



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE DEPUTY SECRETARY
WASHINGTON, DC 20410-0050

MEMORANDUM FOR: State of Louisiana, State of New Jersey, and State of Oregon for Disasters Occurring in 2020 and 2021 (Allocations announced in the February 2022 Notice, the May 2022 Notice and the January 2023 Notice); Community Planning and Development Field Office Directors, Deputy Directors, and Program Managers.

FROM: Adrienne Todman, Deputy Secretary, SD _____/s/____

THROUGH: Marion M. McFadden, Principal Deputy Assistant Secretary for Community Planning and Development, D

SUBJECT: Rental Assistance Waiver and Alternative Requirement (State of Louisiana, State of New Jersey, and State of Oregon only)

APPLICABILITY DATE: May 23, 2023

PURPOSE:

This waiver and alternative requirement memorandum governs the Department of Housing and Urban Development's (HUD) Community Development Block Grant Disaster Recovery (CDBG-DR) funds allocated to the State of Louisiana, the State of New Jersey, and the State of Oregon pursuant to the Disaster Relief Supplemental Appropriations Act, 2022 (Pub. L. 117-43) approved September 30, 2021, for major disasters occurring in 2020 and 2021, and to the State of New Jersey and the State of Louisiana pursuant to the Continuing Appropriations Act, 2023 (Pub. L. 117-180) approved September 30, 2022, for major disasters occurring in 2021.

WAIVER AUTHORITY:

The Disaster Relief Supplemental Appropriations Act, 2022 made available \$5,000,000,000 in CDBG-DR funds for 2020 and 2021 disasters. The Continuing Appropriations Act, 2023 made available \$2,000,000,000 in CDBG-DR funds for 2021 and 2022 disasters. The CDBG-DR funds made available by these acts (the "Appropriations Acts") are for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCDA) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the "most impacted and distressed" areas resulting from qualifying major disasters.

The Appropriations Acts authorized the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD

may also exercise its regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5. The waiver and alternative requirement included below is based upon a determination by the Secretary that good cause exists, and that the waiver and alternative requirement is not inconsistent with the overall purposes of title I of the HCDA.

The Appropriations Acts authorized the Secretary to publish any waiver or alternative requirement via a *Federal Register* notice or on the Department's website, no later than 5 days before the effective date of such waiver or alternative requirement. For the waiver and alternative requirement included below, HUD is exercising its authority to publish on the Department's website.

Of the amounts made available by Public Law 117-43, HUD allocated \$2,051,217,000 for 2020 disasters in October 2021, which are governed by a *Federal Register* notice published February 3, 2022 (87 FR 6364) ("February 2022 Notice"). In March 2022, of the amounts remaining from Public Law 117-43, HUD allocated an additional \$722,688,000 for 2020 disasters and \$2,213,595,000 for 2021 disasters, which are governed by a *Federal Register* notice published May 24, 2022 (87 FR 31636) ("May 2022 Notice"). Subsequently, HUD allocated an additional \$1.447 billion in CDBG-DR funds appropriated by Public Law 117-180 for major disasters occurring in 2021, which are governed by requirements in a *Federal Register* notice published January 18, 2023 (88 FR 3198) ("January 2023 Notice").

Each of these *Federal Register* notices included the Consolidated Notice as Appendix B and made the Consolidated Notice applicable to the grants awarding allocations announced in those notices. This memorandum modifies the requirements for the CDBG-DR funds awarded to the states of Louisiana, New Jersey, and Oregon under the Appropriations Acts by adding a new waiver and alternative requirement.

RENTAL ASSISTANCE PROGRAMS (STATE OF LOUISIANA, STATE OF NEW JERSEY, AND STATE OF OREGON):

Background

The Department received requests and justifications from the State of Louisiana, the State of New Jersey, and the State of Oregon to waive 42 U.S.C. 5305(a)(8) in order to provide tenant-based and other forms of rental assistance to households impacted by disasters eligible under the Appropriations Acts, subject to alternative requirements provided below. While existing CDBG eligible activities allow payments for these purposes, the assistance must be time-limited to be considered an eligible public service.

State of Louisiana

The Department has allocated the State of Louisiana \$1,050,267,000 for 2020 disasters and \$2,103,848,000 for 2021 disasters governed by the February 2022 Notice, the May 2022 Notice, and the January 2023 Notice. Since August of 2020, Louisiana has been impacted by three qualifying major disasters (hurricanes Laura, Delta, and Ida) and severe storms, tornadoes, and flooding. These disasters continue to strain Louisiana's affordable housing conditions. Many renters have or will experience homelessness from the loss of housing stock, limited availability at shelters, and diminished re-housing options.

At the time of the state's waiver request, more than 80,000 applications were identified as delinquent on rent or at risk of eviction. The state also notes that thousands of families continue to be doubled up with family and friends, are facing eviction, or are in temporary housing, including FEMA trailers that will be removed, or will have rents increased in the near future. FEMA Individual Assistance (IA) verified losses of major-severe and minor damage for more than 122,000 renters from the qualified disasters. Of these applicants, more than 100,000 are low-and moderate-income (LMI) households.

In order to address rental housing needs, the state's action plan describes how it plans to provide affordable rental housing and other housing assistance for persons displaced by the storm through the rehabilitation, reconstruction and creation of new rental housing stock, the creation of homeownership opportunities, and by providing rental assistance and support services to vulnerable populations displaced by the disasters. The state will prioritize applications through a phased approach to ensure that the most vulnerable populations are served first. Overall, the state is investing more than \$878 million in affordable housing. However, these units will take a few years to be fully repaired and accessible. Additional time is also needed to stabilize individuals and families in permanent housing where rents are higher than typical for the area and vacancy rates are extraordinarily low. During that time, LMI residents residing in the impacted communities could face unaffordable rents on top of an affordable housing crisis.

State of New Jersey

The Department has allocated the State of New Jersey \$377,575,000 for 2021 disasters governed by the May 2022 Notice and the January 2023 Notice.

Prior to Tropical Storm Ida, New Jersey's housing conditions were already under significant strain from the ongoing national housing crisis and supply chain issues from the COVID-19 pandemic. These issues combined with the subsequent impacts of the storm drastically escalated the state's housing and homelessness crises. At the time of the state's waiver request, the risk of eviction in New Jersey was greater than anywhere else in the country as 393,000 households were delinquent on their rent. These eviction pressures are faced primarily by residents of color, households with children, and in urban areas – including those disaster-impacted urban areas – where low-income populations are particularly vulnerable. In the state, more than 25 percent of renting households are extremely low income, and 73 percent of these extremely low-income renters suffer from severe cost burden.

Due to the impacts of Tropical Storm Ida, over 8,000 homeowners and 4,500 renters experienced major to severe damages, as defined by HUD. The State of New Jersey has prioritized housing rehabilitation that will primarily benefit LMI households, through a phased approach for its homeowner program and by limiting its rehabilitation of rental housing to housing that will be affordable to LMI households. However, these units will take a few years to be fully repaired and accessible. During that time, LMI residents residing in the impacted communities could face unaffordable rents on top of an affordable housing crisis. Rents in the HUD most impacted and distressed (MID) areas have considerably increased since the disaster. From 2021 to the anticipated launch of the state's CDBG-DR programs in early 2023, rents in the HUD MID areas will have increased in some counties by over 10 percent and are expected to continue to rise over the next two to three years. The state plans to offer rental assistance and utility payments in the form of direct payments to homeowners or renters that are displaced as a

result of disasters occurring in 2020 and/or 2021 and are at-risk households when such assistance or payments are part of a homelessness prevention, intermediate housing, or rapid rehousing program or activity, as well as for intermediate housing for grant recipients during the repair or reconstruction of their homes.

State of Oregon

The Department has allocated the State of Oregon \$422,286,000 for 2020 disasters governed by the February 2022 Notice and the May 2022 Notice.

Following the 2020 Wildfires and Straight-line Winds, many Oregon residents were forced to abandon their homes and may be unable to return when damages to the units have made them uninhabitable. Additionally, there are LMI households who have been indirectly impacted by the destruction of housing and could be forced to move from the impacted communities due to the lack of affordable rental housing options in the impacted counties. Of the 4,326 homes impacted by the 2020 wildfires, all but 54 of them were completely destroyed.

According to the FEMA IA data, 41 percent of the impacted residents with verified losses were renters, and the state assumes that around 40 percent of the damaged and destroyed units were rental properties. The total loss of this housing has placed additional demands on areas that were already facing an affordable housing crisis before the wildfires. As such, rents have considerably increased in the impacted counties from 2020 to 2022. Overall, the state is investing over \$300 million of state funding into development, rehabilitation, and preservation of affordable multi- and single-family housing in the impacted counties. This housing will be available in the next 2 to 4 years, but during this time, residents living in the impacted communities face unaffordable rents and are at risk of experiencing homelessness. The state plans to provide intermediate housing assistance for eligible LMI residents that face housing instability or have been displaced by the 2020 Wildfires and are in need of rental, temporary relocation, and/or other intermediate housing assistance.

Rental Assistance Waiver and Alternative Requirement (State of Louisiana, State of New Jersey, and State of Oregon only):

After reviewing each grantee's request and based on the good cause provided herein, HUD is imposing an alternative requirement to modify 42 U.S.C. 5305(a)(8) to expand the definition of public service to include the following activity: provision of rental assistance (e.g. rent, security deposits, and utility deposits) and utility payments for up to 24 months for the State of Louisiana, the State of New Jersey, and the State of Oregon, subject to the following alternative requirements.

This activity is subject to the 15 percent cap on public services, and no beneficiary may receive more than a total of 24 months (for Louisiana, New Jersey, Oregon) of this type of assistance. HUD may further extend the waiver and alternative requirements administratively, if requested by the grantees and good cause for such an extension exists at that time. A homeowner receiving any form of CDBG-DR interim mortgage assistance, allowed in paragraph II.B.6. of the Consolidated Notice that may be offered by the states of Louisiana, New Jersey, and Oregon, is not eligible for rental assistance or utility payments as authorized by this waiver and alternative requirement.

Grantees must determine that the rental assistance and utility payments are needed because

the household moved from their primary residence due to rehabilitation or reconstruction to repair damage from a qualified disaster, because the household is experiencing or is at risk of experiencing homelessness and the assistance is part of a homelessness prevention or rapid rehousing program or activity, or because other disaster-related pressures on the housing market necessitate the assistance to support the household's recovery.

While this waiver and alternative requirement will allow these grantees to provide rental assistance and utility payments to households impacted by a qualifying major disaster, this does not relieve grantees of the duty to comply with other applicable requirements relating to the temporary relocation or permanent displacement of persons. If a person meets the definition of a "displaced person" under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 et seq.)("URA") or section 104(d) of the HCDA (42 U.S.C. 5304(d)) ("section 104(d)"), grantees must provide the displaced person with any relocation assistance to which they are entitled under law, including but not limited to assistance authorized under the URA or section 104(d), as those requirements may be modified by applicable current or future waivers and alternative requirements published on HUD's website and in the *Federal Register*. Currently, URA and section 104(d) waivers and alternative requirements are included in the February 2022 Notice, the May 2022 Notice, and the January 2023 Notice, as applicable.

The goals of this waiver and alternative requirement are to prevent and minimize the time households are experiencing or are at risk of experiencing homelessness as a result of the qualifying disaster and to provide additional time to stabilize persons or households in permanent housing by providing rental assistance, rapid rehousing services, and/or intermediate housing (e.g., including for homeowners during repairs). The use of CDBG-DR funds for each of these purposes advances the Department's priority to support forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness as a result of a disaster.

When providing rental assistance to beneficiaries who are at risk of homelessness, grantees must clearly demonstrate in their action plan the concrete steps they will take to prevent households from becoming homeless after the exhaustion of the CDBG-DR rental assistance. In addition, in developing their policies and procedures, grantees must list services to be provided and outline a referral process that will enable the targeted households to apply to live in affordable housing units, including those that are created under other CDBG-DR funded programs.

HUD requires all grantees to submit procedures to detect and prevent fraud, waste, and abuse consistent with paragraph III.A.1.a.(6) of the Consolidated Notice. To fortify these requirements and achieve a targeted use of funds and to safeguard against fraud, grantees must include provisions in their policies and procedures on how grantees will verify the accuracy of information provided by applicants to their rental assistance programs, how the grantees will document that the applicant used the funds for only the eligible uses defined in its action plan or the program's policies and procedures, and how the grantee will detect and prevent fraud, waste, and abuse in their rental assistance programs. Grantees must document, in its policies and procedures, how it will determine the basis of the rental assistance award for each household assisted and that the amount of the assistance to be provided is necessary and reasonable and not duplicative of any other funding source, including insurance. To comply with the order of assistance requirements in the Appropriations Acts, any rental or temporary housing assistance

provided by FEMA must first be exhausted prior to providing CDBG-DR funds to a household for the uses permitted by this waiver and alternative requirement.

CONTACT:

Tennille Smith Parker, Director, Office of Disaster Recovery, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202–708–3587. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities.

To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs> . Facsimile inquiries may be sent to Ms. Parker at 202–708–0033. (Except for the “800” number, these telephone numbers are not toll-free.) Email inquiries may be sent to Disaster_Recovery@hud.gov .