OCT 13 2017

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

MEMORANDUM FOR: All Community Planning and Development Field Office Directors, Deputy Directors and Program Managers

FROM: Neal Rackleff, Assistant Secretary, D

SUBJECT: Availability of Waivers of Community Planning and Development Grant Program and Consolidated Plan Requirements to Facilitate Recovery from Hurricanes Harvey, Irma, and Maria

PURPOSE:

This memorandum explains the availability of waivers of certain statutory and regulatory requirements associated with several Community Planning and Development (CPD) grant programs to facilitate recovery from Hurricanes Harvey, Irma, and Maria that are the subject of major disaster declarations made under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). Specifically, it is designed to facilitate assistance to eligible communities and families affected by the following three major hurricanes that hit the United States: Hurricane Harvey, Hurricane Irma and Hurricane Maria. Details with regard to each of these major disasters are included in Attachment #1. This memorandum covers the following CPD programs:

- Community Development Block Grant (CDBG),
- HOME Investment Partnerships (HOME),
- Housing Opportunities for Persons With AIDS (HOPWA), and
- Emergency Solutions Grant (ESG).

This memorandum also announces a simplified notification process for grantees of these programs to use the waiver flexibility of CPD statutory and regulatory requirements identified below to expedite the delivery of assistance. CPD Field Office Directors, Deputy Directors, and Program Managers are instructed to inform CPD grantees operating within their jurisdictions of the content of this memorandum.

NOTIFICATION PROCESS:

States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands and CPD grantees located in the counties and county equivalents (islands of the U.S. Virgin Islands and municipalities of Puerto Rico) designated in the major disaster declarations listed in Attachment #1 (the declared-disaster areas) may use the waivers described in this memorandum to assist affected CPD program beneficiaries and CPD program-eligible families and to address damage caused by the disasters. CDBG and HOPWA grantees may also use some of the waivers outside of the declared-disaster area, as explained in those program-specific sections below. The waiver flexibility made available under this memorandum must be used to assist only eligible families who have registered with the Federal

Emergency Management Agency (FEMA). To use the waiver flexibility in this memorandum, the grantee must provide notification in writing, either through mail or e-mail, to the CPD Director of the HUD Field Office serving its jurisdiction no less than three days before the grantee anticipates using the waiver flexibility. Further directions on notifying HUD can be found in Attachment #2.

WAIVER AUTHORITY:

Hurricanes Harvey, Irma, and Maria caused substantial damage to communities from southeast Texas to the Caribbean. As a consequence, many individuals and families residing in the declared-disaster area have been displaced from their homes, including the current beneficiaries of various CPD programs, and families eligible to receive CPD program assistance. CPD-funded grantees and subrecipients are in the process of locating these beneficiaries and CPD program-eligible families and placing them in available housing, facilities, and hotels and motels on an emergency basis. A number of grantees and subrecipients have inquired about the availability of waivers of various CPD program requirements to facilitate assistance to individuals and families.

Section 122 of the Housing and Community Development Act of 1974 (HCDA), as amended, and Section 290 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA), as amended, authorize HUD to suspend, respectively, certain CDBG and HOME statutory requirements to assist grantees of these programs in addressing the damage in an area for which the President has issued a federal disaster declaration under Title IV of the Stafford Act and to assist them in disaster recovery.

Upon determination of good cause, in accordance with 24 CFR 5.110, HUD may waive regulatory provisions subject to statutory limitations. Additional regulatory waiver authority is in 24 CFR 91.600 and 24 CFR 570.5. These provisions provide HUD the authority to make waiver determinations for the CDBG, HOME, HOPWA, and ESG programs. To adequately address disaster relief and recovery among the affected jurisdictions, I hereby find good cause to provide the statutory suspensions and regulatory waivers of CPD grant program requirements as set forth below. Provisions that are not specifically waived remain fully effective.

WAIVER AVAILABILITY:

1. Citizen Participation Public Comment Period for Consolidated Plan Amendment

Requirement: 30-day Public Comment Period

Citations: 24 CFR 91.105(c)(2) and (k), 24 CFR 91.115(c)(2) and (i) and 24 CFR 91.401

Explanation: A CPD grantee may amend an approved consolidated plan in accordance with 24 CFR 91.505. Substantial amendments to the consolidated plan, such as the addition of new activities or a change in the use of CDBG funds from one eligible activity to another, are subject to the citizen participation process in the grantee's citizen participation plan. The citizen participation plan must provide citizens with 30 days to comment on substantial amendments.

Justification: Given the need to expedite actions to respond to the disasters, HUD waives the 30-day public comment requirement of 24 CFR 91.105(c)(2) and (k), 91.115(c)(2) and (i) and 91.401 and reduces the public comment period to seven days. In reducing the comment period to seven days, HUD is balancing the need to quickly assist families dealing with the aftereffects of these hurricanes while continuing to provide reasonable notice and opportunity for citizens to comment on the proposed uses of CDBG, HOME, HOPWA, and ESG funds.

Applicability: This authority is in effect through the end of the grantee's 2017 program year. Any grantee wishing to undertake further amendments to prior year plans following the 2017 program year can do so during the development of its FY 2018 Annual Action Plan.

2. Citizen Participation Reasonable Notice and Opportunity to Comment

Requirement: Reasonable Notice and Opportunity to Comment

Citations: 24 CFR 91.105(c)(2) and (k) and 24 CFR 91.115(c)(2) and (i)

Explanation: As noted above, the regulations at 24 CFR 91.105 (for local governments) and 91.115 (for States) set forth the citizen participation plan requirements for grantees. For substantial amendments to the consolidated plan, the regulations require the grantee to follow its citizen participation plan to provide citizens with reasonable notice and opportunity to comment. The citizen participation plan must state how reasonable notice and opportunity to comment will be given.

Justification: HUD recognizes the destruction wrought specifically by Hurricanes Irma and Maria makes it difficult for impacted jurisdictions within the Commonwealth of Puerto Rico and the U.S. Virgin Islands to provide notice to citizens in accordance with their citizen participation plans. Therefore, HUD waives 24 CFR 91.105(c)(2) and (k) and 24 CFR 91.115(c)(2) and (i) to allow these grantees to determine what constitutes reasonable notice and opportunity to comment given their circumstances.

Applicability: This authority is in effect through the end of the 2017 program year for the U.S. Virgin Islands and grantees in Puerto Rico.

3. CDBG – New Housing Construction

Requirement: Prohibition on Use of Funds for New Housing Construction

Citations: Section 105(a) of the HCDA, 24 CFR 570.207(b)(3) (Entitlements) and 24 CFR 570.420(b)(3) (Virgin Islands)

Explanation: New housing construction is not generally an eligible activity under Section 105 of HCDA. It may be undertaken indirectly through CDBG assistance provided to Community Based Development Organizations or other nonprofit entities specified in Section 105(a)(15) of the HCDA.

Justification: HUD recognizes that Hurricanes Harvey, Irma, and Maria caused damage and destruction to a large number of housing units within the declared-disaster areas. Allowing new housing construction will enable CDBG grantees to replace affordable housing units that were lost as a result of the hurricanes and flooding.

To expedite the rebuilding process, HUD suspends Section 105(a) of HCDA and waives 24 CFR 570.207(b)(3) to permit grantees to directly use CDBG funds for new housing construction activities to address damage from the hurricanes. In addition to the flexibility provided by the suspension of the statute, grantees are encouraged to take advantage of the reconstruction provisions at Section 105(a)(4) of HCDA.

Applicability: This suspension and waiver will remain in effect through the end of the 2018 program year for all CDBG grantees in the declared-disaster areas.

4. CDBG – Suspension of Public Services Cap

Requirement: Cap on Public Services Expenditures

Citations: Section 105(a)(8) of the HCDA, 24 CFR 570.201(e)(1) or (2) (Entitlements) and 24 CFR 570.420(b)(3) (Virgin Islands)

Explanation: Section 105(a)(8) and 24 CFR 570.201(e) limit the amount of CDBG funds that may be used to provide public services to 15 percent of the grantee's most recent CDBG grant plus 15 percent of program income received.

Justification: HUD suspends the provision of Section 105(a)(8) of HCDA and waives 24 CFR 570.201(e) and 24 CFR 570.420(b)(3) to permit CDBG grantees to exceed the 15 percent cap on public service expenditures.

The waiver will allow CDBG grantees to pay for additional support services for individuals and families affected by the hurricanes. Anticipated services would include, but not be limited to, the provision of food, emergency shelter, case management and related services to help residents in declared-disaster areas until long-term recovery resources become available. These costs are eligible under the public services provision of Section 105(a)(8) of HCDA and 24 CFR 570.201(e) of the regulations.

Applicability: This suspension and waiver shall be available to CDBG grantees assisting persons and families who have registered with FEMA in connection with Hurricanes Harvey, Irma, or Maria. Grantees will be required to annotate their performance reports in such a way that activities for which waivers have been granted are distinguishable from regular program activities. Also, the grantee will be required to describe each activity in its annual action plan so the activity is clearly distinguishable as a designated disaster recovery activity.

This authority is in effect through the end of the grantee's 2018 program year. If at that time any grantee believes additional time is needed to carry out public service activities over the 15 percent public service cap or its exception percentage pursuant to 24 CFR 570.201(e)(2), then the Department is willing to consider an additional request for suspension of a grantee's public services cap.

5. CDBG – Emergency Grant Payments for up to Six Months

Requirement: Emergency Grant Payments

Citations: 24 CFR 570.207(b)(4) (Entitlements) and 24 CFR 570.420(b)(3) (Virgin Islands)

Explanation: The CDBG regulations at 24 CFR 570.207(b)(4) prohibit income payments, but permit emergency grant payments for three months. "Income payments" means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities. Emergency grant payments made over a period of up to three consecutive months to the providers of such items and services on behalf of an individual or family are eligible public services.

Justification: HUD waives the provisions of 24 CFR 570.207(b)(4) and 24 CFR 570.420(b)(3) to permit emergency grant payments for items such as food, clothing, housing (rent or mortgage), or utilities for up to six consecutive months. While this waiver allows emergency grant payments to be made for up to six consecutive months, the payments must still be made to service providers as opposed to the affected individuals or families.

Many individuals and families have been forced to abandon their homes due to the severe flooding, storm surge, damaging winds and rain associated with Hurricanes Harvey, Irma, and Maria. The waiver will allow CDBG grantees, including grantees providing assistance to evacuees outside the declared-disaster areas, to pay for the basic daily needs of individuals and families affected by the hurricane on an interim basis.

Applicability: This waiver is available to CDBG grantees, located within and outside of the declared-disaster areas, to assist persons and families who have registered with FEMA in connection with Hurricanes Harvey, Irma, or Maria. This authority is in effect through the end of the grantee's 2018 program year.

6. HOME – Relief from Certification Requirements on Use of HOME Funds for Tenant-Based Rental Assistance (TBRA)

Requirement: Certification Related to Use of HOME Funds for (TBRA)

Citations: Section 212(a)(3)(A)(i) of NAHA, 24 CFR 91.225(d)(1) (Local Governments), 24 CFR 91.325(d)(1) (States), 24 CFR 91.425(a)(2)(i) (Consortia), 24 CFR 92.61(c) (Virgin Islands) and 24 CFR 92.209(b) (Certifications)

Explanation: A participating jurisdiction that intends to use HOME funds to provide TBRA is required to certify that the provision of such assistance is an essential part of its consolidated plan.

Justification: This suspension and waiver is required to relieve participating jurisdictions of the administrative burden of determining and certifying needs that are obvious.

Applicability: The suspension of the TBRA certification requirements applies to the participating jurisdiction's FY 2017 and FY 2018 consolidated plan/annual action plans.

7. HOME – Suspension of the 10% Administration and Planning Cap

Requirement: Limitation on the Use of HOME Funds for Administrative Costs

Citations: Section 212(c) of NAHA and 24 CFR 92.207

Explanation: These provisions limit the amount of HOME funds that a participating jurisdiction may use for administrative and planning costs associated with its HOME award. A participating jurisdiction may expend up to 10 percent of its annual HOME allocation, plus any program income received, for administrative and planning costs. These provisions are suspended to enable the participating jurisdiction to expend up to 20 percent of its FY 2016 and FY 2017 allocations and program income received for administrative and planning costs.

Justification: This suspension is required to provide the participating jurisdiction adequate funds to pay for the increased cost of administering HOME-related disaster relief activities, and to relieve the participating jurisdiction of the burden of identifying other general funds to pay these costs.

Applicability: This suspension and waiver apply to the FY 2016 and FY 2017 HOME allocations of State participating jurisdictions and local participating jurisdictions located in declared-disaster areas designated by FEMA for individual assistance and public assistance in all categories A through G.

8. HOME – Self-Certification of Income

Requirement: Source Documentation for Income Determinations for HOME

Citations: 24 CFR 92.203(a)(1) and (2) and 24 CFR 92.64(a) (Virgin Islands)

Explanation: These sections of the HOME regulation require initial income determinations for HOME beneficiaries by examining source documents covering the most recent two months. Many families whose homes were destroyed or damaged by the hurricanes will not have any documentation of income and will not be able to qualify for HOME assistance, if the requirement remains effective.

Justification: This waiver permits the participating jurisdiction to use self-certification of income, as provided in §92.203(a)(1)(ii), in lieu of source documentation to determine eligibility of persons displaced by the hurricanes for HOME assistance.

Applicability: This waiver applies only to families displaced by the disaster (as documented by FEMA registration) whose income documentation was destroyed or made inaccessible by the hurricanes and remains in effect for six months from the date of this memorandum. The participating jurisdiction or, as appropriate, HOME project owner, is required to maintain: 1) a record of FEMA registration to demonstrate that a family was displaced by the hurricanes; and 2) a statement signed by appropriate family members certifying to the family's size and annual income and that the family's income documentation was destroyed or is inaccessible.

9. HOME – Suspension of Various TBRA Program Requirements

Requirement: Tenant-Based Rental Assistance: Subsidy and program requirements

Citations: Section 212(a)(3)(ii) of NAHA; 24 CFR 92.209(c), (e), (h)(1) and (i) and 24 CFR 92.64(a) (Virgin Islands)

Explanation: Section 212(a)(3)(ii) of NAHA requires a participating jurisdiction to establish written tenant selection criteria for TBRA and 24 CFR 92.209(c) of the regulation requires those criteria to be consistent with the local housing needs and priorities established in the participating jurisdiction's consolidated plan.

Section 92.209(e) requires that the term of a HOME TBRA contract made with a landlord begin on the first day of the lease.

Section 92.209(h)(1) limits the subsidy that a participating jurisdiction may pay toward a TBRA recipient's rent to the difference between the participating jurisdiction's rent standard for the unit size and 30 percent of the family's monthly adjusted income.

Section 92.209(i) requires that units occupied by TBRA recipients meet the housing quality standards established in 24 CFR 982.401(j).

Justification: Suspending these provisions will provide the participating jurisdiction with greater flexibility to use tenant-based rental assistance as an emergency housing resource.

Applicability: The suspension of the requirements related to the content of the consolidated plan applies to the FY 2017 and FY 2018 consolidated plan/annual action plans of the participating jurisdiction.

The provision of 24 CFR 92.209(e) relative to the start date of a TBRA contract is waived for TBRA contracts a participating jurisdiction executes for persons or families displaced by the hurricanes for a period of 12 months after the date of this memorandum. The other provisions of 24 CFR 92.209(e) are not waived.

The provision of 24 CFR 92.209(h)(1) with respect to the maximum TBRA subsidy amount a participating jurisdiction may provide is waived for TBRA recipients who were displaced by the hurricanes for a period of 24 months after the date of this memorandum. The other provisions of 24 CFR 92.209(h) are not waived.

The waiver of the housing quality standards requirements at 24 CFR 92.209(i) applies to units leased by TBRA recipients who were displaced by the hurricanes and are being assisted through a HOME TBRA program funded by the participating jurisdiction for a period of 24 months after the date of this memorandum. Units must meet any applicable State and local health and safety codes and requirements. The lead safe housing requirements of 24 CFR part 35, subpart M, made applicable to units leased by recipients of HOME TBRA by the HOME regulation at 24 CFR 92.355, are not waived.

10. HOME – Suspension of Matching Contribution Requirements

Requirement: Match Contributions

Citation: 24 CFR 92.222(b)

Explanation: This provision requires all HOME participating jurisdictions to make contributions through the fiscal year to housing that qualifies as affordable housing under the HOME program. The contributions must total no less than 25 percent of the HOME funds drawn from the participating jurisdiction's HOME Investment Trust Fund Treasury account. Reducing the match requirement for the participating jurisdiction by 100 percent for FY 2017 and FY 2018 will eliminate the need for the participating jurisdiction to identify match for HOME projects related to the damage caused by Hurricane Harvey, Irma, or Maria. The requirement that the participating jurisdiction must submit a copy of the Presidential major disaster-declaration is waived.

Justification: Given the urgent housing needs created by Hurricane Harvey, Irma, and Maria, and the substantial financial impact the participating jurisdiction will face in addressing those needs, the approval of a match reduction will relieve the participating jurisdiction from the need to identify and provide matching contributions to HOME projects.

Applicability: This match reduction applies to funds expended by a participating jurisdiction located in the declared-disaster area from October 1, 2016 through September 30, 2018. For State participating jurisdictions, this match reduction applies to HOME funds expended in the declared-disaster areas.

11. HOME – Suspension and Waiver of CHDO Set-aside

Requirement: Set-aside for Community Housing Development Organizations (CHDOs)

Citations: Section 231 of NAHA and 24 CFR 92.300(a)(1)

Explanation: These provisions establish a set-aside for CHDOs. The participating jurisdiction must use 15 percent of each annual allocation for housing owned, developed, or sponsored by CHDOs.

Justification: This suspension and waiver are required to relieve the participating jurisdiction of requirements that may impede the obligation and use of funds to expeditiously provide housing to displaced persons and repair damaged properties resulting from Hurricane Harvey, Irma, or Maria.

Applicability: This requirement is reduced to zero percent for the FY 2016, FY 2017, and FY 2018 allocations of State participating jurisdictions and of local participating jurisdictions located in declared-disaster areas designated by FEMA for individual assistance and public assistance in all categories A through G.

12. HOME – Waiver of Property Standards for HOME-assisted Units

Requirement: HOME Property Standards for Units Rehabilitated with HOME Assistance

Citations: 24 CFR 92.251 and 24 CFR 92.64(a) (Virgin Islands)

Explanation: This section of the HOME regulation requires that housing assisted with HOME funds meets property standards based on the activity undertaken, i.e., for homebuyer assistance, and state and local standards and codes or model codes for rehabilitation and new construction. Property standard requirements are waived for repair of properties damaged by the hurricanes. Units must meet State and local health and safety codes. The lead housing safety regulations established in 24 CFR Part 35 are not waived.

Justification: This waiver is required to enable the participating jurisdiction to meet the critical housing needs of families whose housing was damaged and families who were displaced by the hurricanes.

Applicability: This waiver applies only to housing units located in the declared-disaster area which were damaged by the disaster and to which HOME funds are committed within two years of the date of this memorandum.

13. HOME – Suspension and Waiver of Maximum Per unit Subsidy Limit

Requirement: Maximum Per Unit Subsidy Limit

Citations: Section 212(e) of NAHA, 24 CFR 92.250(a) and 24 CFR 92.64(a) (Virgin Islands)

Explanation: The total amount of HOME funds that the participating jurisdiction may invest on a per unit basis may not exceed the per unit dollar limitations established under section 221(d)(3) of the National Housing Act (12 U.S.C 17151(d)(3)(ii)) for elevator-type projects that apply to the area in which the housing is located.

Justification: Due to the damage caused by the hurricanes, many housing units may require substantial funding to either complete the renovation or reconstruction. In addition, the costs for new construction of affordable housing will escalate due to the demand for labor and materials. These high or escalating costs may exceed the established maximum per unit subsidy limits for HOME-assisted projects. Suspending the maximum per unit subsidy limit will provide the participating jurisdiction with the needed flexibility to assist affected low-income families.

Applicability: This suspension and waiver applies to projects in the declared-disaster area that receive a commitment of HOME funds within two years of the date of this memorandum. For State participating jurisdictions, this suspension and waiver applies only to projects located in the declared-disaster areas.

14. HOME – Suspension of Owner-Occupied Housing Maximum Value/Sales Price Limitation

Requirement: Homeownership Housing Maximum Value/Sales Price Limitation

Citations: Section 215(b)(1) (NAHA), 24 CFR 92.254(a)(2) and 24 CFR 92.64(a) (U.S. Virgin Islands)

Explanation: This provision requires that the sales price or maximum after-rehabilitation value of HOME-assisted housing not exceed 95 percent of area median sales price.

Justification: This suspension and waiver is necessary to provide the participating jurisdiction with flexibility to assist affected low-income homeowners to repair hurricane damage to their homes and low-income homebuyers to purchase available, standard housing in local market areas.

Applicability: This suspension and waiver applies to: 1) units damaged by the hurricanes that are being rehabilitated or reconstructed with HOME funds; or 2) units being purchased by persons directly affected by the disaster (as evidenced by FEMA registration), to which HOME funds are committed within two years of the date of this memorandum. For State participating jurisdictions, this suspension and waiver applies only to projects located in the declared-disaster areas.

HOPWA Waivers – Specific Instructions

The following instructions are applicable to HOPWA grantees with respect to the grantee notification process, the effect of the waivers, and other guidance:

- If the grantee is using its HOPWA funds in a declared-disaster area, the grantee must only identify the HOPWA requirement(s) set out in this memorandum for which the grantee intends to use waiver flexibility.

- If the grantee is using its HOPWA funds outside of a declared-disaster area to assist affected families who have registered with FEMA, the grantee must explain the need for waiver of the requirement(s), and identify the number of HOPWA beneficiaries and HOPWA-eligible families anticipated to benefit from the waiver of such identified requirement(s). Grantees using HOPWA funds outside of the declared-disaster area may only use waiver flexibility under this memorandum with respect to: (1) Citizen Participation Public Comment Period for Consolidated Plan Amendment; (2) Citizen Participation Reasonable Notice and Opportunity to Comment; and (15) HOPWA – Self-Certification of Income and Credible Information on HIV Status.

All HOPWA regulatory waivers in this memorandum will remain in effect for a period of 12 months from the date that a grantee provides HUD with written notification. The use of waiver flexibility to assist an affected family is only permitted when the family being served expressly needs such flexibility. The waivers are available for HOPWA formula and competitive grantees in accordance with the procedures and specifications set out in this memorandum. HOPWA competitive grantees seeking to use waiver flexibility under this memorandum to assist families affected by Hurricanes Harvey, Irma, or Maria must receive HUD approval in accordance with 24 CFR 574.260 and the terms and conditions of their award regarding grant amendments for changes that will significantly alter the scope, location, service area, or objectives of an activity or the number of eligible persons to be served.

The Department believes the two most effective ways to expeditiously meet the housing needs of impacted HOPWA beneficiaries and HOPWA-eligible families are to: 1) identify and prepare vacant units in existing emergency housing and rental projects for immediate occupancy; and 2) provide tenant-based rental assistance (TBRA) and/or emergency, short-term or transitional housing assistance to impacted HOPWA beneficiaries and HOPWA-eligible families. For low-income persons living with HIV/AIDS and their families, HOPWA resources can be used for these purposes, including use of permanent housing placement assistance to help relocate the family to the new unit.

15. <u>HOPWA – Self-Certification of Income and Credible Information on HIV Status</u>

Requirement: Source Documentation for Income and HIV Status Determinations

Citation: 24 CFR 574.530, Recordkeeping

Explanation: Each grantee must maintain records to document compliance with HOPWA requirements, which includes determining the eligibility of a family to receive HOPWA assistance.

Justification: This waiver will permit HOPWA grantees and project sponsors to rely upon a family member's self-certification of income and credible information on their HIV status (such as knowledge of their HIV-related medical care) in lieu of source documentation to determine eligibility for HOPWA assistance of families affected by the hurricanes.

Many families whose homes have been destroyed or damaged by Hurricanes Harvey, Irma, or Maria will not have immediate access to documentation of income or medical records and, consequently, will not be able to document their eligibility for HOPWA assistance if the requirement remains effective. The grantee or the project sponsor, as appropriate, is required to maintain the family's income self-certification, confidential documentation of HIV status, and documentation of the family's registration with FEMA.

Applicability: Eligibility is restricted to a low-income person who is living with HIV/AIDS and the family of such person. To document eligibility, grantees and project sponsors must make initial family income determinations for beneficiaries, and make use of credible medical records to evidence a positive HIV status of a member of the family, using source documentation. In addition, source documentation of HIV status and income eligibility must be made within six months of the receipt of HOPWA assistance. This waiver applies only to families displaced by the disaster who have registered with FEMA.

16. <u>HOPWA – FMR Rent Standard</u>

Requirement: Rent Standard for Tenant-Based Rental Assistance

Citation: 24 CFR 574.320(a)(2), Rent Standard

Explanation: Grantees must establish rent standards for their tenant-based rental assistance programs based on FMR (Fair Market Rent). Generally, the TBRA payment may not exceed the difference between the rent standard and 30 percent of the family's adjusted income.

Justification: This waiver of the FMR rent standard limit permits HOPWA grantees to establish rent standards, by unit size, that are reasonable and based upon rents being charged for comparable unassisted units in the area, taking into account the location, size, type, quality, amenities, facilities, management and maintenance of each unit. Grantees, however, are required to ensure the reasonableness of rent charged for a unit in accordance with §574.320(a)(3).

This waiver is required to expedite efforts to identify suitable housing units in the declared-disaster area for rent to HOPWA beneficiaries and HOPWA-eligible families that have been affected by the hurricanes, and to provide assistance to families in the declared-disaster area that must rent units at rates that exceed the HOPWA grantee's normal rent standard as calculated in accordance with §574.320(a)(2).

Applicability: Such rent standards are to be used only within the declared-disaster area in calculating the TBRA subsidy for families affected by Hurricanes Harvey, Irma, or Maria.

17. HOPWA – Property Standards for TBRA

Requirement: Property Standards for Tenant-Based Rental Assistance (TBRA)

Citation: 24 CFR 574.310(b), Housing Quality Standards

Explanation: This section of the HOPWA regulations provides that units occupied by recipients of HOPWA TBRA meet the Housing Quality Standards (HQS) established in this section.

Justification: This waiver is required to enable grantees and project sponsors to expeditiously meet the critical housing needs of the many eligible families that have been affected by Hurricanes Harvey, Irma, or Maria in the declared-disaster area.

Applicability: The property standard requirement is waived for units in the declared-disaster area occupied by HOPWA beneficiaries and HOPWA-eligible families. Grantees and their project sponsors must ensure that these units meet HOPWA HQS within 60 days.

HOPWA Program Guidance on Using Vacant Units to House Persons Displaced by Hurricanes Harvey, Irma, or Maria

As a first step toward meeting their housing needs, grantees and project sponsors that are receiving families impacted by Hurricanes Harvey, Irma, or Maria are encouraged to contact owners of federally-assisted rental projects and compile a list of vacant units, along with their location and number of bedrooms (including units supported by HOME, CDBG, HOPWA, CoC, and other Federal housing programs). The assisted rental projects may choose, if otherwise permissible and in accordance with their tenant selection requirements, to adopt a priority for the special population of HOPWA-eligible persons that have been displaced by Hurricanes Harvey, Irma, or Maria.

The recordkeeping waiver flexibility in this memorandum will permit HOPWA grantees and project sponsors to accept self-certification of income and credible information on HIV status from persons affected by Hurricanes Harvey, Irma, or Maria that have registered with FEMA. Grantees or their project sponsors must document the FEMA registration and retain the self-certification. Because eligibility for HOPWA assistance is based on low-income status, many families will not have any income or only qualify for income from federal welfare programs, and this population can be expected to meet the program income eligibility requirements. The grantee or project sponsor must ensure that source documentation of HIV status and income eligibility must be provided within six months of the receipt of HOPWA assistance. For subsequent annual income certifications, families impacted by Hurricanes Harvey, Irma, or Maria will be subject to the same income eligibility requirements as would any other beneficiary of HOPWA assistance.

HOPWA TBRA also involves the use of a lease or occupancy agreement between the owner and tenant, with standard provisions, such as one-year lease terms. In declared-disaster areas it may not be practicable for the term of leases and occupancy agreements to be for at least one year. Accordingly, grantees and project sponsors may wish to consider providing TBRA assistance to impacted HOPWA beneficiaries and HOPWA-eligible families for a period of less than one year if a shorter term would improve their housing opportunities.

18. <u>ESG – Term limits on Rental Assistance and Housing Relocation and Stabilization Services</u>

Requirement: Term limits on Rental Assistance and Housing Relocation and Stabilization Services

Citations: 24 CFR 576.106(a), 576.105(a)(5), and 576.105(b)(2)

Explanation: The ESG regulation at 24 CFR 576.106(a) prohibits a program participant from receiving more than 24 months of ESG rental assistance during any three-year period. Section 576.105(a)(5) prohibits a program participant from receiving more than 24 months of utility payments under ESG during any three-year period. Section 576.105(b)(2) limits the provision of housing stability case management to 30 days while the program participant is seeking permanent housing and 24 months while the program participant is living in permanent housing.

Justification: Waiving the 24 month caps on rental assistance, utility payments, and housing stability case management assistance will assist individuals and families, both those already receiving assistance and those who will receive assistance subsequent to the date of this memorandum, to maintain stable permanent housing in place or in another area and help them return to their hometowns, as desired, when additional permanent housing is available.

Applicability: The 24 month limits on rental assistance and housing relocation and stabilization services are waived for individuals and families who meet both of the following criteria:

1. The individual or family lives in a declared-disaster area or was displaced from a declared-disaster area as a result of the hurricanes and flooding; and
2. The individual or family is currently receiving rental assistance or housing relocation stabilization services or begins receiving rental assistance or housing relocation stabilization services within two years after the date of this memorandum.

For these individuals and families, ESG funds may be used to provide up to three consecutive years of rental assistance, utility payments, and housing stability case management, in addition to the 30 days of housing stability case management that may be provided before the move into permanent housing under 24 CFR 576.105(b)(2). HUD will also consider further waiver requests to allow assistance to be provided for longer than three years, if the recipient demonstrates good cause.

19. ESG – Restriction of rental assistance to units with rent at or below Fair Market Rent (FMR)

Requirement: Restriction of rental assistance to units with rent at or below Fair Market Rent (FMR)

Citation: 24 CFR 576.106(d)(1)

Explanation: Under 24 CFR 576.106(d)(1), rental assistance cannot be provided unless the total rent is equal to or less than the FMR established by HUD, as provided under 24 CFR Part 888, and complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.

Justification: HUD has determined that the rental vacancy rate in affected areas after the floods is extraordinarily low. Waiving the FMR restriction will make more units available to individuals and families in need of permanent housing.

Applicability: The FMR restriction is waived for any rent amount that takes effect during the two-year period beginning on the date of this memorandum for any individual or family who is renting or executes a lease for a unit in a declared-disaster area. However, the affected recipients and their subrecipients must still ensure that the units in which ESG assistance is provided to these individuals and families meet the rent reasonableness standard. HUD will consider requests to waive the FMR restriction for rent amounts that take effect after the two-year period, if a recipient demonstrates good cause.

ADDITIONAL INFORMATION:

Grantees that are assisting CPD program beneficiaries and CPD program-eligible persons and their families displaced by the hurricanes may require additional relief from the CPD program requirements beyond the waivers described in this memorandum. If a grantee identifies such a need, it should contact the CPD Director in the appropriate HUD field office. Contact information for CPD field offices are available at: https://www.hudexchange.info/programs/cpd-field-office-directory/.

CPD Directors in receipt of notification from a grantee intending to use the waiver flexibilities listed in this memorandum should forward the grantee's mail or email notification to the appropriate CPD Headquarters program Office Director, noted below, within 14 days for statutory waiver-reporting purposes.

If you, or any member of your staff, have any questions concerning this memorandum, you may contact the following persons regarding the waivers and suspensions requested peculiar to the program office: regarding the citizen participation and CDBG waivers, Steve Johnson, Director, OBGA Entitlement Communities Division at (202) 708-1577; regarding the HOME waivers, Virginia Sardone, Director, OAHP at (202) 708-2684; regarding the HOPWA waivers, Rita Flegel, Director, OHH at (202) 708-1934; and regarding the ESG waivers, Norm Suchar, Director, SNAPS at (202) 402-5015.

Attachment (s)

Attachment #1 – Disasters and Jurisdictions Covered by this Memorandum

- **Hurricane Harvey,** the subject of major disaster declaration (FEMA-DR-4322) made on August 25, 2017, that affected multiple counties in **the State of Texas**;

- **Hurricane Irma**, the subject of a major disaster declaration (FEMA-DR-4335) made on September 7, 2017, for the **U.S. Virgin Islands**, major disaster declarations (FEMA-DR-4336 and FEMA-DR-4337) made on September 10, 2017, for the **Commonwealth of Puerto Rico** and **the state of Florida**, respectively, a major disaster declaration (FEMA-DR-4338) made on September 15, 2017, for **the State of Georgia**; and

- **Hurricane Maria**, the subject of major disaster declarations (FEMA-DR-4339 and FEMA-DR-4340) made on September 20, 2017, for **the Commonwealth of Puerto Rico and the U.S. Virgin Islands**.

Attachment #2 to Memorandum:
Availability of Waivers of CPD Grant Program and Consolidated Plan Requirements to Facilitate Recovery from Hurricanes Harvey, Irma, and Maria

This attachment provides further information on the process that CPD grantees should be instructed to follow to access waiver flexibility of CPD statutory and regulatory requirements addressed in the memorandum.

Grantees must send mail or email notification to the Community Planning and Development Director of the HUD Field Office serving the grantee.

The mail or email notification must be sent **three days** before the grantee anticipates using waiver flexibility, and include the following details:

- Requestor's name, title, and contact information;
- Declared-disaster area(s) where the waivers will be used;
- Date on which the grantee anticipates first use of the waiver flexibility; and
- A list of the waiver flexibilities the grantee will use:
    1. Citizen Participation Public Comment Period for Consolidated Plan Amendment
    2. Citizen Participation Reasonable Notice and Opportunity to Comment
    3. CDBG – New Housing Construction
    4. CDBG – Suspension of Public Services Cap
    5. CDBG – Emergency Grant Payments for up to Six Months
    6. HOME – Relief from Certification Requirements on Use of HOME Funds for TBRA
    7. HOME – Suspension of the 10% Administration and Planning Cap
    8. HOME – Self-Certification of Income
    9. HOME – Suspension of Various TBRA Program Requirements
    10. HOME – Suspension of Matching Contribution Requirements
    11. HOME – Suspension and Waiver of CHDO Set-aside
    12. HOME – Waiver of Property Standards for HOME-assisted Units
    13. HOME – Suspension and Waiver of Maximum Per unit Subsidy Limit
    14. HOME – Suspension of Owner-Occupied Housing Maximum Value/Sales Price Limitation
    15. HOPWA – Self-Certification of Income and Credible Information on HIV Status
    16. HOPWA – FMR Rent Standard
    17. HOPWA – Property Standards for TBRA
    18. ESG – Term limits on Rental Assistance and Housing Relocation and Stabilization Services
    19. ESG – Restriction of rental assistance to units with rent at or below Fair Market Rent (FMR)

Additional requirements for HOPWA grantees that are NOT using funds in a declared-disaster area:

HOPWA grantees using funds outside of the declared-disaster area may request waiver flexibility for (1) Citizen Participation Public Comment Period for Consolidated Plan Amendment, (2) Citizen Participation Reasonable Notice and Opportunity to Comment and (15) HOPWA – Self-Certification of Income and Credible Information on HIV Status to serve affected eligible families who have registered with the Federal Emergency Management Agency (FEMA). The grantee must provide notification to the CPD Field Office Director, including all the details listed above. Grantees using funds outside of a declared-disaster area must also explain the need for waiver of the requirement(s) indicated, and identify the number of HOPWA beneficiaries and HOPWA-eligible families anticipated to benefit from the waiver of the requirement(s).