

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT [Docket No. FR-6336-N-01]
Request for Information for HUD's Community Development Block Grant Disaster
Recovery (CDBG-DR) Rules, Waivers, and Alternative Requirements**

Texas Department of Agriculture Comments:

General Comments

The Texas Department of Agriculture administers the annual allocation for the Community Development Block Grant non-entitlement program. We strongly support the responses to this RFI submitted by the Texas General Land Office, the agency directly responsible for CDBG-DR in Texas, and the Council of State Community Development Agencies (COSCEDA). In addition, TDA provides our own comments below for selected RFI questions.

Overall, TDA believes that the strength of the CDBG program lies in its flexibility and ability to determine the best uses of funds to address local needs. The questions in this RFI encourage stakeholder feedback on requirements that would further remove the flexibility of the CDBG-DR program and delay recovery, compounding risk and suffering to those waiting for resources. It also appears that disaster recovery and mitigation could take a backseat to addressing other priorities like climate change, pollution, protected classes, underserved populations, etc. All noble causes and perfectly suited for programs allocated by Congress for that purpose. The priority of CDBG-DR must remain disaster recovery with tailored responses and perhaps goals to other types of concerns.

1. REDUCING ADMINISTRATIVE BURDEN AND ACCELERATING RECOVERY

a: Are there CDBG-DR rules, waivers, or alternative requirements that are unnecessarily complicated? Please provide recommendations for how such rules and requirements should be revised.

It is imperative that data sharing process (DSAs) and computer matching agreement (CMA) templates are unambiguously worded and user friendly. Timely data collection and analysis is critical to effective disaster recovery efforts. These processes must be in place in order for Grantees to develop their needs assessments and action plans based on this data, and to then launch programs that require outreach, data assessments, translations, postings, etc. More information on the State of Texas' experience in this area has been provided as a separate public comment by the General Land Office.

CDBG funding is intended to be available to a very wide range of communities – very small communities that have very real disaster recovery needs and have an established record of managing CDBG grants may be unable to complete the overly complicated certification process to document the physical and financial capacity necessary to manage CDBG-DR/MIT grants. Certifications for smaller grant amounts or existing grantees successfully managing CDBG or CDBG-DR programs should be limited and based on the actual capacity needs of the project requested.

Action plan requirements make the document too lengthy to be utilized by citizens. The result is a lack of transparency and misunderstandings about what benefits are available and how to obtain those benefits. Creating a document that takes more than 6 months to complete and receive approval is not responsive to disaster recovery needs. HUD should consider revising or modernizing outdated publication requirements that are costly and rarely result in public or stakeholder involvement.

Collective and concise guidance and answers must be in writing and timely in order to be effective in guiding program decisions.

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.

There is a need for the alignment of federal standards and the ability to use other federal agency reviews conducted on projects with similar scopes regarding labor, environment, procurement, and relocation.

A streamlined, standardized process of documenting the required certifications and waivers for all disaster grants, incorporating the use of historic data previously provided by grantees, is necessary. New requirements should not be implemented without the program guidance and technological tools to support the new requirement – for example, when HUD implements new updates to the DRGR system without maintaining pace for corresponding templates to populate fields, manual data entry is required and this requires extra staff time.

Clear guidance, in advance of funding allocations when possible, would lead to faster project delivery times.

c. Are there CDBG–DR rules, waivers, or alternative requirements that can be modified, expanded, or removed to reduce administrative burden for beneficiaries?

Because the HUD funds are often the last allocation made available, grantees must be allowed to utilize other federal agency compliance for cross cutting requirements under procurement laws, Davis-Bacon and Related Acts, National Environmental Policy Act (NEPA), Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), etc. Coordination is needed between disaster response agencies. CDBG must continue to be as flexible as possible to allow the most responsive recovery that meets the needs of the current event and beneficiaries.

FEMA Declared Disasters are federally defined major disaster areas as required by the Stafford Act; if HUD is not going to allow for the entirety of the DR area to be eligible for CDBG-DR funds (DR 4332) then HUD must utilize another term to identify allocation eligible areas. By not using the same disaster area as all other federal agencies, HUD is not consistently applying a disaster eligible definition to coincide with other federal agencies.

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?

Technical assistance providers should include information from an operational versus theoretical perspective. Technical assistance is not as effective if there is not a background in implementation of grants. Technical assistance should be tailored to grantees identified needs. The information from HUD tends to be vague and inconsistent. HUD must institute consistent direction through the various field offices and headquarters.

Advance assistance is most effective and a repository from HUD to generate and improve program designs or highlighting optimal programs that meet initiatives would be very beneficial. Written collective, concise, and timely guidance is necessary. Guidance and resources should be readily available publicly. HUD should participate in organizations like COSCDA in an effort for joint program improvement and effective communication. States can best accommodate local subrecipients through financial controls, public outreach, staffing, and program structure.

m. What mitigation techniques or requirements could HUD employ to enhance grantee capacity to comprehensively assess the likelihood of potential fraud risk and to otherwise detect and prevent fraud in grantee programs?

Consistency across all HUD programs and offices is the best way to prevent fraud. Not all HUD programs have the same level of oversight on procurement and other rules as CDBG-DR/MIT creating frustration and confusion for subrecipients who comply with one standard for annual allocations and another for DR. Providing resources (trainings, tools etc.) aimed at preventing fraud and abuse, and a clear understanding of the documentation considered reasonable and appropriate for these compliance areas, would greatly assist grantees in oversight and monitoring of program resources.

2. ESTABLISHING PRIORITIES

a. Should CDBG–DR rules, waivers, or alternative requirements be written to 1) encourage or require grantees to first address disaster recovery housing needs prior to other recovery needs (e.g., infrastructure), or 2) encourage or require grantees to invest in whole community recovery in proportion to its unmet recovery need (e.g., housing, infrastructure, economic revitalization, and mitigation)?

States are best positioned to identify needs and deliver resources responsive to their respective disaster event. A single grant also assures all eligible beneficiaries receive consistent recovery opportunities. The whole community approach is not possible from limited funding provided in any event and would limit a grantee's ability to prioritize programs that meet local needs. Smaller grants and limitations on administrative funds available preclude the ability to operate a multitude of program types to any real benefit. For example, Texas will not be able to effectively support a whole community recovery in 254 counties from \$43 million. The limitation of 5% admin all but assures a housing program is not possible. Funding is never sufficient for a whole community recovery; grantees must have the flexibility to prioritize limited funds.

There are circumstances when housing is the most needed activity but that is not always the case. For example: in disaster prone areas, it may be more cost effective to use infrastructure to support housing instead of direct repair. A \$25 million housing program will reconstruct fewer than 100 homes. A \$25 million drainage project has the potential to remove hundreds of homes from harm's way. Grantees should continue to be empowered to identify their respective needs, determine the best use of funds, and advance activities to address long-term recovery.

e. How can CDBG–DR rules, waivers, or alternative requirements be modified or eliminated to encourage greater levels of investment in infrastructure projects that provide the greatest benefit to impacted low- and moderate-income areas?

Consider alternatives to the standard calculation of LMI area benefit. It is very difficult to do large scale area benefit infrastructure projects and meet the LMI national objective of 51% LMI. Not being 51% LMI should not disqualify those types of projects. A whole community may benefit from repairs and mitigation on a water treatment plant, but the city may not be LMI in its entirety. LMI is defined based on a median income for a family in the County, therefore the larger the benefit areas, the less likely that 51% of the families served will have income below that threshold. Projects in non-LMI areas still benefit the LMI population that is present because the project lessens the impacts for everyone in the area.

Options for alternative requirements include wider application of waivers currently available through other HUD programs; pro-rata funding for large scale infrastructure projects in non-LMI area – ratio i.e., a project that is 40% LMI is has its funding prorated 40% LMI and 60% to another national objective or other funding source; and regional thresholds for LMI calculations rather than county-by-county thresholds.

f. What CDBG–DR rules, waivers, or alternative requirements, if any, should be modified or eliminated so that grantees carry out activities to support economic revitalization for underserved and economically distressed communities?

Underserved and economically distressed communities must be defined with available datasets and applicable guidance.

Economic revitalization activities benefit from the current waiver to allow eligibility based the income of the employee (“income of one”) versus the entire household. HUD should allow for more training and professional/workforce development by making it a more prominent component of economic revitalization in impacted areas.

h. How can CDBG–DR rules, waivers, or alternative requirements be modified or eliminated to allow grantees to leverage private capital (e.g., bridge loans) to start the long-term recovery process immediately after a disaster?

Creating a universal notice would be a big step towards allowing bridge loans to be possible by allowing grantees to know what requirements will be imposed to support recovery in advance of HUD approvals. Setting up a HUD financed bridge loan program could also allow states to draw on that loan to start home and/or multifamily construction before action plan completion. After the appropriation and action plan approval, the loan would be reimbursed back to HUD or other temporary state resources. A universal notice would give potential investors the ability to understand the risk associated with their participation and could bring private funds to disaster recovery.

The CDBG regulations 24 CFR 570.200(a)(4) require the environmental review procedures set forth at 24 CFR part 58 must be completed for each activity, as applicable. The existing requirement in 24 CFR 58.22 restricting development before HUD approvals can be interpreted as overly restrictive for prospective applicants seeking HUD assistance, discouraging non-federal capital from starting recovery immediately after a disaster. While a third party may begin a project in good faith as a private project and, by so doing, is not precluded from later deciding to apply for federal assistance, the lack of guidance documents on choice-limiting actions from HUD, such as a FAQ, would be beneficial during the pre-application and/or application phase for consideration of HUD funds. Moreover, 58.22 should be amended by HUD to include contractually required actions as allowable prior to project federalization and the completion of the environmental review.

6. INCORPORATING MITIGATION AND RESILIENCE PLANNING

a. Are there CDBG-DR rules, waivers, or alternative requirements, and/or policies that prevent or limit grantees' focus on mitigating the impacts of climate change, particularly for those areas disproportionately impacted by climate change? If so, please describe.

Grantees should be afforded the opportunity to dedicate grants to strengthening local and regional resiliency. Such projects are often large-scale infrastructure projects that are challenging to qualify as LMI area projects but important to protecting both LMI and non-LMI areas of the community. The flexibility of CDBG is the best place for such opportunities to be used.

8. MODIFYING GREEN AND RESILIENT BUILDING CODES AND STANDARDS

a. Should the Department impose construction standards that require the use of CDBG-DR funds to adhere to current editions of the International Building Code (IBC), International Existing Building Code (IEBC), International Residential Code (IRC), International Wildland-Urban Interface Code (IWUIC), International Plumbing Code (IPC), International Mechanical Code (IMC), International Fuel Gas Code (IFGC), International Fire Code (IFC), ICC 500-14, ICC/NSSA Standard on the Design and Construction of Storm Shelters, and ICC 600-14 Standard for Residential Construction in High-wind Regions?

HUD should not impose the above-mentioned standards on CDBG-DR funds. The program is designed to respond to on-the-ground needs in states and localities following disaster. Codes vary based on location

and are informed by conditions respective to each jurisdiction. To impose these requirements adds another layer of regulation and delays to recovery. The local and state codes therefore remain the most responsive to communities and households. A requirement that these codes be incorporated in building practices is not practical and can inhibit recovery efforts.

Construction standards applied to CDBG-DR as suggested in the question undoubtedly would raise costs, delay construction, and add responsibilities to stakeholders in post-disaster housing development. It would be sound policy for HUD to use these as recommended approaches to construction practices. However, applying standards as requirements would pose considerable burdens in project design and development.