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Regulations Division Office of General Counsel
US Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

RE: HUD, CDBG-DR RFI – Rules, Waivers, and Alternative Requirements
Docket No. FR-6336-N-01; Document Number: 2022-27547

The following comments are submitted on behalf of the Nebraska Department of Economic Development. In response to a historic disaster event, the State of Nebraska received \$108.9M in CDBG-DR funding to support its long-term recovery from 2019 Winter Storm Ulmer (DR-4420), a bomb cyclone. The effects of the winter storm, straight-line winds, and flooding were widespread, leading to disaster declarations in 84 of its 93 counties and four tribal areas, with the eastern part of the state bearing the brunt.

Infrastructure was severely impacted, such that, in the aftermath, when the intense blizzard conditions let up, some residents were marooned for several days, facing out of service, impassable roads and bridges, while others were unable to get to their homes safely to assess or address damages. During the months long disaster incident period, drinking water and wastewater systems were offline, dams and levees were wiped out, and agriculture and industry faced sweeping impacts. Catastrophic failure of infrastructure contributed to the severity, scope, and scale. On the heels of recovery and in the weeks following HUD's "start-up visit" in February 2020, the worldwide covid-19 pandemic complicated the recovery process. As Nebraska prepared to receive its first CDBG-DR allocation since 2008, the nation would have to navigate a new landscape of historic health risk and uncertainty, physical distancing, and offices conducting business remotely. To facilitate speedy recovery response, Nebraska DED hired a consultant to assist with the action planning and related processes. Said consultant had previously worked directly with Nebraska Emergency Management Agency, so had immediate experience with the FEMA response and unmet needs specific to DR-4420, and the project team included former, recently departed HUD leadership with an intimate, working knowledge of the program and its mission. In combination of establishing a dedicated DED team with CDBG knowledge and experience, this should have resulted in a speedy approval process for the resulting unmet needs assessment and action plan, neither of which came to fruition. Initially submitted to HUD on July 31, 2020, Nebraska's DR Action Plan – which fundamentally did not change – did not receive HUD's approval until April 14, 2021. That long delay in the recovery process would prove emblematic, setting the tone and cadence for the state's CDBG-DR program launch and implementation. Nebraska appreciates HUD's interest in shortening the time between disaster and recovery and looks forward to being part of ongoing improvements to that end.

Reducing Administrative Burden and Accelerating Recovery.

CDBG-DR can be a key player in overall mitigation and resilience. The timeline for CDBG-DR is not workable for addressing immediate or “urgent” needs of owner-occupied housing.

Anyone who’s worked in the long-term disaster recovery realm of community development can attest to the importance of relationships. When people are at their most vulnerable, they look for the helpers. These are often people and organizations coming to their aid. Disaster survivors are seeking some semblance of normalcy, which may result in relocating away from their residence at the time of the disaster to another neighborhood, community, county, or state. By the time the needed resources to support their ability to safely stay in (or return to) their home, those survivors may have moved on – emotionally, physically, or both. To illustrate with an analogy, “snow days” in Nebraska are not an uncommon occurrence. Forecasters look at the data and then schools and businesses are often faced with deciding the day before a storm is set to begin whether or not to cancel class or close for the day. Sometimes officials declare a snow day and the actual snowfall or conditions fall short of expectations. That doesn’t make the decision to call a snow day a bad one. Sometimes it is better to be safe than sorry. In practice, CDBG-DR is often left to be the “last resource” in the recovery process. Waiting to see if the other resources come to support needs is irresponsible and potentially detrimental to safety of individuals and sustainability of communities in the long run, it may also foster distrust. Duplication of benefits requirements are in place to mitigate and address issues.

At all levels and layers, relationship and capacity building are critical to sustaining success and outcomes. HUD and grantees should work in partnership to expedite recovery. As it currently functions, CDBG-DR is overly cumbersome – especially so for grantees not having extensive experience in the specialized program nor long running relationships with seasoned HUD staff having worked with grantees through start-up, implementation, and closeout. Some states and communities have been hit hard and frequently, so they’ve been able to establish teams well-steeped in the federal requirements such that those grantees can assess their unmet needs with a mind for how CDBG-DR resources can best be utilized within the communities they serve, aligning the federal requirements with the architecture of their own systems. A possible means to mount the learning curve for grantees not having established or scalable teams with a working knowledge of CDBG-DR is for said grantees to hire consultants. However, consultants are an expensive undertaking and often do not adequately address the capacity building needs. Consultants can play specialized roles, but they are not a replacement for staff nor, understandably, do HUD’s own guardrails allow for consultants to fill an outsized role for grantees. Similarly, HUD technical assistance providers can also play specialized role; however, they are not a replacement for HUD staff nor do HUD and their TA providers always agree on the interpretation of the requirements – leading to further delays and communication issues between the grantee and HUD, which often leads to delays in beneficiary outcomes. While “old hat” grantees are able to absorb new allocations with nominal growing pains, less experienced grantees are faced with a significant learning curve and bureaucratic, administrative burden. Nebraska DED appreciates the scale, scope, and content of the toolkit materials available on the HUD Exchange; however, the breadth of such tools is such that determining where to find and how best to utilize those resources and which tools, forms, and templates fit into its specific disaster conditions and organizational architecture is not an insignificant problem. HUD should categorize the toolkit materials and HUD grant managers should direct grantees to resources that would be useful given their disaster, UNA, and recovery programs.

Early on, grantees – new and experienced – would benefit from working in partnership with a “strike team” or multidisciplinary team (MDT), including members from HUD having policy, financial, environmental, and program expertise; and grantee staff should be similarly represented. HUD staff have the knowledge of the program to support the grantee in identifying the appropriate staff to participate. An MDT approach would bring together a group of community development professionals representing federal and state interests to explore the problem to determine an effective, right-sized long-term recovery plan that complies with the federal rules and regulations while working within the boundaries of the grantee’s ability to follow through. The MDT would also allow HUD to become familiar with the disaster and character of the MID area(s) and “right-size” certifications, grant conditions, and identify areas of needed capacity building such that all parties could reduce the time between the disaster and recovery, identifying potential waivers and eliminating any unnecessary or inapplicable conditions or requirements based on the conditions on the ground. HUD’s “start-up” visit(s) should be built upon. Regular, ongoing coordination via a MDT approach will promote communication and understanding from start to finish, facilitating partnerships to promote efficiencies.

HUD should be a partner in long-term recovery, and that can and should start with assisting in the establishment of a multidisciplinary “strike team” that can be formed shortly after an allocation is known and work together through closeout. A HUD grant manager alone cannot support the wide-ranging needs of a grantee and its staff. Transparency in coordination and collaboration is key to a well-manicured team.

At the federal-level, FEMA and HUD should coordinate such that FEMA project worksheets can include “approved” alternative scopes of work should CDBG-DR resources become available. This flexibility would allow for the incorporation of mitigation and resilience measures where the funding mechanism is not yet available but anticipated. This incorporation would improve outcomes and allow more local jurisdictions to build back better, taking into account the damage the disaster had as well as improvements to rebuild resiliently. This coordination will enhance the outcome of federal funding through collaboration between and across federal and, in most cases, state agencies by matching the resources with those having the capacity and experience in the respective program requirements. While FEMA and HUD have divergent missions in some respects, the goals and outcomes can coalesce.

Had a MDT approach been in place between federal and state partners, it is likely the misunderstandings and misaligned expectations would have resolved more quickly between HUD and Nebraska DED. In the specific instance of the 2019 disaster, where the impacts were exacerbated by the pandemic prior to program launch, having that coordinated partnership would have alleviated some of the challenges the state faced in standing up programs to serve those unmet needs. The recovery process needs to occur as a partnership.

Permanent authorization of CDBG-DR is a necessary step to reducing the administrative burden for all parties, organizations, agencies, and individuals involved. The uncertainty creates a difficult environment. This format of this RFI process and the direct, yet wide-ranging questions and areas seeking feedback reflects the complicated, interrelated nature of administering the program. Recovery does not occur in a vacuum nor does implementation of a complex program with layers of federal register notices and CDBG regulations that apply except where they explicitly do not. HUD embracing a MDT approach early and throughout closeout would require additional coordination but would align expectations and outcomes, likely reducing the overall recovery timeline and effecting better program delivery for beneficiaries and survivors.

b. Are there CDBG-DR rules, waivers, or alternative requirements that could be streamlined or removed to enable grantees to accelerate recovery? Please provide recommendations for alternative processes that would remove barriers, obstacles, and delays.

HUD's allowing grantees with multiple grants to interchange administrative costs between disaster allocations seems to suggest HUD recognizes the administrative burden is ongoing and persistent for grantees. It could also imply HUD recognizes program administrative costs are steep and economies of scale are at play for repeat grantees. HUD should consider flexibilities or alternative requirements for new or less experienced grantees.

HUD must provide a more expansive, clear definition of activities under activity delivery costs and outlay expectations and acceptable means for tracking cost types, including within federal reporting systems, as well as clear expectations for tracking and documenting costs incurred by subrecipients and consultants.

HUD should streamline federal reporting requirements. Activity setup is complicated and the DRGR Manual lacks detail here. Making available example templates in csv format for use by grantees for activity setup and reporting would ensure accurate, complete reporting.

HUD should establish timelines and tasks for HUD and grantees to act in common stages of program implementation once allocations have been announced. These include submission of action plans; initial action plan approval, denial, remediation; community engagement and public hearings; access to grant funds; HUD response times to waiver requests; and grant closeout.

HUD should establish a process flow and an outline or template for submitting waivers. Grantees, subrecipients, and beneficiaries would also benefit from discussions between HUD and the grantee that identify potential waivers that may fit the specific conditions, UNA, and programs identified in the Action Plan. This could be fortified by the MDT approach recommended in an earlier comment.

e. Should there be a minimum allocation threshold for CDBG-DR grant awards? If so, what should the minimum allocation threshold be or be based on?

No, a minimum threshold should not be applied to CDBG-DR grant awards. However, flexibilities and accommodations or alternative requirements should be considered. Smaller grants are difficult to deliver across impacted areas – especially so when unmet needs are identified over large geographic areas that may not be densely populated. Much of the expectations for CDBG-DR seem to assume the MID is densely populated or not in a rural area. Administrative burden should not disqualify a potential grantee from benefiting from federal aid.

f. Recent appropriations allow grantees to access funding for program administrative costs prior to the Secretary's certification of financial controls and procurement processes and adequate procedures for proper grant management. Grantees have used these administrative funds primarily for the development of the action plan (e.g., procuring contractors, increasing capacity, facilitating public participation, etc.). Aside from creating the action plan for program administrative costs, are there other approaches that HUD should consider to promote proactive coordination with other disaster response agencies before a CDBG-DR grant is executed?

HUD's interpretation of the ability of grantees to apply costs associated with action plan development appears to be in flux. As Nebraska DED has shared in previous communications and correspondence, costs incurred for action plan development can and should be allowed as an eligible activity under planning costs. However, the latest directive by HUD that action plan development falls under program administrative costs and cannot be applied to planning costs is a reversal of precedent and prior processes. The administrative cap of 5% constricts all aspects of program management at the state and local levels. HUD could cap action plan and action plan amendment costs under the planning costs,

similar to its cap on public services, with the understanding that some associated costs of action plans and action plan amendments are inherently administrative, e.g., cost of a public hearing.

k. What types of technical assistance should HUD offer grantees to support a timely, equitable, resilient, and successful recovery? Are there phases of CDBG-DR grants (e.g., initial administrative work, action plan development, program implementation, etc.) where providing more intensive technical assistance would be more effective? What types of technical assistance should States offer local government subrecipients to support a timely, equitable, resilient, and successful recovery?

See above recommendation regarding a multidisciplinary team (MDT) approach. This could include HUD TA providers. However, the role of HUD TA providers should be clear and articulated in writing based on the actual work plan underway. Grantees should have a copy of the work plan.

Understanding the Requirements for Most Impacted & Distressed (MID) Areas

Currently, CDBG-DR appropriations acts require all funds to be used in a most impacted and distressed (MID) area resulting from a major disaster. Current rules attempt to balance requirements in the appropriations acts to make allocations to HUD-identified MID areas while also providing grantees with flexibility to capture additional areas that the grantee can determine is also a MID area, using data or information that is not available to HUD.

c. Should HUD continue to allow for the use of CDBG-DR funds to benefit grantee-identified MID areas? How, if at all, should HUD adjust the requirements for the balance of assistance between HUD-identified and grantee-identified MID areas?

Yes, HUD should continue to allow the use of CDBG-DR funds to benefit grantee-identified MID areas. Moreover, HUD should develop guidance to support grantees seeking to expand the HUD MID, identifying the specific conditions it requires to expand the HUD MID, including where the area may not be contiguous or adjacent. Storms and other disaster events rarely follow or stay within arbitrary jurisdictional lines.

Developing the Action Plan

b. HUD currently requires grantees to post an action plan for 30 days to solicit public comment and to host at least one public hearing—is this enough time to solicit meaningful public feedback? Should HUD consider increasing this time or the number of public hearings required for initial action plans and/or for later, substantial amendments to the action plan to achieve meaningful community engagement?

Public engagement opportunities should be open and transparent for stakeholders at all levels to participate. HUD can assist this process by reaffirming the ability to use modern communication technologies. HUD should establish best practices but should not arbitrarily hold grantees to those standards as the unique conditions of the disaster, size of allocation relative to disaster-impacted area, common means of communication and engagement, etc. may not suit all conditions, especially between rural and urban areas or densely- and sparsely populated-areas. Perhaps HUD could develop a checklist or questionnaire for grantees to complete ahead of implementing their outreach and engagement to document the underlying decision-making process, including allowances for shorter public comment periods for substantial amendments.

c. What enhancements should HUD consider to improve a grantee's experience with the HUD's Disaster Recovery Grant Reporting (DRGR) system and data reported by grantees, in particular the Public Action Plan module?

See above recommendations regarding creation of templates for activity setup. Creation of short how-to videos may also prove beneficial. DRGR is not an intuitive system. Furthermore, it is difficult to align reporting functions in DRGR with internal processes and systems of record. HUD should work with grantees to develop a crosswalk tool to import data between systems.