



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6226-N-01]

Waivers, Alternative Requirements and Extensions for Community Development Block Grant Disaster Recovery Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This notice governs Community Development Block Grant disaster recovery (CDBG-DR) funds awarded under several appropriations. Specifically, this notice provides waivers and establishes alternative requirements and extensions for grants provided pursuant to Public Laws 114-113, 114-223, 114-254, 115-31, 115-56, 115-123, 115-254, and 116-20 in connection with HUD's obligation or use by the recipient of these funds. This notice provides additional flexibility to CDBG-DR grantees as they continue their disaster recovery efforts while also responding to the Coronavirus Disease 2019 (COVID-19) pandemic.

DATES: Applicability Date: **[Insert date five days after date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Office of Block Grant Assistance, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, 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 202-708-0033. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

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I. Public Laws 114-113, 114-223, 114-254, 115-31, 115-56, and 115-123 Extensions

The Department has awarded CDBG-DR funds for multiple disasters occurring in 2015, 2016, and 2017 under Public Laws 114-113, 114-223, 114-254, 115-31, 115-56, and 115-123. Those Public Laws authorize 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). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5. As required by Public Laws 114-113, 114-223, 114-254, 115-31, 115-56 or 115-123, the waiver and alternative requirement provided herein is based upon a determination by the Secretary that good cause exists and that the waiver and alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974 (HCDA).

HUD has determined that the rapidly emerging needs of states and local governments in responding to the COVID-19 pandemic provides good cause to allow extensions of the CDBG-DR expenditure deadlines established in Federal Register notices published on June 17, 2016 (paragraph VI.A.24, 81 FR 39687); November 21, 2016 (section II. and paragraph VI.A.24., 81 FR 83254); January 18, 2017 (section II., 82 FR 5591); August 7, 2017 (sections I.E. and III.B., 82 FR 36812); February 9, 2018 (paragraph VI.A.28. and section VII., 83 FR 5844); and August

14, 2018 (section V., 83 FR 40314) (the “Prior Notices”). HUD shall presume the start of the COVID-19 crisis to be January 21, 2020, the date the Centers for Disease Control and Prevention (CDC) confirmed the first case in the United States, unless HUD receives conclusive evidence to the contrary.

These Prior Notices establish an administrative deadline for the timely distribution of funds, requiring each grantee to expend 100 percent of its allocation of CDBG-DR funds on eligible activities within six years. In response to the COVID-19 pandemic, HUD is providing a one-year extension of the previously established expenditure deadline for all grantees that received CDBG-DR funds under Public Laws 114-113, 114-223, 114-254, 115-31, 115-56 or 115-123 for a 2015, 2016, or 2017 disaster. If a grantee determines that an extension is required beyond the one-year extension provided by HUD in this notice, within 90 days of the applicability date of this notice, a grantee must submit a written request to HUD to further extend the expenditure deadline for one additional year (for a maximum total extension of two years).

Grantees are reminded that the Prior Notices require the grantee to update the projections of expenditures for each grant based on the status of current programs or projects and to reflect any new expenditure deadlines.

To request the additional one-year extension referenced above, the grantee shall: (a) indicate how the COVID-19 pandemic has affected the grantee’s ability to expend CDBG-DR funds in a timely manner and to meet its original deadline; (b) describe the specific CDBG-DR funded recovery programs, activities, or projects that have slowed as a result of the COVID-19 pandemic and; (c) submit an updated version of its “CDBG-DR Grantee Projections of Expenditures and Outcomes” that provides for the full expenditure of the grant within the expenditure period requested (a maximum total two-year extension is allowed). In its request,

the grantee shall also indicate if it previously was identified by HUD as a “slow spender” as of October 2019 or later in the Department’s Monthly CDBG-DR Grant Financial Reports for the grant under consideration. If the grantee was identified as a slow spender for the grant under consideration as of October 2019 or later, the grantee must also include an explanation of the causes of its slow expenditures prior to the COVID-19 pandemic and the actions that have been implemented to address those causes. Grantees that have been identified as a slow spender during the above period must also include a description of the concrete steps that it will implement to ensure that its CDBG-DR expenditures will be “on pace” as soon as practicable, and must update its “CDBG-DR Grantee Projections of Expenditures and Outcomes” that was previously submitted to HUD with its action plan. The Department shall establish, as appropriate, a grant condition to require each grantee receiving the additional one-year extension (for a maximum total extension of two years) to comply with expenditure milestones as provided in the revised projections, consistent with the provisions at 2 CFR part 200. The Department may, if warranted, restrict the availability of funds until such time as this or any grant condition is met by individual grantees.

Grantees are reminded that HUD may, at any time, establish or revise grant conditions based on performance or lack thereof or may pursue remedies based on performance consistent with subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. Grantees are advised to work with the assigned CPD representative in the development of expenditure extension requests. The Department will periodically publish all revised expenditure deadlines established pursuant to this notice on the HUD website.

II. Public Laws 115-254 and 116-20 Extensions

The Department has awarded CDBG-DR funds for multiple disasters occurring in 2017, 2018, and 2019 under the Public Laws 115-254 and 116-20. The COVID-19 pandemic, which the President declared as a national emergency on March 13, 2020, disrupted normal government operations that are likely to impede grantees' ability to meet previously established submission deadlines. Therefore, as described below, HUD is exercising its waiver authority to waive and modify submission deadlines published in Federal Register notices that contain grant requirements for these CDBG-DR funds. Public Laws 115-254 and 116-20 authorize 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 HCDA. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5. For the waiver and alternative requirement described herein, the Secretary has determined that good cause exists and that the waiver and alternative requirement is not inconsistent with the overall purposes of title I of the HCDA.

Section III of the Department's January 27, 2020 Federal Register notice (85 FR 4681) included deadlines for the submission of the initial CDBG-DR action plan, the Financial Management and Grant Compliance certification submission, and the Pre-Award Implementation Plan. The January 27, 2020 notice requires grantees receiving funds for 2018 and 2019 disasters to submit their Pre-Award Implementation Plan and Financial Management and Grant Compliance certification documentation within 60 days of the applicability date of that notice (or

together with the submission of the action plan, if earlier) and to submit their initial action plans within 120 days after the applicability date of that notice. Section III.A. of the same notice required grantees that received an allocation for unmet infrastructure needs for 2017 disasters to submit a substantial amendment to their current action plan no later than 90 days after the applicability date of that notice.

On March 20, 2020, HUD issued a notification to these grantees that extended the above deadlines for an additional 90 days to provide flexibility to CDBG-DR grantees as they also respond to the impacts of the COVID-19 pandemic. On July 24, 2020, HUD amended that notification for only those grantees that received an allocation for unmet infrastructure needs for 2017 disasters, to extend their deadline for submission by an additional 30 days. In order to provide CDBG-DR grantees with additional flexibility in complying with submission deadlines, HUD is amending the January 27, 2020 notice to allow individual grantees to request further extensions, if necessary. Accordingly, HUD is amending section III of the January 27, 2020 notice by replacing the third paragraph of section III in its entirety with the following:

“To begin expending CDBG–DR funds, the grantee must follow the process outlined in the February 9, 2018 notice (83 FR 5846), unless otherwise amended below:

- HUD will accept an action plan no later than 210 days after the applicability date of this notice, unless the grantee has requested, and HUD has approved an extension of the submission deadlines below.
- Within 150 days of the applicability date of this notice (or when the grantee submits its action plan, whichever is earlier), submit documentation for the certification of financial controls and procurement processes and adequate procedures for grant management, as amended in section IV.B.1 of this notice. A

grantee that received a certification of its financial controls and procurement processes pursuant to a 2016 or 2017 disaster may request that HUD rely on that certification for purposes of this allocation, provided, however, that grantees shall be required to provide updates to reflect any material changes in the submissions.

- Within 150 days of the applicability date of this notice (or when the grantee submits its action plan, whichever is earlier), submit documentation for the implementation plan and capacity assessment.
- Additionally, all funds must be expended within 6 years of the date of obligation as described in section V of this notice.”

HUD is also amending section III.A. of the January 27, 2020 notice, and will replace that section in its entirety with the following:

“Each grantee that received an allocation pursuant to Public Law 115–56 or Public Law 115–123 for 2017 disasters and an additional allocation in this notice for unmet infrastructure needs is required to submit a substantial amendment to its current action plan required by the Prior Notices. The substantial amendment must be submitted no later than 210 days after the applicability date of this notice, unless the grantee has requested, and HUD has approved an extension of its submission deadline. The substantial amendment must include the additional allocation of funds and address the requirements of the Prior Notices, as amended by this notice. Each grantee must follow the applicable substantial amendment process pursuant to section III.B of the August 14, 2018 notice (83 FR 40316). Based on the 2019 Appropriations Act, HUD will condition the availability of these funds for grantees that have entered into alternative procedures under section 428 of the Stafford Act as of the date of enactment of the 2019

Appropriations Act until such grantees have reached a final agreement on all fixed cost estimates within the timeline provided by FEMA.”

III. Citizenship Requirements

Please note that the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services provides that Immigration Reform and Control Act, 8 U.S.C. 1324a et seq. prohibits employers from hiring and employing an individual for employment in the U.S. knowing that the individual is not authorized with respect to such employment. This generally applicable law also applies to CDBG grantees and their subrecipients and/or contractors/subcontractors (including relating to employees recruited under Section 3). For more information, please see <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/10-why-employers-must-verify-employment-authorization-and-identity-of-new-employees> and <https://www.uscis.gov/i-9-central/legal-requirements-and-enforcement>.

IV. Environmental Review

This Notice provides operating instructions and procedures in connection with activities under Federal Register documents that have previously been subject to required environmental reviews. Accordingly, under 24 CFR 50.19(c)(4), this Notice is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*).

Dated: August 11, 2020.

John Gibbs,
*Acting Assistant Secretary for
Community Planning and Development.*

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