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**Billing Code 4210-67**  
**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-5696-N-18]**

**Additional Clarifying Guidance, Waivers and Alternative Requirements for Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds Under Public Law 113-2 for the Submission of Expenditure Deadline Extension Requests and Urgent Need Certification Extensions and for the provision of Interim Mortgage Assistance by the State of New York**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice provides additional clarifying guidance for all Community Development Block Grant Disaster Recovery (CDBG-DR) grantees in receipt of funds under the Disaster Relief Appropriations Act, 2013 (the Appropriations Act), with regard to the submission of requests for an extension of the 2-year expenditure deadline established for funds provided under the Appropriations Act and the continued use of the alternative urgent need national objective. This notice also provides an alternative requirement for New York State as a grantee in receipt of CDBG-DR funds under the Appropriations Act. This alternative requirement addresses the period of time in which interim mortgage assistance may be provided to beneficiaries in the State's housing recovery programs.

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

**FOR FURTHER INFORMATION CONTACT:** Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech

impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the “800” number, these telephone numbers are not toll-free.) E-mail inquiries may be sent to [disaster\\_recovery@hud.gov](mailto:disaster_recovery@hud.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Table of Contents**

- I. Background
- II. Applicable Rules, Statutes, Waivers, and Alternative Requirements
- III. Catalog of Federal Domestic Assistance
- IV. Finding of No Significant Impact

### **I. Background**

The Appropriations Act (Public Law 113–2, approved January 29, 2013) made available \$16 billion in CDBG-DR funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas, resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et. seq.) (Stafford Act) due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced the amount of funding for CDBG-DR grants under the Appropriations Act to \$15.18 billion. To date, a total of \$15.18 billion has been allocated or set aside: \$13 billion in response to Hurricane Sandy, \$514 million in response to disasters occurring in 2011 or 2012, \$655 million in response to 2013 disasters, and \$1 billion set aside for the National Disaster Resilience Competition.

This notice applies to all CDBG-DR grantees in receipt of allocations under the Appropriations Act, which are described within the Federal Register notices published by the Department on March 5, 2013 (78 FR 14329), April 19, 2013 (78 FR 23578), May 29, 2013 (78 FR 32262), August 2, 2013 (78 FR 46999), November 18, 2013 (78 FR 69104), December 16, 2013 (78 FR 76154), March 27, 2014 (79 FR 17173), June 3, 2014 (79 FR 31964), July 11, 2014 (79 FR 40133), October 7, 2014 (79 FR 60490), October 16, 2014 (79 FR 62182), January 8, 2015 (80 FR 1039), April 2, 2015 (80 FR 17772), May 11, 2015 (80 FR 26942), August 25, 2015 (80 FR 51589), and November 18, 2015 (80 FR 72102), referred to collectively in this notice as the “prior notices.” The requirements of the prior notices continue to apply, except as modified by this notice.<sup>1</sup>

## **II. Applicable Rules (including Clarifying Guidance), Statutes, Waivers, and Alternative Requirements**

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with HUD’s obligation, or use by the recipient, of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and 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.) (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

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<sup>1</sup> Links to the prior notices, the text of the Appropriations Act, and additional guidance prepared by the Department for CDBG-DR grants, are available on the HUD Exchange web site: <https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>.

For the waivers and alternative requirements described in this notice, the Secretary has determined that good cause exists and that the waiver and alternative requirements are not inconsistent with the overall purpose of the HCD Act. Grantees may request waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of the Appropriations Act, waivers must be published in the Federal Register at least 5 days before the effective date of such waiver.

1. Timeline for the submission of expenditure deadline extension requests. The Appropriations Act requires the Department to obligate all funds provided under the Appropriations Act by September 30, 2017, and requires grantees to expend funds within 24-months of the date on which the Department obligates funds to a grantee. The Appropriations Act also authorizes the Office of Management and Budget (OMB) to grant waivers of the 24-month expenditure deadline. OMB authorized the Department to provide CDBG-DR grantees with expenditure deadline extensions for activities that are inherently long-term and where it would be impracticable to expend funds within the 24-month period and still achieve program missions, up to amounts approved by OMB. In the Federal Register notice published on May 11, 2015, (80 FR 26942), the Department established the process and criteria for the submission of expenditure deadline extension requests for CDBG-DR grantees in receipt of funds under the Appropriations Act. The May 11, 2015, notice requires these grantees to submit requests for the extension of an expenditure deadline at least 120 calendar days in advance of the expenditure deadline (80 FR 26944). Since the May 11, 2015, notice was published, the Department subsequently received, reviewed, and acted upon expenditure deadline extension requests from a number of CDBG-DR grantees in receipt of funds under the Appropriations Act. In some instances, the Department observed that events and circumstances beyond the control of the grantee may require grantees to request an extension of an expenditure deadline after the 120-calendar-day deadline has passed.

The Department is therefore amending this requirement of the May 11, 2015, notice to provide that a grantee “submits the completed CDBG-DR Expenditure Deadline Extension Request template and any attachments to HUD in order to request consideration of the extension request at least 120 calendar days in advance of the expenditure deadline on the funds (or 60 days for funds expiring in calendar year 2015). HUD may, however, also accept requests from CDBG-DR grantees for the extension of an expenditure deadline *less than* 120 calendar days in advance of the deadline upon receipt of a letter from the chief executive officer of the grantee requesting the extension and a demonstration by the grantee that the request is required in order to achieve program missions. Grantees are advised however, that time constraints may not permit HUD to act upon requests that are received in close proximity to an expenditure deadline.”

2. Urgent need national objective certification requirements. The March 5, 2013, notice (78 FR 14329) provided grantees receiving funds under the Appropriations Act with a waiver of the certification requirements for the documentation of the urgent need national objective, located at §§ 570.208(c) and 570.483(d), until 2 years after the date the Department obligates funds to a grantee. The May 11, 2015, notice allowed grantees seeking a waiver of an expenditure deadline to simultaneously seek an extension of the urgent need certification waiver. The extension of the urgent need certification waiver, however, is currently only effective after its publication in the Federal Register. This approach presents challenges for CDBG-DR grantees who receive an extension of an expenditure deadline for an activity associated with the urgent need certification, with the extended expenditure deadline in effect but with the urgent need certification waiver still requiring publication in the Federal Register.

To accommodate the timely expenditure of funds, HUD is modifying the temporary, streamlined urgent need waiver and alternative requirement in paragraph VI.A.1.f. of the March 5, 2013, notice (78 FR 14336). This waiver and alternative requirement supersedes the information

published in the May 11, 2015, notice and will allow grantees to more effectively implement urgent recovery activities by aligning the applicable urgent need national objective criteria with the expenditure deadline on the use of funds. The March 5, 2013, notice is modified to add the following alternative requirement for grantees that receive an extension of the expenditure deadline: For activities designed to respond to a disaster-related impact that poses a serious and immediate threat to the health or welfare of the community, the grantee may continue to use the urgent need national objective until the end of the new expenditure deadline if the grantee meets the following requirements from the March 5, 2013, notice: (1) before seeking the expenditure deadline extension, the grantee must reference in its Action Plan the type, scale, and location of the disaster-related impacts addressed by each program and/or activity that will meet the urgent need national objective; (2) before seeking the expenditure deadline extension, the grantee must identify these disaster related impacts in its Action Plan needs assessment; (3) the needs assessment must be updated as new or more detailed/accurate disaster-related impacts are known; and (4) the grantee must document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the grantee.

3. Alternative requirement to permit extended time for the provision of interim mortgage assistance (State of New York only). In the Federal Register notice published on March 5, 2013, the Department established an alternative requirement to 42 U.S.C. 5305(a)(8) to extend the authority of grantees under the Appropriations Act to provide interim mortgage assistance to qualified individuals from 3 months to up to 20 months (78 FR 14345). A grantee using this alternative requirement is required to document in its policies and procedures how it will determine the amount of assistance to be provided is necessary and reasonable. The State of New York has requested a modification of the 20-month limitation on the provision of interim mortgage assistance to authorize the assistance for a period of up to 36 months.

Under the State's existing Interim Mortgage Assistance (IMA) program, financial assistance is available to eligible applicants to the NY Rising Housing Recovery Program who demonstrate financial difficulty in paying their mortgage due to additional housing expenses incurred as a result of their primary residence no longer being habitable. Interim mortgage assistance may be provided for past, current, and future debt obligations of the mortgage, capped at \$3,000 per month for a maximum of 20 months or \$60,000.

On November 15, 2013, the Department approved Amendment 4 to the State's disaster recovery Action Plan to allocate \$80,000,000 to the initial State IMA program. On May 27, 2014, the Department approved Amendment 6 to the State's disaster recovery Action Plan to modify the calculation of the IMA grant award based on a participant's monthly mortgage amount for their primary residence and proof of an additional housing payment. On April 13, 2014, the Department approved Amendment 8 to the State's disaster recovery Action Plan to enable the State to calculate partial IMA grant awards that reflect rental housing expenses incurred by participants while displaced, less any rental assistance received from insurance or government agencies.

At the time the State submitted a request for a modification of the alternative requirement, 454 program participants were receiving IMA assistance and approximately 25 percent of those participants were low- and moderate-income households. In its request for a modification of the alternative requirement, the State indicated that in the absence of additional time to provide assistance, 287 IMA recipients would no longer qualify for IMA funds within the succeeding 12 months and that 26 percent of those recipients were low- and moderate-income households. In its request to provide IMA payments for a period of up to 36 months, the State cited a number of unanticipated developments that contributed to delays in the completion of assisted housing projects. Most notably, the State pointed to the prospect of increased National Flood Insurance

Program (NFIP) claim payments to NY Rising program participants as a result of fraudulent damage assessments conducted on behalf of the NFIP in the immediate aftermath of the disaster. The State indicated that uncertainty surrounding these payments, and the potential impact of the payments on the amount of CDBG-DR funds ultimately available to the homeowner, contributed to delays and supports an extended period of availability for IMA. Other factors cited by the State as contributing to the need for extended IMA are the limited pool of contractors experienced in undertaking the elevation of homes and the shorter Northeastern United States construction season. The State further noted that its own clarification process, through which applicants may appeal the ultimate amount of their CDBG-DR award, can also slow progress in completing repairs and contribute to the need for additional IMA.

The State proposed to implement the extended period for IMA by initially maintaining the current 20 months of assistance for IMA participants. At the end of the 20-month period of assistance, the State may subsequently determine a need for an additional 16 months of IMA, for a total not to exceed 36 months of assistance. When a need for an extension of IMA is identified, the State will conduct an inspection of the property to determine if substantial construction progress has been made. If substantial construction progress has been made, the State may provide IMA for the additional authorized period of time, for a total period of assistance up to 36 months. If the inspection indicates that substantial progress has not been made, the extension of IMA will be provided only when the recipient agrees to participate in the newly established construction program within the NY Rising Housing Recovery Program. Under the construction program, the State will contract for and manage, on behalf of the IMA recipient, the rehabilitation of the IMA recipient's home. Prior to its initial implementation of the construction program, the State will determine the need for the IMA extension in those instances where substantial

construction progress has not occurred and will give priority to the rehabilitation of homes for those IMA recipients receiving a total up to 36 months of IMA.

After reviewing the State's request, and for the State of New York's IMA program only, the Department is modifying the provision of the March 5, 2013, Federal Register notice that limits the provision of interim mortgage assistance to a period of 20 months and establishing an alternative requirement that allows for the payment of assistance for a period of up to 36 months if the State meets the other requirements described in the above paragraph. The goal of this alternative requirement is to provide an extended period of IMA in order to minimize the risk of foreclosure of storm damaged homes while they are being rehabilitated with CDBG-DR funds and to return IMA recipients to their rehabilitated homes as quickly as possible. The State must implement this alternative requirement consistent with the approach outlined in its request and as described herein. This waiver and alternative requirement shall remain in effect until December 31, 2017, after which the State shall be authorized to offer interim mortgage assistance for a period no more than 20 months. Interim mortgage assistance is an authorized eligible public service activity and the State is reminded that IMA expenditures are subject to the 15 percent cap on public services established pursuant to 42 U.S.C. 5305(a)(8).

Within 30 days of the effective date of this notice, the State must begin to implement its construction program for IMA recipients receiving an extended period of assistance and without substantial construction progress in the rehabilitation of their home. The State must have fully implemented the construction program for all IMA recipients within 6 months of the effective date of this notice. In addition, the State's policies and procedures must:

- (1) Document how the State will determine that "substantial progress" has or has not been made in the rehabilitation of an IMA recipient's home;
- (2) Document how the State will determine that the amount and period of assistance to be

provided under this alternative requirement is necessary and reasonable;

(3) Document how the State will prioritize the rehabilitation of homes of IMA recipients receiving a total up to 36 months of IMA;

(4) Include internal controls designed to ensure that IMA provided to recipients is being used for its authorized purpose; and

(5) Include a plan for assisting recipients that exhaust their IMA after 36 months but continue to have a need for assistance because the rehabilitation of their home has not been completed.

### **III. Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this notice is 14.269.

### **IV. 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 for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Dated: February 8, 2016.

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Nani A. Coloretti, Deputy Secretary.

**[FR-5696-N-18]**

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