



NATIONAL LOW INCOME HOUSING COALITION

OUTLINE OF THE CDBG-DR FEDERAL REGISTER NOTICE

(February 23, 2018)

INTRODUCTION

When Congress makes a special appropriation of Community Development Block Grant funds for disaster recovery (CDBG-DR), HUD has to issue a notice in the *Federal Register* that serves as regulations states must follow when they receive these funds.

This outline summarizes key features residents and advocates should know about the February 9, 2018 *Federal Register* notice that applies to the \$7.4 billion in CDBG-DR funds Congress appropriated on September 8, 2017. Of that amount, HUD awarded \$5 billion to Texas, \$1.5 billion to Puerto Rico, \$616 million to Florida, and \$243 million to the Virgin Islands.

While this outline is just about the February 9 *Federal Register* notice, most of the features outlined are likely to apply to future *Federal Register* notices, including one that will be published for the additional \$28 billion Congress appropriated on February 9, 2018 (although that upcoming *Federal Register* notice will have special features about the \$12 billion specifically set aside for disaster mitigation).

Page references in this outline are to the [“Public Inspection” version](#) of the *Federal Register* posted February 7 and 8. This version is easier to read than the formal version.

The *Federal Register* notice uses the term “grantee” to refer to states as well as to Puerto Rico and the Virgin Islands.

FIRST, SOME BASICS

[CDBG-DR Is Similar to Regular CDBG – But Different](#)

CDBG-DR is a special appropriation intended to respond to Presidentially Declared Disasters. CDBG-DR is different from the regular CDBG that states and about 1,200 cities and counties receive each year. In general, CDBG-DR follows the regular State CDBG program’s legal and regulatory provisions.

However, HUD is allowed to waive or modify regular CDBG provisions in order to enable the funds to be used in ways more appropriate to disaster recovery. Each *Federal Register* notice is tailored to each disaster and sets out the provisions grantees must follow when seeking and using CDBG-DR funds.

Grantees may request additional waivers at any time, as long as they provide data to support the requested waiver. Therefore, residents need to be vigilant at all times and respond to any requested waiver.

70% of CDBG-DR Must Benefit Low and Moderate Income Households [page 43]

As with regular CDBG, grantees must use at least 70% of their CDBG-DR for activities that benefit “low and moderate income” households (those with income less than 80% of the area median income, AMI). A grantee may seek a waiver, but must present a compelling need. To justify a waiver of the 70% low/mod income benefit rule, a grantee must:

- a. Identify proposed activities that will meet the needs of low and moderate income households;
- b. Describe proposed activities that will be affected by the reduced low/mod income benefit requirement, including the location of the activities and their role in the long-term recovery plan;
- c. Describe how the activities identified in (b) prevent the grantee from meeting the 70% low/mod income benefit requirement; and
- d. Demonstrate that low and moderate income persons’ disaster-related needs have been sufficiently met and that the needs of those who are not low and moderate income persons or the needs of low/mod income areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them.

Emphasis on Housing

The *Federal Register* notice states on the first page, “...this notice requires each grantee to primarily consider and address its unmet housing recovery needs”.

In addition, the notice states (four times) that “each grantee [is required] to primarily consider and address its unmet housing recovery needs. A grantee may also allocate funds to address unmet economic revitalization and infrastructure needs, but in doing so, the grantee must identify how unmet housing needs will be addressed or how its economic revitalization or infrastructure activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas.”

[Pages 3, and 22/23 and 30 (pertaining to uses for economic revitalization and infrastructure)]

The Most Impacted and Distressed Areas [page 5]

The statute providing CDBG-DR money requires the funds to be used for disaster-related expenses in “the most impacted and distressed areas”. The *Federal Register* notice requires Florida, Puerto Rico, and Texas to spend at least 80% of their CDBG-DR allocation in areas that HUD has identified as “most impacted and distressed” based on data available to HUD. The list of those areas is on page 4. For the remaining 20% of CDBG-DR, Florida, Puerto Rico, and Texas may determine other areas that these grantees consider to be the “most impacted and distressed”.

The Virgin Islands must spend 100% of its CDBG-DR on St. Thomas, St. Croix, and St. John.

THE ACTION PLAN [page 20]

Grantees must draft a disaster Action Plan for public review and comment before submitting it to HUD. The Action Plan must identify how a grantee proposes to use its CDBG-DR funds and the eligibility criteria for those seeking assistance. The Action Plan must explain how the uses will address disaster relief, long-term recovery, and the restoration of housing, infrastructure, and economic revitalization – all in “the most impacted and distressed areas”.

Grantees must publish a draft Action Plan on its disaster recovery website for at least 14 days of public review and comment. This is a greatly reduced amount of time; the regular CDBG program requires at least 30 days. [pages 10, 37–39]
More details are on page 9 of this outline.

Grantees must include enough information in the draft Action Plan so that all interested parties will be able to understand the draft Action Plan and comment on it. [page 31]

Grantees must enter their HUD-approved Action Plan into a HUD management information system called the Disaster Recovery Grant Reporting (DRGR) system. Each activity to be funded with CDBG-DR is entered into DRGR and must be categorized under a “project”. Typically, projects are based on groups of activities that accomplish a similar, broad purpose, such as “housing”, “infrastructure”, or “economic revitalization”. [page 34] More details about DRGR are on pages 11 and 12 of this outline.

Distribution of CDBG-DR [page 27/28]

The Action Plan must describe how the grantee will distribute CDBG-DR to local governments and Indian tribes (or how the grantee will carry out activities directly).

This description must also include:

- How the needs assessment informed how the funds are to be distributed.
- For the 20% of CDBG-DR funds that can go to areas that HUD has not listed as “most impacted and distressed”, the reasoning behind the grantee’s choice of other areas the grantee considers “most impacted and distressed”.

Components of the Action Plan

The *Federal Register* notice lists 13 components that must be in an Action Plan; a summary of them is provided on the next page.

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1. Needs Assessment [page 21]

The Action Plan must contain an assessment of unmet needs. The purpose is to understand the types and locations of needs in order to target funds to activities and areas with the greatest needs. Grantees must indicate the sources of data used.

At a minimum, the needs assessment must:

a. Evaluate housing, infrastructure, and economic revitalization needs.

For housing, grantees must assess:

- Interim and permanent housing needs
- Needs of renters and homeowners
- Multifamily and single-family housing needs
- Affordable housing needs and market-rate housing needs
- The needs of people who were homeless before the disaster

b. Assess whether public services are also needed. Services might be housing counseling, legal services, job training, or health and mental health services. The Action Plan must indicate how these services will be accessible to people with disabilities.

c. Describe the extent to which planning activities will benefit the most impacted and distressed areas identified by HUD.

d. Describe the impact of each type of activity geographically, at the smallest level possible (such as census tract, neighborhood, zip code).

e. Consider the costs of including measures to protect against future “extreme weather events” (previous notices used the term “climate change”). The terms for such measures are “mitigation” and “resilience”.

Grantees are expected to revise their needs assessment and Action Plan as conditions change or additional needs are identified.

2. Connection Between Unmet Needs and Use of CDBG-DR [page 23]

Grantees must propose CDBG-DR activities “that primarily consider and address unmet housing needs”.

Grantees can use CDBG-DR for economic revitalization and infrastructure activities, but if they do they must:

- Identify how any remaining unmet housing needs will be addressed, or
- How the economic revitalization and infrastructure activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas.

Grantees may also use CDBG-DR for public service activities and for planning and administration.

3. Housing and Shelter Activities [page 23]

The Action Plan must describe how a grantee will identify and address the rehabilitation, reconstruction, replacement, and new construction of housing and shelters in the most impacted and distressed areas.

This description includes:

- a. Rental housing that is affordable to low or moderate income households; [page 71]
- b. Public housing; [page 70]
- c. Emergency shelters and housing for homeless people;
- d. Private market units receiving project-based assistance;
- e. Private market units with tenants who have vouchers; and
- f. Any other housing assisted under a HUD program.

The grantee must impose a minimum affordability period of 20 years that can be enforced with recorded use restrictions. The Action Plan must provide a definition of “affordable rents” and the income limits for tenants. [page 71]

4. Housing for Vulnerable Populations [page 23]

The grantee must describe activities that will address:

- a. The transitional housing, permanent supportive housing, and permanent housing needs of individuals and families (including subpopulations) who are homeless or at-risk of homelessness.
- b. Prevention of low income individuals and families with children (especially those with income below 30% of the area median) from becoming homeless; and
- c. The special needs of people who are not homeless but who require supportive housing (for example, elderly people, people with disabilities, people with alcohol or other drug addiction, people with HIV/AIDS and their families, and public housing residents).

Grantees must also assess how decisions:

- Might affect people in:
 - Protected classes, which are race, color, national origin, sex, disability, family status (such as families with children), and religion;
 - Racially and ethnically concentrated areas; and
 - Areas of concentrated poverty;
- Will promote availability of affordable housing in low-poverty, non-minority areas;
- Will respond to natural hazard related impacts.

Use of CDBG-DR must meet accessibility standards, provide reasonable accommodations for people with disabilities, and take into consideration the functional needs of people with disabilities if there is a need to relocate them.

5. Minimize Displacement [page 24]

The Action Plan must describe plans to minimize displacing people due to CDBG-DR activities; but if displacement is necessary, how displaced people will be helped.

6. Maximum Amount of Assistance [page 24]

For each CDBG-DR activity, the Action Plan must describe the maximum amount of assistance that could be provided to someone. It must also describe how the grantee will make exceptions.

7. Plans for Sustainable, Long-term Recovery [page 25]

The Action Plan must describe how the grantee will promote long-term recovery planning based on an evaluation of risks, such as construction standards and land use, which reflect floodplain management (taking into account continued sea level rise).

8. Complying with Elevation Requirements [page 25]

The Action Plan must describe how CDBG-DR activities will comply with elevation requirements (discussed in detail on page 68). The cost of elevation must be reasonable compared to alternatives such as buyouts, infrastructure improvements to prevent future property damage, or demolition of severely damaged structures and reconstruction on the same site.

9. Protecting People and Property from Harm, Emphasizing Energy Efficiency and Green Building [page 26]

The Action Plan must describe how CDBG-DR activities will:

- a. Protect people and property from harm;
- b. Be energy efficient and mold-resistant; and
- c. Comply with Green Building standards (details on page 67).

The Action Plan must also describe how the grantee will support the adoption and enforcement of resilient building codes.

10. If CDBG-DR Is Used for Infrastructure [page 26]

The Action Plan must describe how infrastructure activities will address long-term resilience and how such activities will align with other planned capital improvements.

The Action Plan must describe how grantees will address the construction or rehab of storm water management systems in flood-impacted areas. Grantees must work with local governments in the most impacted and distressed areas to identify unmet storm water infrastructure needs.

Remember, at the beginning of the notice and elsewhere,

“...this notice requires each grantee to primarily consider and address its unmet housing recovery needs”. [pages 1, 3, and 23]

Also, if CDBG-DR is used for infrastructure, “...a grantee must identify how any remaining unmet housing needs will be addressed or how its infrastructure activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas”. [pages 3, 23, and 30]

If CDBG-DR Is Used for Economic Revitalization [pages 29/30]

Economic revitalization may include any CDBG-DR activity that addresses an impact caused by the disaster, such as job loss, or negative impacts to tax revenues or businesses. Examples of activities include loans and grants to businesses, job training, and improvements to commercial districts. Grantees must identify how proposed activities will address economic loss or need resulting from the disaster.

A grantee must identify how any remaining unmet housing needs will be addressed or how its economic development activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas.

11. Disaster Recovery and Response Plan [page 27]

The Action Plan must describe the proposed use of CDBG-DR funds to develop a disaster recovery and response plan that addresses long-term recovery and pre- and post-disaster hazard mitigation.

12. Leveraging CDBG-DR [page 27]

The Action Plan must describe how CDBG-DR will be an incentive for state, local, or private money to be used for recovery.

HUD expects grantees to use their own resources, such as “rainy day” funds, reserves, borrowing authority, or retargeting existing financial resources. [page 7]

13. Means for Homeowners to Challenge Construction Work [page 27]

The Action Plan must describe the standards construction contractors must meet and the way homeowners can challenge construction work that does not meet these standards. HUD encourages grantees to require a post-construction warranty.

HUD Must Review and Approve an Action Plan [pages 6, 11, and 31]

Florida and Texas must submit an Action Plan by May 15, while Puerto Rico and the Virgin Islands have until June 14. HUD has 45 days to review an Action Plan.

HUD may decide not to approve an Action Plan if it is “substantially incomplete” because it does not “meet the requirements of the notice”. HUD will tell the grantee why its Action Plan was not approved and how to fix it. The grantee has another 45 days to resubmit a revised Action Plan.

Amending the Action Plan [page 32]

A grantee must amend its Action Plan to update its needs assessment, modify or create new activities, or reprogram funds. Each amendment must be highlighted, or otherwise identified, in the context of the entire Action Plan. The beginning of every Action Plan amendment must include:

- A section that identifies what is being added, deleted, or changed;
- A chart or table that shows where funds are coming from and where they are moving to; and
- A revised budget allocation table that reflects all funds, as amended.

The current version of an entire Action Plan must be accessible for viewing as a single document at any given time, rather than the public having to view and cross-reference changes among multiple amendments.

See page 9 of this outline for discussion of “substantial amendments”.

PUBLIC PARTICIPATION [page 37]

Draft Action Plan [page 37]

Less Time for Public Review and Comment [pages 10, 37, and 38]

Grantees must publish for public review and comment, a proposed Action Plan (or Substantial Amendment to an Action Plan, described below). Instead of 30 days for public review and comment, the *Federal Register* notice reduces public engagement to a mere 14 days. The *Federal Register* notice also eliminates the requirement that the grantee hold at least one public hearing. [page 37] This is not enough time for residents to obtain the draft Action Plan, study it, discuss it in their organizations, and prepare written comments about such important, long-term investments in their neighborhoods.

Requirements for “Publishing” a Draft Action Plan [pages 37 and 38]

The draft Action Plan must be “prominently” posted on a grantee’s official website and be easy for the public to navigate to from the grantee’s homepage (more on the website below).

Grantees are encouraged to notify the public about a draft Action Plan through electronic mailings, press releases, statements by public officials, advertisements, public service announcements, and contacts with neighborhood organizations.

Publication efforts must meet the effective communications requirements of the Americans with Disabilities Act (ADA). Grantees must ensure that there is equal access to information for people with disabilities and people with limited English proficiency (LEP). Grantees must ensure that information is available in appropriate languages.

Public Comments Must Be Considered [page 39]

Grantees must consider all comments received about the Action Plan or any substantial amendment to it. A summary of comments and the grantee’s response to each must be submitted to HUD with the Action Plan or substantial amendment.

Substantial Amendments and Non-substantial Amendments [pages 38 and 39]

The draft Action Plan must spell out what the grantee considers to be a substantial amendment to an Action Plan. The *Federal Register* notice specifies that at a minimum, a substantial amendment is:

- A change in a program’s beneficiaries or eligibility criteria;
- The addition or deletion of an activity; or
- The allocation or reallocation of a monetary threshold.

For substantial amendments, a grantee must follow the same public notice and comment provisions as it does for its draft Action Plan.

If an amendment is not substantial, a grantee does not have to seek public comment; it simply has to notify HUD five business days before the amendment becomes effective.

Substantial and non-substantial amendments must be numbered in sequence and posted on a grantee’s website.

Availability of Information [page 39]

Grantees must make the Action Plan, any substantial amendments, and all performance reports (see next section) available to the public on its website and on request.

Grantees must make these documents available in a form accessible to people with disabilities and those with limited English proficiency.

During the term of the grant, grantees must provide the public with reasonable and timely access to information and records relating to the Action Plan and to the grantee's use of grant funds.

Public Complaints [page 40]

Grantees must provide a timely written response to every complaint. The response must be provided within 15 working days.

Application Status [page 40]

Grantees must provide timely status updates to people who have applied for assistance. Updates must be provided in multiple ways, such as through toll-free numbers and websites.

Grantees must indicate how often status updates will be made, and identify the staff or governmental unit responsible for providing applicants with status updates. [page 18]

Public Website [pages 40 and 63]

Grantees must maintain a public website that shows how all CDBG-DR funds are administered and used. The website must include links to Action Plans, amendments, CDBG-DR program policies and procedures, Quarterly Performance Reports (QPRs, see next section), public participation requirements, and information about all activities described in the Action Plan.

PERFORMANCE REPORTS [page 33]

Grantees must enter information into HUD's Disaster Recovery Grant Reporting (DRGR) system "in sufficient detail" so that HUD can review performance on a quarterly basis through the Quarterly Performance Report (QPR).

Grantees must submit a QPR no later than 30 days after the end of each calendar quarter. Each QPR must be posted on the grantee's official website within 3 days of submitting the QPR to HUD. [page 36]

Each QPR must include information about the use of funds for activities identified in the DRGR Action Plan during the calendar quarter. For each activity this includes:

- The project name, activity, location, and CDBG national objective (which should mostly be "low and moderate income benefit").
- Funds budgeted, obligated (for example, a contract for the construction of new apartments affordable to low income households), drawn down (money transferred from HUD to the grantee), and spent.
- The source of the funding and total amount of any non-CDBG-DR funds to be spent;
- The date an activity is started and the date it is completed.
- Outcomes achieved, such as the number of housing units completed or the number of low and moderate income persons served.
- The race and ethnicity of persons assisted by direct benefit activities. Direct benefit activities in disaster recovery typically involve providing housing assistance, or maybe counseling. (Infrastructure activities are not typically "direct benefit".)
- For housing and economic revitalization activities, the address of each CDBG-DR-assisted property. (The address must not be included in the public QPR for privacy reasons. NLIHC wonders why economic revitalization addresses should not be made public.)
- A description of actions taken to affirmatively further fair housing.

Under a separate portion of the *Federal Register* notice, grantees are required to keep records, including data on the racial, ethnic, and gender characteristics of people who are applicants for, participants in, or beneficiaries of a program. Grantees must report this fair housing data in the DRGR system at the activity level. This section of the *Federal Register* notice only speaks of this information being available to HUD – not to the public. [page 49] However, in the public participation section of the *Federal Register* notice, grantees are required to provide the public with reasonable and timely access to information and records relating to the Action Plan and to the grantee's use of grant funds. [page 39]

PERFORMANCE REPORTS, continues next page

PERFORMANCE REPORTS, *continued*

It seems that more information than that listed in the *Federal Register* notice is requested in the QPR, based on the DRGR Manual, “Section 6: Quarterly Performance Report (QPR) Module”. For instance, the manual refers to other characteristics such as: the income level of the beneficiary, whether the head of household is female, whether the household rents or owns their home, and whether an assisted unit is in a multifamily building or is a single-family structure. [page 6-11 of Section 6 of the Manual]

It appears that the QPR only provides data for the grantee as a whole. It does not seem that the data can be provided by neighborhood, census tract, or zip code.

HUD’s DRGR webpage is at <https://www.hudexchange.info/programs/drgr>

Advocates can review QPRs by clicking on “DRGR Public Data Portal”, [View the Public Data Portal](#). In the search box, enter a state, for example “Texas”. In the Texas example, a number of “Grantees” as well as “Responsible Organizations” are available. Choosing “GLO” (General Land Office) reveals information for various CDBG-DR awards, including the Action Plan for that award and the QPRs.

Advocates who want to get into the weeds to learn more about DRGR might wish to explore the DRGR User Manual, especially “Section 6: Quarterly Performance Report (QPR) Module” and “Section 10: Public Data Portal Overview”. Although these are written for grantee staff who enter data into the DRGR system, they might provide insight for advocates.

MISCELLANEOUS OTHER PROVISIONS

- The Appropriations Act providing \$7.4 billion for CDBG-DR requires the funds to be spent within two years of the date that HUD executes a grant agreement obligating the funds to the grantee (in situations involving a partial obligation). In addition, a grantee must spend 100% of its CDBG-DR allocation within six years of HUD executing an initial grant agreement. [pages 12, 64/65, and 92/93]
- Grantees should begin to draw down funds from DRGR no later than 180 days after the effective date of the *Federal Register* notice. [pages 12 and 32]
- Grantees may use up to 5% of their total grant award (and program income) for grant administration by the state, units of general local government, or by subgrantees. [pages 6 and 45]
- Grantees can spend no more than 15% of their total grant amount on planning costs. [page 45]

- The CDBG “national objective” of “low and moderate income benefit” can be met in a variety of ways. One key way is to directly assist someone by rehabbing their home or by repairing rental housing (“housing benefit”).

Another way is by “creating or retaining jobs”. The *Federal Register* notice simplifies the “low/mod income benefit test” for “jobs” by allowing grantees to document for each person employed, the name of the business, type of job, and the annual wage or salary of the job. The person will be considered income-qualified if their annual wage or salary is at or less than the HUD-established income limit for a one-person household. [page 85]

- CDBG-DR may not be used for activities that can be or have been funded by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers. Grantees must verify whether FEMA or Corps of Engineers funds are available before awarding CDBG-DR to activities or people. In addition, grantees must prevent duplication of benefit by ensuring that each CDBG-DR activity provides assistance to a person or entity only to the extent that they have a disaster recovery need that has not been fully met by other sources. [pages 7, 13, 16, and 62]
- Discussion of environmental requirements begins on page 59.
- Discussion of various green building standards and elevation standards start on page 66.
- Buyouts are discussed on pages 74-80.