



[Docket No. FR-6412-N-01]

Waivers and Alternative Requirements for Community Development Block Grant Disaster Recovery (CDBG-DR) and Community Development Block Grant National Disaster Resilience (CDBG-NDR) Grantees

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

ACTION: Notice.

SUMMARY: This notice governs Community Development Block Grant disaster recovery (CDBG-DR) and Community Development Block Grant National Disaster Resilience (CDBG-NDR) funds awarded under several appropriations acts identified in the Table of Contents.

Specifically, this notice provides waivers and establishes alternative requirements for certain CDBG-DR and CDBG-NDR grantees that have submitted requests for waivers and alternative requirements for grants provided under the public laws cited in this notice.

DATES: Applicability Date: **[INSERT DATE FIVE DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Tennille 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 (this is not a toll-free number).

HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or 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>. Email inquiries may be sent to disaster_recovery@hud.gov.

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I. Authority to Grant Waivers

Each of the appropriations acts cited in the Table of Contents 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 grant 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.

All waivers and alternative requirements authorized in this notice are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCDA). The good cause for each waiver and alternative requirement is summarized in this notice.

II. Public Law 113-2 Waivers and Alternative Requirements

II.A. Isle de Jean Charles Waiver and Alternative Requirement for Eligibility and National Objective Compliance and Use of Program Income (State of Louisiana only).

The *Federal Register* notice published on June 7, 2016 (81 FR 36557) announced the allocation of approximately \$1 billion of CDBG-NDR funds appropriated pursuant to Public Law 113-2 for competitive awards through the National Disaster Resilience Competition (NDRC). Through the NDRC, HUD awarded CDBG-NDR funds to 13 states and local governments to implement innovative and replicable activities to increase the resilience of communities to future disasters. HUD awarded \$92.6 million in CDBG-NDR funds to the State of Louisiana, including \$48.3 million to implement the Isle de Jean Charles (IDJC)

Relocation. Additionally, HUD published a *Federal Register* notice on February 19, 2019 (84 FR 4836) that included a clarification of certain actions being taken by the State as part of the relocation of the IDJC community.

The State is using its CDBG-NDR funds to support the voluntary resettlement of current and former residents of the flood-prone Isle de Jean Charles to a new and more resilient inland community (the “IDJC Resettlement Project”). In 1955, Isle de Jean Charles was a 22,400-acre island. At the time of the CDBG-NDR award, IDJC had lost 98 percent of its land due to subsidence, with only 320 acres remaining. The goals of the IDJC Resettlement Project are to move residents out of harm’s way, to engage the Isle de Jean Charles community residents in the design of the new community, to identify means by which the new community can be financially sustainable, and to safeguard the preservation and continuity of IDJC’s diverse cultural identities and traditions.

In the *Federal Register* notice published on February 19, 2019, HUD clarified that costs required to restrict the use of land as a primary residence are eligible costs of the State’s new construction and disposition activities for relocating island residents. (84 FR at 4839). HUD also clarified that the placement of restrictions and limitations on the use of land as a primary residence is a condition of the new construction and disposition activities to relocate IDJC residents out of harm’s way into more resilient housing, and not acquisition activities triggering buyout requirements. Since the award of the CDBG-NDR funds, the State has moved forward in the planning and development of the new community, New Isle, and has identified several challenges related to the eligibility of some project activities and the timeline for certain activities to meet a national objective, as provided in the CDBG-NDR notice (81 FR 36557). The State has also identified challenges associated with maintaining the affordability of New Isle for resettled residents.

II.A.1. Background and support for the waivers and alternative requirements necessary for the IDJC Resettlement Project.

The resettlement of the Isle de Jean Charles community and the development of the more resilient New Isle community is a unique effort by the State of Louisiana to demonstrate, with the support of CDBG-NDR funds, how communities nationwide may implement the voluntary resettlement of a community with diverse cultural identities and traditions, when confronted with repetitive disaster-related losses of land mass due to climate change. The IDJC Resettlement Project has the potential to serve as a model for other communities seeking to manage the retreat and resettlement of communities threatened by climate change.

Almost every IDJC household qualifies as low- or moderate-income, many are elderly and on fixed incomes, and nearly all will face increased overall expenses in relocating from IDJC. The State has therefore requested the following waivers and alternative requirements to address the challenges related to the eligibility and carrying out of activities, meeting of a national objective within the approved period of performance, and use of program income for the IDJC Resettlement Project.

The Department finds that there is good cause for the waivers and alternative requirements in this section because they are necessary to facilitate the IDJC Resettlement Project, which HUD anticipates will serve as a model for communities pursuing the resettlement of low- and moderate-income residents to lower-risk areas, and further the State's recovery goal of a holistic approach to resettlement of a diverse and culturally rich community.

II.A.2. Activity eligibility of the Isle de Jean Charles Resettlement Project.

In rare instances, when necessary to achieve recovery goals, HUD has previously granted waivers and alternative requirements to allow a grantee to treat a large complex project with multiple components that contribute to long-term recovery and resilience as a single eligible activity. HUD has determined that the components of the IDJC Resettlement Project are largely eligible CDBG-NDR activities but that the complexity of managing multiple separate eligible activities as components of the overall relocation would detrimentally delay the timeline of this critical recovery project. Therefore, based on the good cause determination described in

paragraph II.A.1. and to further facilitate an efficient implementation of the IDJC Resettlement Project, HUD is waiving section 105(a) of the HCDA (42 U.S.C. 5305(a)), as amended, to the extent necessary to create the new eligible activity of the “IDJC Resettlement Project,” comprised of the Residential Assistance Fund (the “Fund”) described in the next paragraph, as well as the acquisition, infrastructure, housing, economic development, and public service activities described in the State’s current, HUD-approved, amended CDBG-NDR action plan. The IDJC Resettlement Project eligible activity is subject to the alternative requirements described below.

The State indicated that one of the new activities of the IDJC Resettlement Project eligible activity will be the establishment of the Fund. The State plans to use CDBG-NDR funds, CDBG-NDR program income generated by economic development activities at New Isle, and other sources to capitalize the Fund. The State indicated that the Fund will be used to assist New Isle homeowners with certain monthly costs (e.g., termite treatment, property insurance, and flood insurance) to maintain the affordability and stability of the New Isle community. HUD recognizes that the relocated residents of the New Isle community will have new expenses than those incurred while living in IDJC and may require additional short-term assistance to maintain their new homes in New Isle. The Department therefore has determined that the State’s use of CDBG-NDR for the Fund advances the Department’s priority to support forward-thinking solutions to help low- and moderate-income households, facing the imminent threat of sea level rise attributable to climate change, to relocate to new, more resilient, and affordable communities.

Accordingly, under the waiver provided above to establish the IDJC Resettlement Project as a single new eligible CDBG-NDR activity, the State may use CDBG-NDR funds and program income to assist low and moderate-income New Isle residents relocated from the IDJC community with allowable housing costs for up to five years, meaning no beneficiary may receive more than a total of 5 years of this type of assistance or up to a specific amount, as

determined by the State, to maintain the stability and affordability of New Isle and resettlement of relocated IDJC residents. HUD is also establishing an alternative requirement that no assistance shall be provided for this purpose until the State submits a substantial action plan amendment for its CDBG-NDR grant. The substantial action plan amendment must include the following:

1. A budget for the Fund,
2. Identify eligible costs under the Fund,
3. Describe how identified costs are allowable in accordance with 2 CFR part 200, subpart E,
4. Describe the criteria that will be used to select beneficiaries and determine the amount of assistance under the Fund,
5. The mechanisms and process to provide the assistance,
6. How the State will oversee and monitor the administration and use of the Fund,
and
7. How the State will ensure public transparency regarding the provision of assistance and use of the Fund.

Additionally, CDBG-NDR funds and program income, including any portion used to finance the Fund, shall not be used to compensate beneficiaries for losses from disaster-related impacts.

Finally, as an alternative requirement, and in addition to all other modifications which constitute a substantial amendment requiring HUD approval as described in the *Federal Register* notice published on August 7, 2017 (82 FR 36812 at 36819), the deletion of the Fund or any activity that is part of the “IDJC Resettlement Project” as described in the State’s current, HUD-approved, amended CDBG-NDR action plan, or the addition of any other activities as part of the “IDJC Resettlement Project” constitute a substantial amendment requiring HUD approval.

II.A.3. *National objective compliance for the IDJC Resettlement Project.*

The additional regulatory waivers and alternative requirements provided in this section enable the State to accomplish its goals for the IDJC Resettlement Project. The IDJC Resettlement Project aims to foster the growth of the New Isle's residents and address their housing, economic, and service needs. The IDJC Resettlement Project is not merely replacing the relocated households' homes, but is also carrying out acquisition, infrastructure, housing, economic development, and public service activities intended to create a sustainable, long-term community for these relocated residents. For these reasons and based on the good cause provided in paragraph II.A.1., the Department waives the criteria in 24 CFR 570.483(b) for the IDJC Resettlement Project eligible activity only and establishes the following alternative requirement for the criteria as a means of addressing the objective of benefitting low- and moderate-income (LMI) persons. To demonstrate that the IDJC Resettlement Project eligible activity addresses the objective of benefitting LMI persons, the State must meet all the applicable criteria described below:

1. The State must determine the actual service area benefiting from the IDJC Resettlement Project, in accordance with the regulations. The service area must be primarily residential in character with related cultural and recreational components (e.g., community centers with cultural components);
2. The State must complete the housing units for occupancy by the households that are part of the original IDJC resettlement (at least 34 units of housing) and document that at least 70 percent of those households qualify as LMI;
3. The State must complete the community center, marketplace, recreational facilities, parks, and additional site improvements, as described in its approved action plan, as part of the New Isle community;
4. That State must require its Partners (as defined in the National Disaster Resilience Competition Phase 2 Notice of Funding Availability) and subrecipients to document that any economic development activities funded through the IDJC Resettlement

Project are complete and will increase economic opportunity, primarily for LMI persons, through the creation of permanent jobs. The State may presume that any jobs created are held by or made available to a low- or moderate-income person, if the economic development activities are located in the New Isle community;

5. The State must submit a sustainability plan with its substantial action plan amendment adding the Fund as an activity, that is then approved by HUD. The sustainability plan must include prominent posting on the State's official website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan. The State must notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with organizations located in or serving the target area or neighborhood. At a minimum, the sustainability plan must include the following information:
 - a. An estimate of the amount of taxes and insurance required for each home per year;
 - b. A detailed description of the process and timeline for New Isle residents to pay for housing costs that were once covered by the Fund, after their assistance from the Fund has ended (i.e., reaches 5 years of assistance or maximum amount set by the State) and/or the State concludes its use of the Fund;
 - c. A description of other financial resources, if any, that will be available to support beneficiaries with housing costs after the State concludes use of the Fund;
 - d. A detailed description of how the State will inform beneficiaries about the Fund, terms and conditions for Fund assistance, and the beneficiaries' financial responsibilities after assistance from the Fund ends; and
 - e. How the State will detect and prevent fraud, waste, and abuse in the administration and use of the Fund.

II.A.4. *Clarification on Public Services for the Isle de Jean Charles Resettlement*

Project.

Additionally, the *Federal Register* notice published on June 7, 2016 (81 FR 36557) waives 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), including the public benefit standards at 24 CFR 570.482(g), for economic development activities designed to create or retain jobs or businesses. This waiver continues to apply to the State's CDBG-NDR grant.

Finally, all public services carried out as part of the IDJC Resettlement Project shall be exempt from the cap on public service expenditures found in section 105(a)(8) of the HCDA (42 U.S.C. 5305(a)), as amended.

II.B. *Waivers and Alternative Requirements for New Jersey's CDBG-DR Grant under Pub. L. 113-2 (State of New Jersey Only)*

In the *Federal Register* notices published on March 5, 2013 (78 FR 14329) (the "March 2013 Notice"), November 18, 2013 (78 FR 69104) (the "November 2013 Notice"), and October 16, 2014 (79 FR 62182) (the "October 2014 Notice"), HUD awarded a total of \$4,174,110,000 in CDBG-DR funds to the State of New Jersey for recovery from Superstorm Sandy from Pub. L. 113-2 of which \$380,000,000 were for Rebuild by Design (RBD) also under Pub. L. 113-2.

The *Federal Register* notice published on May 24, 2022 (87 FR 31636) (the "May 2022 Notice") announced the allocation of \$228,346,000 of CDBG-DR funds under Pub. L. 117-43 (the "2022 Appropriations Act") and the *Federal Register* notice published on January 18, 2023 (87 FR 3198) (the "January 2023 Notice") announced the allocation of \$149,229,000 of CDBG-DR funds under Pub. L. 117-180 (the "2023 Appropriations Act") for a total of \$377,575,000 in CDBG-DR funds to the State of New Jersey for recovery from Tropical Storm Ida (collectively referred to as "the Appropriations Acts"). The 2022 Appropriations Act gives the Secretary authority to authorize grantees receiving a CDBG-DR grant under the 2022 Appropriations Acts and prior or future appropriation acts for activities authorized under title I of the HCDA for a

specific qualifying disaster(s) to use these funds interchangeably and without limitation for the same activities in the most impacted and distressed (MID) areas resulting from a major disaster in prior or future appropriation acts, as long as the MID areas overlap and the activities address unmet needs of both disasters.

Based on this authority, New Jersey's CDBG-DR grants for Tropical Storm Ida and its CDBG-DR grants for Superstorm Sandy may be used interchangeably and without limitation for the same activities in MID areas resulting from Superstorm Sandy or Tropical Storm Ida, if the MID areas of both disasters overlap and the activities address unmet needs of both disasters, as described in the May 2022 Notice and the January 2023 Notice. The State has requested, and HUD is providing the following waivers and alternative requirements to the State of New Jersey to carry out activities that will benefit Tropical Storm Ida beneficiaries. Both waivers and alternative requirements provided herein will help the State to expedite the delivery of assistance through programs that address the same activities related to unmet recovery needs resulting from Superstorm Sandy and Tropical Storm Ida in the MID areas that overlap. The grantee must describe its use of funds in both its CDBG-DR action plans for Superstorm Sandy and Tropical Storm Ida.

II.B.1. Waiver to Allow the Use of CDBG-DR Funds Provided Under Pub. L. 113-2 for Rental Assistance (State of New Jersey only).

The State's request notes that after Superstorm Sandy, the State identified a significant shortage of rental housing as a result of the storm, particularly in the MID areas, with rental stock being virtually non-existent. HUD and the State have evaluated the State's program budgets and the State has forecasted expenditures to determine that the State's Superstorm Sandy related unmet needs will be satisfied with the existing programs in place, while impacts related to Tropical Storm Ida have created new unmet rental needs that have further exacerbated issues associated with the COVID-19 pandemic.

Prior to Tropical Storm Ida, New Jersey's housing conditions were already under

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

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

The State plans to use its CDBG-DR funds under Pub. L. 113-2 to offer rental assistance and utility payments in the form of direct payments to homeowners or renters who are displaced and homeless or at-risk of homelessness as a result of the impacts of Tropical Storm Ida when such assistance payments are part of a homelessness prevention, intermediate housing, or rapid rehousing program activity, including intermediate housing during the repair and reconstruction of homes.

After reviewing the State's request and based on the good cause that the waiver and alternative requirements will help homeowners and renters that are displaced and impacted by Tropical Storm Ida to obtain and remain in housing that is in limited supply due to New Jersey's ongoing housing and homelessness crises, the Department is imposing an alternative requirement to waive and modify 42 U.S.C. 5305(a)(8) to expand the definition of public service to include the following activity: provision of rental assistance (e.g. rent, security deposits, and utility deposits) and utility payments for up to 24 months for the State of New Jersey's funds provided under Pub. L. 113-2 to address unmet needs from Tropical Storm Ida, subject to the following alternative requirements.

This activity is subject to the 15 percent cap on public services, and no beneficiary may receive more than a total of 24 months of rental assistance and utility payments. A homeowner receiving any form of CDBG-DR interim mortgage assistance that may be offered by the State is not eligible for rental assistance or utility payments, as authorized by this waiver and alternative requirement.

The State must determine that the rental assistance and utility payments are needed because the household moved from their primary residence due to rehabilitation or reconstruction needs from Tropical Storm Ida, the household is experiencing or is at risk of experiencing homelessness and the assistance is part of a homelessness prevention or rapid rehousing program or activity, or other disaster-related pressures on the housing market necessitate the assistance to support the household's recovery.

While this waiver and alternative requirement will allow the State to provide rental assistance and utility payments to households impacted by Tropical Storm Ida, this does not relieve the State of the duty to comply with other applicable requirements relating to the temporary relocation or displacement of households. If a household meets the definition of a "displaced person" under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 et seq.) ("URA") or Section 104(d) of the

HCDA (42 U.S.C. 5304(d)) (“Section 104(d)”), the State must provide the displaced person with any relocation assistance to which they are entitled under law, including but not limited to assistance authorized under the URA or Section 104(d), pursuant to those requirements in the applicable notices, as modified by the waiver of Section 414 of the Stafford Act in Section II.B.2., below.

The goals of this waiver and alternative requirement are to prevent and minimize the time households are experiencing or are at risk of experiencing homelessness as a result of the qualifying disaster and to provide additional time to stabilize persons or households in permanent housing through the use of CDBG-DR funds for rental assistance and utility payments. The use of CDBG-DR funds for each of these purposes advances the Department’s priority to support forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness as a result of a disaster.

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

HUD has previously certified the State’s procedures to detect fraud, waste, and abuse prior to the obligation of Superstorm Sandy funding. To fortify these requirements and achieve a targeted use of funds and to safeguard against fraud, the State must amend the provisions in its policies and procedures to show how the State will verify the accuracy of information provided by applicants to its rental assistance and utility payment program, how the State will document that the applicant used the funds for only the eligible uses defined in its action plan or the program’s policies and procedures, and how the State will detect and prevent fraud, waste, and

abuse in its rental assistance and utility payment programs. The State must document, in its policies and procedures, how it will determine the basis of the rental assistance and utility payments award for each household assisted and that the amount of the assistance to be provided is necessary and reasonable and not duplicative of any other funding source, including insurance. To comply with the order of assistance requirements in the Appropriations Acts, any rental or temporary housing assistance provided by or made available by the Federal Emergency Management Agency (FEMA) must first be exhausted prior to providing CDBG-DR funds to a household for the uses permitted by this waiver and alternative requirement.

II.B.2. Waiver of Section 414 of the Stafford Act (42 U.S.C. 5181 (State of New Jersey only)).

The State of New Jersey has requested a waiver of section 414 of the Stafford Act (42 U.S.C. 5181), as amended, for real property acquisition, rehabilitation, and demolition of real property for CDBG-DR activities funded by Pub. L. 113-2 that will address the unmet housing needs from Tropical storm Ida.

Section 414 of the Stafford Act provides that “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) [42 U.S.C. 4601 et seq.] [(“URA”)] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA].” Accordingly, homeowner occupants and tenants displaced from their homes as a result of an identified disaster and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA.

The State has requested a waiver of section 414 of the Stafford Act to better align its CDBG-DR grants funded by Pub. L. 113-2 for Superstorm Sandy with its grants funded by the

2022 and 2023 Appropriations Acts. The State contends that this waiver, granted for all funds under the 2022 and 2023 Appropriations Acts, will allow it to implement its programs for Tropical storm Ida beneficiaries consistently, whether the program is being funded under Pub. L. 113-2 or the 2022 and 2023 Appropriations Acts.

HUD provided the waiver for grants under the 2022 and 2023 Appropriations Acts to simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster considering most of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence.

Therefore, the Department has determined that good cause exists for a waiver for the State's funds under Pub. L. 113-2 and waives section 414 of the Stafford Act and its implementing regulation at 49 CFR 24.403(d)(1) to the extent that they would apply to real property acquisition, rehabilitation, or demolition of real property for a CDBG-DR funded project commencing more than one year after the date of Tropical Storm Ida undertaken by the State, or its subrecipients, provided that the project was not planned, approved, or otherwise underway before the date of the disaster.

For purposes of this waiver, a CDBG-DR funded project shall be determined to have commenced on the earliest of: (1) the date of an approved Request for Release of Funds and certification; (2) the date of completion of the site-specific review when a program utilizes Tiering; or (3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12).

This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

III. Public Law 115-123 Waivers and Alternative Requirements

Revision of Electrical Power System Consultation Requirements (Commonwealth of Puerto Rico and U.S. Virgin Islands only)

The *Federal Register* notice published on June 22, 2021 (86 FR 32681) (the “June 2021 Notice”) established the requirements for the nearly \$28 billion in CDBG-DR funds approved February 9, 2018 by the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Pub. L. 115–123), including \$2 billion for enhanced or improved electrical power systems in the Commonwealth of Puerto Rico (the Commonwealth) and the U.S. Virgin Islands (USVI) to address the impact of Hurricanes Irma and Maria on each grantee’s electrical power system.

Because of the unique purpose of this \$2 billion allocation of CDBG-DR funds, in recognition of the many Federal agencies that would be providing assistance to the Commonwealth and the USVI to enhance and improve each jurisdiction’s electrical power system, and because of the historical and on-going fiscal and operational challenges of each of the public utilities that operate the Commonwealth and USVI systems, the June 2021 Notice established a number of on-going coordination requirements unique to this allocation.

In February 2020, FEMA and the U.S. Department of Energy (DOE) established Energy Technical Coordination Teams (“TCT”) at each jurisdiction as a formal mechanism for coordination among the numerous local and Federal entities involved in electricity grid recovery to facilitate decision making and ensure the best use of expertise, solutions, and funds in the implementation of energy recovery activities. Section V.A.2.e. of the June 2021 Notice requires each grantee to consult at least quarterly with its respective TCT on one or more of the following areas: on the action plan required by the June 2021 Notice for the use of the CDBG-DR funds and any substantial amendments to that plan; the evaluation of the capacity of any public utility that will receive CDBG-DR funds to carry out improvements; the identification of opportunities to sequence and coordinate on permits and approvals necessary to carry out CDBG–DR funded

electrical power system improvement activities, including environmental reviews; the technical evaluation of proposed electrical power system improvements; and implementation of applicable electrical power system industry standards and the commercial availability of system components that the grantee proposed to fund.

To ensure the coordination of electrical power system improvements that may be funded from each grantee's other allocations of CDBG-DR and CDBG mitigation (CDBG-MIT) funds provided in response to Hurricanes Irma and Maria, the June 2021 Notice also prohibits the use of other CDBG-DR and CDBG-MIT funds for electrical power system improvements until HUD consults and coordinates with its Federal members through the TCTs. The June 2021 Notice also provides that HUD shall determine when the required consultations previously noted shall be deemed complete.

Since the publication of the June 2021 Notice, each grantee has proactively engaged with its respective TCT on a wide range of issues associated with its planned and on-going electrical power system improvements. In January 2022, HUD, FEMA, and DOE also executed a memorandum of understanding establishing a framework outside of the TCT for coordination and providing technical assistance to the Commonwealth. Additionally, following Hurricane Fiona, the Administration announced the formation of a Puerto Rico Grid Recovery and Modernization Team, to be led by DOE, to coordinate Federal grid recovery and modernization efforts.

In recognition of these developments and the critical importance of accelerating electrical power system improvements following the devastating impact of Hurricane Fiona in September 2022, HUD finds good cause to waive and revise the consultation requirements of its June 2021 Notice as follows:

Upon approval by HUD of an action plan providing for the use of a grantee's total allocation of funds for electrical power system improvements as provided by the June 2021 Notice:

(1) Paragraph V.A.2.e of the June 2021 Notice, and as referenced elsewhere in the June 2021 Notice, with respect to TCT consultation shall no longer apply; provided that, at the request of HUD, each grantee shall engage with its TCT to provide updates on its implementation of CDBG-DR, CDBG-MIT, and other Federal funding for electrical power system improvements until grant closeout; and

(2) The consultation requirements at paragraph V.B.4 of the June 2021 Notice that prohibits grantees from using other CDBG-DR and CDBG-MIT funds provided in response to Hurricanes Irma and Maria for activities to enhance or improve electrical power systems until HUD consults and coordinates with its Federal members through the TCT shall no longer apply.

HUD will continue to engage its Federal partners directly in providing ongoing technical assistance to each grantee and in monitoring each grantee's use of all CDBG-DR and CDBG-MIT funds used for electrical power system improvements. HUD will also continue to engage its Federal partners through the TCTs, the Recovery Support Function Leadership Group (RSFLG) energy subgroup, and other forums.

IV. Public Law 116-20 Waivers and Alternative Requirements

Waiver and alternative requirement for 70 percent overall low- and moderate-income benefit requirement (State of California only).

The *Federal Register* notice published on January 27, 2020 (85 FR 4681) ("January 2020 Notice") included an allocation of \$38,057,527 appropriated under the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. 116-20) to the State of California for recovery from 2017 wildfires and 2017-2018 wildfires, flooding, mudflows, and debris flows. These funds have been provided to meet the unmet infrastructure recovery needs in the HUD-defined MID areas. Prior to this award, HUD also allocated \$124,155,000 under Pub. L. 115-123 to the State for recovery from the same disasters in the *Federal Register* notice published on August 14, 2018 (83 FR 40314).

The overall benefit requirement established by the HCDA requires that 70 percent of the aggregate of a grantee's CDBG-DR fund expenditures shall be used to support activities benefiting LMI persons. Under certain circumstances, it can be difficult for grantees working in disaster recovery to meet this overall benefit test because the MID areas resulting from a disaster may not be low- and moderate-income areas, and this requirement can therefore (in some exceptional cases) limit a grantee's ability to assist those affected by the disaster. The January 2020 Notice maintained the 70 percent overall benefit requirement for all CDBG-DR grantees receiving funds under Pub. L. 116-20 and the notice imposed the requirements of the February 9, 2018 notice (83 FR 5844) ("February 2018 Notice"), which provides grantees with the option of submitting a request to HUD for a lower overall benefit requirement. Specifically, the February 2018 Notice allows a grantee to request to further reduce its overall benefit requirement if it submitted a justification that, at a minimum: (a) identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/ programs identified in (b) prevent the grantee from meeting the 70 percent requirement; and (d) demonstrates that low- and moderate-income persons' disaster-related needs have been sufficiently met and that the needs of non-LMI persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them.

The State submitted a request to establish a lower overall benefit requirement based on the above criteria. In its request, the State contends that its two established programs: Owner-Occupied Rehabilitation and Reconstruction Program (OOR) and Multifamily Housing Program funded under Pub. L. 115-123 will meet the unmet needs of its LMI populations. Specifically, in its OOR program, the State has prioritized the needs of LMI persons and estimates that the program will expend at least 90 percent of funds for the benefit of LMI households. The Multifamily Housing Program is limited to projects that meet the LMI National Objective

criteria, and the State estimates the program will expend 100 percent of funds for the benefit of LMI households. Based on these estimates, the total projected LMI benefit percentage for the State's allocation under Pub. L. 115-123 will be 96 percent, which demonstrates the State's commitment to meeting the needs of its LMI populations. While the Department evaluates overall benefit for each grant separately, the allocations from Public Laws 115-123 and 116-20 support recovery from the same disasters in the same MID areas, and the total projected LMI benefit percentage when combining the allocations would be 82 percent.

The State's allocation under Pub. L. 116-20 was limited to allow the State to only address its unmet infrastructure recovery needs. For this allocation, the State expanded its original Infrastructure Program proposed in its initial action plan to include standalone infrastructure projects and FEMA Hazard Mitigation Grant Program Non-Federal match activities in addition to FEMA Public Assistance non-federal match projects.

When considering its unmet infrastructure needs, the State indicated in its request that the total LMI percentage of the population in the HUD-identified MID areas is 42 percent, and the City of Clearlake is the only jurisdiction that is a MID area and would also qualify as an eligible LMI area. To address the needs of LMI households throughout the MID areas, the State prioritized infrastructure projects in MID areas that would benefit LMI areas through its Notice of Intent (NOI) process where eligible applicants submitted proposed infrastructure projects to meet the unmet infrastructure need in their community. The State also conducted extensive outreach to potential applicants by hosting multiple webinars and holding office hours for months during and after the NOI process. Despite these efforts, the State's CDBG-DR funded infrastructure program only received nine project applications from four eligible applicants: City of Clearlake, City of Santa Rosa, Santa Barbara County, and Sonoma County. Of the nine applications, three projects qualify for the LMI national objective, and all LMI projects will derive from a single eligible applicant, the City of Clearlake, leading to the allocation's total projected LMI benefit percentage being 38 percent.

To enable the State to undertake the activities it has determined to be the most critical for its recovery and LMI households in the MID areas, HUD is granting a waiver and alternative requirement to reduce the overall benefit requirement from 70 percent to not less than 38 percent of the State's total allocation of CDBG-DR funds for its unmet infrastructure recovery needs. This is a limited waiver modifying sections 101(c) and 104(b)(3)(A) of the HCDA and 24 CFR 570.200(a)(3) only to the extent necessary to reduce the LMI overall benefit requirement that the State must meet when carrying out activities identified in its approved action plan from 70 percent to not less than 38 percent of the grantee's allocation of CDBG-DR funds under Pub. L. 116-20 for its unmet infrastructure recovery needs. Based on the analysis submitted by the State, the Secretary finds good cause for this waiver and alternative requirement due to the circumstances outlined in the State's request. In particular, HUD notes that the State had demonstrated that it has sufficiently addressed LMI unmet recovery needs through both its CDBG-DR allocations awarded under Public Laws 115-123 and 116-20, conducted significant amounts of public outreach when determining LMI unmet infrastructure needs, and prioritized and selected infrastructure projects serving LMI areas, even though the LMI percentage of the MID areas was only 42 percent.

V. 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 online on HUD's CDBG-DR website at https://www.hud.gov/program_offices/comm_planning/cdbg-dr and 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). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or 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>.

Adrienne Todman,

Deputy Secretary.

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