CDFI whose charter limits its investment area to a primarily residential area with 51 percent LMI persons, scattered site housing activities may be considered to be a single structure for the purposes of applying the LMI housing national objective criteria.

The use of a CDFI allows the grantee to classify the activity as meeting the LMI housing national objective provided that it can demonstrate that at least 51 percent of the households who occupy the repaired homes are low- or moderate-income.





CHAPTER 4

VOLUNTARY PURCHASES OF REAL PROPERTY (BUYOUTS AND ACQUISITIONS)

The term “buyouts” refers to the acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding, or the acquisition of properties in Disaster Risk Reduction Areas located outside of floodways and floodplains for the purpose of reducing risks from the hazard that was the basis of the Disaster Risk Reduction Area designation. Disaster Risk Reduction Areas must be designated in accordance with the buyout requirements of applicable Federal Register Notices.

The key factor in determining whether the acquisition is a buyout is whether the intent of the purchase is to reduce risk from future flooding or to reduce the risk from the hazard that lead to the property's Disaster Risk Reduction Area designation. The distinction between buyouts and other types of acquisitions is important — grantees may only redevelop an acquired property if the property is not acquired through a buyout program (i.e., the purpose of acquisition was something other than risk reduction). When acquisitions are not acquired through a buyout program, the purchase price must be consistent with applicable uniform cost principles (the pre-disaster fair-market value may not be used). Properties purchased through a buyout program may not typically be redeveloped, other than (a) a public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (b) a rest room; (c) a flood control structure that the local floodplain manager approves in writing before the commencement of construction of the structure.

Grantees may acquire and redevelop property for uses other than those listed above if the property is not acquired through a buyout program. When acquisitions are not acquired through a buyout program, the purchase price must be consistent with applicable uniform cost principles (the pre-disaster fair market value may NOT be used). Acquisition for redevelopment may serve properties that require repairs or other program-eligible redevelopment uses but are not located in or part of a qualified buyout area.



In most cases, a program that provides pre-disaster fair market value (FMV) to buyout applicants provides compensation at an amount greater than the post-disaster FMV. When the purchase price exceeds the current FMV, any CDBG-DR funds in excess of the FMV are considered assistance to the seller, thus making the seller a beneficiary of CDBG-DR assistance. If the seller receives assistance as part of the purchase price, this may have implications for duplication of benefits calculations or for demonstrating national objective criteria, as discussed below. However, a program that provides post-disaster FMV to buyout applicants only provides the FMV of the property; thus, the seller is not considered a beneficiary of CDBG-DR assistance. Grantees must be consistent and uniformly use valuation methods within each buyout or acquisition for redevelopment programs.

Disaster Risk Reduction Areas

Disaster Risk Reduction Areas are identified by the grantee based on criteria developed by the grantee. The criteria is subject to the following requirements:

1. The hazard in the area must have been caused or exacerbated by the presidentially-declared disaster for which the grantee received its CDBG-DR allocation;
2. The hazard must be a predictable environmental threat to the safety and well-being of program beneficiaries, as evidenced by the best available data and science; and
3. The Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the Disaster Risk Reduction Area

Once grantees have established criteria to designate a Disaster Risk Reduction Area and designated a Disaster Risk Reduction Area in accordance with the established criteria, the grantee may conduct buyouts in the Disaster Risk Reduction Area, provided the grantee's approved action plan contains a description of the buyouts to be conducted in the identified Disaster Risk Reduction Areas and the national objective that the buyouts will meet.

Real estate purchases for recovery purposes other than reduction of risk from future flooding or other future disasters are Acquisitions and are not subject to the special buyout requirements.

Non-risk reduction recovery activities may include: resilient redevelopment (such as elevation above the floodplain) of storm-damaged, blighted properties; redevelopment of properties to anchor and stimulate post-storm economic revitalization; and transitioning homeowners to new residential locations because their circumstances are incompatible with elevation requirements or prolonged reconstruction.

National Objectives

As per the Federal Register Notice issued Aug. 8, 2017, and technical correction in FR Notice issued Dec. 27, 2017, in addition to the existing criteria at 24 CFR 570.208(a) 1-4 and 570.483(b) (1)–(4), HUD has established an alternative requirement to include two new LMI national objective criteria for buyouts (LMB) and housing incentives (LMHI) that benefit LMI households that use CDBG-DR funding provided by Public Law 113–2, 114–113, 114–223, 114–254 and 115–31.



CDBG-DR buyout activities located in a floodplain are subject to the regulations found at 24 CFR Part 55 and Protection of Wetlands.

For a buyout award or housing incentive to meet the new LMB and LMHI national objectives, grantees must demonstrate the following:

The CDBG-DR funds have been provided for an eligible buyout activity that benefits LMI house-holds by supporting their move from high-risk areas. The following activities shall qualify under this criterion, and must also meet the eligibility criteria of the notices governing the use of the CDBG-DR funds.

Low/Mod Buyout (LMB)

Low/Mod Buyout (LMB). When CDBG-DR funds are used for a buyout award to acquire housing owned by a qualifying LMI household, where the award amount is greater than the post-disaster fair-market value of that property;

Low/Mod Housing Incentive (LMHI)

Low/Mod Housing Incentive (LMHI). When CDBG-DR funds are used for a housing incentive award, tied to the voluntary buyout or other voluntary acquisition of housing owned by a qualifying LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.

Activities that meet the above criteria will be considered to benefit low- and moderate-income persons unless there is substantial evidence to the contrary.

Table 3: Buyout or Acquisition of Residential Properties

Activity	LMH	LMB*	LMHI*	Urgent Need	Elimination of Slum and Blight Spot Basis	Elimination of Slum and Blight Area Basis
Buyout	Yes	Yes	Yes	Yes	No	Yes
Acquisition	Yes	No	Yes	Yes	Yes	Yes

*Requires waiver for pre 113-2 grants. See coordination with HUD as per FR Notices referenced here and in the Housing Incentives section of Chapter 3. Any activities that meet the newly established national objective criteria described above will count towards the calculation of a CDBG-DR grantee's overall LMI benefit to comply with the primary objective described in 24 CFR 570.200(a)(3) and 24 CFR 570.484(b).

Any activities that meet the original LMH or newly established national objective described above will count towards the calculation of a CDBG-DR grantee's overall LMI benefit to comply with the primary objective described in 24 CFR 570.200(a)(3) and 24 CFR 570.484(b).

Grantees receiving an allocation of CDBG-DR funds pursuant to the following appropriations acts must specifically request a waiver and alternative requirement from HUD in order apply the new national objective criteria established in this section of the notice: Public Law 109-148, 109-234, and 110-116 (Katrina, Rita, and Wilma); Public Law 110-252 and 110-328 (2008 Disasters), Public Law 111-112 (2010 disasters), and Public Law 112-55 (2011 disasters).



Source: @NYCBuilditBack, Twitter

The ultimate re-use of the acquired real property following its acquisition is what determines which national objective it will meet. This is why referring to an acquisition program as acquisition for redevelopment or other intended uses helps distinguish it from real property acquisition for a buyout program purpose whereby the end use of a buyout is restrictive and a specific national objective will be met.

An initial determination of the acquisition re-use for compliance may be based on the planned use. A final determination prior to file closeout must be based on the actual use of the property, excluding any short-term, temporary uses.

Where the acquisition is for the purpose of clearance that will eliminate specific conditions of blight or physical decay, the clearance activity may be considered the actual use of the property. However, any subsequent use or disposition of the cleared property must be treated as a “change of use” under 24 CFR 570.489(j), as applicable.

If the Acquisition Program to acquire real property for a general purpose, such as housing or economic development, and the actual specific project is not yet identified, the grant recipient must document the general use it intends for the property and the national objective it expects to meet. The grantee or subrecipient of the program must also make a written commitment to use the property only for a specific project under that general use that will meet the specified national objective. Please see in 24 CFR 570.489(j) for further guidance on the ‘five-year rule’ and disposition requirements.



Buyout or Acquisition of Commercial Properties

Per 24 CFR 570.483(b)(4), if a business can document that it is retaining or creating 51 percent low- and moderate-income jobs (LMJ) as a result of the buyout, the LMJ national objective will be met. The actual clearance of the property may address an urgent need or blighted condition. As with residential properties, an area benefit may be provided if the end use of the land will be available to an entire residential community (such as park or green space) and at least 51 percent of the households are LMI.

Churches may also be purchased under a CDBG-DR Buyout program. Neither 24 CFR 570.200(j) nor the Department-wide faith-based requirements at 24 CFR 5.109 preclude the use of CDBG-DR funds to acquire a church building as part of a floodplain buyout program. The end use must be CDBG-DR eligible and meet a National Objective.

Tenant Displacement and Relocation

Any buyout or acquisition program should be prepared to address displaced tenant needs following the guidance in their FR Notice and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and other HUD requirements such as Section 104(d) of the Housing and Community Development Act. Even if the buyout program does not intend or make eligible the purchase of tenant-occupied properties, a URA Notice of Intent and General Information Notice should still be provided as required when implementing a buyout or acquisition program. For more guidance and sample forms regarding URA, please consult your HUD representative and review materials available on the HUD website at: <https://www.hud.gov/relocation>

The Purchase Price (Fair-Market Value)

A certified appraisal must be conducted for determining the fair-market value (FMV) of a property. The appraisal requirement may be waived in instances where the anticipated value is less than \$10,000. For properties where the anticipated value is between \$10,000 and \$25,000, the appraisal requirement may also be waived provided the property owner is offered the option of having the Agency appraise the property.

When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation. The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation.

Additional information on determining the FMV of a property, including criteria for appraisals, can be found at 49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.

Demolition of Properties Acquired via a Buyout or Acquisition Program

Demolition may need to be used to achieve a National Objective to either eliminate slum and blight or to create permanent open space. Expenses that can be included in demolition expense include:

- Removal of demolition products (rubble) and other debris;
- Physical removal of environmental contaminants or treatment of such contaminants to render them harmless;
- Movement of structures to other sites.



Source: The Blue Book

Deconstruction as Part of a CDBG-DR Clearance Activity

Deconstruction is permitted in the CDBG-DR program. Deconstruction is a type of demolition where crews dismantle a building to salvage as many of the reusable materials as possible. Salvaged items typically include doors, windows, cabinets, lighting and plumbing fixtures, framing lumber, roofing materials, and flooring. There is no specific applicable Federal law, CDBG regulations, or Federal Register notice that prohibits the salvaging of materials. However, grantees should consider the cost principles of 2 CFR 200, Subpart E in determining the benefits received from a combination of compensation and salvage rights.

If a contractor, subcontractor, or homeowner will be salvaging items, HUD recommends that the award to that entity take into account the appraised value of the salvageable items. In the alternative, if a Request for Proposal (RFP) is posted (e.g., for the demolition of X number of units) HUD recommends the RFP state that the awarded bidder is granted salvage rights. As a result of this practice, contractors place bids for the job accordingly.

DUPLICATION OF BENEFITS IN REAL ESTATE PURCHASE PROGRAMS

As noted above, HUD strongly encourages grantees to work with other local, state, and Federal agencies immediately after the disaster to ensure a coordinated response. In practice, it often takes significant time to determine whether properties (and/or areas) should be redeveloped or turned into greenspace (frequently, this determination is also dependent on FEMA's updating of flood maps). Thus, many applicants receive some form of assistance for rehabilitation prior to their participation in a Buyout or Acquisition program. The below guidance addresses this situation.

FEMA, SBA Assistance and/or Insurance Proceeds Received Prior to the Purchase

In cases where an applicant has previously received FEMA, SBA and/or any other funds for the purpose of rehabilitation, those funds are considered to have a different purpose than real estate purchase funds. Under HUD's DOB Notice, purchase funds do not duplicate rehabilitation funds. However, 2 CFR Part 200 requires all Federal funds to be used for costs that are "necessary and reasonable." As a result, the grantee's DOB analysis for a buyout must consider any FEMA, SBA, insurance or any benefits provided as compensation for damage to structures. Benefits received for personal property are not considered in the DOB analysis.

Benefits from any source used by the applicant for rehabilitation or repair of the damaged structure are classified as rehabilitation assistance, and do not duplicate purchase funds (considered "replacement housing" assistance). However, to ensure compliance with the necessary and reasonable cost principle requirements, the applicant should certify that he/she used those benefits to rehabilitate the damaged home or business. To substantiate the certification, the applicant can provide receipts documenting eligible rehabilitation costs.

As an alternative to the collection and verification of receipts for eligible repairs, an inspection or appraisal of the home can accompany the certification and may verify work completed. These measures ensure the rehabilitation funds are used as intended, and the CDBG-DR award is necessary and reasonable. The CDBG-DR award should be reduced by the amount of funds not used to rehabilitate the damaged structure.





Determining the Amount of the Buyout Award

The examples below show the amount that an applicant is eligible for given certain circumstances surrounding the purchase of their home. In each example the purchases are made through Buyout programs in which eligible applicants are paid pre-flood Fair Market Value (FMV). These programs are considered to provide disaster assistance to the applicant because he or she receives more than the current FMV of their home.

1. Mr. Smith's pre-flood FMV is \$100k. He received \$40k from FEMA and used the entirety for repairs to his damaged home. He is eligible for a \$100k CDBG-DR Buyout award.
2. Ms. Rodriguez's pre-flood FMV is \$100k. She received \$40k from FEMA and certified that she used \$20k for repairs to her damaged home. She does not certify that she will repay FEMA the \$20k not used for repairs. She is eligible for an \$80k CDBG-DR Buyout award.
3. Ms. Chen's pre-flood FMV is \$100k. She received \$40k from insurance and provides receipts showing that she used \$40k for repairs to her damaged home. She is eligible for a \$100k CDBG-DR Buyout award.
4. Ms. Okafor's pre-flood FMV is \$100k. She received \$40k from insurance and certified that she used \$20k for repairs to her damaged home. She is eligible for an \$80k CDBG-DR Buyout award.

FREQUENTLY ASKED QUESTIONS

Can a grantee buy out an individual's home when that home is located in a floodplain and the homeowner wishes to retain the property for a non-residential use (e.g., farming)?

Yes — the grantee could purchase the home by separating the pre-flood FMV of the structure from the FMV of the land. Since buyout programs typically value the property as a whole (land and structures combined), the grantee would need to implement a process to ensure that once the home is moved or demolished, the land meets the applicable requirements (e.g., remains unencumbered by any new structures).



CHAPTER 5

ECONOMIC DEVELOPMENT/ REVITALIZATION

Most CDBG-DR appropriations acts authorize the use of funds for the purpose of economic revitalization. To accomplish this purpose, grantees can undertake any CDBG-eligible activity, including economic development activities permitted under the HCD Act. The activity may address job losses or negative impacts to tax revenues or businesses. Examples of eligible activities include:

- Providing loans and grants to businesses;
- Funding job training;
- Making improvements to commercial/retail districts; and
- Financing other efforts that attract/retain workers in devastated communities.

All economic revitalization activities must address economic impact(s) caused by the disaster (e.g., loss of jobs, loss of public revenue). The Internal Revenue Service has issued Publication 547, ***“Casualties, Disasters, and Thefts,”*** which provides guidance for businesses to determine the amount of a loss as a result of a disaster and Publication 584-B, a guide that helps businesses identify disaster losses on their tax returns. Grantees should be able to discern information on applicant losses by viewing a business’s tax return provided that the business has filed their taxes at the time of their CDBG-DR application as well as followed this IRS guidance.

NATIONAL OBJECTIVES

Economic development and economic revitalization activities typically meet the National Objective of either:

- Low- and Moderate-Income Job Creation or Retention (LMJ);
- Urgent Need; or, in some special situations,
- Low- and Moderate-Income Area Benefit (see below).

The job creation and retention LMI benefit national objective may be met when CDBG-DR funded activities create or retain permanent jobs, at least 51 percent of which (computed on a full-time equivalent basis) will be made available to or held by LMI persons.

Low- and Moderate-Income Area Benefit

This National Objective can be met when assistance is to a business which provides goods or services to residents of an LMI residential area. An example of this is assistance to neighborhood businesses such as grocery stores and laundromats, serving a predominantly LMI neighborhood. There are also two special situations in which economic development activities can meet the area benefit national objective as opposed to job creation or retention. These situations are:

- In the case where the grantee has a HUD-approved Neighborhood Revitalization Strategy (NRS) pursuant to the authority of § 91.215(e)(2) of the regulations, activities undertaken pursuant to the Revitalization Strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the area benefit subcategory criteria in lieu of the jobs subcategory criteria (the area considered for this purpose is the NRS)⁴ ; and
- Where CDBG-assisted activities are carried out by a Community Development Financial Institution (CDFI) whose charter limits its investment area to a primarily residential area consisting of at least 51 percent LMI income persons, activities that the CDFI carries out for the purpose of creating or retaining jobs may, at the grantee's option, be considered to meet the area benefit subcategory criteria in lieu of the job creation or retention subcategory criteria. The area considered for this purpose is the CDFI's investment area.⁵



Twitter, @NYCBuildItBack

⁴ Reference: §208 (d) (5)(i)

⁵ Reference: §570.208(d)(6)(i)



Public Benefit Criteria

Typically, CDBG-DR Federal Register Notices waive the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), for economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects). HUD does not waive the prohibition on uses for activities that HUD has determined do not meet a public benefit, i.e., those activities under 570.482(f)(1)(ii).

Low- and Moderate-Income Job Creation or Retention (LMIJ);

- General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);
- Assistance to professional sports teams;
- Assistance to privately owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to LMI persons;
- Acquisition of land for which the specific proposed use has not yet been identified; and
- Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient.

Public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per LMI person to which goods or services are provided by the activity. These dollar thresholds can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity. Grantees should review their FR notices for data requirements in lieu of these standards or waivers that are conditioned on alternative evidence of how the activity will create or retain jobs or businesses.

Job Creation Documentation

To meet the requirements of the job retention National Objective, the grantee must have a written agreement with each assisted business that includes:

- A commitment by the business that at least 51 percent of the permanent jobs on a full-time equivalent (FTE) basis will be held by LMI persons;
- A listing by job title of the permanent jobs to be created (identifying which are part-time, if any);
- A listing by job title of the permanent jobs filled and which jobs were initially held by LMI persons; and
- For each LMI person hired, information on the size and annual income of the person's family prior to the time the person was hired for the job, or evidence the person qualifies as presumed to be LMI based upon location of the business or the person's residence.
- Or with the alternative requirement for documentation of LMI jobs, for each LMI person/job: salary/wages for job must be at or under the HUD established income limit for a one-person household for that jurisdiction.

In addition the grantee must have a method or system for tracking the business's progress in meeting its responsibilities under the agreement.



Job Retention Documentation

To determine that an activity meets the requirements of the job retention National Objective, the Grantee must have a written agreement with each assisted business that includes:

- Evidence that clearly and objectively shows that jobs would be lost absent CDBG-DR assistance;
- A listing by job title of permanent jobs retained, indicating which of those jobs are part-time and which are held by LMI persons;
- Where applicable, identification of any of the retained jobs (other than those held by LMI persons) which are projected to become available to LMI persons through job turnover within two years;
- For each retained job held by an LMI person, information on the size and annual income of the household, or evidence the person is presumed LMI based on the business location or the person's residence.

As with job creation, the grantee must have a method or system for tracking the business's progress in meeting its responsibilities under the agreement.

PROGRAM CONSIDERATIONS

Restrictions on Use of Eminent Domain

Since 2006, HUD Appropriation Acts have included an administrative provision which restricts the use of CDBG funds appropriated to support any federal, state, or local project that seeks to use the power of eminent domain unless eminent domain is employed only for a public use that does not involve economic development which primarily benefits private entities. Most CDBG-DR funds are exempt from this provision as they are appropriated through supplemental appropriations and not the annual HUD budget. However, when CDBG-DR funds are included in the annual HUD appropriation, CDBG-DR funds are subject to the restriction on the use of CDBG funds for projects involving eminent domain. For additional information, refer to the Federal Register Notice and consult your assigned HUD representative.

Necessary and Reasonable

Grantees must insure that all assistance provided to a business is necessary and reasonable. HUD has published 24 CFR Appendix A to Part 570 – **"Guidelines and Objectives for Evaluating Project Costs and Financial Requirements"** to provide grantees with a framework for financial underwriting and selecting CDBG-assisted economic development projects which are financially viable and will make the most effective use of the CDBG funds. The use of these underwriting guidelines as published by HUD is not mandatory. However, grantees electing not to use these underwriting guidelines would be expected to conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business.

Additional information on determining the necessity and reasonableness for working capital is discussed below.



Duplication of Benefits

Section 312 of the Stafford Act prohibits any person, business concern, or other entity from receiving financial assistance for any part of a loss resulting from a major disaster for which he has received financial assistance under any other program or from insurance or any other source. In order to comply with this law, grantees must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met. Please note PL 115-254 establishes new regulations regarding working capital and short term subsidized loans. HUD issued new guidance reflecting application of this law published June 20, 2019, (84 FR 28836 and 28848)

To assist grantees with complying with this requirement, the CDBG-DR Toolkit contains a ***“Duplication of Benefits Affidavit”*** designed specifically for business loans and grants. The CDBG-DR Toolkit also includes a sample subrogation agreement or continuing resolution that is designed specifically for business loans and grants. Before using the sample subrogation agreement, grantees should consult with their legal counsel to ensure that the sample language meets all state law requirements and adequately protects the grantee's interests. The sample subrogation agreement can be found at: <https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-implementation/>

CDBG-DR Funded Working Capital

In some instances, businesses in a declared area experience a change in their financial condition, attributable to the effect of a specific disaster, which results in the inability of the business to meet its obligations as they mature, or to pay ordinary and necessary operating expenses.

CDBG-DR funds can be awarded to a business to help it meet its day-to-day, short-term financial obligations and operating expenses that could have been met had the disaster not occurred. This type of assistance is commonly referred to as providing working capital.

Determining the amount of working capital that is necessary and reasonable for a business can be complex and subjective in nature. The factors in each case are unique and do not lend themselves to a “cookie cutter” approach to underwriting.

The SBA’s Economic Injury Disaster Loan (EIDL) program provides working capital loans designed to return a business to normal operations after a disaster. SBA has developed guidance for use by its underwriters to determine the working capital requirements a business could have covered had the disaster not occurred, but cannot meet on its own or through other resources until normal operations resume.

The procedures that SBA follows for determining a working capital loan amount can be found in SBA Standard Operating Procedure 50-30-8 dated 7/1/15. Please note that SBA updates these procedures as needed.

Given the complexity of determining necessary and reasonable working capital amounts, business lending experience is essential for implementing this activity.



What Working Capital is Not

Working capital does not include funds for the repair or installation of equipment, nor does it include repairs or reconstruction of damaged buildings. As a result, Environmental Review and Davis-Bacon requirements are not triggered by working capital awards. If CDBG-DR funds are provided to a business for property repairs, equipment installation or any other activities that would ordinarily require Environmental Review and Davis-Bacon compliance, these crosscutting regulations apply regardless of whether the grantee refers to the assistance as “working capital.”

Recruiting Businesses from Another Labor Market

Typically CDBG-DR notices contain a limited waiver of the job relocation requirements at 42 U.S.C. 5305(h) and 2 at 24 CFR 570.210, also known as the Anti-Pirating rules. When included in the notice or subsequently granted, the waiver allows a grantee to provide assistance to a business located in another state or another labor market area within the same state if the business was displaced from a declared area within the state by the disaster and wishes to return.

CDBG-DR funds can be used to help a company located outside of a declared area expand to a disaster-impacted community provided it is truly an expansion and not a relocation. To be considered an expansion, the company must certify that for three years:

1. No employees will be forced to relocate to the new facility; and
2. The original facility will remain open and operable.

The three-year period begins on the date the assistance is provided to the business. Funds may have to be recaptured if the company doesn’t comply with the requirements for the necessary length of time. For assisted firms, job loss is not an issue if fewer than 25 jobs are lost (**570.482(h) (2)(iv)**), but it will be a concern if an employee is required to relocate in order to save his/her job.

FREQUENTLY ASKED QUESTIONS

Can CDBG-DR assistance be provided to a privately owned utility?

Some Federal Register Allocation Notices specifically prohibit the use of CDBG-DR money to assist private utilities. In instances where they do not, depending on the purpose of the assistance, a grantee can provide CDBG-DR funds to a private utility as an economic development activity under 105(a)(17). This section of the act allows for the provision of assistance to private, for-profit entities, when the assistance is appropriate to carry out an economic development project. The economic development project must:

- Create or retain jobs for LMI persons;
- Prevent or eliminate slums and blight;
- Meet urgent needs;
- Create or retain businesses owned by community residents;
- Assist businesses that provide goods or services needed by, and affordable to, LMI residents; or
- Provide technical assistance to promote any of the above activities

May grantees use their CDBG-DR funds to buy down/subsidize the interest rate of a business's SBA disaster recovery loan?

The Duplication of Benefits Federal Register Notice entitled “Clarification of Duplication of Benefits Requirements under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees,” published 11/16/11, (76 FR 71060) significantly restricted the use of CDBG-DR funds to pay down an SBA loan — this would include the use of CDBG-DR funds to subsidize the SBA interest rate. However, new guidance was recently provided that does allow, in some cases, the use of CDBG-DR funds for reimbursement of costs paid by subsidized loans following Disaster Recovery Reform Act (DRRA) qualifying disasters for a certain period of time starting with 2015 CDBG-DR Grantees. <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>





CHAPTER 6

PUBLIC FACILITIES AND PUBLIC IMPROVEMENTS

Neither the CDBG statute nor the regulations define the terms “public facilities” or “public improvements.” However, in the CDBG program, these terms are broadly interpreted to include all improvements and facilities that are either publicly owned or that are traditionally provided by the government, or owned by a nonprofit, and operated so as to be open to the general public. Public facilities include neighborhood facilities, firehouses, public schools, and libraries.

Public improvements may include streets, sidewalks, curbs and gutters, parks, playgrounds, water and sewer lines, public flood and drainage improvements, parking lots, utility lines, and aesthetic amenities on public property such as trees, sculptures, pools of water and fountains, and other works of art.

Typical CDBG-DR-funded activities in this category include the repair, replacement, or relocation of damaged public facilities or public improvements. Infrastructure activities typically meet the National Objective of Urgent Need or Low Mod Income Area Benefit. If applicable, infrastructure projects located in a floodplain must meet the requirements of 24 CFR Part 55 ***“Floodplain Management and Protection of Wetlands.”***

Construction of New Infrastructure

The construction of new infrastructure may be CDBG-DR eligible provided that the grantee can demonstrate how the activity will meet one of the statutory purposes of the funds, such as restoration of infrastructure, long-term recovery, or economic development. As previously stated, all CDBG-DR disaster recovery activities must clearly address an impact of the disaster for which funding was appropriated. Given the standard CDBG requirements, this means each activity must: (1) be CDBG eligible (or receive a waiver), (2) meet a national objective, and (3) address a direct or indirect impact from the disaster in a Presidentially declared county.

New infrastructure may be CDBG eligible as a public facility or improvement under Section 105(a)(2) of the HCD Act. In addition, it may be able to meet a national objective (e.g., benefit to an LMI area or urgent need).



However, the critical issue becomes illustrating the connection between the construction of the infrastructure and the applicable disaster. Often, the new construction of infrastructure can easily be tied to mitigation (i.e. the prevention of future damage) — but it must demonstrate a recovery need whereby mitigation alone is not the only unmet need served. However, where the appropriation law allows “economic revitalization” (e.g., Public Law 110-329, 111-212, 112-55), grantees are encouraged to illustrate how the new infrastructure enables or benefits the local community’s economic recovery. For example, a grantee may be able to show how a new levee ensures that homes or jobs will stay in the community. Grantees are reminded to consult the applicable Federal Register Notice for any additional public infrastructure requirements.

In addition, resilience in approaches, design and green infrastructure are eligible planning activities and scopes to consider. These concepts should be considered and may be addressed further in future FR Notices. As per the Superstorm Sandy FR Notice issued Nov. 18, 2013, Section VI(2)(e) titled “Resilience Performance Standards” and VI(2)(f) “Green Infrastructure Projects or Activities” and Section VII titled “Mitigation and Resilience Methods, Policies, and Procedures” are of particular guidance.

Please note that the Rebuilding Strategy referenced therein was released on Aug. 19, 2013. The Executive Order directs HUD and other federal agencies, to the extent permitted by law, to align its relevant programs and authorities with the Rebuilding Strategy. This Strategy is available at: <https://archives.hud.gov/news/2013/HSRebuildingStrategy.pdf>

NATIONAL OBJECTIVES

CDBG-DR funded activities in this category typically meet Urgent Need or Low- and Moderate- Income Area Benefit (LM Income Area Benefit). To use the LM Income Area Benefit national objective, the grantee must first determine that an activity provides a benefit to all the residents of a defined service area. Next, the activity may meet the LM Income Area Benefit national objective only if at least 51 percent of the residents (or fewer if the exception criteria apply) in the area served by the activity are LMI persons.

Determining Service Areas for LM Income Area Benefit Activities

Some activity types have had their service area already determined for other purposes — most notable among these activities are police precincts, fire stations, and schools. When boundaries such as these have been determined, no further work is needed for purposes of identifying the area served by assisting the facility. However, the documentation must be included in the project/activity file.

In some communities the planning department or the department or agency administering a particular facility or service, for their own purposes, establishes service areas for certain public facilities or improvements such as libraries, parks, playgrounds, etc. Again, when boundaries such as these have been determined, and are current, no further work is needed for purposes of identifying the area served by assisting the facility.

Public facilities include neighborhood facilities, firehouses, public schools, and libraries. Public improvements include streets, sidewalks, curbs and gutters, parks, playgrounds, water and sewer lines, flood and drainage improvements, parking lots, utility lines, and aesthetic amenities on public property such as trees, sculptures, pools of water and fountains, and other works of art.

Generally speaking, it is reasonable to assume that certain kinds of facilities serve only very small areas. For example, sidewalks, gutters, and streetlights on a residential street would usually benefit only the residents of the immediately adjacent area. Therefore, the area served by such activities is usually limited to a few census block groups surrounding the area in which they are located. Conversely, the lighting system in a regional baseball park could serve one or multiple counties.

When the grantee does not already have an up-to-date identification of the area served for a given facility or service, and the national objective is LMI Income Area Benefit, it is necessary for the grantee

to determine the service area before CDBG-DR assistance is provided. The factors to be considered in making the determination of the area served (both by the grantee and HUD) for these purposes are the nature of the activity, accessibility issues and the availability of comparable activities.

Is the Service Area Low- and Moderate-Income?

As per 24 CFR Part 570.483, units of general local government that receive an award from the state, may, at the discretion of the state, use either HUD-provided data comparing census data with appropriate LMI levels or survey data that is methodologically sound. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion. For entitlement and non-entitlement communities that receive funding directly from HUD, the regulations at 24 CFR 570.208(a)(1)(vi) require that Census data be used to the maximum extent feasible for determining the income of persons residing in service areas. As a result, the Census divisions that best fall within the service area should be used for defining the service area for purposes of reporting on the activity and for calculating the percentage of LMI income persons residing in that area. Recipients that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are LMI.

Nature of the Activity

In determining the boundaries of the area served by a facility, its size and how it is equipped need to be considered. For example, a park, which contains three ball fields, or a ball field with grandstands that can accommodate hundreds of spectators, could not reasonably be said to be designed to serve a single low income neighborhood. The same comparison would apply to the case of assisting a small, two-lane street in a residential neighborhood versus that of assisting an arterial four-lane street that may pass through the neighborhood but is clearly used primarily by persons passing through from other areas.



Photo, Metropolitan Evaluation Services

Location

Where an activity is located will also affect its capacity to serve particular areas. A library, for example, probably cannot be claimed to benefit an area that does not include the area in which it is located, unless it is located in the heart of an industrial or commercial area. When a facility is located near the boundary of a particular neighborhood, its service area would be expected to include portions of the adjacent neighborhood as well as the one in which it is located.

Public Access

Public access to the activity also needs to be considered in defining the area served. For example, if a river or an interstate highway forms a geographic barrier that separates persons residing in an area in a way that precludes them from taking advantage of a facility that is otherwise nearby, that area should not be included in determining the area served. Other limits to accessibility may apply to particular activities, such as the time or duration that an activity is available, access to transportation and parking, and the distance to be traveled. Language barriers might also constitute an accessibility issue in a particular circumstance.

LEVEES

CDBG-DR funds can be used for the rehabilitation of levees on both public and private property.⁶ With some restrictions that may be noted in the applicable Federal Register notices, grantees may use CDBG-DR to make improvements to flood control systems, including those funded or maintained by the U.S. Army Corps of Engineers (USACE). Mitigation features may be added onto a project that addresses recovery from the effects of the covered disaster. For example, if a levee failed or had to be extensively sandbagged above its existing level or was overtopped but held, one might be eligible to raise it with CDBG-DR, provided the grantee can meet a National Objective.

⁶ Section 105 of the HCD Act states, “...(a) Activities assisted under this chapter may include only – ... (4) clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned properties, and including the renovation of closed school buildings).”

If the levee was overtopped but not damaged, the rehabilitation must tie back to address a disaster recovery need. If the activity is eligible for assistance or reimbursement by USACE, CDBG can only be used to cover remaining unmet need after applying for USACE assistance.

As noted above, grantees must refer to the appropriate Federal Register Notice for additional requirements that must be met when CDBG-DR funds are used for levees and dams. When applicable, these Federal Register notice requirements generally require grantees that use CDBG-DR funds for levees and dams to:

1. Register and maintain entries regarding such structures with the USACE National Levee Database or National Inventory of Dams;
2. Ensure that the structure is admitted in the USACE PL 84-99 Program (Levee Rehabilitation and Improvement Program);
3. Ensure the structure is accredited under the FEMA National Flood Insurance Program;
4. Upload into the DRGR the exact location of the structure and the area served and protected by the structure; and
5. Maintain file documentation demonstrating that the grantee has conducted a risk assessment prior to funding the flood control structure and documentation that the investment includes risk reduction measures.

DEBRIS REMOVAL

If FEMA or another source has provided debris removal assistance, CDBG-DR funds may recover remaining unmet need (sometimes required as a FEMA match). The amount of remaining unmet need should be determined through a duplication of benefits analysis. If FEMA will provide assistance but it is not yet available, the CDBG-DR grantee may provide temporary assistance and recapture CDBG-DR assistance once FEMA funds are available.



Source: By U. S. Fish and Wildlife Service - Northeast

FREQUENTLY ASKED QUESTIONS

May an applicant use CDBG-DR disaster recovery funds to pay for debris removal?

It depends. While debris removal is an eligible CDBG activity, in disaster recovery circumstances, the cost of debris removal is typically covered by FEMA. If a grantee or sub-grantee did not file for FEMA assistance, the applicant is required by the CDBG-DR statute to apply for FEMA assistance, because CDBG-DR funds cannot be used for activities reimbursable by, or for, funds which are made available by FEMA. If FEMA or another source has provided debris removal assistance, CDBG-DR funds may recover remaining unmet need (sometimes required as a FEMA match). The amount of remaining unmet need should be determined through a DOB analysis. If FEMA will provide assistance but it is not yet available, the CDBG-DR grantee may provide temporary assistance and recapture CDBG-DR assistance once FEMA funds are available. If the activity meets all other CDBG-DR requirements (e.g., national objective, etc.) it can be assisted with CDBG-DR funds.

How does a grantee determine a levee's service area (if using LM Income Area Benefit)?

The grantee would treat this activity like any other public improvement (e.g., a street). For non-USACE recognized levees, an engineer may review a topographical map to determine the beneficiaries. For USACE levees, the grantee could use data already prepared by the USACE to document the service area. That data should show where the water flowed in the past, and where the water no longer flows due to the levee. The difference between these flow patterns equals the service area.

Last, the grantee must ensure the USACE (or another Federal agency) is not funding the repairs. Per most CDBG-DR appropriation laws, "funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers."

Would green infrastructure reforestation designed to ensure watershed protection by stabilizing soils, reducing runoff and reducing wildfire potential be considered a public improvement?

It depends. As with all CDBG-DR expenditures, the activity must have a tie back to the qualifying event in that it responds to a need that arose from the disaster. Major reforestation as part of a green infrastructure project may qualify as an eligible public improvement, but would be dependent on the specific design and nature of the activity.

Alternatively, if the land is owned by the public and the trees also will be owned by the public (even if a private contractor is used to plant them), then the CDBG program could see this as improvement or reconstruction of a public improvement or facility. Grantees with questions should consult with their HUD field offices about the eligibility of this activity and the national objective it may meet.

Is a waiver required for watershed restoration?

Many watershed restoration activities on public land may qualify as public improvements, which is a standard CDBG-DR eligible activity category. If the restoration is on private land secured by a long-term (15 or more years) public easement, it would still fit in the public improvement category. If the restoration work is on private land without an easement, other categories could come into play, such as economic development. Grantees should consult their local HUD field office to discuss the eligibility and national objective of their planned restoration activity.

Can CDBG-DR funds be used as match for USACE projects?

Grantees should consult their local HUD field office to discuss the eligibility and national objective of their planned restoration activity. CDBG-DR funds cannot be used for activities reimbursable by or for which funds are made available by USACE. Public Law 105-276 limits to \$250,000 the CDBG-DR portion of a required non-Federal cost share of any project funded by the Secretary of the Army through the Corps of Engineers.

CDBG-DR grants are subject to regulations as may be amended. As the CPD transition notice explains, Federal awards made before Dec. 26, 2014, will continue to be governed by the 2013 edition of 24 CFR part 84 or 85, or as provided under the terms of the Federal award. The regulations further provide that, "Where the terms of a Federal award made prior to Dec. 26, 2014, state that the award will be subject to regulations as may be amended, the Federal award shall be subject to 2 CFR Part 200." 2 CFR 200.305(b)(1) which provides that advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. When CDBG-DR is being used as a match for USACE projects, it must often be provided in a lump-sum prior to the start of construction. The USACE has indicated that this advance of funds is consistent with its interpretation of the Federal Anti-Deficiency Act. Thus, the grantee may provide a lump-sum advance to the USACE if the USACE can (1) demonstrate a need for the funds (e.g., a signed statement from its legal counsel expressing and explaining the need) and (2) submit that information for the grantee's review. Upon reviewing and accepting the information, the grantee may disburse the requested funds if it chooses.



Photo: @NYCBuildItBack, Twitter



CHAPTER 7

OTHER PROGRAM REQUIREMENTS

WAIVERS FROM STANDARD CDBG REQUIREMENTS

Typically, the CDBG-DR appropriation provides the Secretary of HUD with the authority to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the CDBG-DR funds except for requirements related to fair housing, nondiscrimination, labor standards, and the environment.

CROSSCUTTING REGULATIONS

Section 3

Section 3 of the Housing and Urban Development Act of 1968 (24 CFR Part 135) requires that recipients of CDBG-DR funds, to the greatest extent feasible, provide job training, employment, and contract opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods. Section 3 applies to activities involving housing (construction, demolition, rehabilitation) or other public construction — i.e. roads, sewers, community centers, etc. The regulations seek to ensure that low- and very low-income persons, and the businesses that employ these individuals, are notified about the expenditure of HUD funds in their community and encourages them to seek opportunities (if they are created).

Furthermore, Section 3 applicability depends on the size of the contract. As per 24 CFR Part 135, Section 3 requirements apply to program assistance for a Section 3 covered project(s) for which the amount of the assistance exceeds \$200,000. Section 3 requirements also apply to contractors and subcontractors performing work on Section 3 covered project(s) for which the amount of the assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000.

Section 3 Numerical Goals

Recipients and covered contractors may demonstrate compliance with the “greatest extent feasible” requirement of section 3 by meeting the numerical goals set forth in 24CFR Part 135 for providing training, employment, and contracting opportunities to Section 3 residents and Section 3 business concerns.



The minimum numerical goal for employment is 30 percent of the aggregate number of annual new hires shall be Section 3 residents. The minimum goals for contracting are:

- Ten percent of the total dollar amount of all Section 3-covered contracts shall be awarded to Section 3 businesses; and
- Three percent of the total dollar amount of all non-construction Section 3-covered contracts shall be awarded to Section 3 businesses.

Davis-Bacon and Related Acts

The Davis-Bacon and Related Acts, as amended, require that each CDBG-DR funded contract over \$2,000 for the construction, alteration, or repair of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Davis-Bacon is applicable to demolition work only when the demolition activity is part of a construction project that requires Davis-Bacon. Demolition for purposes of blight removal only and that is not part of "...construction, alteration or repairs..." does not trigger Davis-Bacon Act requirements. The term "construction work" applies to both labor and/or materials. If CDBG-DR funds are only used to pay for the cost of materials for a Davis-Bacon covered project, Davis-Bacon requirements would still apply.

Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine such local prevailing wage rates.

In addition to the Davis-Bacon Act itself, Congress has added prevailing wage provisions to approximately 60 statutes, which assist construction projects through grants, loans, loan guarantees, and insurance. These "Related Acts" involve construction in such areas as transportation, housing, air and water pollution reduction, and health. If a construction project is funded or assisted under more than one Federal statute, the Davis-Bacon prevailing wage provisions may apply to the project if any of the applicable statutes require payment of Davis-Bacon wage rates.

Environmental Review

The environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted projects, including CDBG-DR funded projects, to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. More information about the environmental review process can be found on the HUD Exchange under Orientation to Environmental Review.



Part 58

HUD regulations at 24 CFR 58.4 allow the assumption of authority to perform the environmental reviews by responsible entities, which are units of general local government, such as a town, city, county, tribe, or state. The CDBG-DR grantee is the Responsible Entity (RE), and is responsible for the scope and content of the review and making the finding. The certifying officer of the RE, usually the mayor, signs the review and takes legal responsibility for the review.

Timing of the Review

HUD's regulations at 24 CFR 58.22 prohibit grant recipients and their partners from committing or spending HUD or non-HUD funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environmental review once a project has become "federal." This prohibition on "choice-limiting actions" prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions. The environmental review should therefore begin in the project planning's earliest phase to maximize opportunities to improve projects' environmental design.

The restriction on undertaking or committing funds for choice-limiting actions does not apply to undertakings or commitments of non-federal funds before a project participant has applied for HUD funding. A party may begin a project in good faith as a private project and is not precluded from later deciding to apply for federal assistance. However, when the party applies for federal assistance, it will generally need to cease further choice-limiting actions on the project until the environmental review process is complete.

Environmental Reviews and CDBG-DR

There are several laws and authorities that CDBG-DR grantees should be especially mindful of in their environmental reviews: Historic Preservation – Section 106, Executive Order (EO) 11988 – Floodplain Management, and EO 11990 – Protection of Wetlands.

Early coordination is important with Historic Preservation – Section 106. HUD has a Disaster Recovery Programmatic Agreements for Section 106 Review database for current disaster recovery Programmatic Agreements that may apply to CDBG-DR projects. It includes which states have a FEMA Programmatic Agreement in place, which states and local governments have executed a HUD addendum to the FEMA Programmatic Agreement, and any state-specific protocols, and/or guidance issued to support historic preservation and disaster recovery in the state. Compliance with EO 11988 - Floodplain Management and EO 11990 – Protection of Wetlands should and can easily be evaluated early in the process with tiering using mapping tools from FEMA and the U.S. Fish and Wildlife Service, in conjunction with state or local wetland maps.

Tip: Environmental review requirements should be considered during CDBG-DR program development to ensure environmentally compliant programs. Environmental review efficiencies can be better achieved when all involved parties understand respective roles and responsibilities. It creates opportunities for streamlining and avoids duplication of effort.

Recent FR Notice(s) allow the grantee to rely on other federal agency environmental reviews.



TIERING AND CDBG-DR

Usually in the context of CDBG-DR, certain programs identified in Action Plans lend themselves well to using the tiering approach for environmental compliance. Tiering may increase efficiency when at the planning level the CDBG-DR grantee (the RE) does not yet fully know the specific timing, location, or environmental impacts. Tiering may be appropriate when the RE is evaluating a collection of projects that would fund the same or very similar activities repeatedly within a defined local geographic area and timeframe (e.g., rehabilitating many single-family homes within a city district or neighborhood over the course of one to five years) but where the specific sites and activities are not yet known. To learn more about how tiering may be appropriate for your CDBG-DR program contact your local Regional Field Environmental Officer.

PROCUREMENT

CDBG-DR Federal Register Notices do not typically waive any CDBG statutory or regulatory requirements related to procurement or competitive bidding. Therefore, grantees must follow all CDBG statutory and regulatory program requirements, including those in 24 CFR Part 570 as well as the procurement standards in 2 CFR §200.317 - 200.326 as applicable. Additionally, all costs must be necessary and reasonable and comply with the cost principles at 2 CFR Part 200, subpart E.

State CDBG-DR programs have different procurement requirements than local governments that receive CDBG-DR allocations. The state CDBG regulations at 24 CFR 570.489(g) and the procurement section of CDBG-DR Federal Register Notices published after March 5, 2013 expressly permit state grantees to use their own procurement requirements. States can adopt 200.317, which allows a state to follow its own rules but impose Part 200 rules under 200.318-200.326 on its subrecipients/sub-awards.

When allocating funds to a subrecipient, state and UGLG grantees must review subrecipient procurement policies to ensure the policies comply with state and local law, CPD regulations and 2 CFR Part 200 (if applicable). Grantees may want to review individual procurement contracts to ensure compliance.

PROGRAM INCOME

As per 24 CFR 570.489 and 570.500, program income means gross income received by the recipient or subrecipient that is directly generated from the use of CDBG funds. CDBG-DR programs that provide loans (e.g., housing rehabilitation, or economic development assistance) or involve real property most often generate program income.



In general, program income includes:

- Proceeds from the disposition of real property purchased or improved with CDBG funds;
- Proceeds from the disposition of equipment purchased with CDBG funds;
- Gross income from the use or rental of real property acquired, constructed, or improved with CDBG funds, less costs incidental to the generation of income;
- Payments for principal and interest on loans made using CDBG funds;
- Proceeds from the sale of loans made with CDBG funds;
- Proceeds from the sale of obligations secured by loans made with CDBG funds;
- Interest earned on funds held in a revolving fund account;
- Interest earned on program income pending disposition of income;
- Funds collected through special assessments against properties owned by non-low- and moderate-income persons; and
- Gross income paid to a unit of local government or subrecipient/sub-grantee from ownership interest in a for-profit.

Program income does not include:

- Total amount of funds less than \$25,000 for Entitlement grantees or \$35,000 for State CDBG grantees received in a single year that is retained by a unit of local government or a sub-recipient, unless the applicable Federal Register notice provides for a different amount. NOTE: This does not apply to revolving loan funds.
- Amounts generated by activities carried out by 105(a)(15)s; and
- Amounts generated by activities financed through Section 108 and that meet public benefit criteria at 570.482(f)(3)(v) or are carried out in an empowerment zone.
- Revenue created from the use of infrastructure built for an economic development purpose. This revenue is considered to be directly generated from the activities within the structure (or on the structure for rails, road, and sidewalks) and only indirectly attributable to the structure itself. The same situation exists for public utilities — grantees may build water and/or sewer lines but funds the utility receives from users are not considered to be program income.

Program Income and Rental Housing

CDBG-DR can be applied to types of small multifamily and mixed-use rental projects or programs. The generation of program income will vary or not be defined as program income depending on how the ownership and development project is structured. It is important for grantees to work closely with their HUD representative to clarify and note to the project file how program income applies or does not. The following illustrates, but is not limited to, three basic scenarios for how program income may or may not apply:



Scenario #1: A grantee-owned project

A grantee owns a site that is eligible for a new rental project that will generate income through net revenue after operating and debt service expenses are considered. Any of this net revenue after these expenses is considered program income and must be used in accordance with the requirements of the applicable Federal Register Notice.

Scenario #2: A grantee provides a subrecipient (UGLG or non-profit) CDBG-DR grant funds (not a loan) to develop a rental project

Any net revenue as defined in Scenario #1 above and generated by the UGLG or nonprofit project they develop is considered program income and must be used in accordance with the requirements of the applicable Federal Register Notice.

Note: The program income (net revenue) may be retained by the subrecipient if previously agreed to but must still be used in accordance with the applicable Federal Register Notice.

Scenario #3: A grantee provides CDBG-DR grant funds (not a loan) to a private developer (individuals and/or agencies) to develop a rental project

If the developer is a for-profit or non-profit that owns (or is acquiring) the land on which the complex will be constructed, the developer can be treated as a for-profit direct beneficiary. In this scenario, any income or net revenue generated by the developer would not be considered program income. Unless modified in the Federal Register Notice, program income, for the purposes of new construction of multifamily rental housing, is "gross income from the use of rental of real property, owned by the recipient or subrecipient that was constructed or improved with CDBG funds, less costs incidental to generation of income."⁷

If CDBG-DR funds are used as a loan to finance a rental deal in whole or in part, once the affordability requirements have been met and the loan has been completely repaid, that activity can be closed. Five years after closeout of the activity, the use of the property can be changed so that the CDBG identity disappears. Program income includes "proceeds from the disposition by sale or long term lease of real property purchased or improved by CDBG funds." (24 CFR 570.489(e)(1)(i)). If the use of the property changes before five years from the date of closeout 24 CFR 570.489(j)(2) requires "...reimbursement...in the amount of the current fair-market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property..."

Program Income after Closeout

Grantees should consult their applicable Federal Register notices for the specific close-out requirements in regards to program income.

In addition to the regulations dealing with program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: A grantee may transfer program income before closeout of the grant that generated the program income to its annual CDBG program. In addition, state grantees may transfer program income before closeout to any annual CDBG-funded activities

⁷ 570.500(a)(iv) or 570.489(e), as applicable.



In all cases, any program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of this notice. Rather, those funds will be subject to the grantee's regular CDBG program rules.

For Entitlement Grantees (who have received a direct CDBG-DR appropriation), after closeout, any program income:

- Used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of the Notice;
- Not used to continue the disaster recovery activity that generated the program income, shall be program income to the most recent annual CDBG program grant and can be used to carry out activities under the entitlement's regular program.

REVOLVING LOAN FUNDS

Creating a revolving fund does not constitute meeting a national objective and is not inherently an eligible activity. A revolving fund is a method to implement activities that meet national objectives. Typically, CDBG-DR program income, including program income deposited in revolving funds, must be spent on CDBG-DR eligible activities only. A grantee may choose to transfer program income to a revolving loan fund under its regular CDBG program; but, then all CDBG-DR waivers and alternative requirements are severed. Grantees should always refer to their applicable FR Notice(s) regarding program income and revolving loan fund guidance and work closely with their HUD representatives to determine set-up and closeout requirements for revolving loan funds.

Pursuant to 24 CFR 570.489(f)(3) A revolving fund established by either the state or UGLG shall not be directly funded or capitalized with grant funds. Grantees should also consult and coordinate closely with their HUD representatives when considering teaming with entities such as Community Development Financing Institutions (CDFIs) to help administer or implement the CDBG-DR loan fund(s) and programs. Grantees have many considerations if working with one or more local, regional or statewide CDFI programs to manage related loan funds. Whether using a subrecipient versus a procured contractor relationship can have significant impacts on how the program is designed, procurement is managed, cost reasonableness established for fees and cost allocations for administration versus activity delivery are set up. How loan funds are designed and implemented can become complex and should be considered only if there is a significant amount of anticipated need, capacity and funding based on the types of disaster recovery programs considered.



FREQUENTLY ASKED QUESTIONS

Davis-Bacon Labor Standards: How do the Davis-Bacon requirements apply to mixed-use projects, if separate sources of funds will be used for the different uses?

Most likely, the Davis-Bacon requirements will apply to the whole project. Davis-Bacon applies to projects financed “in whole or in part” with Federal funds. The Department has interpreted this language to mean: when CDBG-DR funds are used in conjunction with other sources for construction, Davis-Bacon applies to the entire “construction work.” The question, then, is what comprises the “construction work”?

The Department may consider a component of the construction to be outside the “construction work” if there is sufficient separability between the components. For example, assume a business owns a parcel of land and wants to develop a new facility (with its own funding). However, public improvements are needed to make the site accessible. The city uses CDBG-DR funds to install the public improvements up to the business’ property; the business hires a contractor to construct the facility, paying with its own sources. In this case, HUD deems the efforts to be two separate construction works as there is separate ownership, separate contracts, and separate funding.

Work may also be considered separate depending on when it was completed. Oftentimes in disaster recovery, a city, business owner, or developer has undertaken construction work before the availability of CDBG-DR assistance was announced. Under the Department of Labor (DOL) regulations (29 CFR 1.6(g)) it is possible to exclude Davis-Bacon requirements for work that was completed before the CDBG-DR funding availability was announced. Although the DOL must approve this variance, it has been very receptive to past requests.

When work is performed on one building (owned entirely by one entity) and the owner contracts for all components of the work, there is not sufficient separability to exclude the portion(s) funded with other (non CDBG-DR) sources from Davis-Bacon compliance.

Environmental Review: Are CDBG-DR funds exempt from environmental review under 58.34(a)(10)?

No, the exemption at 58.34(a)(10) is limited to work that needs to take place as an immediate need in the aftermath of a disaster event. These activities include the (1) purchase of tools, supplies, and equipment (including generators that are not permanent fixtures); (2) supportive services for healthcare, housing, housing placement, day care, and short-term rent payment; (3) public services related to crime prevention and health; (4) inspections and testing for hazards; (5) engineering and design costs; (6) technical assistance and training; (7) environmental and other studies and planning and development strategies; (8) tenant-based rental assistance; and (9) assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety.

More information on when this exemption can be used can be found in the ***“HUD Memo: Environmental Review Processing During Emergencies and Following Disasters under 24 CFR Part 58.”***



Who is the Responsible Entity (RE) for an environmental review when the CDBG-DR grant is provided to a state?

As per the environmental regulations at 24 CFR 58.4, when a state carries out activities directly, the state is the RE and must submit the certification and request for release of funds to HUD for approval.

When a state distributes CDBG funds to units of general local government (UGLG), the state takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. Thus, whenever a state passes CDBG funds to a UGLG, the UGLG must be the RE. It is not the state's permissive decision to "delegate" RE status to the local government. However, whenever a state passes CDBG funds to a non-profit or contractor, the state remains the RE.

Is there an expedited processing for public comments periods for projects that are not Exempt or Categorically Excluded Not Subject to Part 58.5?

When responding to emergencies using HUD assistance, responsible entities can perform many activities without completing an environmental review or with shortened comment periods. If a project is exempt under 24 CFR 58.34 or categorically excluded not subject to the related laws and authorities (CENST) under 24 CFR 58.35(b), the project file only needs to make a reference to the applicable exemption or CENST and document compliance with 24 CFR 58.6 requirements. Additionally, comment periods for projects that are not exempt or CENST may be combined during Presidentially declared disaster or local emergencies declared by the chief elected official for the responsible entity. For additional information refer to the guidance posted at: <https://www.hudexchange.info/resources/documents/Environmental-Review-Exemptions-Disasters-Imminent-Threats.pdf>

Do HUD regulations require a noise analysis for reconstruction and rehabilitation for disaster recovery projects?

No, a noise analysis is not required. HUD's regulations at 24 CFR 51.101(a)(3) state that HUD's noise policy does not apply to any action or emergency assistance under disaster assistance provisions or appropriations which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance that has the effect of restoring facilities substantially as they existed prior to the disaster.

Do HUD regulations require an Acceptable Separation Distance (ASD) analysis for disaster recovery projects that reconstruct or rehabilitate housing?

No, ASD requirements do not apply to the majority of housing rehabilitation projects because the definition for HUD-assisted project at 24 CFR 51.201 is predicated on whether the HUD project increases the number of people exposed to hazardous operations.

Procurement: Can one firm serve as both grant administrator and engineer?

In some cases a state or local government's procurement policy prohibits this. If it is allowed by the grantee's policy, the grantee must abide by the following:



1. Projects where one firm serves as both should be flagged by the state's internal auditor as a high risk.
2. The administrative division of a company must excuse itself from any work dealing with the engineering side (e.g., preparing bid packets), although they can perform basic financial admin, such as cutting checks. The administrative side of the firm cannot be responsible for reviewing the work of the engineering side — but someone has to perform this role (i.e. a 3rd party)
3. The application can be one proposal for both services, or two separate proposals, but the engineer cannot write the specs for the admin request for quotation and vice versa— basically, all interaction between the two sides must be arms-length.
4. The grant administrator can't be involved in selecting the engineering firm.
5. Though not a requirement, HUD would be more comfortable if both contracts were bid at the same time, or at least before the firm was employed as the grant administrator, as there would be an appearance of conflict of interest if the grant administrator firm was chosen as the engineer, even if the firm had nothing to do with the writing of the RFP, or the selection of proposals.

What are the bonding requirements and when are they applicable?

As per 2 CFR §200.88 for local governments and state grantees that adopt the requirements of 2 CFR Part 200, the requirements at 2 CFR Part 200.325 state:

"For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold⁸, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected."

If such a determination has not been made, the minimum requirements must be as follows:

1. A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

⁸ As per 2 CFR §200.88 Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this Guide, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation.

Assume a grantee provides a loan to a sub-recipient for the construction of new multifamily housing. Can program income be used to repay the CDBG loan?

Yes — if a project earns income in excess of the debt service, the subrecipient could certainly use those extra funds to make additional principal payments. However, if the program income requirements apply, those additional principal payments become program income to the grantee (or subgrantee, as applicable).

As another example, assume a subrecipient receives a CDBG-DR loan, as well as a private loan. CDBG program income can also be used to accelerate the repayment schedule for the private loan so long as it's allowed by the subrecipient agreement.

May a non-profit keep program income?

Typically yes. A program income waiver leaves a state the choice of requiring program income to be returned or allowing an organization (subrecipient or local government) to recycle the funds for additional CDBG activities (which must be reported to HQ). Therefore, if a nonprofit is NOT a qualified entity under 105(a)(15),⁹ the state can allow the nonprofit to retain and use CDBG program income under the terms of the above waiver. In this scenario, the nonprofit is a subrecipient.

If a subrecipient has repaid its CDBG disaster recovery loan, and the term of affordability has expired, would the CDBG identity of the applicable project no longer apply such that a portion of the income from the project no longer needs to be repaid to the grantee as program income?

Program income is forever, so it applies throughout the life of the project. However, once affordability requirements have been met for a particular activity, and the loan has been completely repaid, that activity can be closed. Five years after closeout of the activity, the use of the property can be changed so that the CDBG identity disappears.



⁹ Section 105(a)(15) of the HCDA allows as eligible the provision of assistance to neighborhood-based nonprofit organizations, local development corporations, and nonprofit organizations serving the development needs of communities in non-entitlement areas to carry out neighborhood revitalization, community economic development or energy conservation projects.

