COSCDA
Council of State Community Development Agencies

Reforming Disaster Recovery Act
Recommendations
October 2021

The Reforming Disaster Recovery Act (S.2471, H.R. 4707) was introduced in recent months to codify the Community Development Block Grant – Disaster Recovery program (CDBG-DR) and install relevant updates to promote expediency in disaster aid. CDBG-DR was intended to operate on a temporary basis when it was first funded nearly 30 years ago. Since then, the program has distributed tens of billions of dollars in federal assistance to housing, public facilities, and related investments. The program has unfortunately been inhibited by its current framework and without congressional action, inefficiencies will continue to exist. We encourage your respective committees to consider this important legislation ensuring future CDBG-DR resources can be better targeted and reach communities within due time following disaster.

In addition to codification of CDBG-DR, COSCDA offers the following recommendations to enhance the legislation and improve administration of disaster recovery resources:

Concern regarding the increase from 50% to 70% of funds going to LMI

Section 123 (c)(4) directs grantees to apply 70% of their total funding to benefit low- and moderate-income (LMI) populations. While this threshold is appropriate for the CDBG formula program, it may prohibit grantees from supporting developments under the public facilities category, which benefit a broader population base compared to other recovery activities. The vast majority of CDBG formula funds should support LMI populations based on the program's goals and intent to serve primarily disadvantaged populations. CDBG-DR, however, promotes resources to post-disaster efforts, rebuilding entire communities and strengthening their resilience. Communities as a whole are affected by large disaster events with damage sustained across differing populations and places. Under the 70% LMI threshold, grantees may be unable to access and best use recovery funds in large-scale infrastructure projects critical to long-term protection and community-wide recovery.

Historically, disaster recovery funds have had a requirement that 50% of funding meets HUD's various definitions of serving LMI communities. Part of the rationale for this deviation from the traditional CDBG program standard of 70% is that damages from large scale disasters do not

tend to distinguish between income levels, and disasters do not know community boundaries. The income levels themselves can also be extremely arbitrary since they are based on the local median income, which means that a household in one county making $40,000 annually may not be considered LMI, while a household making $80,000 in a neighboring county could be considered LMI.

Varying natural disaster events often cause widespread damage across homes, businesses, public buildings and related structures. Among the largest and most meaningful assets to area-wide recovery are public facilities such as drainage infrastructure, roads, evacuation routes, bridges, community centers, and utilities. Restoring infrastructure of this scale serves the broader community and provides opportunities to mitigate future damages. The challenge is that most areas of a town or county large enough to be impactful for mitigation don't meet the area definition of LMI. HUD defines a LMI benefit area as one that benefits all residents in a particular area, where at least 51% households served have income less than 80% of the area median family income (AMFI). The challenge is that if a service area is small enough to meet the LMI benefit definition, it will not be large enough to be impactful for mitigation. Service areas with less than 51% LMI beneficiaries cannot count towards the LMI requirements. Yet, low- to moderate-income households still live in these areas. Infrastructure serves people regardless of income, but it is the lower income families that will disproportionally experience the most harm if the projects are not completed. If recovery funding is not used for these projects because of the inability to meet LMI requirements, low income families will bear the burden through ongoing damages, lack of services, and cost increases through mill levies, fees or utility bills when the community must raise funds elsewhere.

While noble in its intent, in application, the increase from 50% to 70% will prohibit investments in resilient infrastructure that improve upon if not solve repetitive damage and ultimately hurt all citizens, especially those that are most vulnerable. The increase may be appropriate for housing, but it is harmful to a community's ability to rebuild safe infrastructure. In many communities, the ability to properly address low-income housing needs that are more resilient and sustainable can only be achieved once safe infrastructure has been rebuilt. While the provision for a waiver exists, waivers can be extremely time intensive and may ultimately be arbitrary in their approval from administration to administration. This will work against the intent of the bill by adding impediments to recovery.

We recommend an alternative approach, which facilitates resources to both individuals as well as community- and region-based projects. This alternative would require grantees to meet or exceed the 70% requirement for housing and economic recovery activities, but allow infrastructure projects to serve the larger community. Amounts to public facilities would be constrained by the proportionality clause ensuring that infrastructure is not prioritized over affordable housing and jobs for low and moderate income households.

Proposed action:
Page 26, strike lines 21 through 24 and insert:

"(A) USE OF FUNDS.— Not less than 70 percent of housing, economic recovery, or individual benefit activities undertaken under a grant made under this section shall be used for activities that benefit persons of low and moderate income unless the Secretary—".

Revised provision:
SEC. 123. COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY PROGRAM.

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(c) GRANTEE PLANS.—

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(4) LOW- AND MODERATE-INCOME OVERALL BENEFIT.—

~~(A) USE OF FUNDS.—Not less than 70 percent of a grant made under this section shall be used for activities that benefit persons of low and moderate income unless the Secretary—~~

(A) USE OF FUNDS.— Not less than 70 percent of funds allocated to housing, economic recovery, or individual benefit activities undertaken under a grant made under this section shall be used for activities that benefit persons of low and moderate income unless the Secretary—

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EXPLANATION: The amendment would require grantees to meet or exceed the 70 percent requirement for housing and economic recovery activities, but allow infrastructure projects to serve the larger community.

Adoption of Federal Agency Reviews

Coordination of federal resources is critical to disaster response and further direction is needed to adequately promote relief between agencies. One area which can be better supported is compliance requirements and verification across agencies. These requirements, like procurement, prevailing wage compliance, environmental protections and relocation assistance are applicable to all federal programs. However, limited and inconsistent direction or acceptance from other federal agencies' regulatory compliance has impeded recovery efforts. While the provision to adopt FEMA-funded reviews is a step in the right direction (Section 123 (g)(1)), environmental compliance is not the only challenge when matching other federal programs.

Labor requirements and other constraints compose additional costs on projects that are already moving forward under other federal rules and guidelines.

Additionally, there are other federal programs not listed in the bill where CDBG-DR can provide matching funds not specifically listed in the bill. In the past, COSCDA and states have made the case for "global match", by which one CDBG-DR project can serve as match for FEMA projects. This was so that some projects could meet FEMA requirements only and others would meet CDBG-DR requirements only, but there have always been timing issues and concern on FEMA's part on implementation. A more elegant solution, would be to simply state: "When CDBG-DR is used to match other Federal Funds, the project will inherit the compliance requirements of the primary funding source." In other words, rather than layering additional HUD requirements onto FEMA, USDA, Department of Commerce or other Federal requirements, we pass on the single set of environmental, labor and other requirements already being adopted for the other primary federal agency.

Proposed action:
Page 41, line 10, insert "AND INTERAGENCY COORDINATION" after "ENVIRONMENTAL REVIEW".

Page 41, line 11, strike "ADOPTION" and insert "UNIVERSAL COMPLIANCE".

Page 41, strike lines 19 through 22 and insert "labor standard, procedure under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), and procurement process approval, applied or performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to the environmental review, approval, or permit required under sections 104(d), 104(g)(1) and 110(a), and general procurement standards applicable to non-Federal entities. The rules and requirements of such Federal agency shall apply to project development and shall be used in determining compliance regarding environmental, labor, relocation, and procurement requirements."

Revised provision:
SEC. 123. COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY PROGRAM.

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(g) ENVIRONMENTAL REVIEW AND INTERAGENCY COORDINATION.—

(1) ~~ADOPTION~~ UNIVERSAL COMPLIANCE.—A recipient of funds provided under this section that uses the funds to supplement Federal assistance provided under section 402, 403, 404, 406, 407, 408(c)(4), 428, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5173, 5174(c)(4), 5189f, 5192) may adopt, without review or public comment, any environmental review, ~~approval, or permit performed by a Federal agency, and that~~

~~adoption shall satisfy the responsibilities of the recipient with respect to the environmental re22 view, approval, or permit under section 104(g)(1).~~ labor standard, procedure under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), and procurement process approval, applied or performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to the environmental review, approval, or permit required under sections 104(d), 104(g)(1) and 110(a), and general procurement standards applicable to non-Federal entities. The rules and requirements of such Federal agency shall apply to project development and shall be used in determining compliance regarding environmental, labor, relocation, and procurement requirements.

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EXPLANATION: The amendment provides for better coordination of federal resources for disaster response. It provides direction to agencies to promote coordinated compliance requirements and verification across agencies.

Certifications

Certification of grantees is covered in both paragraphs (d) and (h) of Section 123. Certification requirements have been another source of delay in the implementation of disaster grants and there is further opportunity to streamline the process while maintaining the integrity of the program. Within the bill itself, there are Certification requirements in paragraph (d), specifically (d)(3) and (d)(4) that are more appropriately placed under paragraph (c), "Grantee Agreement," as this is where funding and prioritization takes place. The primary purpose of the Certifications is to ensure that grantees have the capacity in terms of financial controls and compliance to actually manage a CDBG-DR grant. Paragraphs (d) and (h) could be combined for simplicity.

The larger concern is the time it takes for certifications to be consolidated and then approved by HUD for grantees that have already been managing these funds for years, even decades. While the "Compliance before Allocation" section could be helpful, it is unlikely that communities are going to embark on this arduous journey prior to a guarantee of disaster funds. Meanwhile, grantees are managing multiple disasters and yet are expected to prove with every new disaster the ability to manage grants they are already managing and wait for HUD approval prior to getting a grant agreement in place.

COSCDA members have a few recommendations to streamline this process, which in turn will get funds to those who need it quicker:

1) Grantees with existing CDBG-DR grants and no major audit findings with HUD can carry over their certifications from their current disaster.

2) Certifications for grantees under a certain dollar threshold where grantees are low risk in terms of audit findings can operate under abbreviated certification criteria.

3) For new grantees, the certification process can be completed in conjunction with HUD technical assistance.

In all cases, the certification process needs to run concurrently with the grant planning process and there should be very rare cases where a lack of certification holds up a grant agreement. Establishing concurrent processes will mean funds are disbursed into communities more quickly and intended outcomes and results will be realized in line with the public's expectations.

Proposed action:
Page 34, after line 19, insert the following:

> "(10) the grantee has in place proficient processes and procedures to comply with the requirements developed by the Secretary under subsection (h)(1).".

Page 42, strike line 24 and all that follows through page 45, line 4 and renumber succeeding paragraphs appropriately.

Page 43, line 11, add after the period the following "The Secretary shall deem a previous or existing grantee under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) to be in compliance unless there are major audit findings by the Office of Community Planning and Development and such grantee has no corrective action plan. A grantee with no major audit findings by the Office of Community Planning and Development shall be deemed in compliance.".

Page 44, after line 21, insert the following new paragraph:

> "(5) STREAMLINING CERTIFICATIONS.—The Secretary shall-
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> "(A) permit a grantee with an existing grant for previous disasters which has not been closed out and for which there are no open major audit findings by the Office of Community Planning and Development without a corrective action plan to apply the certification from such grant to its current disaster application or grant;
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> "(B) establish a threshold grant amount under which a grantee with a low risk of adverse audit findings may use abbreviated certification criteria; and
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> "(C) provide a new grantee technical assistance in completing the certification process.".

Revised provision:
SEC. 123. COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY PROGRAM.

. . .

(d) CERTIFICATIONS.

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(10) the grantee has in place proficient processes and procedures to comply with the requirements developed by the Secretary under subsection (h)(1).

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(h) FINANCIAL CONTROLS AND PROCEDURES.—

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~~(2) CERTIFICATION. Before making a grant under this section, the Secretary shall certify that the grantee has in place proficient processes and procedures to comply with the requirements developed under paragraph (1), as determined by the Secretary.~~

(3) COMPLIANCE BEFORE ALLOCATION.—The Secretary may permit a State, unit of general local government, or Indian tribe to demonstrate compliance with the requirements for adequate financial controls developed under paragraph (1) before a disaster occurs and before receiving an allocation for a grant under this section. The Secretary shall deem a previous or existing grantee under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) to be in compliance unless there are major audit findings by the Office of Community Planning and Development and such grantee has no corrective action plan. A grantee with no major audit findings by the Office of Community Planning and Development shall be deemed in compliance.

. . .

(5) STREAMLINING CERTIFICATIONS.—The Secretary shall-

(A) permit a grantee with an existing grant for previous disasters which has not been closed out and for which there are no open major audit findings by the Office of Community Planning and Development without a corrective action plan to apply the certification from such grant to its current disaster application or grant;

(B) establish a threshold grant amount under which a grantee with a low risk of adverse audit findings may use abbreviated certification criteria; and

(C) provide a new grantee technical assistance in competing the certification process.

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EXPLANATION: Certification requirements have been a source of delay in the implementation of disaster grants. These amendments streamline the process while maintaining the integrity of the program.