



**[Docket No. FR-6444-N-01]**

## **Waiver for a Community Development Block Grant Disaster Recovery (CDBG-DR)**

### **Grantee**

**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) funds allocated to the Commonwealth of Puerto Rico pursuant to the Supplemental Appropriations for Disaster Relief Requirements Act, 2017, and the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018, for major disasters occurring in 2017. In response to a request by the Commonwealth of Puerto Rico, this notice provides a waiver to use CDBG-DR funds to satisfy the non-federal cost share for Federal Emergency Management Agency (FEMA) Public Assistance (PA) funded reconstruction and rehabilitation of houses of worship for grants provided to the Commonwealth.

**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 from 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](mailto:disaster_recovery@hud.gov).

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## **I. Authority to Grant Waivers**

The Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Division B, Pub. L. 115-56), approved September 8, 2017, and the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1, Pub. L. 115-123), approved February 9, 2018, 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.

The waiver authorized in this notice is based upon a determination by the Secretary that good cause exists and that the waiver 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 the waiver is summarized in this notice.

## **II. Pub. L. 115-56 and 115-123 Waiver**

*Waiver to use CDBG-DR funds to satisfy the non-federal cost share for FEMA PA-funded reconstruction and rehabilitation of houses of worship (Commonwealth of Puerto Rico only).*

The Department has awarded CDBG-DR funds to the Commonwealth of Puerto Rico (“the Commonwealth”) under Public Laws 115-56 and 115-123 to assist in the long-term recovery from the 2017 disasters, Hurricanes Irma and Maria. This notice waives requirements for CDBG-DR funds awarded to the Commonwealth under these two Public Laws.

Many buildings in the Commonwealth, including houses of worship, suffered extensive damage in the wake of the two major hurricanes that occurred within the same month of September 2017. In the aftermath of the two hurricanes and other disasters, faith-based

organizations (FBOs) have used churches and other principal places of worship to assist residents. Especially in smaller, rural communities of the Commonwealth, houses of worship often serve as shelters during and after disasters and as gathering places to obtain post-disaster assistance and information.

In its current, amended action plan (Amendment 13 to the CDBG-DR action plan, effective October 9, 2023), the Commonwealth's Non-Federal Match Program (NFMP) uses CDBG-DR funds to meet the non-federal share obligations of other, federal disaster-relief assistance provided to the Commonwealth that is used for a variety of activities authorized under title I of the HCDA, including building reconstruction and rehabilitation costs authorized under 42 U.S.C. 5305(a)(4). For example, FEMA has approved the use of its PA funds to pay the federal cost share for the rehabilitation or reconstruction of disaster-damaged houses of worship, including sanctuaries, chapels, or other rooms that FBOs use as their principal place of worship. The Commonwealth seeks to use CDBG-DR funds through the NFMP, pursuant to 42 U.S.C. 5305(a)(4) and 5305(a)(9), to reimburse FBOs for the non-federal cost share associated with FEMA PA-funded reconstruction and rehabilitation of houses of worship damaged or destroyed by Hurricanes Irma and Maria. The regulation at 24 CFR 5.109 applies to CDBG-DR funds, and without a waiver, sections of this regulation either prohibit the use of CDBG-DR funds for these activities or impose costly and time-consuming accounting constraints that prevent the Commonwealth from using its CDBG-DR funds for these activities.

The regulation at 24 CFR 5.109(j) prohibits the use of direct federal financial assistance for the acquisition, construction, or rehabilitation of sanctuaries, chapels, or other rooms that a HUD-funded FBO uses as its principal place of worship. Where a structure is used for both eligible and explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), 24 CFR 5.109(j) also provides that direct federal financial assistance may not exceed the cost of the share of acquisition, construction, or rehabilitation attributable to eligible activities in accordance with the cost

accounting requirements applicable to the HUD program or activity. The regulations at 24 CFR 5.109(e) state that if an organization engages in explicitly religious activities, the explicitly religious activities must be offered separately, in time or location, from the programs or activities supported by direct Federal financial assistance, and participation must be voluntary for the beneficiaries of the programs or activities that receive direct federal financial assistance. Without a waiver, 24 CFR 5.109(e) and (j) prohibit the Commonwealth from using CDBG-DR funds through the NFMP for reimbursement of the non-federal cost share either outright or because of burdensome and time-consuming cost accounting requirements.

The Department may waive 24 CFR 5.109(e) and (j) only upon a determination of good cause. The Department would not be able to find good cause if it concluded the Commonwealth's proposed use of funds for NFMP activities will likely violate the Establishment Clause. Here, the Department has concluded that the Commonwealth's proposed use of CDBG-DR funds would likely be constitutional and found good cause because the Commonwealth will use neutral, secular criteria in making funding decisions under the NFMP, including in the Commonwealth's assessments of whether NFMP activities meet a national objective. The Department's finding of good cause is additionally based on the fact that granting a waiver to allow CDBG-DR funds to be used as the non-federal match for projects that are otherwise eligible under FEMA's PA Program, will permit the grantee to align its recovery with the way in which FEMA PA funds are distributed and decrease the grantee's administrative burden. The Department's good-cause determination is based on the specific combination of facts and circumstances presented here, and similar waivers may not be permissible in other contexts.

The Secretary's determination of good cause is based on the Department's review of the Commonwealth's waiver requests, the descriptions of the NFMP in the Commonwealth's current CDBG-DR action plan, the Commonwealth's program guidelines for the NFMP, including its criteria for making funding decisions under the NFMP, and other correspondence and

communication with the Commonwealth (collectively referred to as the “waiver requests and related correspondence”). The Commonwealth’s waiver requests and related correspondence have provided HUD with a reasonable basis for concluding that the Commonwealth has adopted relevant, neutral, secular criteria to make its funding decisions because it has demonstrated that its funding decisions are made on the same terms and conditions, without regard to religion, and only for eligible entities that qualify under the NFMP.

The Commonwealth’s program guidelines shared with HUD indicate that it will make its eligibility determinations exclusively based on neutral and secular criteria including the availability of funds, the date of execution of a subrecipient’s agreement, and whether a proposed project meets CDBG-DR requirements related to activity eligibility and one or more of the three national objectives, namely, to benefit low- and moderate-income families, aid in the prevention or elimination of slums or blight, and/or to meet community development needs having a particular urgency. Religion is not relevant to the Commonwealth’s assessment of activity eligibility under 42 U.S.C. 5305(a)(4) and 5305(a)(9) for payment of the non-federal cost share of the reconstruction and rehabilitation of houses of worship or any other building. Under these program guidelines, the Commonwealth determines whether a proposed project will meet a national objective before approving funds under the NFMP as part of its eligibility determinations and has indicated that it intends to apply either the urgent need or low- and moderate-income area benefit (LMA) national objectives for projects funded through its NFMP. Furthermore, the Commonwealth’s waiver requests and related correspondence also demonstrate that it will use neutral, secular criteria for purposes of assessing compliance under these national objectives.

The urgent need national objective criteria (i.e., activities that meet a community development need that has a particular urgency) that is applicable to the Commonwealth’s CDBG-DR funds is established through a waiver and alternative requirement in paragraph VI.A.12. of the *Federal Register* notice published on February 9, 2018 (83 FR 5844) and does

not take religion into consideration. Under the waiver and alternative requirement, assisted houses of worship will be in compliance with the urgent need national objective if the assisted structures fall within the type, scale, and location of the disaster-related impacts identified to be addressed through the NFMP in the Commonwealth's action plan. Because the urgent need national objective criteria is a neutral, secular requirement that does not allow for the exercise of discretion with regard to religion, a determination by the Commonwealth that an activity is consistent with the urgent need waiver and alternative requirement is one that uses neutral, secular criteria.

The requirements for the LMA national objective are found at 24 CFR 570.483(b)(1)(i), and activities satisfy this requirement if an activity's benefits are available to all the residents in a particular area, where at least 51 percent of the residents are low- and moderate-income persons. The Commonwealth's waiver requests and related correspondence with HUD identify neutral, secular reasons for the Commonwealth to determine that its use of CDBG-DR funds to reimburse the costs of reconstructing or rehabilitating houses of worship damaged by Hurricanes Irma and Maria will meet the LMA national objective. Specifically, the Commonwealth has indicated that FBOs used houses of worship in many distressed communities in the Commonwealth to provide childcare, foodbanks, or shelter for the homeless; FBOs in the Commonwealth served as "first responders" in low- to moderate-income communities where natural disasters occurred, and shrines, chapels, and other rooms that serve as primary places of worship were "used for eligible activities outside of hours of worship"; and houses of worship in Puerto Rico "are almost always found in the center of town" and are of great importance to, especially, smaller communities, in part because the structures have "served as shelters during and after . . . hurricanes" and have been "gathering places to obtain post-disaster assistance and information." These representations provide a reasonable basis for HUD's conclusion that the Commonwealth will use neutral, secular criteria in assessing whether funded activities would meet the LMA national objective requirement.

Because HUD has concluded that the Commonwealth has adopted neutral, secular criteria to make its funding decisions under the NFMP, HUD has found good cause for the requested waiver, and waives 24 CFR 5.109(e) and (j) only to allow the Commonwealth to use CDBG-DR funds to reimburse FBOs for the non-federal cost share associated with FEMA PA-funded reconstruction and rehabilitation of houses of worship damaged or destroyed by Hurricanes Irma and Maria through its NFMP pursuant to 42 U.S.C. 5305(a)(4) and 5305(a)(9). This waiver is conditioned on the Commonwealth's compliance with the Establishment Clause, and is only available so long as the Commonwealth uses neutral and secular criteria in its funding decisions under the NFMP, including in its assessments of whether activities funded through the NFMP meet a national objective.

### **III. 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](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,**  
*Acting Secretary.*

**[BILLING CODE: 4210-67]**

