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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6625-N-01]

Waivers and Alternative Requirements for Community Development Block Grant Disaster Recovery (CDBG-DR) and Community Development Block Grant Mitigation (CDBG-MIT) 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 mitigation (CDBG-MIT) funds awarded under the appropriations acts identified below. In response to grantee requests, this notice provides a general waiver and alternative requirement for all grantees that received CDBG-DR and CDBG-MIT funds for disasters occurring in 2015 to 2019, permitting buyout activities consistent with Universal Notice requirements. This notice also provides specific waivers and alternative requirements for the State of South Carolina and for Hawaii County, HI, for grants provided under the public laws cited herein.

DATES: Applicability Date: [**INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

FOR FURTHER INFORMATION CONTACT: William J. Silva, Director, Office of Disaster Recovery, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington D.C., 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 DisasterRecovery@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Authority to Grant Waivers

Each appropriations act cited in the Table of Contents authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation 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 request by a grantee to facilitate the use of the funds or a determination by the Secretary that good cause exists, and a determination by the Secretary 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 basis for each waiver and alternative requirement is summarized in this notice.

II. Public Law 114-113, 114-223, 114-254, 115-31, 115-56, 115-123, 115-254, and 116-20 Waivers and Alternative Requirements

Waiver and Alternative Requirement to Align Buyout Requirements with the Universal Notice.

The Department received requests from multiple grantees, with good cause justifications, to waive the requirement that only real property be eligible for acquisition in buyout activities–a limitation that excludes the acquisition of manufactured, modular, or mobile housing units (MHUs) when they are not considered real property. Prior to the CDBG-DR allocations under Public Law 117-43 for disasters occurring in 2020 and 2021, waivers and alternative requirements for buyout activities did not permit the use of CDBG-DR and CDBG-MIT funds to acquire MHUs when the MHUs are not considered real property. The newer, more flexible buyout requirements first appeared in HUD's *CDBG-DR Consolidated Waivers and Alternative*

Requirements Notice (the "Consolidated Notice"), published as Appendix B to the Allocation Announcement Notices at 87 FR 31636 (May 24, 2022) and 88 FR 3198 (Jan. 18, 2023), and were later carried forward in the notice titled, *Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees: The Universal Notice*, published on January 8, 2025, at 90 FR 1754, as amended by Memorandums 25-02[1] and 25-03[2] (the "Universal Notice"), allow CDBG-DR funds to be used for buyout activities involving MHUs, regardless of whether they are real property.

This waiver and alternative requirement, as further described below, applies to all CDBG-DR and CDBG-MIT allocations for disasters occurring in 2015 through 2019 funded by the Public Laws listed in the heading of this section (hereinafter "2015-2019 allocations").

Prior to this waiver and alternative requirement, more stringent buyout requirements applied to grantees with CDBG-DR and CDBG-MIT allocations for 2015–2019 disasters that have not received a previous waiver and alternative requirement. Per these requirements, CDBG-DR and CDBG-MIT grantees undertaking buyout activities were required to adhere to the acquisition activity requirements at 42 U.S.C. 5305(a)(1), which limit acquisition to *real property*. However, the Universal Notice waives the requirements at 42 U.S.C. 5305(a) to the extent necessary for the creation of a *new* eligible activity termed "buyouts." Per this waiver and alternative requirement, CDBG-DR funds subject to the Universal Notice may be used for buyout activities defined as the acquisition of *properties* located in a floodway, floodplain, or other Disaster Risk Reduction Area (DRRA) that is intended to reduce risk from future hazards. This means that CDBG-DR funds subject to the requirements of the Universal Notice may be

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[1] Memorandum 25–02, "Revisions made to the Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees: The Universal Notice published in the Federal Register (90 FR 1754) and Clarifications to the Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG–DR Consolidated Waivers and Alternative Requirements Notice Published in the Federal Register (90 FR 4759)," published on March 19, 2025. Found at *https://www.hud.gov/sites/dfiles/CPD/documents/CPDUniversalnotice.pdf.*

[2] Memorandum 25–03, "Revisions made to the Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees: The Universal Notice published in the Federal Register (90 FR 1754)," published on March 31, 2025. Found at *https://www.hud.gov/sites/default/files/CPD/documents/CDBG-DR/3-31-2025UniversalNoticeChangesMemo.pdf.*

used to undertake buyout activities involving MHUs, even when these MHUs are considered personal property.

HUD is establishing this waiver and alternative requirement to allow additional grantees to undertake buyout activities that can include MHUs and thereby remove more homes from harm's way. MHUs constitute a significant portion of the housing stock in many communities across the country, and HUD recognizes the need to include the value of MHUs in buyout offers to better serve this population and reduce the risk of future damage to the MHU-housing stock, which also tends to be among the most vulnerable.

Based on the good cause provided herein, the Department is imposing an alternative requirement modifying 42 U.S.C. 5305(a) to provide CDBG-DR and CDBG-MIT grantees with 2015-2019 allocations the same flexibilities for buyout activities established in the Universal Notice. Accordingly, HUD is replacing the buyout requirements for these allocations, wherever established in the prior notices, with the following waiver and alternative requirements in the Universal Notice. The following is the buyout language from Section III.D.5.h. of the Universal Notice; internal section references within the quoted text refer to the Universal Notice. For purposes of this waiver and alternative requirement, references to 'CDBG-DR' in the quoted language below apply equally to the CDBG-MIT 2015-2019 allocations subject to this notice.

"III.D.5.h. *Buyouts*. CDBG-DR grantees may carry out property acquisition for a variety of purposes, but buyouts are a type of acquisition for the specific purpose of reducing the risk of property damage. HUD has determined that creating a new activity and alternative requirement for buyouts is necessary for consistency with the application of other Federal resources commonly used for this type of activity. Therefore, HUD is waiving 42 U.S.C. 5305(a) and establishing an alternative requirement only to the extent necessary to create a new eligible activity for voluntary buyouts. The term "buyouts" for CDBG-DR purposes means the voluntary acquisition of properties located in a floodway, floodplain, or other Disaster Risk Reduction Area that is intended to reduce risk from future hazards. Requiring buyouts to be voluntary

acquisitions will focus the buyout activities on areas where relocation plans are community driven. Grantees may designate a Disaster Risk Reduction Area, as defined below.

Grantees carrying out buyout activities must establish an open space management plan or equivalent, if one has not already been established, before implementation. The open space management plan or equivalent must establish full transparency about the planned use of acquired properties post-buyout, or the process by which the planned use will be determined and enforced.

Buyout activities are subject to all requirements that apply to acquisition activities generally including but not limited to, the URA (42 U.S.C. 4601 *et seq*.) and its implementing regulations at 49 CFR part 24, subpart B, unless waived or modified by alternative requirements. Only acquisitions that meet the definition of a ‘‘buyout’’ are subject to the post-acquisition land use restrictions imposed by the alternative requirement (III.D.5.h.(i). below). The key factor in determining whether the acquisition is a buyout is whether the intent of the purchase is to reduce the risk of property damage from future flooding or other hazards in a floodway, floodplain, or a Disaster Risk Reduction Area. A grantee that will acquire property for purposes of a buyout in a Disaster Risk Reduction Area must establish criteria in its policies and procedures to designate an area as a Disaster Risk Reduction Area for the buyout, pursuant to the following requirements:

1) the area has been impacted by the hazard that has been caused or exacerbated by the disaster for which the grantee received its CDBG-DR allocation or address the current and future risks as identified in the grantee’s mitigation needs assessment;

2) the hazard identified must be a predictable environmental threat to the safety and well-being of program beneficiaries, as evidenced by the best available data (e.g., FEMA Repetitive Loss Data, National Risk Index, etc.) and science (such as engineering and structural solutions propounded by FEMA, USACE, other federal agencies, etc.); and

3) the area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

III.D.5.h.(i). *Buyout requirements:*

1. Property to be acquired or accepted must be located within a floodway, floodplain, or Disaster Risk Reduction Area.

2. Any property acquired or accepted must be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, floodplain and wetlands management practices, or other disaster-risk reduction practices.

3. No new structure will be erected on property acquired or accepted under the buyout program other than:

(a) a public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area);

(b) a restroom; or

(c) a flood control structure, provided that:

(i) the structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream; and

(ii) the local floodplain manager approves the structure, in writing, before commencement of construction of the structure.

4. After the purchase of a buyout property with CDBG-DR funds, the owner of the buyout property (including subsequent owners) is prohibited from making any applications to any Federal entity in perpetuity for additional disaster assistance for any purpose related to the property acquired through the CDBG-DR funded buyout, unless the assistance is for an allowed use as described in paragraph (2) above. The entity acquiring the property may lease or sell it to adjacent property owners or other parties for compatible uses that comply with buyout requirements in return for a maintenance agreement.

5. A deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses that comply with buyout requirements in perpetuity.

6. Grantees must choose from one of two valuation methods (pre-disaster value or post-disaster value) for a buyout program (or a single buyout activity). The grantee must apply its valuation method for all buyouts carried out under the program. However, a grantee may provide exceptions to its established valuation method on a case-by-case basis (e.g., if the grantee determines the post-disaster value of a property is higher than the pre-disaster value). The grantee must describe the process for such exceptions and how it will analyze the circumstances to permit an exception in its buyout policies and procedures. Each grantee must adopt policies and procedures on how it will demonstrate that the amount of assistance for a buyout is necessary and reasonable.

7. All buyout activities must be classified using the "buyout" activity type in the DRGR system.

8. Any state grantee implementing a buyout program or activity must consult with local or tribal governments within the areas in which buyouts will occur.

9. All buyouts must be voluntary. Grantees are prohibited from using eminent domain to buy out properties. However, a grantee may request and HUD may approve a waiver of this limitation, if good cause for such a waiver exists."

This new language will not apply retroactively and will apply as of the applicability date of this notice."

III. Public Law 115-123 and Pub. L. 116-20 Waivers and Alternative Requirements

Waiver and Alternative Requirement for Consultation with a Citizen Advisory Committee for the State of South Carolina's CDBG-MIT Grants for 2015, 2016, and 2018 Disasters (State of South Carolina Only)

The Department received a request and justification of good cause from the State of South Carolina to waive the second paragraph of Section V.A.3.c. of the notice published in 84 FR 45838 on August 30, 2019 (''the August 2019 Notice''), which requires CDBG–MIT grantees to form one or more citizen advisory committees. These committees are required to meet at least twice a year and solicit and respond to public comments, serving a function to provide increased transparency to the public on the use of the CDBG–MIT allocation.

This waiver and alternative requirement, as further described below, applies to the following CDBG-MIT grants allocated to the State: 1) the allocation for disasters occurring in 2015 and 2016, funded by Pub. L. 115-123; and 2) the allocation for a disaster occurring in 2018, funded by Pub. L. 116-20. Both allocations are subject to the requirements published in 84 FR 45838 on August 30, 2019; 85 FR 60821 on September 28, 2020; and 86 FR 561 on January 6, 2021.

This waiver request aligns with HUD's requirements included in the notice titled, *Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees: The Universal Notice*, published on January 8, 2025, at 90 FR 1754, as amended by Memorandums 25-02[3] and 25-03[4] (the "Universal Notice"). Section III.A.6.a. of the Universal Notice does not require the use of citizen advisory committees but instead encourages their use as a means to gather feedback and recommendations from the public at least annually.

The August 2019 Notice requires that, following HUD's approval of the Action Plan, each grantee form one or more citizen advisory committees to meet in an open forum at least

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[3] Memorandum 25–02, "Revisions made to the Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees: The Universal Notice published in the Federal Register (90 FR 1754) and Clarifications to the Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG–DR Consolidated Waivers and Alternative Requirements Notice Published in the Federal Register (90 FR 4759)," published on March 19, 2025. Found at *https://www.hud.gov/sites/dfiles/CPD/documents/CPDUniversalnotice.pdf.*

[4] Memorandum 25–03, "Revisions made to the Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees: The Universal Notice published in the Federal Register (90 FR 1754)," published on March 31, 2025. Found at *https://www.hud.gov/sites/default/files/CPD/documents/CDBG-DR/3-31-2025UniversalNoticeChangesMemo.pdf.*

twice a year. The primary function of these groups is to provide increased transparency to the public on use of the CDBG–MIT funds by soliciting and responding to public comments and serving as an on-going public forum to continuously provide input on the CDBG–MIT funded projects and programs. Citizen advisory committees could also be a part of the process to prepare the initial CDBG–MIT Action Plan submitted to HUD, although not expressly required.

The State of South Carolina reports that despite their efforts to engage and support the citizen advisory committees, member participation and engagement have significantly decreased over the last four years, and these groups no longer serve their intended purpose. The State describes its good faith attempts to maintain the citizen advisory committee, including: soliciting membership from a variety of existing stakeholder groups, including citizens and non-profit organizations engaged in disaster recovery; appointing members across the eligible geographic regions to capture regional perspectives of recovery; and holding scheduled meetings so members could attend virtually or in person to maximize committee turnout.

Despite these efforts, participation of the committee members is inconsistent, with low attendance and high turnover, and minimal participation from those who attend. These ongoing recruitment, retention, and engagement challenges have resulted in the State spending a disproportionate amount of staff time to maintain and increase committee participation despite the overall decline in the committee's effectiveness. Together, these factors indicate that the grantee's request is reasonable and that the approval of this waiver will reduce administrative burden, save resources, and streamline recovery efforts.

After reviewing the State of South Carolina's request and based on the good cause provided herein, the Department is waiving the alternative requirement found in the second paragraph of Section V.A.3.c. of the August 2019 Notice. HUD notes the State's administrative and financial burden of forming a citizen advisory committee for its CDBG-MIT grants and, in alignment with Section III.A.6.a. of the Universal Notice, waives this requirement. As an alternative requirement the grantee is subject to the requirement in section III.A.6.a. of the

Universal Notice that states, “HUD encourages grantees to gather feedback and recommendations on key program decisions from a citizen advisory group at least annually.” If the State decides later that they do wish to work with a citizen advisory committee, the State can determine the cadence of the meetings and how the group would provide feedback to the grantee. This waiver applies to the second paragraph of Section V.A.3.c. of the August 2019 Notice as it relates to citizen advisory committees for CDBG-MIT funds under Pub. L. 115-123 and Pub. L. 116-20 for the State of South Carolina *only*. The State must continue to follow the first paragraph of Section V.A.3.c. as it relates to the availability and accessibility of the Action Plan, substantial amendments, and performance reports, as well as other citizen participation requirements in Section V.A.3.

IV. Public Law 116-20 Waivers and Alternative Requirements

Waiver and Alternative Requirement for Consultation with a Citizen Advisory Committee for Hawaii County’s CDBG-MIT Grant for 2018 Disasters (Hawaii County, HI only).

The Department received a request and justification of good cause from Hawaii County to waive the second paragraph of Section V.A.3.c. of the notice published in 84 FR 45838 on August 30, 2019 (‘‘the August 2019 Notice’’), which requires CDBG–MIT grantees to form one or more citizen advisory committees. These committees are required to meet at least twice a year and solicit and respond to public comments, serving a function to provide increased transparency to the public on the use of the CDBG–MIT allocation.

This waiver and alternative requirement, as further described below, applies to the following CDBG-MIT grant allocated to the County: allocation for disasters occurring in 2018, funded by Pub. L. 116-20 and subject to the requirements published in 84 FR 45838 on August 30, 2019; 85 FR 60821 on September 28, 2020; and 86 FR 561 on January 6, 2021. This waiver request aligns with HUD’s requirements included in the notice titled, *Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees: The Universal Notice*, published on January 8, 2025, at 90 FR 1754, as

amended by Memorandums 25-02[5] and 25-03[6] (the "Universal Notice"). Section III.A.6.a. of the Universal Notice does not require the use of citizen advisory committees but instead encourages their use as a means to gather feedback and recommendations from the public at least annually.

The August 2019 Notice requires that, following HUD's approval of the Action Plan, each grantee form one or more citizen advisory committees to meet in an open forum at least twice a year. The primary function of these groups is to provide increased transparency to the public on use of the CDBG–MIT funds by soliciting and responding to public comments and serving as an on-going public forum to continuously provide input on the CDBG–MIT funded projects and programs. Citizen advisory committees could also be a part of the process to prepare the initial CDBG–MIT Action Plan submitted to HUD, although not expressly required.

The programs outlined in the County's CDBG-MIT Action Plan are tied to hazard mitigation projects identified in their 2020 Multi-Hazard Mitigation Plan (MHMP) which were informed by public outreach and will continue to receive stakeholder input on planned maintenance activities. Furthermore, given the small grant size, the grantee believes the resources required to convene and manage a citizen advisory committee would be better applied toward project implementation and targeted outreach methods on a project basis. Together, these factors indicate that the grantee's request is reasonable given that the CDBG-MIT grant will be used to pursue the implementation of projects outlined in the County's 2020 MHMP and that the approval of this waiver will reduce administrative burden, save financial resources, and streamline recovery efforts.

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[5] Memorandum 25–02, "Revisions made to the Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees: The Universal Notice published in the Federal Register (90 FR 1754) and Clarifications to the Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG–DR Consolidated Waivers and Alternative Requirements Notice Published in the Federal Register (90 FR 4759)," published on March 19, 2025. Found at *https://www.hud.gov/sites/dfiles/CPD/documents/CPDUniversalnotice.pdf.*

[6] Memorandum 25–03, "Revisions made to the Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees: The Universal Notice published in the Federal Register (90 FR 1754)," published on March 31, 2025. Found at *https://www.hud.gov/sites/default/files/CPD/documents/CDBG-DR/3-31-2025UniversalNoticeChangesMemo.pdf.*

After reviewing Hawaii County's request and based on the good cause provided herein, the Department is waiving the alternative requirement found in the second paragraph of Section V.A.3.c. of the August 2019 Notice. HUD notes the County's administrative and financial burden of forming a citizen advisory committee for its CDBG-MIT grant and, in alignment with Section III.A.6.a. of the Universal Notice, waives this requirement. As an alternative requirement the grantee is subject to the requirement in section III.A.6.a. of the Universal Notice that states, "HUD encourages grantees to gather feedback and recommendations on key program decisions from a citizen advisory group at least annually." If the County decides later that they do wish to work with a citizen advisory committee, the County can determine the cadence of the meetings and how the group would provide feedback to the grantee. This waiver applies to the second paragraph of Section V.A.3.c. of the August 2019 Notice as it relates to citizen advisory committees for CDBG-MIT funds under Pub. L. 116-20 for Hawaii County *only*. The County must continue to follow the first paragraph of Section V.A.3.c. as it relates to the availability and accessibility of the Action Plan, substantial amendments, and performance reports, as well as other citizen participation requirements in Section V.A.3.

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 through the Federal eRulemaking Portal at http://www.regulations.gov and HUD's CDBG-DR website at https://www.hud.gov/hud-partners/community-cdbg-dr-regulations.

Ronald J. Kurtz,
Assistant Secretary for Community Planning and Development.

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