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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6012-N-01]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice allocates \$1,805,976,000 in Community Development Block Grant disaster recovery (CDBG-DR) funds appropriated by the Further Continuing and Security Assistance Appropriations Act, 2017 for the purpose of assisting long-term recovery in Florida, Louisiana, North Carolina, South Carolina, Texas, and West Virginia. This allocation of CDBG-DR supplements funds appropriated by the Continuing Appropriation Act, 2017. It provided \$500 million in CDBG-DR funding that has been allocated to Louisiana, Texas, and West Virginia in response to qualifying disasters. In HUD's Federal Register notice published on November 21, 2016, at 81 FR 83254 (the Prior Notice), HUD described that allocation and applicable waivers and alternative requirements, relevant statutory and regulatory requirements, the grant award process, criteria for action plan approval, and eligible disaster recovery activities. Grantees receiving an allocation of funds under this notice are subject to the requirements of the Prior Notice, including provisions of the Prior Notice amended herein.

DATES: Effective Date: **[Insert date five days after date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech

impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to: disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

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I. Allocations

Section 101 of the Further Continuing and Security Assistance Appropriations Act, 2017 (division A of P. L. 114-254, approved December 10, 2016) amended the Continuing Appropriations Act, 2017 (division C of P. L. 114-223) by adding a new section 192 that makes available \$1,808,976,000 in Community Development Block Grant (CDBG) funds 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.*) related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared in 2016 and occurring prior to December 10, 2016.

Qualifying major disasters are declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (Stafford Act). The following allocations of funds appropriated by section 192 are in addition to the \$500 million appropriated by section 145(a) and allocated in the Prior Notice. Section 192 specifies that these additional funds are subject to the same authority and conditions as those in section 145(a), except the major disaster must have occurred prior to December 10, 2016.

Section 145(a) provides that grants shall be awarded directly to a State or unit of general local government at the discretion of the Secretary. The Secretary has elected to award funds only to States in this notice. Unless noted otherwise, the term “grantee” refers to the State receiving an award from HUD under this notice. To comply with the statutory requirement that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD allocates funds using the best available data that cover all of the eligible affected areas.

Section 192(b) permits HUD to use up to \$3,000,000 of the appropriated amount for necessary costs, including information technology costs, of administering and overseeing the obligation and expenditure of amounts made available by sections 145(a) and 192. The Department is deducting the full \$3,000,000, resulting in a total of \$1,805,976,000 available for allocation.

Based on further review of the impacts from the eligible disasters, and estimates of unmet need, HUD is making the following allocations:

TABLE 1—ALLOCATIONS UNDER PUBLIC LAW 114-245

Disaster No.	Grantee	Allocation	Minimum amount that must be expended for recovery in the HUD-identified “most impacted and distressed” areas
4263, 4277	State of Louisiana	\$1,219,172,000	(\$975,337,600) East Baton Rouge, Livingston, Ascension, Tangipahoa, Ouachita, Lafayette, Lafayette, Vermilion, Acadia, Washington, and St. Tammany Parishes
4266, 4269, 4272	State of Texas	\$177,064,000	(\$141,651,200) Harris, Newton, Montgomery, Fort Bend, and Brazoria Counties
4273	State of West Virginia	\$87,280,000	(\$69,824,000) Kanawha and Greenbrier Counties
4285	State of North Carolina	\$198,553,000	(\$158,842,400) Robeson, Cumberland, Edgecombe, and Wayne Counties
4286	State of South Carolina	\$65,305,000	(\$52,244,000) Marion County
4280, 4283	State of Florida	\$58,602,000	(\$46,881,600) St. Johns County
TOTAL		\$1,805,976,000	

Use of funds for all grantees is limited to unmet recovery needs from the major disasters identified in Table 1. Please note that in addition to the FEMA disaster numbers listed in the Prior Notice for the State of Texas, the State may also expend its allocation of funds from the Prior Notice on FEMA disaster number DR-4272.

Table 1 also shows the HUD-identified “most impacted and distressed” areas impacted by the disasters. At least 80 percent of the total funds provided to each State under this notice must address unmet needs within the HUD-identified “most impacted and distressed” areas, as identified in the last column in Table 1. For grantees that received an allocation under the Prior

Notice, 80 percent of both allocations may be used to address unmet needs within the HUD-identified “most impacted and distressed” areas that are identified in Table 1 of this notice.

Grantees may determine where the remaining 20 percent may be spent by identifying areas it determines to be “most impacted and distressed.” A detailed explanation of HUD’s allocation methodology is provided at Appendix A.

II. Use of Funds

Funds allocated under this notice and funds allocated pursuant to the Prior Notice are subject to the requirements of the Prior Notice, including the provisions of the Prior Notice as amended herein. As a reminder, section 145(a) requires that prior to the obligation of CDBG-DR funds, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds, including criteria for eligibility, and how the use of these funds will address long-term recovery and restoration of infrastructure and housing and economic revitalization in the most impacted and distressed areas. This action plan for disaster recovery must describe uses and activities that: (1) are authorized under title I of the Housing and Community Development Act of 1974 (HCD Act) or allowed by a waiver or alternative requirement (see section IV., below); and (2) respond to disaster-related impact to infrastructure, housing, and economic revitalization in the most impacted and distressed areas. To inform the plan, grantees must conduct an assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities, pursuant to paragraph A.2.a. in section VI of the Prior Notice, as amended in this notice.

Pursuant to the Prior Notice, each grantee is required to expend 100 percent of its allocation of CDBG-DR funds on eligible activities within 6 years of HUD’s execution of the grant agreement.

III. Overview of Grant Process

To begin expenditure of CDBG-DR funds, grantees must complete the expedited steps outlined in Section V. Overview of Grant Process in the Prior Notice. As stated below at paragraph IV.1.a, the deadlines established by the Prior Notice are now determined by the effective date of this notice.

IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice describes rules, statutes, waivers, and alternative requirements that apply to grantees receiving an allocation under this notice. All funds allocated by the Prior Notice and this notice are subject to the requirements of the Prior Notice, including provisions of the Prior Notice as amended herein. Further, the Secretary has determined that good cause exists for each waiver and alternative requirement established in the Prior Notice and that the waivers and alternative requirements are not inconsistent with the overall purpose of the HCD Act. The Secretary's determination extends to each waiver or alternative requirement amended by this notice.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Except where noted, waivers and alternative requirements described below apply to all grantees under this notice. Waivers and alternative requirements are effective five days after they are published in the Federal Register.

1. Incorporation of waivers, alternative requirements, and statutory changes previously described. The waivers and alternative requirements provided in the Prior Notice apply to the awards under this notice, except as modified herein. These waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift

recovery following the disasters, while also ensuring that statutory requirements are met. The requirements of the Prior Notice and this notice apply only to the CDBG-DR funds appropriated in sections 145(a) and 192.

The following clarifications or modifications apply to grantees in receipt of an allocation under this notice and to funds allocated under the Prior Notice:

- a. All deadlines for the submission of the Secretary's certification, risk analysis, or the action plan referenced in the Prior Notice are now determined by the effective date of this notice. This means that the deadlines established by the Prior Notice for the submission of the Secretary's certification, risk analysis and action plan, as well as other deadlines, are extended to deadlines established by this notice. This allows grantees receiving an allocation of funds under both the Prior Notice and this notice to submit a single action plan and other documents governing both allocations.
- b. Paragraph VI.A.2.a.6 of the Prior Notice at 81 FR 83258 is amended by revising the action plan requirement to identify a maximum amount of assistance available to beneficiaries under each program. In addition to the requirement described in the Prior Notice, for any residential rehabilitation or reconstruction program, grantees must establish a process by which it assesses the cost effectiveness of each rehabilitation or reconstruction project undertaken to assist a household. The requirement is amended by adding the following:

“A description of the maximum amount of assistance available to a beneficiary under each of the grantee's disaster recovery programs. Additionally, for any residential rehabilitation or reconstruction program funded under this notice, each grantee must have policies and procedures to assess the cost effectiveness of each

proposed project undertaken to assist a household, including criteria for determining when the cost of the rehabilitation or reconstruction of the unit will not be cost-effective relative to other means of assisting the property-owner, including through buyout or acquisition of the property, or the construction of area-wide protective infrastructure, rather than individual building mitigation solutions designed to protect individual structures. For example, as the grantee is designing its program, it might choose as comparison criteria the rehabilitation costs derived from the RS Means Residential Cost Data and costs to buyout or acquire the property as a means of determining whether or not to fund a rehabilitation project

A grantee may find it necessary to provide exceptions on a case-by-case basis to the maximum amount of assistance or cost effectiveness criteria and must describe the process it will use to make such exceptions in its policies and procedures. Each grantee must adopt policies and procedures that communicate how it will analyze the circumstances under which an exception is needed and how it will demonstrate that the amount of assistance is necessary and reasonable. All CDBG-DR expenditures remain subject to the cost principles in 2 CFR part 200, including the requirement that costs be necessary and reasonable for the performance of the grantee's CDBG-DR grant.”

- c. Paragraph VI.A.2.a.7 of the Prior Notice at 81 FR 83258 is amended by rewriting and clarifying the action plan requirements for the descriptions of long-term recovery and hazard mitigation planning and addressing specific predevelopment principles as outlined in the Federal Resource Guide for Infrastructure Planning and Design, as follows:

“A description of how the grantee plans to:

- (a) Promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account continued sea level rise, if applicable. This information should be based on the history of FEMA flood mitigation efforts, and take into account projected increase in sea level (if applicable) and frequency and intensity of precipitation events, which are not considered in current FEMA maps and National Flood Insurance Program premiums;
- (b) Adhere to the advanced elevation requirements established in paragraph B. of section VI of the Prior Notice;
- (c) Coordinate with local and regional planning efforts to ensure consistency, including how the grantee will promote community-level and/or regional (e.g., multiple local jurisdictions) post-disaster recovery and mitigation planning;
- (d) For infrastructure allocations, the grantee must also describe:
 - i. How mitigation measures will be integrated into rebuilding activities and the extent to which infrastructure activities funded through this grant will achieve objectives outlined in regionally or locally established plans and policies that are designed to reduce future risk to the jurisdiction;
 - ii. How infrastructure activities will be informed by a consideration of the costs and benefits of the project;
 - iii. How the State will seek to ensure that infrastructure activities will avoid disproportionate impact on vulnerable communities and create opportunities to address economic inequities facing local communities;

- iv. How the State align investments with other planned state or local capital improvements and infrastructure development efforts, and will work to foster the potential for additional infrastructure funding from multiple sources, including existing state and local capital improvement projects in planning, and the potential for private investment; and
- v. The extent to which the State will employ adaptable and reliable technologies to guard against premature obsolescence of infrastructure.

Additional guidance on predevelopment principles are described in the Federal Resource Guide for Infrastructure Planning and Design:

(<http://portal.hud.gov/hudportal/documents/huddoc?id=BAInfraResGuideMay2015.pdf>)

The action plan must also provide for the use of CDBG-DR funds to develop a disaster recovery and response plan that addresses long-term recovery and pre- and post-disaster hazard mitigation, if one does not currently exist.

V. Duration of Funding

Section 192 directs that these funds be available until expended. However, consistent with OMB Circular A-11, if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for two consecutive fiscal years, any remaining unobligated balance will be made unavailable for obligation or expenditure.

VI. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218; 14.228.

VII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Dated: January 9, 2017

Nani A. Coloretti,
Deputy Secretary

[FR-6012-N-01]

Appendix A—Allocation of CDBG–DR Funds to Most Impacted and Distressed Areas due to 2016 Federally Declared Disasters thru December 10, 2016

Background

Section 145(a) of Division C of the Continuing Appropriations Act, 2017 (P. L. 114-223, Division C), enacted on September 29, 2016, appropriated \$500,000,000 through the Community

Development Block Grant disaster recovery (CDBG-DR) program for necessary expenses for authorized activities related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared in 2016 but prior to September 29, 2016.

Section 145(a) of P. L. 114-223, Division C stated:

SEC. 145. (a) In addition to the amount otherwise provided by section 101 for the “Community Planning and Development, Community Development Fund,” there is appropriated \$500,000,000 for an additional amount for fiscal year 2016, to remain available until expended, 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.) related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared in 2016, and which the disaster occurred prior to the date of enactment of this Act, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.): Provided, That funds shall be awarded directly to the State or unit of general local government at the discretion of the Secretary: ...

Subsequently, section 101 of the Further Continuing and Security Assistance Appropriations Act, 2017 (division A of P. L. 114-254, approved December 10, 2016) (Appropriations Act) amended the Continuing Appropriations Act, 2017 (division C of Public Law 114-223) by adding a new section 192. Section 192(a) appropriates \$1,808,976,000 in CDBG-DR funding for the same purposes, authorities and conditions as section 145(a) for major disasters declared in 2016 but prior to December 10, 2016. Section 192(b) authorizes HUD to deduct \$3,000,000 from this amount for the cost of administering both appropriations, resulting in a total of \$1,805,976,000 available for allocation.

Combined, the two appropriations make \$2,305,976,000 available for allocation, effectively matching HUD’s November 2016 estimate for serious unmet repair or replacement needs.

Most impacted and distressed areas

As with prior CDBG-DR appropriations, HUD is not obligated to allocate section 192 funds for all major disasters declared in 2016 but prior to December 10, 2016. Relying on the language of section 145(a), HUD is directed to use the funds “in the most impacted and distressed areas.” HUD has implemented this directive by limiting CDBG-DR formula allocations to jurisdictions with major disasters that meet three standards:

- (1) Individual Assistance/IHP designation. HUD has limited allocations to those disasters where FEMA had determined the damage was sufficient to declare the disaster as eligible to receive Individual and Households Program (IHP) funding. President Obama signed P.L. 114-254 into law on December 10, 2016, and 45 disasters had received major declarations in calendar year 2016 by that date. Only 17 of 45 disasters that were declared in 2016 have an IHP designation.

- (2) Concentrated damage. HUD has limited the allocations to counties with high levels of damage. For this allocation, HUD is using the amount of serious unmet housing need as its measure of concentrated damage and limits the data used for the allocation only to counties exceeding a “natural break” in the data for their total amount of serious unmet housing needs. For purposes of this allocation, the serious unmet housing needs break at the county level occurs at \$13 million. Serious unmet housing needs are calculated as the additional cost to repair the most damaged homes after subtracting out insurance, FEMA, and SBA assistance.
- (3) Natural break. Among disasters with data meeting the first two thresholds, HUD identifies a natural break in calculated serious unmet recovery needs and funds only the jurisdictions that have substantially higher unmet needs than other jurisdictions. The jurisdictions clearing this threshold as a result of major disasters declared since January 1, 2016 now includes Florida, North Carolina, and South Carolina as a result of Hurricane Hermine or Hurricane Matthew, as well as Louisiana, Texas, and West Virginia which were qualified for funds appropriated by section 145(a) as a result of major disasters declared prior to September 29, 2016.

These allocations are thus based on the unmet costs to repair seriously damaged properties and infrastructure in the counties with more than \$13 million of serious unmet housing needs. These do not capture expected resiliency costs, although grantees may choose to use the CDBG funds for resiliency expenses. The estimated damage is based on the following factors:

- (1) Seriously damaged owner occupied units without insurance repair estimate in Most Impacted Counties after FEMA, Insurance, and SBA;
- (2) Seriously damaged rental units occupied by renters with income less than \$20,000 repair estimate in Most Impacted Counties after FEMA, Insurance, and SBA;
- (3) Small businesses denied by SBA repair estimate; and
- (4) The state match requirement to address the FEMA estimates for repair of permanent infrastructure in the FEMA Public Assistance program (categories C to G).

Methods for estimating unmet needs for housing

The data HUD staff have identified as being available to calculate unmet needs for qualifying disasters come from the FEMA Individual Assistance program data on housing-unit damage as of December 9, 2016.

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA’s Individual Assistance program. HUD calculates “unmet housing needs” as the number of housing units with unmet

needs times the estimated cost to repair those units less repair funds already provided by FEMA, where:

Each of the FEMA inspected owner units are categorized by HUD into one of five categories:

- Minor-Low: Less than \$3,000 of FEMA inspected real property damage
- Minor-High: \$3,000 to \$7,999 of FEMA inspected real property damage
- Major-Low: \$8,000 to \$14,999 of FEMA inspected real property damage
- Major-High: \$15,000 to \$28,800 of FEMA inspected real property damage and/or 4 to 6 feet of flooding on the first floor.
- Severe: Greater than \$28,800 of FEMA inspected real property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

To meet the statutory requirement of “most impacted” in this legislative language, homes are determined to have a high level of damage if they have damage of “major-low” or higher. That is, they have a real property FEMA inspected damage of \$8,000 or flooding over 1 foot. Furthermore, a homeowner is determined to have unmet needs if they reported damage and no insurance to cover that damage.

FEMA does not inspect rental units for real property damage so personal property damage is used as a proxy for unit damage. Each of the FEMA inspected renter units are categorized by HUD into one of five categories:

- Minor-Low: Less than \$1,000 of FEMA inspected personal property damage
- Minor-High: \$1,000 to \$1,999 of FEMA inspected personal property damage
- Major-Low: \$2,000 to \$3,499 of FEMA inspected personal property damage
- Major-High: \$3,500 to \$7,499 of FEMA inspected personal property damage or 4 to 6 feet of flooding on the first floor.
- Severe: Greater than \$7,500 of FEMA inspected personal property damage or determined destroyed and/or 6 or more feet of flooding on the first floor.

For rental properties, to meet the statutory requirement of “most impacted” in this legislative language, homes are determined to have a high level of damage if they have damage of “major-low” or higher. That is, they have a FEMA personal property damage assessment of \$2,000 or greater or flooding over 1 foot. Furthermore, landlords are presumed to have adequate insurance coverage unless the unit is occupied by a renter with income of \$20,000 or less. Units are

occupied by a tenant with income less than \$20,000 are used to calculate likely unmet needs for affordable rental housing.

The average cost to fully repair a home for a specific disaster to code within each of the damage categories noted above is calculated using the average real property damage repair costs determined by the Small Business Administration for its disaster loan program for the subset of homes inspected by both SBA and FEMA for 2011 to 2013 disasters. Because SBA is inspecting for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally more than the FEMA estimates on the cost to make the home habitable. For each household determined to have unmet housing needs (as described above), their estimated average unmet housing need less assumed assistance from FEMA, SBA, and insurance was calculated at \$27,455 for major damage (low); \$45,688 for major damage (high); and \$59,493 for severe damage.

Methods for estimating unmet infrastructure needs

To best proxy unmet infrastructure needs, HUD uses data from FEMA's Public Assistance program on the expected State match requirement (usually 25 percent of the estimated public assistance needs, it is 10 percent for DR-4277 in Louisiana). This allocation uses only a subset of the Public Assistance damage estimates reflecting the categories of activities most likely to require CDBG funding above the Public Assistance and State match requirement. Those activities are categories: C, Roads and Bridges; D, Water Control Facilities; E, Public Buildings; F, Public Utilities; and G, Recreational—Other. Categories A (Debris Removal) and B (Protective Measures) are largely expended immediately after a disaster and reflect interim recovery measures rather than the long-term recovery measures for which CDBG funds are generally used.

Methods for estimating unmet economic revitalization needs

Based on SBA disaster loans to businesses, HUD calculates the median real estate and content loss by the following damage categories for each state:

- Category 1: real estate + content loss = below 12,000
- Category 2: real estate + content loss = 12,000–30,000
- Category 3: real estate + content loss = 30,000–65,000
- Category 4: real estate + content loss = 65,000–150,000
- Category 5: real estate + content loss = above 150,000

For properties with real estate and content loss of \$30,000 or more, HUD calculates the estimated amount of unmet needs for small businesses by multiplying the median damage estimates for the categories above by the number of small businesses denied an SBA loan, including those denied a loan prior to inspection due to inadequate credit or income (or a

decision had not been made), under the assumption that damage among those denied at pre-inspection have the same distribution of damage as those denied after inspection.

Allocation Calculation

Once eligible entities are identified using the above criteria, the allocation to individual grantees represents their proportional share of the estimated unmet needs. For the formula allocation, HUD calculates total serious unmet recovery needs as the aggregate of:

- Serious unmet housing needs in most impacted counties.
- Serious unmet business needs
- The estimated local match requirement for the repair of infrastructure estimated for FEMA's Public Assistance program.

Natural break for most impacted disasters. HUD limits funded disasters to those with that have substantially higher unmet needs than other jurisdictions. Florida, Louisiana, North Carolina, South Carolina, Texas, and West Virginia each have aggregate unmet needs in excess of \$50,000,000, an amount that is higher than other jurisdictions affected by major disasters declared between January 1 and December 10, 2016.

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