



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

OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

MEMORANDUM FOR: Adrienne Todman, Deputy Secretary, D

THRU: Kevin Bush, Deputy Assistant Secretary  
for Grant Programs, DG

FROM: Tennille Parker, Director  
Disaster Recovery & Special Issues Division, DGB

SUBJECT: Environmental Assessment and Finding of No Significant Impact  
Under the National Environmental Policy Act for the Community  
Development Block Grant Disaster Recovery and Community  
Development Block Grant Mitigation Waivers and Alternative  
Requirements Notice [FR-6316-N-01]

It is the finding of this Office that issuance of the attached notice does not constitute a major Federal action having an individually or cumulatively significant effect on the human environment and, therefore, does not require the preparation of an environmental impact statement.

This notice provides the following clarifying guidance, waivers, and alternative requirements for certain grantees that received an allocation of funds appropriated under the following Public Laws: 107-38; 107-73; 107-117; 107-206; 113-2; 114-113; 114-223; 114-254; 115-31; 115-56; 115-123; 115-254; 116-20. The clarifying guidance, waivers and alternative requirements and are not inconsistent with the overall purpose of the Housing and Community Development Act of 1974 (HCDA).

While the attached notice also includes waivers and alternative requirements that are unrelated to environmental considerations (e.g., public participation, tourism deadline extension, etc.), the list below only includes those waivers that are related to environmental considerations.

1. *Amendment to the One-for-One Replacement Housing Alternative Requirements for CDBG-MIT Grants.* The language for waiving Section 104(d)(2)(A)(i) and (ii) and (d)(3) of the HCDA and 24 CFR 42.375 at section V.A.22.a. of Federal Register notice 84 FR 45859 is amended for the CDBG-MIT program. The alternative requirement applies language applicable to the current and future risk requirements of the CDBG-MIT program. One-for-one replacement housing requirements at section 104(d)(2)(A)(i) and

(ii) and (d)(3) of the Housing and Community Development Act of 1974 (HCDA) and 24 CFR 42.375 are waived for all demolished or converted lower-income dwelling units that are CDBG-MIT eligible to permanently move people and/or property out of harm's way as part of a housing mitigation activity, such as a buyout, that addresses a risk identified in a grantee's risk-based Mitigation Needs Assessment. This waiver exempts lower-income dwelling units that meet the grantee's definition of "not suitable for replacement" from the one-for-one replacement requirements, since CDBG-MIT grantees may be undertaking activities that remove housing units that are not damaged by a previous disaster but still are necessary to address mitigation risk. Before carrying out activities that may be subject to the one-for-one replacement requirements, the grantee must define "not suitable for replacement" in its action plan or in policies and procedures governing these activities. When working to move people and/or property out of harm's way, requiring replacement housing units to be located within the same neighborhood can be inconsistent with the purposes of the CDBG-MIT grants and is not always feasible because these areas have been identified to have current and future disaster risks, as described in the grantee's Mitigation Needs Assessment. HUD is providing this waiver in recognition that grantees are using CDBG-MIT funds for mitigation needs based on a Mitigation Needs Assessment that identifies and analyzes all significant current and future disaster risks as the basis for undertaking the proposed demolition or conversion activities consistent with the goals of the CDBG-MIT funds.

2. *Base Flood Elevation Requirement and Reimbursement in the "Homeowner Reimbursement Program" (State of Texas only)*. The alternative requirements for building to 2 feet above base-flood-elevation (BFE) at section VI.B.32.e of Federal Register notice 83 FR 5844 are waived for reimbursement of rehabilitation work done before CDBG-DR programming was made available. Some homeowners seeking assistance from the state's Homeowner Reimbursement Program elevated their homes to meet the requirements of their municipalities but did not elevate their homes to meet HUD's requirement that residential structures be elevated to at least two feet above base flood elevation. Because these homeowners did not anticipate receiving CDBG-DR assistance, the state is requesting a waiver to reimburse homeowners that are otherwise eligible for assistance but elevated their homes to comply with FEMA program requirements and the local jurisdiction's elevation requirements, which may be lower than the HUD-mandated standard to elevate to base flood elevation plus two feet.
3. *Base Flood Elevation Requirement and Reimbursement in the "Homeowner Reimbursement Program" (State of Texas – Harris County and City of Houston Only)*. The alternative requirements for building to 2 feet above base-flood-elevation (BFE) at section VI.B.32.e of Federal Register notice 83 FR 5844 are waived for reimbursement of rehabilitation work done before CDBG-DR programming was made available. In the Federal Register notice published on September 28, 2020 at 85 FR 60825, the Department provided a waiver and alternative requirement permitting the State of Texas to reimburse homeowners that are otherwise eligible for assistance but who elevated their homes to comply with the local jurisdiction's freeboard requirements, which may be lower than the HUD-mandated standard to elevate to base flood elevation plus 2 feet (the "September 2020 waiver"). The State of Texas has submitted a request to extend the September 2020 waiver to also include two local governments awarded funds by the

state: Harris County and the City of Houston, as described below. The state awarded funds to Harris County and the City of Houston to develop their own disaster recovery programs. Both Harris County and the City of Houston are implementing homeowner reimbursement programs: Harris County's Homeowner Reimbursement Program and the City of Houston's Reimbursement Option in their Harvey Homeowner Assistance Program. These programs are designed to assist homeowners in recovering out-of-pocket expenses paid by the homeowner for residential rehabilitation due to Hurricane Harvey. Both programs' eligibility requirements require that the home be the owner's primary residence and the eligible rehabilitation costs must have been incurred prior to the owner's application to the program or December 31, 2020, whichever is earlier. Because the state, county, and city's Hurricane Harvey response and recovery efforts commenced on the date of the disaster and before CDBG-DR assistance was available, some homeowners participating in these homeowner reimbursement programs may have repaired their homes to meet FEMA's program requirements and the local jurisdiction's elevation requirements, rather than HUD's Federal Register notice requirements. The elevation requirements in the Federal Register notice require that residential structures be elevated to at least 2 feet above base flood elevation. Because the homeowners did not anticipate receiving CDBG-DR assistance, the state is requesting that HUD extend the September 28, 2020 waiver to include its subrecipients' reimbursement programs.

Assistance under the CDBG program is subject to the environmental review requirements of 24 CFR Part 58. Grantees are responsible for completing environmental reviews on specific projects in accordance with Part 58. When the grantee determines that the environmental review is complete, the grantee must submit a Request for Release of Funds and Certification and receive approval from HUD, if applicable, before it can commit funds or take any choice limiting action with respect to a project. Issuance of the notice does not constitute approval of any proposed projects. Any impacts arising from program activities would be localized and addressed in the appropriate environmental reviews prior to any choice-limiting actions.

In accordance with the Appropriations Act, grant recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, 408(c)(4), or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit. The grant recipient must notify HUD in writing of its decision to adopt another agency's environmental review. Environmental requirements include historic preservation reviews. To facilitate expedited historic preservation (Section 106) reviews, HUD strongly encourages grantees to allocate administrative funds to retain a qualified historic preservation professional and support the capacity of the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) to review disaster recovery projects. As appropriate, grantees may use provisions in existing Section 106 Programmatic Agreements (PAs) to expedite Section 106 reviews.

In addition, the Appropriations Act allows the Secretary, upon a receipt of a Request for Release of Funds and certification, to immediately approve the release of funds for an assisted activity or project if the recipient has adopted an environmental review, approval, or permit from another Federal agency or if the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). For these grants, HUD will

allow a grantee to also carry out activities directly, in addition to distributing funds to subrecipients. Thus, per 24 CFR 58.4, when a grantee carries out activities directly, the grantee must submit the Certification and Request for Release of Funds to HUD for approval. Grantees receiving an allocation of funds under the notice are encouraged to participate in an expedited and unified interagency review process as one means of expediting the implementation of disaster recovery projects.

Tiered environmental reviews, as described at 40 CFR 1508.1(ff) and 24 CFR 58.15, are a means of making the environmental review process more efficient by allowing parties to “eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review” (40 CFR 1501.11(a)). Tiering is appropriate when a responsible entity is evaluating a single-family housing program with similar activities within a defined local geographic area and timeframe (e.g., rehabilitating single-family homes within a city district or county over the course of one to five years) but where the specific sites and activities are not yet known. Public notice and the Request for Release of Funds (HUD-Form 7015.15) are processed at a broad level, eliminating the need for publication at the site-specific level. However, funds cannot be spent or committed on a specific site or activity until the site-specific review has been completed and approved. HUD encourages grantees as Responsible Entities to develop a tiered approach to streamline the environmental review process whenever the action plan contains a program with multiple similar activities that will result in similar impacts.

Issuance of the notice does not constitute approval of any proposed projects. Any impacts arising from program activities would be localized and addressed in the appropriate environmental reviews prior to any choice-limiting actions. Accordingly, the issuance of the notice is deemed not to be a major Federal action having a significant impact on the human environment.

Concurrences:

\_\_\_\_\_  
 Lauren Hayes Knutson  
 Environmental Clearance Officer  
 Community Planning and Development

\_\_\_\_\_  
 Date

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 Lauren McNamara  
 Acting Departmental Environmental Clearance Officer

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Christopher H. Hartenau  
 Environmental Clearance Officer  
 Office of General Counsel

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 Date

Approve:

\_\_\_\_\_  
 Adrienne Todman  
 Deputy Secretary

\_\_\_\_\_  
 Date

Attachment

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