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Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th St. SW
Washington, DC 20410

Submitted via www.regulations.gov

Re: Request for Information Community Development Block Grant Disaster Recovery (CDBG-DR) Formula; Docket No. FR-6337-N-01

I. Introduction

The National Low Income Housing Coalition (NLIHC), on behalf of the NLIHC-led Disaster Housing Recovery Coalition (DHRC), welcome the opportunity to respond to the U.S. Department of Housing and Urban Development's (HUD) Request for Information (RFI) regarding the agency's long-term disaster recovery programs, Community Development Block Grant-Disaster Recovery (CDBG-DR).

NLIHC is dedicated solely to achieving racially and socially equitable public policy that ensures people with the lowest incomes have quality homes that are accessible and affordable in communities of their choice. NLIHC leads the DHRC, a coalition of more than 890 national, state, tribal, and local organizations, including many working directly with disaster-impacted communities and with first-hand experience recovering after disasters. Together, we work to ensure that federal disaster recovery efforts prioritize the housing needs of the lowest-income and most marginalized people in impacted areas.

NLIHC has worked on disaster housing recovery issues in the years since Hurricane Katrina struck New Orleans in 2005. From this work, we have reached the conclusion that America's disaster housing recovery system is fundamentally broken and in need of major reform. It is a system designed for middle-class people and communities – a system that does not address the unique needs of the lowest-income and most marginalized people and the communities in which they live. As a result, these households are consistently left behind in recovery and rebuilding efforts, and their communities are made less resilient to future disasters. The federal disaster recovery system exacerbates many of the challenges these communities faced prior to disasters, worsening the housing crisis, solidifying segregation, and deepening inequality.

While CDBG-DR and CDBG-MIT programs are vital recovery tools that provide states and communities with the flexible, long-term recovery and mitigation resources needed to rebuild affordable housing and infrastructure after a disaster and to prevent future harm, too often, these resources are diverted away from the people and communities with the greatest needs. Recovery efforts tend to prioritize homeowners, who are more likely to be white, over renters, who are predominantly Black, Indigenous, and people of color. In doing so, disaster recovery exacerbates racial wealth disparities and pushes more low-income renters of color into long-term housing instability and, in the worst case, homelessness. While low-income communities and communities of color are often located in areas at higher risk of disaster and have less resilient infrastructure to protect residents from harm, long-term recovery resources tend to go to more communities that face lower risks. Rather than dismantling the racial segregation that is

the direct result of intentional federal, state, and local policy, rebuilding efforts tend to entrench racial disparities.

Reforming the CDBG-DR program is critical to ensuring the lowest-income and most marginalized disaster survivors receive the assistance they need for a complete and equitable recovery. The policy recommendations included in this comment letter reflect nine core principles that should guide our country's disaster housing recovery and mitigation efforts:

1. Recovery and mitigation must be centered on survivors with the greatest needs and ensure equity among survivors, especially for people of color, low-income people, people with disabilities, immigrants, LGBTQ people, and other marginalized people and communities;
2. Everyone should be ensured fair assistance to full and prompt recovery through transparent and accountable programs and strict compliance with civil rights laws, with survivors directing the way assistance is provided;
3. Processes for securing help from the government must be accessible, understandable, and timely;
4. Everyone in need should receive safe, accessible shelter and temporary housing where they can reconnect with family and community;
5. Displaced people should have access to all the resources they need for as long as they need to safely and quickly recover housing, personal property, and transportation;
6. Renters and anyone experiencing homelessness before a disaster must be provided quickly with quality, affordable, accessible apartments in safe, quality neighborhoods of their choice;
7. All homeowners should be able to rebuild without delay in safe, quality neighborhoods of their choice;
8. All neighborhoods should be free from environmental hazards, have equal quality and accessible public infrastructure, and be safe and resilient; and
9. Disaster rebuilding should result in local jobs and contracts for local businesses and workers.

Due to the length of this RFI, the below sections contain answers to selected questions and are laid out to correspond to issue areas identified by HUD. Answers are presented in a bulleted format for ease of review. Any questions regarding this comment can be directed to NLIHC Senior Vice President of Policy and Field Sarah Saadian (ssaadian@nlihc.org) and Senior Policy Analyst for Disaster Recovery Noah Patton (npatton@nlihc.org).

II. General Questions

Question: *Given the policy objective of quickly allocating funds so that state and local officials can speedily develop programs to address their most serious unmet needs for disaster recovery, are there other ways HUD might allocate CDBG-DR funds beyond the methodology described above?*

Response:

- HUD will be receiving many suggestions regarding potential data sources to utilize in its methodology for making formula allocations. When selecting sources, the agency should ensure they effectively reflect the unmet needs of those most in need of assistance following disasters. To further that goal, HUD should prioritize granularity as well as specificity when reviewing data sources for inclusion in its methodology. HUD's current system relies on Federal Emergency Management Agency (FEMA) and Small Business Administration (SBA) data that often lack the granularity necessary to fully identify all unmet needs for disaster recovery at the neighborhood level across the country, including in areas such as Puerto Rico. Utilizing more granular information will facilitate a more targeted formula for the allocation of CDBG-DR funding, which can ensure that all disaster needs are considered when allocating these scarce long-term disaster recovery funds.

Question: *If Congress appropriates funds in advance of disasters occurring in a specified time period, should disasters be funded as soon as practicable after they occur, or should HUD hold back funding until all disasters in a year are known so each receives an equal share of the remaining funding relative to their needs?*

Response:

- Regardless of when a full allocation is provided, it is critical that HUD and grantees begin coordination with other federal disaster assistance agencies as quickly as possible after a disaster strikes. The DHRC supports activating initial funding to grantees to allow them to start planning for long-term recovery. This should include funds to assist grantees to begin data collection and Action Plan-related efforts, to allow grantees to quickly respond to subsequent funding availability.
- Beyond administrative costs, HUD and grantees should be empowered to act quickly to provide housing assistance to disaster survivors, particularly those most at risk of displacement and homelessness. There must be continuity in providing housing assistance without arbitrary deadlines or bifurcation among federal agencies. Too often, FEMA ends the provision of housing resources to disaster survivors before HUD CDBG-DR resources have been distributed and before homes are rebuilt, leaving survivors without the affordable, stable homes they need to get back on their feet. FEMA and HUD must coordinate to ensure seamless transition from one program to another for disaster survivors, who have experienced significant disruption to their lives already. Ideally, HUD – not FEMA – should play the lead role in shaping disaster housing assistance for both immediate and long-term needs, given HUD's expertise in housing and proven track record in serving households with the greatest needs.
- To facilitate seamless transition among different recovery programs, HUD should enter into an Interagency Agreement with FEMA to activate the Disaster Housing Assistance Program (DHAP) to provide low-income survivors with direct, longer-term rental assistance and case

management services provided by local housing professionals.¹ DHAP has played a critical role in providing safe, decent, and affordable homes to some of our nation's most vulnerable individuals and families after a disaster, and has been widely upheld as a best practice by past Democratic and Republican administrations. Such an Interagency Agreement would create a bridge to CDBG-DR-funded programs implemented during long-term recovery efforts for survivors most at risk of displacement and homelessness.

- HUD must also work with FEMA to ensure that people experiencing homelessness prior to a disaster are able to be rehoused. Despite consistent advocacy, FEMA regulations frequently deny people experiencing homelessness from receiving FEMA assistance, even if their possessions have been destroyed. FEMA should ensure that people experiencing homelessness are eligible for the same emergency shelter and housing recovery resources available to impacted renters. HUD should continue the recently implemented Rapid Unsheltered Supportive Housing (RUSH) program to ensure those experiencing homelessness can receive assistance prior to the implementation of CDBG-DR-funded programs.

III. Basic Formula

Question: *Are there are other unmet needs that HUD should be factoring into the formula calculation beyond housing, economic revitalization, and infrastructure?*

Response:

- HUD should direct grantees to take the presence of FEMA Individual Assistance (IA) and Individual and Households Program (IHP) denial data into account. Due to well-recognized deficiencies within FEMA IA programs, the majority of applications for FEMA assistance result in a denial. These denials are often the result of barriers to assistance created through the FEMA application process and do not reflect a lack of need or disaster impact. Reasons an individual might be denied assistance could be as simple as an inability to contact FEMA to schedule an inspection, or an applicant reiterating a preference to remain in their pre-disaster dwelling.
- The number of FEMA application denials can provide the grantee with an idea of where gaps in FEMA's assistance coverage may exist. Because these FEMA-created barriers are often present for renters, households with low incomes, and historically marginalized communities, these areas must be flagged for additional assistance or otherwise weighted within the allocation formula.

IV. Housing Unmet Needs

Question: *For homeowner occupied units, are the FEMA Verified Loss (FVL) breaks the correct breaks for assessing disaster severity?*

Response:

- To advance equity, HUD should direct grantees to adjust damages for homeowners based on metrics of home values, such that the minimal damage qualifying as "major damage" is expressed as a percentage of overall home value, not as a flat number that does not

¹ <https://bipartisanpolicy.org/blog/71864/>

recognize the well-documented impacts of racial bias on appraisal methodology and neighborhood home values. Any methodology using property value as a metric systemically underestimates the level of damage and unmet need in terms of the resources necessary to rebuild. The use of property value also has a disparate, harmful impact on many homeowners, especially those who are people of color and located in Black, Indigenous, and other communities of color. As President Biden noted in his January 26, 2021 Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies, discriminatory housing policies at the federal, state, and local government level are responsible for creating segregated neighborhoods and obstructing access to opportunity and the ability to build wealth for communities of color.

- HUD should also reconsider its assumption that damages of more than \$8,000 constitute "major damage" for purposes of determining unmet need among the impacted low- and moderate-income (LMI) population and for each group within the LMI population – particularly when such determinations are made by FEMA inspectors who are trained to exclude anything they subjectively consider "deferred maintenance" from the amount of damages. Evidence of this practice was directly cited by the Government Accountability Office (GAO) in October 2022.² Given these issues, HUD should move to weigh the initial FVL determinations to account for the impact of inspection bias among very low-income individuals.

Question: *Is there an alternative to personal property damage that HUD might consider for measuring damage to rental housing? For renter occupied units, are the FEMA personal property breaks currently used the right breaks for assessing disaster severity? Should these be modified to reflect FEMA program changes?*

Response:

- To ensure the needs of renters are not undercounted, HUD should establish the methodology used by New York State after Superstorm Sandy as the baseline for allocations among grantees and within grantee jurisdictions. The initial 2013 New York State Action Plan in response to Superstorm Sandy rejected the use of FEMA IA data as a basis for allocating need because it correctly found that the FEMA IA data "systematically underrepresents the extent of damage to the rental stock; given the large proportion of minority and low-income New Yorkers who require affordable rental properties, the State believes it is critical to understand damage incurred by this segment of the housing market."
- The New York State methodology, which is easily replicable based on a standard formula, corrects for the systematic underrepresentation of renters by using homeowner data as a baseline and extrapolating the more detailed homeowner data collected by FEMA to assess damage to renters in the same Census block or block group. HUD should use this methodology as the baseline for assessing housing needs and should require grantees to use it as the default methodology for assessing unmet need.
- The methodology currently used minimizes the unmet needs of renters, establishing a baseline that persists through grantee action plan design and implementation to produce indefensible discriminatory outcomes for impacted households, low-income communities,

² <https://www.hsdl.org/c/view?docid=872482>

and communities of color.³ The methodology and data for determining unmet needs must be restructured to better serve the needs of renter households, and particularly lower-income renter households, which are disproportionately households of color.

- The initial under-assessment and undercounting of rental housing and renter needs by FEMA is compounded by HUD's current methodology, which calculates unmet need allocations based on repair estimates for serious damage only for rental units occupied by very low-income renters. By assuming all landlords who rent to households with very low incomes "have adequate insurance coverage," the impact of a disaster on the entire pre-event rental inventory is critically undercounted.⁴ Faced with scarce inventory and resulting supply-driven rent increases, higher-income renters migrate into the remaining lower-income inventory, and lower-income households are totally deprived of housing with no recovery plan in place to reestablish balance.

V. Infrastructure

Question: *How can HUD better target the calculation of unmet infrastructure needs for lower income households and other vulnerable populations in the most impacted and distressed areas? Should HUD pro-rate the estimate of infrastructure needs based on the fraction of damaged homes with unmet needs located in LMI areas?*

Response:

- HUD should pursue a plan to pro-rate the estimate of infrastructure needs based on the fraction of damaged homes with unmet needs located in LMI areas. CDBG-DR must explicitly require grantees to address the legacy of disinvestment in Black, brown, and low-income communities and to prioritize the recovery needs of the lowest-income and most marginalized households. When implemented correctly, infrastructure investment can become a desegregating, equality-increasing process that can eradicate generations-long barriers erected by white supremacy and economic inequality. These principles have largely been reflected in the Administration's Justice40 initiative.⁵
- Affordable housing is frequently surrounded by underfunded infrastructure that exacerbates the impact of disasters. In Houston, 88% of the city's open-ditch sewage system lies in historically Black neighborhoods.⁶ During Hurricane Harvey, the open ditches overflowed, spreading sewage waste into streets and homes. Similar events occurred in North Carolina and Puerto Rico, where the lowest-income individuals often live in areas at high risk of environmental damage or flooding during disasters.⁷ State and local governments will often endeavor only to meet the minimum program requirements and direct funds for mitigation projects to higher-income communities when possible. HUD must counteract that by explicitly requiring HUD grantees to prioritize the infrastructure and housing needs historically disinvested communities.

³ (See: 85 F.R. 4681, 4689 – Jan. 27, 2020) See: mandate of 3 Executive Order 13985, Sec. 7. Promoting Equitable Delivery of Government Benefits and Equitable Opportunities.

⁴ 85 F.R. 4681, 90

⁵ https://www.hud.gov/press/press_releases_media_advisories/HUD_No_22_132

⁶ <https://preservationdatabase.org/wp-content/uploads/2021/06/Taking-Stock.pdf>

⁷ <https://preservationdatabase.org/wp-content/uploads/2021/06/Taking-Stock.pdf>

VI. Mitigation

Question: *Should there be a separate calculation of mitigation needs that is independent of the unmet need calculation? If so, what should that calculation be?*

Response:

- The needs of federally assisted housing must be given priority for mitigation efforts following disasters. Federally assisted housing is at increased risk of natural hazards, so calculations of mitigation needs should take into account the amount of federally assisted housing within an impacted area.
- Due to a combination of segregation, exclusionary zoning, and disinvestment in infrastructure for economically depressed communities and communities of color, 450,000 of the nation's affordable homes are located in flood-prone areas.⁸ In general, federally assisted affordable housing continues to be located in such at-risk areas, forcing the lowest-income households into areas with the highest risk of disasters. Not only does this pattern needlessly place people in harm's way, but it ensures more federal dollars will be needed to repair and reconstruct homes and fund emergency services in the wake of a disaster.
- Federally assisted affordable housing is more likely than market-rate housing to be located in areas with high natural hazard risks. A recent report by NLIHC and the Public and Affordable Housing Research Corporation (PAHRC) found that nearly one-third of federally assisted housing stock is located in areas with very high or relatively high risk of negative impacts from six natural hazards, compared to one-quarter of all renter-occupied homes and 14% of owner-occupied homes. Households residing in these higher-risk units are made up predominantly of people of color, with Public Housing comprising the largest share of units (40%) in areas at very high or relatively high risk of natural hazards.⁹ Given the importance of these units to the underlying affordable housing stock of an area, their preservation is vital.

VII. Amount of Funding

Question: *If resources are limited, should a certain type or types of unmet need be prioritized over others in determining an allocation? For example, housing only.*

Response:

- It is of *critical* importance that CDBG-DR rules require grantees to first address disaster recovery housing needs. Any other attempt to address disaster impacts via a whole community approach will be ineffective if the immediate housing needs of those most impacted by the disaster are not met.
- While the flexibility of CDBG-DR funds can be counted as one of the programs greatest strengths, that flexibility can lead to program spending that does not match disaster impacts. Commonly, this results in disproportionate spending on a sub-area of CDBG-DR – such as infrastructure or homeownership – that comes at the expense of assisting households with lower incomes. This is illustrated by a 2021 report from the GAO which

⁸ <https://preservationdatabase.org/wp-content/uploads/2021/06/Taking-Stock.pdf>

⁹ <https://preservationdatabase.org/wp-content/uploads/2021/06/Taking-Stock.pdf>

highlighted significant concerns as to whether CDBG-DR funds are reaching those most impacted by disasters, and found spending is instead being utilized to fund other CDBG-DR-eligible areas.¹⁰

- When a disaster exacerbates the already severe shortage of affordable rental homes, the consequences can be devastating for the lowest-income survivors, putting them at risk of displacement, evictions, and, in worst cases, homelessness. Rental prices often increase dramatically after a major disaster. This rise has been attributed to a combination of the rapid loss in available housing stock due to the disaster and a simultaneous increase in demand for rental housing for households seeking temporary shelter as their damaged or destroyed homes are replaced.
- For example, some ZIP codes in the Houston area saw rent increases of 50% after Hurricane Harvey.¹¹ These rapid increases in rent can displace low-income households. The 2018 California wildfires destroyed a large amount of northern California's housing stock; 14% of Butte County, California's housing supply was destroyed by the Camp Fire alone.¹² As a result, rents have increased rapidly in areas already experiencing an affordable housing crisis. Reports of rents doubling or tripling after an area wildfire resulted in Chico County, California passing an emergency ordinance limiting rent increases to just 10%.¹³ The increased cost of rental housing is also sometimes attributed to price gouging by landlords seeking to take advantage of the immediate increase in demand. Local advocates report that landlords have evicted tenants without cause to make room for new tenants willing and able to pay much higher rents. Such practices lead to further destabilization and displacement.
- Affordable and accessible homes are often the most vulnerable to disasters, but they are less likely to be rebuilt after a disaster strikes.¹⁴ When naturally occurring affordable rental housing stock is damaged, the cost to repair and rehabilitate the property leads to higher rents. The slow pace and complications of federal disaster-recovery efforts often mean that federally assisted affordable housing is not rebuilt until many years after a disaster, if at all.
- In addition, FEMA programs are largely unavailable to individuals who were experiencing homelessness at the time of the disaster, and assistance for renters is typically not enough to support full recovery following a disaster. As a result, CDBG-DR-funded programs are the only available assistance eligible for these groups. Without these important funds, impacted renter households risk displacement or homelessness, and individuals experiencing homelessness have even less opportunity to access permanent housing.

VIII. Local and Tribal

Question: *Are there revisions to HUD's allocation methodology that should be considered to capture tribal recovery needs more effectively?*

¹⁰ <https://www.gao.gov/assets/gao-22-104452.pdf>

¹¹ <https://www.homelesshouston.org/hurricane-harvey-five-years-later#:~:text=We%20had%20placed%20more%20than,homelessness%20from%20the%20year%20before.>

¹² <https://www.latimes.com/local/lanow/la-me-paradise-housing-shortage-20181123-story.html>

¹³ <https://www.latimes.com/local/lanow/la-me-paradise-housing-shortage-20181123-story.html>

¹⁴ <https://preservationdatabase.org/wp-content/uploads/2021/06/Taking-Stock.pdf>

Response:

- HUD's Office of Native American Programs (ONAP) already has long-term established relationships with the majority of tribal communities in the U.S. ONAP should play a greater role in helping tribal governments understand how to successfully access the CDBG-CR programs through training in advance of the next wave of natural disasters, and by providing a direct departmental liaison with FEMA. Regional and national HUD staff should be available to provide guidance and assistance on an emergency basis when a disaster strikes tribal communities.
- In the last decade, more than 70 natural disasters have occurred on tribal lands, with some communities being hit more than once a year, but these communities received scant recovery or mitigation funding. According to an analysis from the Center for Public Integrity, tribal nations were on average more vulnerable to disasters than the U.S. overall, based on measures such as unemployment and income. Yet, in the span of one year, tribes receive less than half of what the U.S. Department of Homeland Security grants states for recovery efforts daily. For example, the Standing Rock Sioux Tribe in North and South Dakota has been hit nine times in the last 10 years by catastrophic flooding and winter storms that knocked out power and washed out roads and bridges. In the spring of 2013, when record flooding swept the state of North Dakota, the Standing Rock Sioux received just under \$240,000 in assistance from FEMA to repair roads, bridges and replace culverts that were washed out.¹⁵

IX. Minimum Amounts for Most Impacted Areas

Question: *Currently at least, 80 percent of CDBG-DR funds must be spent to benefit the most impacted and distressed area designated by HUD, and up to 20 percent may be spent in area designed by the grantee as most impacted and distressed areas; is this the right amount?*

Response:

- HUD must maintain the requirement that at least 80% of funds be spent in HUD-identified Most Impacted and Distressed (MID) areas. Grantee-designated MID areas typically constitute areas that were less-directly impacted by the disaster. Because these areas have spent less funds on direct disaster response, they typically have greater capacity to utilize CDBG-DR-funded contracts. This can lead to an inequitable distribution of grantee capacity and attention to projects in these grantee-designated MID areas, as they are more likely to be "shovel-ready" quicker than those areas that experienced greater disaster impacts. To avoid this effect, HUD must continue to maintain and enforce the requirement that no more than 20% of funds be spent in grantee-designated MID areas.

X. Data Provided to Grantees

Question: *In addition to the raw data provided by FEMA to HUD for the formula calculation, should HUD provide to CDBG-DR grantees and the public a set of pre-scripted tables and maps to assist with development of Action Plans?*

¹⁵ <https://publicintegrity.org/environment/one-disaster-away/when-disaster-strikes-indigenous-communities-receive-unequal-recovery-aid/>

Response:

- Public input provided with only partially available data on disaster impacts and needs will be incomplete. To ensure public input is fully informed, HUD should direct grantees to provide to the public the raw data that HUD and FEMA use in their methodology in a timely and systemized manner to allow the public to fully participate in action plan development and to identify potential racially disparate outcomes in action plan programs. Applications for assistance or program participation must be reported in granular detail with deletion of personally identifying information (PII). The data should include the date the information was acquired and posted along with a specific, individual case tracking number assigned to every applicant. These data, on both initial impacts and the spending of funds, are instrumental to empowering residents and advocates to enforce equity and civil rights protections in the structure and content of grantee plan programs and resource allocation.
- Program data should be anonymized to protect survivors' identities and disaggregated by geography, income, race, and ethnicity, and all protected classes of individuals to ensure fair and equitable access. HUD and FEMA should collaborate in making these data available, and these data should be accessible through the program website.
- Just as municipalities and state governments need education regarding human rights-centric mitigation practices, communities themselves also need access to information and expertise to navigate the sometimes labyrinthian technical jargon affiliated with recovery projects and their implementation. To aid this understanding, HUD should work to ensure that grantees establish open data sources with interactivity, allowing community members to track the progress of mitigation plans as well as conduct statistical analysis to inform continued public input into the process.
- HUD should collaborate with FEMA to institute a common format for distribution of data to the public after a major disaster, based on the OpenFEMA data set. These data must include information at the most granular available Census geography, preferably the Census block, to enable the public to compare the data with Census data in areas that FEMA does not currently collect information on, such as race and ethnicity.
- Easily accessible data is essential for advocates to fully ensure compliance both before and after the creation of an Action Plan. An exceptional example of transparency in procurement and operations post-impact is the New Jersey Office of the Comptroller's Sandy Transparency pages.¹⁶ This resource has since been taken down, but many of its elements are resurrected on the Office of the Comptroller's COVID-19 Oversight page and COVID-19 Compliance and Transparency page. One agreement reached in the voluntary compliance agreement between the state of New Jersey and DHRC member Fair Share Housing Center (FSHC) requires the state to send FSHC quarterly reports containing much of the data described above, at an individual award level with procedures to protect recipient privacy. Such transparency has proven helpful, and monthly updates on a public page including all the described data and procedures, should be a baseline in data access and transparency.

¹⁶ <https://www.nj.gov/covid19oversight/transparency/contracts/>