



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

**MEMORANDUM FOR:** State of Louisiana 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:** Reimbursement Extension and One-for-One Replacement Waiver and Alternative Requirement (State of Louisiana only)

**APPLICABILITY DATE:** July 3, 2023

**PURPOSE:**

This waiver and alternative requirement memorandum governs Community Development Block Grant disaster recovery (CDBG-DR) funds allocated to the State of Louisiana 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 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 authorize 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. 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. This memorandum modifies the requirements for the CDBG-DR funds awarded to the States of Louisiana under the Appropriations Acts by adding a new waiver and alternative requirement.

## **REIMBURSEMENT EXTENSION WAIVER (STATE OF LOUISIANA):**

### **Background**

In paragraph III.F.5 of the Consolidated Notice, HUD permits grantees to charge to grants the pre-award and pre-application costs of homeowners, renters, businesses, and other qualifying entities for eligible costs these applicants have incurred in response to an eligible disaster covered under a grantee’s applicable Allocation Announcement Notice. For purposes of the Consolidated Notice, pre-application costs are costs incurred by an applicant to CDBG-DR funded programs before the time of application to a grantee or subrecipient, which may be before (pre-award) or after the grantee signs its CDBG-DR grant agreement.

In addition to other requirements, paragraph III.F.5 stipulates that grantees may charge the eligible pre-application costs to the grant only if (1) the person or private entity incurred the expenses within one year after the applicability date of the grantee’s Allocation Announcement Notice (or within one year after the date of the disaster, whichever is later); and (2) the person or entity pays for the cost before the date on which the person or entity applies for CDBG-DR assistance.

Congress may enact multiple supplemental appropriations of CDBG-DR funds for disasters occurring in the same year and HUD may then publish multiple notices announcing CDBG-DR

grants for the same disaster. In this circumstance, grantees may find it difficult to track expenses incurred within one year after the applicability date of the grantee's Allocation Announcement Notice, given that funds for disasters occurring in 2020 and 2021 are announced in different notices. To avoid confusion and to apply a uniform time frame to reimbursement of all pre-application costs for 2020 and 2021 disasters, the January 2023 Notice clarifies that grantees shall comply with the following alternative: The person or private entity incurred the expenses within one year after the applicability date of the notice (either the February 2022 Notice or the May 2022 Notice) that announced the *initial* allocation of CDBG-DR funds (or within one year after the date of the disaster, whichever is later). Because the state received awards in both the February 2022 Notice and the May 2022 Notice, the last date that an applicant could incur reimbursable pre-application costs would be February 8, 2023, or the date of application to the state for assistance, whichever is earlier. Costs incurred by an applicant after the date of application are not "pre-application" costs, and therefore are not the subject of the following modified alternative requirement. Costs incurred by an applicant after submitting an application may only be reimbursed after satisfying all environmental review requirements in 24 CFR part 58 and in accordance with other applicable grant requirements.

The Department received a request and justification from the State of Louisiana to extend the February 8, 2023 deadline to December 31, 2023, for eligible pre-application costs. In the waiver request, the state describes the complex operational components of its reimbursement program, including the different phases for applications. The state's reimbursement program will prioritize assistance to elderly, disabled, and low-and moderate-income households. However, the phased approach means that some individuals will not be able to apply for assistance until later in the process. Even with the state's aggressive launch and implementation of its reimbursement program, the state does not anticipate concluding the application process until December 31, 2023, and requests this additional flexibility.

#### Reimbursement Extension Modified Alternative Requirement (State of Louisiana only)

After reviewing the grantee's request and based on the good cause provided above, the Department finds there is good cause to modify the alternative requirement in paragraph IV.B.1. of the January 2023 notice to change the February 8, 2023 deadline to December 31, 2023, for all funds provided to Louisiana under the Appropriations Acts. For the State of Louisiana *only*, the last date that persons or private entities could incur otherwise allowable, reimbursable disaster related costs is December 31, 2023, or the date of application to the state for assistance, whichever is earlier. For any applicant that submits an application to the state prior to the reimbursement deadline of December 31, 2023, the eligible period to incur reimbursable costs would be from the date of the initial disaster to the date of the application. When reimbursing eligible pre-award and pre-application costs of homeowners, renters, businesses, and other qualifying entities, the state is reminded to follow all requirements described in paragraph III.F.5 of the Consolidated Notice.

In addition, until this alternative requirement is applicable, the grantee cannot reimburse pre-application costs incurred between February 8, 2023 and the applicability date of this Memo. However, after it is effective, this alternative requirement permits the grantee to reimburse allowable pre-award and pre-application costs between February 9, 2023 and the applicability

date of this memo to the extent that they comply with the other requirements in paragraph III.F.5 of the Consolidated Notice.

## **ONE-FOR-ONE REPLACEMENT HOUSING REQUIREMENTS FOR THE CDBG-DR MITIGATION SET-ASIDE (STATE OF LOUISIANA):**

### **Background**

The Department received a request and justification from the State of Louisiana to waive the one-for-one replacement requirements in section 104(d)(2)(A)(i) and (ii) and 104(d)(3) of the Housing and Community Development Act of 1974 (HCDA) and 24 CFR 42.375 for the grantee's CDBG-DR mitigation set-aside only.

Additionally, the Appropriations Acts require HUD to include in any allocation of CDBG-DR funds for unmet needs an additional amount of 15 percent for mitigation activities (the "CDBG-DR mitigation set-aside"). For the purposes of grants under the Appropriations Acts, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impacts of future disasters. This waiver and alternative requirement modifies the requirements for the CDBG-DR mitigation set-aside awarded to the grantee under the Appropriations Acts for disasters occurring in 2020 and 2021.

The grantee intends to buyout high-risk properties located in the floodway and move these households to lower risk areas. The grantee has identified more than 1,800 properties in the floodway that are also located in the most impacted and distressed areas for disasters occurring in 2020 and 2021. To maximize participation in the buyout program, the grantee is requesting a waiver and alternative requirement to the one-for-one replacement requirements in section 104(d)(2)(A)(i) and (ii) and 104(d)(3) of the HCDA and 24 CFR 42.375 for the CDBG-DR mitigation set-aside allocations in the February 2022 Notice, the May 2022 Notice, and the January 2023 Notice.

Section IV.F.1. of the Consolidated Notice waives the one-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and 104(d)(3) of the HCDA and 24 CFR 42.375 for owner-occupied lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The section 104(d) one-for-one replacement housing requirements apply to occupied and vacant occupiable lower-income dwelling units demolished or converted in connection with a CDBG assisted activity. This waiver expands the waiver provisions of section IV.F.1. of the Consolidated Notice to exempt all owner-occupied lower-income dwelling units funded under the relevant CDBG-DR mitigation set aside for the State of Louisiana that meet the grantee's definition of "not suitable for rehabilitation" from the one-for-one replacement housing requirements of 24 CFR 42.375.

The Department recognizes that the purposes of the CDBG-DR mitigation set-aside grants are different than CDBG-DR funds. The purpose of the CDBG-DR mitigation set-aside can be forward looking and does not have to address recovery needs from the qualified disaster. Instead, the CDBG-DR mitigation set-aside funds can be used to address current and future risks to lessen the impact of future disasters. With that purpose in mind, the grantee is not required to

demonstrate that its CDBG-DR mitigation set-aside activities “tieback” to the specific disaster and address a specific unmet recovery need for which funds were allocated. The grantee may be undertaking activities that remove housing units that are not damaged by a previous disaster but still constitute as an eligible use of CDBG-DR mitigation set-aside, because those activities must meet the requirement that they are moving people or property out of harm’s way or otherwise lessening the impact of future disasters on residents of those units.

The grantee is required to document how all activities funded by its CDBG-DR mitigation set-aside will meet the definition of mitigation activities, which as stated in the February 2022 Notice, the May 2022 Notice, and January 2023 Notice means those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters. The grantee is prohibited from funding activities with the CDBG-DR mitigation set-aside that fail to meet the definition of mitigation. Based on the goals and requirements of the CDBG-DR mitigation set-aside and articulated in the February 2022 Notice, May 2022 Notice, and January 2023 Notice, the Department finds there is good cause to waive the one-for-one replacement requirements for the grantee’s CDBG-DR mitigation set-aside only.

One-for-One Replacement Waiver and Alternative Requirement (State of Louisiana only):

After reviewing the grantee’s request and based on the good cause provided herein, the Department finds there is good cause to waive the one-for-one replacement requirements in 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 for the grantee’s CDBG-DR mitigation set-aside only. Accordingly, HUD establishes the following waiver and alternative requirement for the grantee’s CDBG-DR mitigation set-aside funds. This waiver and alternative requirement will not apply retroactively and will only apply to the eligible CDBG-DR mitigation set-aside activities identified in the February 2022 Notice, the May 2022 Notice, and January 2023 Notice, as of the applicability date of this memo.

One-for-one replacement housing requirements at section 104(d)(2)(A)(i) and (ii) and 104(d)(3) of the HCDA and 24 CFR 42.375 are waived for all demolished or converted lower income dwelling units that are eligible through the CDBG-DR mitigation set-aside 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 activities funded by the CDBG-DR mitigation set-aside may be removing housing units that are not damaged by the qualified disaster but still are necessary to address mitigation risk.

Before carrying out activities under the CDBG-DR mitigation set-aside 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-DR mitigation set-aside 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 the grantee is using the CDBG-DR mitigation set-aside for mitigation needs based on a mitigation needs assessment. The mitigation needs

assessment 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-DR mitigation set-aside.

Even when using the CDBG-DR mitigation set-aside, the grantee must reassess post-disaster population and housing needs relative to the mitigation needs assessment to determine the appropriate type and amount of lower-income dwelling units to rehabilitate or reconstruct. The grantee must include this analysis in its program files with a description of how the CDBG-DR mitigation set-aside funds or other sources, including CDBG-DR funds, will be used to address housing and mitigation needs for residents of lower-income dwelling units. The grantee should note that the demolition and/or disposition of public housing units continue to be subject to section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

### **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](mailto:Disaster_Recovery@hud.gov).