

CDBG-CV PROGRAM SUMMARY

Notice of Program Rules, Waivers, and Alternative Requirements under the CARES Act for Community Development Block Grant Program Coronavirus Fiscal Year 2019 and 2020 Response Grants, Community Development Block Grants, and for Other Formula Programs

SUMMARY

Effective August 7, 2020, FR-6218-N-01 describes the program rules, statutory and regulatory waivers, and alternative requirements applicable to supplemental Community Development Block Grant (CDBG) funds made available to prevent, prepare for, and respond to coronavirus (CDBG-CV funds) and to annual formula CDBG grants awarded in fiscal years 2019 and 2020.

KEY TAKEAWAYS

- ▶ Purpose of CDBG-CV: Grantees may use CDBG-CV funds only for those activities carried out to prevent, prepare for, and respond to coronavirus (both direct and indirect) — must be adequately documented.
- ▶ Deadline for application for CDBG-CV funds is August 16, 2021.
- ▶ Timeline for CDBG-CV expenditure:
 - 80% expended within three (3) years of grant agreement.
 - 100% expended within six (6) years of grant agreement.
- ▶ Public services cap, normally 15 percent, waived for CDBG-CV funds; public services cap waived for FY 2019 and 2020 funds when used on coronavirus-related activities.
 - Requirement to demonstrate a new or quantifiable increase in service remains.
- ▶ Emergency payments alternative requirement: CDBG-CV funds may be used to provide emergency payments for individuals or families impacted by coronavirus for items such as food, clothing, housing (emergency rental assistance or mortgage assistance) or utilities for up to six consecutive months.
- ▶ CARES Act Reporting: Quarterly reporting required for grantees receiving over \$150,000 or more of CARES Act funding.
 - Must submit not later than 10 days after the end of each calendar quarter, a report containing:
 - information regarding the amount of funds received
 - the amount of funds obligated or expended for each project or activity
 - a detailed list of all such projects or activities, including a description of the project or activity
 - and detailed information on any subcontracts or subgrants awarded by the recipient.
- ▶ HUD will conduct regular oversight and monitoring activities related to the CDBG-CV funds.
- ▶ Permits states to carry out activities directly. States must include a list of the use of all funds for activities it will carry out directly, and how the use of the funds will prevent, prepare for, and respond to coronavirus.

CDBG-CV PROGRAM SUMMARY

Page 2

- State must set aside a portion of its grant for use by non-entitlement UGLGs.
 - Set-aside must be no less than an amount equal to the state's first CDBG-CV allocation, and may be from any portion of the state's additional CDBG-CV allocation
- ▶ When CDBG funding is used for purposes of the CARES Act, it is not considered to substantially replace the amount of local financial support previously provided to community development activities.
- ▶ CDBG-CV funds may be used to reimburse expenses related to coronavirus, regardless of the date when costs were incurred, dating back to January 21, 2020.
- ▶ Program income generated by CDBG-CV shall be treated as annual formula CDBG program income.
- ▶ A grantee is required to develop and maintain adequate procedures to prevent a duplication of benefits that address (individually or collectively) each activity or program.

HUD GUIDANCE

Application for Funds

- ▶ HUD recommends grantees substantially amend currently-approved annual Action Plan; grantees may also choose to include CDBG-CV funds in FY 2020 Action Plans for full review.
 - Benefit of substantially amending currently approved Action Plan: public hearings not required for substantial amendments.
- ▶ Applying through substantial amendment:
 - Include CDBG-CV as available resource for the year.
 - Include proposed use of all funds and how they will be used to prevent, prepare for, and respond to coronavirus.
- ▶ Grantees encouraged not to wait for all available CDBG-CV funds to be allocated by HUD before applying for funding.
 - Grantees may substantially amend Action Plan now, and subsequent allocations can be applied for in future substantial amendments to the same Action Plan.

CDBG-CV PROGRAM SUMMARY

Page 3

Use of Urgent Need National Objective

- ▶ Requirements for use of Urgent Need not waived, but HUD has offered the following guidance for how grantees can meet these requirements for coronavirus-related activities:
 - **Criteria 1: Is the activity designed to alleviate existing conditions?**

For CDBG-CV grants, the records the grantee maintains to demonstrate that the activity was designed to alleviate existing conditions can be the same records used to show that grant funds were used to prevent, prepare for, and respond to coronavirus, as required by the CARES Act.
 - **Criteria 2: Does the condition pose a serious and immediate threat to the health or welfare of the community that is of recent origin or that recently became urgent?**

In light of the severity of coronavirus and the urgency of the nation in addressing its impacts, pursuant to 24 CFR 570.208(c) (entitlements) or 24 CFR 570.483(d) (states), a grantee may certify that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community within 18 months following a date determined by one of the following three methods:

 - Referral to a U.S. Department of Health and Human Services issued press release declaring a public health emergency for the entire United States. The declaration was retroactive to January 27, 2020;
 - Referral to the President’s declaration of the ongoing Coronavirus Disease 2019 (COVID-19) pandemic as an emergency of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the “Stafford Act”). (The President subsequently approved additional major disaster declarations for states); or
 - Referral to the effective date of a grantee’s own local or state emergency declaration.
 - **Criteria 3: Is the grantee or unit of general local government unable to finance the activity on its own, and are other sources of funds not available to carry out the activity?**

The extreme needs of local governments resulting from coronavirus in the United States outweigh available resources, despite the extraordinary level of assistance provided to states and units of general local government under the CARES Act. Therefore, documentation that the activity will prevent, prepare for, and respond to the coronavirus may be used to demonstrate that a grantee or unit of general local government is unable to finance the activity on its own.

CDBG-CV PROGRAM SUMMARY

Page 4

Overall LMI benefit

- ▶ Separate from annual formula CDBG calculation.
 - Calculated based on the percentage of the CDBG-CV grant that benefits LMI persons.
- ▶ Seventy percent overall LMI benefit requirement remains.

ALTERNATIVE REQUIREMENTS AND WAIVERS

Expedited procedures to draft, propose, modify, or amend Consolidated Plans

Citizen Participation Plan and Public Comment Period

- ▶ Grantees may amend citizen participation plans and require it be published no less than five (5) calendar days to solicit public comment.
- ▶ Application for CDBG-CV funds must be published for no less than five (5) calendar days to solicit public comment.
 - Public comment period for citizen participation plan and application for CDBG-CV funds can run concurrently.
- ▶ Waiver granted to modify citizen participation requirements for substantial amendments for CDBG, ESG, HOME, HTF, and HOPWA to streamline the process (March 2020).
 - FR grants waiver to modify citizen participation plans for all 2020 FY consolidated plan and annual action plan submissions that pertain to ESG, HOME, HTF, and HOPWA.

Virtual Hearings

- ▶ Virtual hearings allowed for as long as national or local health authorities recommend social distancing and limiting public gatherings for public health reasons (for CDBG-CV, FY 2019, and FY 2020).
 - Must provide reasonable notification, provide timely responses from local officials to all citizen questions and issues; public access to all questions and responses.
 - Must take appropriate actions to encourage the participation of all residents, including the elderly, minorities, persons with limited English proficiency, as well as persons with disabilities.

CDBG-CV PROGRAM SUMMARY

Page 5

Extension of flexibilities

- ▶ Permits states to extend these flexibilities to UGLGs and insular areas.

Application Submission

- ▶ Temporarily waives requirement that grantee certifies housing activities are consistent with the strategic plan.
 - Grantee may submit those certifications when it submits its next full (3-5 year) consolidated plan due after the 2020 program year.
 - Temporarily waives HUD requirement to review grantee performance under the consistency criteria, until next strategic plan is submitted.
- ▶ April 2020 HUD Memo — Waived required updates to the housing and homeless needs assessment, housing market analysis, and strategic plan.

Reimbursements

- ▶ CDBG-CV funds may be used to cover or reimburse allowable costs of activities to prevent, prepare for, and respond to coronavirus incurred by a state or locality regardless of the date on which such costs were incurred (starting January 21, 2020).
- ▶ Permits reimbursement of pre-application costs of subrecipients (however environmental review must be performed and release of funds obtained prior to committing CDBG-CV funds).
- ▶ For entitlement grantees — waives the requirement that costs incurred must be included in a consolidated action plan before incurring costs; instead, the activity must be included in the grantee's CDBG-CV application before CDBG-CV funds are used to reimburse the costs.

Job Creation and Retention National Objective Criteria

- ▶ Alternative requirement: for purposes of the LMI job creation/retention national objective, a census tract qualifies if the poverty rate is at least 20 percent (instead of typical 30 percent) and if its evidences pervasive poverty and general distress.

CDBG-CV PROGRAM SUMMARY

Page 6

- ▶ Waives requirement to consider/document household income. Instead, grantees and employers may consider individuals that apply for or hold jobs to be members of one-person families for activities that prevent, prepare for, and respond to coronavirus.
 - HUD will consider the person income-qualified if the annual wages or salary of the job is equal to or less than the Section 8 low-income limit established by HUD for a one-person family.

CDBG-CV for Economic Development

- ▶ Direct assistance to for-profits is a special economic development activity in the CDBG program and it is eligible, provided it meets a national objective, underwriting, and public benefit requirements. Because there is a large amount of SBA funding for small businesses in the CARES Act and other sources of financial assistance to small businesses may be available, grantees must also have procedures to prevent duplications of benefits between various programs that provide this type of financial assistance.
- ▶ Grantees may provide assistance to an economic development project through a for-profit entity that passes the funds through a financing mechanism (e.g., Qualified Opportunity Funds and New Markets Tax Credit (NMTC) investment vehicles). Investment vehicles/financing mechanisms other than NMTC are permitted.

Public Benefit

- ▶ CDBG-CV grantees can adequately demonstrate public benefit based on the individual public benefit standards.
 - Alternative requirement for individual benefit: For activities subject to the public benefit standards, grantees must document that:
 - a) the activity will create or retain at least one full-time equivalent, permanent job per \$85,000 of CDBG funds used;
 - b) the activity will provide goods or services to residents of an area such that the number of LMI persons residing in the area served by the assisted businesses amounts to at least one LMI person per \$1,700 of CDBG funds used; or
 - c) the assistance was provided due to business disruption related to coronavirus (in which case, no monetary standard applies because HUD has determined that there is sufficient public benefit derived from the provision of assistance to stabilize or sustain businesses in the grantee's jurisdiction that suffer disruption due to coronavirus, and that facilitation of business assistance for this purpose may help to avoid complete economic collapse within the grantee's jurisdiction).

CDBG-CV PROGRAM SUMMARY

Page 7

Extension of Emergency Payments

- ▶ Alternative requirement CDBG-CV funds may be used to provide emergency payments for individuals or families impacted by coronavirus for items such as food, clothing, housing (emergency rental assistance or mortgage assistance) or utilities for up to six consecutive months.

Public Services Cap

- ▶ No limit for the use of funds for public service activities (coronavirus-related activities) — 15 percent cap waived

Application of Requirements in 2 CFR 200

- ▶ Flexibilities in OMB 2 CFR 200 memoranda do not automatically apply to grantees. HUD has not approved class exceptions to 2 CFR 200 for CDBG-CV grants. 2 CFR 200 continues to apply.

Program Income

- ▶ Program income generated by CDBG-CV shall be treated as annual formula CDBG program income.

Rules applicable to State CDBG-CV Grants

- ▶ Permit the state grantee to use a portion of its funds to act directly to carry out activities in all geographic areas within its jurisdiction, including entitlement areas and tribal populations.
- ▶ State must set aside a portion of its grant for use by non-entitlement UGLGs.
 - Set-aside must be no less than an amount equal to the state's first CDBG-CV allocation, and may be from any portion of the state's additional CDBG-CV allocation.
- ▶ States carrying out projects in tribal areas must obtain consent of the Indian tribe with jurisdiction.
- ▶ The recordkeeping requirements at 24 CFR 570.490(b) are waived when states carry out activities directly, and the following alternative requirement shall apply: the state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG-CV funds, under 24 CFR 570.493.
- ▶ States are responsible to make reviews and audits, including on-site review of any subrecipients and local governments.

CDBG-CV PROGRAM SUMMARY

Page 8

Cap on State Admin costs and Technical Assistance

- ▶ Waives 42 U.S.C. 5306(d)(5) and (6) and 24 CFR 570.489(a)(1), which caps a state at no more than \$100,000 plus three percent of its annual grant for admin and TA combined.
 - Alternative requirement: up to seven percent of CDBG-CV grant combined for admin and TA costs — five percent for admin, two percent for technical assistance.

Procurement

- ▶ Notice does not modify procurement requirements at 570.489(g) for state grantees.

Rules for entitlements, insular areas, non-entitlement Hawaii

- ▶ No more than 20 percent of the total CDBG-CV grant shall be expended for planning and program administrative costs, as defined in 24 CFR 570.205 and 24 CFR 570.206, respectively.
- ▶ There is no program year obligation test for planning and administrative costs of CDBG-CV grants.
- ▶ Program income, shall be included in the compliance determination of the administrative and planning cost cap applicable to annual formula CDBG grants and program income, separately from CDBG-CV funds.

Environmental review

- ▶ Does not waive environmental requirements.

Labor Laws

- ▶ CDBG-CV funds are subject to Davis Bacon.

Section 108

- ▶ CDBG-CV funds shall not be factored into a grantee's Section 108 borrowing authority.

CDBG-CV PROGRAM SUMMARY

Page 9

Period of Performance

- ▶ Must expend all CDBG-CV funds within six-year period
- ▶ Must expend 80% of all CDBG-CV funds within three years, unspent funds will be recaptured.
- ▶ HUD may authorize extensions for mitigating factors (litigation, disasters, limited construction seasons due to weather, other extenuating circumstances).

Timeliness

- ▶ CDBG-CV funds will not be included in HUDs timeliness test for grantees (however program income generated by CDBG-CV will be as it is part of annual CDBG allocation calculation).

Closeout

- ▶ HUD is waiving the CDBG closeout regulations at 24 CFR 570.509 for grantees subject to entitlement regulations and imposing an alternative requirement that HUD will close out grants in accordance with grant closeout requirements of 2 CFR 200.343.

Reporting Requirements

- ▶ Reporting requirements that apply to annual formula CDBG also apply to CDBG-CV.
- ▶ Additional CARES Act reporting
 - Recipients of \$150,000 or more of CARES Act funding submit, not later than 10 days after the end of each calendar quarter, a report containing: information regarding the amount of funds received; the amount of funds obligated or expended for each project or activity; a detailed list of all such projects or activities, including a description of the project or activity; and detailed information on any subcontracts or subgrants awarded by the recipient.

Duplication of Benefits

- ▶ A grantee is required to develop and maintain adequate procedures to prevent a duplication of benefits that address (individually or collectively) each activity or program. Must include, at minimum:
 - A requirement that any person or entity receiving CDBG-CV assistance (including subrecipients and direct beneficiaries) must agree to repay assistance that is determined to be duplicative; and
 - A method of assessing whether the use of CDBG-CV funds will duplicate financial assistance that is already received or is likely to be received by acting reasonably to evaluate need and the resources available to meet that need.

CDBG-CV PROGRAM SUMMARY

Page 10

FY 2020 and FY 2019 Grants

- ▶ Timeliness — HUD is suspending for fiscal year 2020 all corrective actions, sanction, and informal consultations for timeliness effective January 21, 2020.
- ▶ Expedited citizen participation and virtual hearings apply.
- ▶ Deadline for grantees to submit action plans and other updates to consolidated plans is August 16, 2021.
- ▶ CAPER Extension — 180 days after the close of a jurisdictions program year (instead of 90).
- ▶ Temporarily waiving requirement for consistency with the consolidated plan.
- ▶ Public services cap waived when funds are used on coronavirus-related activities (but not waived for other activities).