



Billing Code: 4210-67

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6074-N-01]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees; State of Texas Allocation

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

ACTION: Notice.

SUMMARY: This notice allocates \$57,800,000 of Community Development Block Grant disaster recovery (CDBG-DR) funds to the State of Texas in response to Hurricane Harvey. This allocation is made pursuant to the requirements of Public Law 115-31. This notice also makes a technical correction to the previously established alternative requirement on the low- and moderate- income national objective criteria for grantees undertaking CDBG-DR buyouts and housing incentives.

DATES: Applicable: [INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Acting Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 10166, 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 Ms. Kome at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. 2017 Allocations
 - A. Background
 - B. Use of Funds
 - C. Grant Process
 - D. Applicable Rules, Statutes, Waivers, and Alternative Requirements
 - E. Duration of Funding
- II. Applicable Rules, Statutes, Waivers, and Alternative Requirements
- III. Catalog of Federal Domestic Assistance
- IV. Finding of No Significant Impact

I. 2017 Allocations

A. Background

Congress appropriated \$400 million in CDBG-DR funds for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (HCDA) 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 qualifying major disaster declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (Stafford Act) (42 U.S.C. 5121 et seq.) in 2015, 2016, 2017 or later.

Of this amount, HUD previously allocated \$342,200,000 to areas impacted by disasters in 2015 and 2016. The \$57,800,000 allocated under this notice is the remaining amount from \$400 million appropriated under Public Law 115-31.

Public Law 115-31 specifies that the funds allocated for disasters in 2017 or later must be

allocated and used under the same authority and conditions as those applicable to CDBG-DR funds appropriated by Public Law 114–223. Therefore, the funds allocated to the State of Texas under this notice are subject to the authority and conditions of Public Law 114-223 and the requirements, waivers, and alternative requirements applicable to CDBG-DR funds appropriated under Public Law 114-223 provided in HUD’s Federal Register notices published on November 21, 2016, January 18, 2017, and August 7, 2017. These **Federal Register** notices describe the allocation and applicable waivers and alternative requirements, relevant statutory and regulatory requirements, grant award process, criteria for Action Plan approval, and eligible disaster recovery activities for the qualifying disaster.

Section III.A. of HUD’s August 7, 2017 **Federal Register** notice provided that HUD would not evaluate a 2017 disaster for qualification to receive CDBG–DR funds until: (i) the major disaster has been declared eligible for the Federal Emergency Management Agency’s (FEMA) Public Assistance (PA) Program and Individual and Households (IHP) Program; (ii) FEMA has approved Individual Assistance applications totaling at least \$13 million in IHP financial assistance for the declared disaster in a single county; and (iii) four months have passed since the disaster declaration that made IHP available, or the IHP registration period is closed, whichever comes first. Section III. A. iii. was intended to allow time for HUD to gather data needed to validate that a disaster met the eligibility thresholds established in the methodology. However, HUD has already received sufficient data to show these thresholds were far exceeded by Hurricane Harvey, and thus, the Department is rescinding section III. A. iii. of the August 7, 2017 notice to expedite this allocation.

Section III.A. also provided that HUD would use the detailed methodology specified in Appendix A of the January 18, 2017 notice and make allocations equal to the lesser of 100

percent of the serious unmet needs or the remaining funds available from Public Law 115-31. Using updated data HUD received from the Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA), the unmet needs in Texas far exceed this allocation of the remaining \$57,800,000 available from Public Law 115-31. A detailed explanation of HUD’s allocation methodology applicable to the \$57,800,000 is provided at Appendix A of the January 18, 2017 notice.

Table 1 – Qualifying 2017 Disaster and “Most Impacted and Distressed” area

FEMA Disaster No.	Grantee	Minimum amount that must be expended for recovery in the HUD-identified “most impacted and distressed” areas
2017 Disasters		
4332	State of Texas	Harris County (\$46,240,000)

The grantee’s use of funds is limited to unmet recovery needs from Hurricane Harvey (FEMA Disaster No. 4332). Table 2 shows the HUD-identified “most impacted and distressed” areas impacted by the identified disaster. At least 80 percent of the \$57,800,000 must address unmet needs within Harris County, Texas, which is the “most impacted and distressed” area, as identified by HUD. Texas may spend the remaining 20 percent in Harris County or in other areas the grantee determines to be “most impacted and distressed” that a received a presidential disaster declaration pursuant to the disaster number listed in Table 1.

B. Use of Funds

Public Law 115-31 requires funds to be used only for specific disaster recovery related purposes. This allocation provides funds to the State of Texas for authorized disaster recovery efforts associated with Hurricane Harvey. Section III of the August 7, 2017 notice describes the requirements governing the submission of action plans required for 2017 disasters. However, the

State of Texas previously completed a CDBG-DR action plan for 2016 disasters and that action plan is subject to the same requirements applicable to this allocation. Due to the severity of Hurricane Harvey and to help ensure funds reach those affected in a timely manner, HUD will allow Texas to adopt and incorporate into its Action Plan, for the funds allocated under this notice, any relevant information from the action plan that it previously completed for its 2016 disaster allocation. Additionally, the scale of analysis for this allocation may be commensurate with the amount of the allocation and the limited data available this soon after the disaster. Accordingly, section III. B. of the August 7, 2017 notice is deleted and replaced with the following:

B. Use of Funds.

Grantees receiving an allocation of funds under Public Law 115-31 for 2017 and later disasters pursuant to a subsequent notice are subject to the requirements of the November 21, 2016 notice, as amended, which require that prior to the obligation of CDBG-DR funds, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds, including criteria for eligibility, and how the use of these funds will address long-term recovery and restoration of infrastructure and housing and economic revitalization in the most impacted and distressed areas. The grantee's Action Plan for 2017 disasters may adopt and incorporate applicable sections and any other relevant information from its Action Plan for 2016 disasters, previously submitted pursuant to the November 21, 2016 notice or January 18, 2017 notice. The grantee must include updated information specific to the 2017 disasters, such as its analysis of unmet needs and use of funds to address these needs. The Action Plan for 2017 disasters must describe uses and activities for all funds that: (1) are authorized under title I of the Housing and Community

Development Act of 1974 (HCDA) or allowed by a waiver or alternative requirement; and (2) respond to disaster-related impact to infrastructure, housing, and economic revitalization in the most impacted and distressed areas. To inform the Action Plan, the grantee must conduct an updated assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities, pursuant to paragraph A.2.a. in section VI of the November 21, 2016, notice, as amended. However, the scale of analysis for this allocation may be commensurate with the amount of the allocation and the limited data available.

Public Law 115-31 requires the Secretary to certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. The November 21, 2016 notice further required grantees to submit risk analysis documentation and to certify to its capacity to administer CDBG-DR funds. To provide a basis for these certifications, grantees were required to submit documentation to the Department demonstrating compliance with the stated requirements of the statute and corresponding notice. The Department will not require grantees to resubmit its previous documentation to support the Secretary's required certification before signing the grant agreement for funds under Public Law 115-31 for 2017 disasters. Instead, grantees receiving an allocation of funds under Public Law 115-31 for 2017 disasters may submit a new certification to HUD indicating that its submissions in response to the certification requirements of the

November 21, 2016 notice for its CDBG-DR grant for 2016 disasters remain unchanged, and the policies and procedures on which HUD based its certification for 2016 disasters are adopted and will apply to the grantee's CDBG-DR grant allocation for 2017 disasters. Alternatively, grantees may provide a supplement updating its previous submissions in response to the certification requirements of the November 21, 2016 notice to indicate any changes that will apply to the use of funds for 2017 disasters, and will submit a certification that its submissions remain unchanged, except as indicated.

Pursuant to the November 21, 2016 notice, as amended, a grantee receiving an allocation of funds for 2017 disasters in a subsequent notice is also required to expend 100 percent of its allocation of CDBG-DR funds on eligible activities within 6 years of HUD's execution of the grant agreement.

A grantee receiving an allocation of funds for 2017 disasters will be subject to the grant process provided for in section V. of the November 21, 2016 notice, as amended. The grantee and HUD will execute a separate grant agreement for funds for 2017 disasters.

C. Grant Process

To receive funds allocated by this notice, Texas may adopt and incorporate applicable sections and any other relevant information from its approved Action Plan for 2016 disasters, and include any additional information, as appropriate, to address recovery from Hurricane Harvey. In developing the resulting Action Plan for Hurricane Harvey (Public Law 115-31), Texas must meet the grant process requirements from the November 21, 2016 notice, which include the following:

- Consult with affected citizens, stakeholders, local governments, and public housing

authorities to assess needs;

- Publish the resulting Action Plan for Hurricane Harvey (Public Law 115-31) in accordance with the requirements set forth in section VI.A.4.a of the November 21, 2016 notice, including the requirement to prominently post the Action Plan on its official website for no less than 14 calendar days. The grantee must also ensure equal access for persons with disabilities and persons with limited English proficiency. The manner of publication must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the Action Plan contents and provide feedback;
- Respond to public comment and submit its resulting Action Plan for 2017 disasters to HUD no later than 90 days after the effective date of this notice;
- Enter the activities from its published Action Plan for Hurricane Harvey (Public Law 115-31) into the Disaster Recovery Grant Reporting (DRGR) system and submit the updated DRGR Action Plan to HUD within the system;
- Sign and return the grant agreement to HUD;
- Ensure that the HUD approved Action Plan for Hurricane Harvey (Public Law 115-31) is posted prominently on its official website; and
- Amend its published Action Plan for Hurricane Harvey (Public Law 115-31) to include its projection of expenditures and outcomes within 90 days of the Action Plan approval.

HUD will review Texas's resulting Action Plan for Hurricane Harvey (Public Law 115-31) within 45 days from date of receipt and determine whether to approve the plan per criteria identified in this notice and all applicable prior notices. HUD will then send an approval letter, grant conditions, and an unsigned grant agreement to the grantee. If the state's Action Plan is not approved, a letter will be sent identifying its deficiencies and the state must then re-submit the

plan within 45 days of the notification letter.

Once HUD signs the grant agreement and revises the grantee's line of credit amount, the state may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58 or as authorized by Public Law 115-31 and, as applicable, receives from HUD or the state an approved Request for Release of Funds and certification.

D. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The funds allocated under this notice are subject to the waivers and alternative requirements provided in the November 21, 2016, January 18, 2017, and August 7, 2017 notices governing the award of CDBG-DR funds to 2016 grantees. These waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift recovery following the disasters, while also ensuring that statutory requirements are met. Texas may request additional waivers and alternative requirements from the Department, as needed, to address specific needs related to its recovery activities. Waivers and alternative requirements are effective five days after they are published in the **Federal Register**.

E. Duration of Funding

Public Law 115-31 provides that these funds will remain available until expended. However, consistent with 31 U.S.C. § 1555 and OMB Circular A-11, if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for two consecutive fiscal years, any remaining balance will be made unavailable for obligation or expenditure. Consistent with the November 21, 2016, January 18, 2017, and August 7, 2017 notices, the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are

waived and replaced with alternative requirements. Grantees must expend 100 percent of their allocation of CDBG-DR funds on eligible activities within 6 years of HUD's execution of the grant agreement.

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice provides a technical correction to the previously established alternative requirement on the low- and moderate- income (LMI) national objective criteria for grantees undertaking buyouts and housing incentives with CDBG-DR funding provided by Public Laws 113-2, 114-113, 114-223, 114-254 and 115-31.

The **Federal Register** notice published by the Department on August 7, 2017 (82 FR 36812) established additional opportunities for CDBG-DR grantees to meet the LMI national objective with respect to assistance provided to LMI persons through buyouts and housing incentives. After the publication of that notice, HUD determined that the language used would make it difficult for grantees to meet those objectives. Accordingly, starting at the fifth paragraph of Section V, the August 7, 2017 notice is amended to read:

For a buyout award or housing incentive to meet the new LMB and LMHI national objectives, grantees must demonstrate the following:

(1) The CDBG-DR funds have been provided for an eligible activity that benefits LMI households by supporting their move from high risk areas. The following activities shall qualify under this criterion, and must also meet the eligibility criteria of the notices governing the use of the CDBG-DR funds:

(a) Low/Mod Buyout (LMB). When CDBG-DR funds are used for a buyout award to acquire housing owned by a qualifying LMI household, where the award amount is greater than post-disaster (current) fair market value of that property;

(b) Low/Mod Housing Incentive (LMHI). When CDBG–DR funds are used for a housing incentive award, tied to the voluntary buyout or other voluntary acquisition of housing owned by a qualifying LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.

(2) Activities that meet the above criteria will be considered to benefit low- and moderate-income persons unless there is substantial evidence to the contrary.

Any activities that meet the newly established national objective criteria described above will count towards the calculation of a CDBG–DR grantee’s overall LMI benefit to comply with the primary objective described in 24 CFR 570.200(a)(3) and 24 CFR 570.484(b). Grantees receiving an allocation of CDBG–DR funds pursuant to the following appropriations acts must specifically request a waiver and alternative requirement from HUD in order apply the new national objective criteria established in this section of the notice: Public Law 109–148, 109–234, and 110–116 (Katrina, Rita, and Wilma); Public Law 110–252 and 110–328 (2008 Disasters), Public Law 111–112 (2010 disasters), and Public Law 112–55 (2011 disasters).

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218; 14.228; and 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: December 20, 2017.

Neal J. Rackleff,
Assistant Secretary for Community Planning
and Development.

[FR-6074-N-01]

[FR Doc. 2017-27960 Filed: 12/26/2017 8:45 am; Publication Date: 12/27/2017]