CONSOLIDATED COMMENTS AND RECOMMENDATIONS RE: S. 2301

FEBRUARY 21, 2020

PURPOSE

This document consolidates general comment and specific recommendations or concerns with the Reforming Disaster Recovery Act of 2019 from a consortium of disaster recovery practitioners from multiple states with deep experience in managing CDBG-DR funds. All of these states have significant experience in implementing and managing CDBG-DR grant funds and believe that having a more consistent and uniform approach to these grants has great potential in improving the efficacy of these critical recovery dollars. These suggestions provide information regarding program Impacts which should be considered in connection with the proposed legislation.

OVERVIEW AND GENERAL COMMENTS

If done properly, permanently codifying CDBG-DR grant funding will be extremely beneficial. It will provide grantees clearer guidance and prevent references to multiple Federal Register notices. This will improve clarity and decrease the likelihood of grantees missing critical guidance. The HUD OIG issued an audit report recommending the codification of the CDBG-DR program dated July 23, 2018 (Audit Report Number: 2018-FW-0002) that identified 59 grantees with 112 active Disaster Recovery grants that had to comply with 61 different Federal Registers. Consolidating and standardizing these rules could help alleviate the systemic challenges regarding CDBG-DR grants. Two of the consistent challenges that grantees face when implementing CDBG-DR are:

1. Reducing the time it takes from disaster impact to action plan approval to program implementation, and
2. Coordinating disaster recovery resources across both federal and non-federal funding sources.

There are opportunities here to improve in both areas.

While consolidation and consistency are helpful, S. 2301 in some cases goes too far by including unnecessary restrictions which limit the flexibility of the CDBG program that made it the best fit program for disaster recovery funds in the first place. The legislation should not be so prescriptive in its details that the flexibility previously available requires additional congressional action. In other cases it attempts to redefine or restate existing requirements such as those in the Privacy Act of 1974 or 2 CFR 200. The law should reinforce these existing regulations rather than create redundant requirements that may lead to contradictions in the future.

MAJOR COMMENTS, CONCERNS, AND RECOMMENDATIONS

- MITIGATION. SEC 123(b)(2) Allocation for Mitigation: 45% is a very large percentage for mitigation. This should be lowered to a more reasonable 15%. Generally, the funding received through CDBG-DR will not even be sufficient to rebuild, so this requirement only works in the unlikely event that unmet needs following a major disaster are fully funded and the mitigation funds provided are in addition to that unmet need. Otherwise, a percentage that large for mitigation will likely take resources from much needed recovery priorities. Strictly interpreting this, HUD may allow for the elevation of a home but then not have sufficient funds to repair to code. Grantees can and should include mitigation requirements as part of their processes, but dictating that almost half of the money goes to mitigation is not reasonable, especially when there are other sources of funding available specifically for mitigation. That said, mitigation measures should be strongly encouraged and funded under CDBG-DR allocations to enable communities to rebuild stronger and safer. But use of the funding should not be limited to the most impacted areas from a particular disaster; such a limitation makes sense in repairing damage from an event, but for resilience and mitigation the more effective approach often requires a broader geographic implementation. TIMING. Further improvements are needed to reduce the time from disaster to program implementation. Comments and suggestions are as follows:
    - SEC 123(d)(2)(B): 14 days as proposed is great. Some prior disasters required 30 days, which delays implementation.
    - SEC 123(d)(6): HUD will be comparing action plan content to an established checklist; time to review should be reduced to not later than 30 days.
    - SEC 123(d)(6): This section should allow for a partial approval of the plan by including the following language: “The Secretary may approve a portion of the Action Plan while the balance is under deliberation in order to expedite the initial grant agreement”.
    - SEC 123(d)(4)(C): Grantees are already subject to the fair housing and discrimination laws. A requirement to specify the exact method of ensuring compliance at the time of preparation of an action plan disregards that the plans are designed following a disaster but before the launch of programs through which they gather information.. Monitoring of the various programs compliance with the requirements is already available, and remedi are available through the courts in cases of discrimination. Some requirement that we inform all applicants of their rights and obligations under the Fair Housing Act would be appropriate, but writing a ‘plan to ensure compliance’ is redundant and unreasonable and mandates an unrealistic level of clairvoyance at the inception pf a disaster recovery program. A more appropriate provision would be for the Secretary to consider whether the programs, as described, are not on their face in contravention of the Fair Housing Act.

  As currently proposed, if everything goes according to schedule, funds may not be available until more than 9 months after congressional action (2 months for HUD to release allocations, 4 months to write the Action Plan, and 3 months to approve the Action Plan (assuming it is approved). This does not include the time it takes HUD to issue the grant agreement, which is not addressed in the bill. This very optimistically assumes that congressional action can be taken within days of the disaster. This is not typically the case. All opportunities to systemically reduce this time to implementation should be taken.

- LMI. The bill requires an overall percentage to be spent on LMI households of 70% in SEC 123(k)(3) without a waiver from the Secretary. A 50% threshold is more appropriate and consistent with previous disaster recovery efforts funded under CDBG-DR. This is not the regular CDBG program which rightfully targets low income areas. Damages from a disaster do not limit themselves strictly to low income areas and 50% is the more appropriate starting point, recognizing that the Secretary can adjust this number as appropriate based on the areas impacted. The 70% limit will also harm areas with damages heavy in infrastructure as those projects tend to serve a more general population. Requiring a waiver request where damages happen to be more weighted towards infrastructure or general populations will only further slow implementation. That said, **the law should require an analysis of vulnerable populations be included in the action plan to ensure these populations receive primary consideration.**
- COORDINATION. One of the larger challenges with CDBG-DR is coordinating efforts with other funding sources. Greater clarification on the use of CDBG-DR as matching funds or as a co-financing source where another program is the primary funding source would greatly facilitate recovery and present further opportunity to better coordinate federal funding sources.
    - The coordination section at SEC 123(c)(4) only references FEMA and SBA and seems to be misplaced under the larger heading of "Timing". Other sources not mentioned in the bill include FHA, USACE, NRCS, USDA and EDA funding sources. While a common application may not be appropriate for all programs, any federal agency that provides disaster relief for a specific disaster should coordinate with HUD specifically when CDBG-DR funds may be used as local match.
    - The coordination should not be limited to instances where CDBG-DR is utilized as a source of nonfederal share of the other program. Where another federal program is the primary funding source of a project, the Secretary should be authorized to allow adoption of the other programs requirements in lieu of the CDBG-DR requirements without the necessity of issuing a waiver.
    - The ability to adopt FEMA environmental reviews is incredibly helpful. But there are other federal requirements that can cause delays in recovery. A key provision that would be incredibly helpful would state: **Where CDBG-DR funds are being utilized as match for other federal funding sources, the eligibility provisions of the primary funding source apply and supersede the CDBG-DR requirements.** This would include environmental, elevation and construction standards, labor, Uniform Relocation Act, etc. Currently these provisions apply differently or are interpreted differently across federal programs and have led to significant delays in implementation or outright ineligibility of necessary and viable recovery projects.
    - Specifically as it relates to environmental requirements for single family housing to be repaired or reconstructed following a disaster, the Secretary should have the ability to waive the requirements. Historically, the delay and expense associated with these reviews in disaster recovery programs overwhelmingly outweighs the very limited impact these efforts have on the outcome of the homes to be repaired or reconstructed..

Specific Comments and Recommendations Regarding the Bill (In order of Appearance)

1. Section 2 of S 2301. Add as item 7: " Coordinating with the private and philanthropic sectors, academia and other agencies to accelerate the development of technologies, construction methods, and building materials that are low cost and disaster resilient"
2. SEC 123(b)(2)[1] ALLOCATION FOR MITIGATION – See Major Concerns: Mitigation above.
3. SEC 123(c)(1) DEADLINES FOR ALLOCATIONS – See Major Concerns: Timing above.
4. SEC 123(c)(3)(C) OBLIGATION OF AMOUNTS BY THE SECRETARY. Requiring grantees to establish a direct assistance program and process applications for homeless assistance for persons experiencing homelessness prior to or as a result of the declared major disaster will require a waiver or a change in eligible activities. While it is important to serve our most vulnerable populations following a disaster, it is not likely that funding allocations will be large enough to address ongoing issues of homelessness *and* serve those households directly impacted by the disaster.

- SEC 123(b)(5)(A) COORDINATION OF DATA. While this paragraph requires HUD to coordinate for the receipt of data regarding recovery needs, specifically with FEMA and SBA, there is no provision requiring data sharing with the grantee. However, it is the grantee who is responsible for developing a thorough unmet needs analysis and also must ensure no duplication of benefit. The process for grantees to access critical data from federal agencies can be difficult and can take months to acquire. **This section must require HUD to establish data sharing agreements with federal agencies and establish standard data sharing protocols between grantees and federal agencies that provide the unit level data needed to evaluate unmet needs and later aid compliance with duplication of benefit evaluations.** These protocols also need to ensure grantees handle data appropriately and in compliance with the Privacy Act of 1974. Protocols must be developed in advance so that grantees can evaluate their needs and produce a quality action plan within the 90 day requirement.

5. SEC 123(d)(1)(A)(ii), 123(d)(1)(D) PLAN FOR USE OF ASSISTANCE. At the end of the paragraph SEC 123(d)(1)(A)(ii) we should add the phrase "due to the disaster." It is not likely that a CDBG-DR allocation will be sufficient to resolve significant, pre-existing problems of homelessness related to other factors such as mental illness. The plan to provide case management assistance as required in 123(d)(1)(D) typically falls under a grantee's Disaster Housing Plan through the ESF 6 and Recovery Support Function – Housing plans. The CDBG-DR Action Plan can reference these other plans and even supplement them, but it should not be the expectation that case management is fully funded through CDBG-DR.
6. SEC 123(d)(3) APPROVAL and 123(d)(4) DISAPPROVAL. The Secretary's approval of an Action Plan should include a provision for partial approval. This would allow grantees to move forward with disaster recovery activities with a portion of the grant and decrease the time required to provide assistance. See also Major Concerns: Timing above.

- 123(d)(4)(C) DISAPPROVAL Regarding the incorporation of civil rights and fair housing laws into an Action Plan, Grantees are already required to conduct their activities in compliance with these laws and remedies exist for aggrieved individuals. In large part, compliance with these laws are driven

[1] Section 123 as used in this memorandum refers to the Section 123 of the Housing and Community Development Act as added by the legislation.

by data acquired following the approval of the action plan; the current wording of the requirements thus requires a level of knowledge unavailable at the time of time of submission of the action plan. The suggested alternative is that the Secretary determines that the action plan is not on its face inconsistent with these laws.123(d)(4)(D) DISAPPROVAL. With regards to one-for-one replacement of public housing as addressed in this paragraph, the language should be changed to "address" one-for-one replacement rather than "prioritize". In most cases, public housing will already have resources for repairs such as NFIP or other sources of HUD funding. Nationally the public housing stock is quite aged and more susceptible to disaster impacts. HUD has its own public housing program and funds associated with the rebuilding of public housing should be handled by that section of HUD. Trying to navigate both program areas can be very difficult. "Prioritizing" implies that CDBG-DR funds need to go to these subsidized residential units first when it is not always appropriate for CDBG-DR to be funds that are "first in" on these projects. So long as public housing needs are assessed and addressed, that should be sufficient.

7. SEC 123(e)(1)(D) FINANCIAL CONTROLS. This states that each grantee shall have adequate procedures to ensure the grantee will maintain comprehensive and publicly accessible websites that include information on all disaster recovery activities and all resulting contracts, agreements or other disposition of requests for qualification of assistance for procurement with such funds. This section should be clarified or removed. It should not include grant agreements to individual households or businesses for privacy reasons. If it is limited to major subgrants (which would be in the Action Plan anyway) or major consulting grants through administrative dollars, then it is reasonable. Otherwise, it is administratively onerous and duplicative of other State and Federal efforts. Many States have the means to post RFPs and contracts through their State Procurement Office. Contracts are also available through a FOIA request. Grantees are required to post all contracts over $25,000 through the FSRS (grants.gov) in accordance with the Federal Funds Accountability and Transparency Act (FFATA) . If reporting through that system does not provide adequate transparency, Congress should amend FFATA rather than putting additional and onerous requirements on a single federal grant program. The ambiguity and broadness of the term "any resulting contract, agreement, or other disposition…" would literally result in establishing a separate reporting system for several hundred or even thousands of contracts and agreements even for a relatively small grant. For major disasters there are likely 10s of thousands of grant agreements and contracts.
8. SEC 123(f) USE OF FUNDS. This does not provide how program funds can be used (it does address administration, limitations and how UD may use the funds). A paragraph needs to be added that at a minimum clarifies what we can do consistent with HCDA plus additional waivers that may be provided by the Secretary. It also needs to provide clarification on the use of CDBG-DR for matching other federal programs including the option to utilize "flexible" (formerly known as "global") match with FEMA Public Assistance or other programs requiring local match.
9. SEC 123(f)(1) ADMINISTRATIVE COSTS. The restriction limiting administrative costs to 5% will be difficult for new grantees that do not have the staffing and structure in place to manage these grants as well as recipients of small and medium sized grants. This percentage should either be raised to 10% or allow the HUD Secretary to develop a formula based on existing capacity and size of grant. Note that currently grantees can and do shift administrative dollars to recovery programs if they are able to do so within their budget.

10. SEC 123(f)(2) HUD ADMINISTRATIVE COSTS. The proposed set-aside for HUD administrative costs is a positive. However, given the number of open disasters and billions of dollars committed across the nation, HUD needs an annual appropriation in order to maintain the Disaster Recovery and Special Issues unit under the CPD. Currently, experienced HUD employees need to reapply for their jobs on a continuous basis as positions are funded based on irregular appropriations. Establishing permanent positions for qualified disaster recovery experts at HUD would facilitate retention and allow HUD to better serve impacted communities.
11. SEC 123(f)(4) CAPACITY BUILDING. This provision should be expanded to allow technical assistance at any time following a presidential disaster declaration to potential grant recipients for necessary planning and design of programs in anticipation of allocation of grant funds.
12. SEC123(f)(6)(A)(i) and (ii) FLOOD RISK MITIGATION REQUIREMENTS. This requires "any structure" that is newly constructed in a special flood hazard area be elevated 2 feet above freeboard. While definitely a good idea, this could cause problems if CDBG-DR is used as match with other federal funds that have a lesser requirement and generally begin work sooner. This creates disparate requirements between other federally funded programs and local code, therefore it must be elevated to a cross-cutting regulation. It also needs to be clarified and limited to be any enclosed structure designed to house humans (i.e. residential, office, etc.) so that items such as barns, playgrounds and other projects broadly defined as 'structures' are not entirely eliminated from eligibility. These non-residential structures should still require floodproofing, but they should be eligible where there is a recovery benefit.
13. SEC 123(g)(2) ADMINISTRATION. This does nothing except provide an unnecessary restriction on both the grantee and the HUD Secretary that could prevent these funds from completing legitimate recovery activities. There are cases where more complete information over time requires grantees to reevaluate priorities. Activities and plans should not be limited or restricted in this way. CPD needs the ability to allow expenditures for what are otherwise eligible activities if an amendment to the action plan can address CPD findings. This section should be stricken.
14. SEC 123(i) PROCUREMENT PROCESSES AND PROCEDURES FOR GRANTEES. This should simply reference and require compliance with 2 CFR 200. The OMB just went through considerable work in establishing common requirements for federal grants. To replicate that elsewhere with parallel requirements would undermine that effort and could lead to inconsistencies in implementing federal grants.SEC123(k)(1) AUTHORITY. This states that while administering amounts made available for use under this section, the Secretary may 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 the use by recipient of those funds EXCEPT for requirements related to fair housing, non-discrimination, labor standards, flood risk management, and the environment. As it relates to *any* activity by which CDBG-DR funds are matching other federal sources, **the Secretary should be able to authorize use of the primary source's requirements in lieu of CDBG-DR requirements without need for a waiver.**
15. SEC 123(k)(2) NOTICE AND PUBLICATION. This states that any waiver of or alternative requirement shall not take effect before the expiration of the 15-day period beginning upon the publication of notice in the Federal Register of such waiver or alternate requirement. Since there may be cases, for instance with the use of CDBG-DR as matching funds, where a waiver is required after the activity

has started, the Secretary should have the authority and discretion to grant waivers after an activity has begun.

16. SEC 123(k)(3) LOW- AND MODERATE-INCOME USE. See Major Concern: LMI above.
17. SEC 123(m)(2) COLLECTION OF INFORMATION. This paragraph calls for the Secretary to collect information from grantees in recovery activities on a monthly basis. HUD already has a robust data collection in place for quarterly reports through the DRGR. This system is sufficient and viewing progress on a quarterly basis does better to show long term progress over short-term variability. Setting up a monthly system would be costly and add very little value
18. SEC 123(m)(3) PROTECTION OF INFORMATION. This should simply require compliance with the Privacy Act of 1974 to avoid confusion and potentially conflicting guidance.
19. SEC 123(k) PRE-CERTIFICATION FOR UNITS OF GENERAL LOCAL GOVERNMENT. This section calls for the pre-certification of UGLGs, but it does not appear to apply to States or Tribes. It should apply to all since all have to go through a certification process. The certification process should be waived if the non-federal entity is currently in good standing with an open CDBG-DR grant (one open grant would be better than the proposed two past grants). Unfortunately, once a CDBG-DR grant is completed, those staff often move on to other jobs. Grantees are likely to lose capacity relatively quickly once a disaster grant closes. The pre-certification is a good idea that will both decrease the time to implementation and reduce the administrative burden on HUD. However, it should apply more broadly and only be available to those with open grants. Those UGLGs that do truly have capacity will be able to certify quickly.
20. SEC 123(o) DEPOSIT OF UNUSED AMOUNTS IN FUND. The creation of a Disaster Recovery Reserve Fund is a good idea but HUD should be limited in its use to provide for “seed” money for grantees in advance of a known award or in the provision of technical assistance to potential grantees or a declared disaster. HUD should not be allowed to make grantees compete for disaster recovery funds.
21. SEC 123(o)(2) EXTENSION OF PERIOD FOR USE OF FUNDS. This section provides an unnecessary limit of 3 years for an extension. There will be recoveries of a scale that need to exceed the 10 years allowed. If the extension request is going to the appropriations committees anyway, they can use their judgment as to the appropriate number of years to extend.
22. SEC 124 CDBG-DR RESERVE FUND. A reserve fund is a good idea to the extent that it will allow disaster impacted communities to begin their recovery as they wait for the appropriations process. These funds could be used to bring in that initial expertise or be used to ramp up programs early. A reserve fund that could actually be used for disaster recovery activities would be even better, especially as specific appropriations can get delayed in Congress. For new grantees, HUD should implement a ‘strike team’ approach regardless of any reserve fund to help less experienced grantees understand their options and expedite implementation.

CONCLUSION

The concept of codifying CDBG-DR funding is a great idea that has the potential to expedite the delivery of disaster recovery resources and provide consistency across grantees and disasters. However, a thoughtful approach is required to ensure that impediments to community recovery are not permanently placed into law. Too much detail, unnecessarily long timeframes, or restrictions within the

law can hamper flexibility in a recovery scenario, and laws are much more time consuming to amend than federal register notices. Therefore “getting it right the first time” is imperative in furthering real recovery in disaster impacted areas. The disaster recovery community stands ready to assist in these efforts for the benefit of future disaster impacted communities.