

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****Table of Contents**

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**I. Overview and Background**

Q: Will the Notice be published in the Federal Register?

A: Yes. The Notice was published in the Federal Register with the Docket Number FR-6218-N-01 on August 20, 2020, <https://www.govinfo.gov/content/pkg/FR-2020-08-20/pdf/2020-18242.pdf>.

Q: Is the Notice effective before it is published in the Federal Register?

A: Yes. The Notice was effective August 7, 2020, when it was signed.

Q: What programs are covered by the Notice?

A: Most of the Notice is about Community Development Block Grant coronavirus (CDBG-CV) grants, as well as annual FY2019 and FY2020 Community Development Block Grant (CDBG) grants. The HOME, Emergency Solutions Grant (ESG) and Housing Opportunities for Persons With AIDS (HOPWA) programs are addressed in the Consolidated Plan section.

Q: Why have a Federal Register (FR) Notice?

A: The FR Notice puts all the CDBG-CV waivers and alternative requirements in one place so grantees and stakeholders can more easily find, use, and understand them. Although the Notice is necessarily technical, HUD did try to use plain language wherever possible to speed understanding and implementation.

**II. Summary of Special Authorities Under the CARES Act**

Q: Which requirements apply to CDBG-CV grants?

A: CDBG-CV grants are subject to the Coronavirus Aid, Relief and Economic Security Act (CARES Act), the authorities and conditions imposed on fiscal year 2020 CDBG grants, the Notice and except as provided in the Notice, the statutory and regulatory provisions governing the CDBG program. The CDBG regulations, at 24 CFR part 570, implement Title I of the Housing and Community Development Act of 1974, as amended. The CARES Act modifies some CDBG program rules and authorizes the Secretary of HUD to grant waivers and alternative requirements. Accordingly, the Notice describes how certain requirements of the CDBG

program are modified for CDBG-CV grants, fiscal year 2020 CDBG grants under the Department of Housing and Urban Development Appropriations Act, 2020 (Public Law 116-94), and fiscal year 2019 CDBG grants under the Department of Housing and Urban Development Appropriations Act, 2019 (Public Law 116-6). Unless the Notice states otherwise, the CARES Act statutory flexibilities, waivers, and alternative requirements do not apply to other sources of CDBG funds. A grantee's CDBG-CV grant agreement has conditions binding the grant to the program requirements.

Q: I am a citizen who may be affected by CDBG-CV. Where can I get more information and who should I contact with questions?

A: CDBG-CV grantees make the local project or activity funding decisions. You can find your grantee's contact information here: <https://www.hudexchange.info/grantees/contacts/> (and click the "CDBG: Community Development Block Grant Program" box). Also, HUD has field offices all over the country. You can find your Community Planning and Development (CPD) field office here: [https://www.hud.gov/program\\_offices/comm\\_planning/staff#fieldoffices](https://www.hud.gov/program_offices/comm_planning/staff#fieldoffices). Finally, questions regarding the CDBG-CV program may be submitted to [CPDQuestionsAnswered@hud.gov](mailto:CPDQuestionsAnswered@hud.gov). Interested parties may also visit HUD's website at [https://www.hud.gov/program\\_offices/comm\\_planning](https://www.hud.gov/program_offices/comm_planning) for updated information and resources.

Q: How big is CDBG-CV and when was it appropriated?

A: The CARES Act, enacted March 27, 2020, appropriated \$5 billion in CDBG-CV funds to be allocated to about 1,250 States, local governments, and insular areas. HUD anticipates that grantees will fund tens of thousands of activities to prevent, prepare for, and respond to coronavirus with this funding. To address these challenges, CDBG-CV and CDBG grants are a flexible source of funding that can be used to pay costs that are not covered by other sources of assistance, particularly to benefit persons of low and moderate income.

Q: What are the main changes the CARES Act makes to the CDBG requirements?

A: The CARES Act modifications are:

- Permits a public comment period of no less than 5 days when citizen participation is required.
- Permits grantees to develop expedited citizen participation procedures and to hold virtual public hearings when necessary for public health reasons.
- Eliminates the public services cap for coronavirus-related activities.
- Allows states and local governments to reimburse allowable costs of eligible activities regardless of the date the costs were incurred.

### **III. CDBG-CV Grants**

#### *III.A. Allocations of CDBG-CV Funds*

Q: How much did my city or state receive in the first and second CDBG-CV allocations?

A: HUD made the first CDBG-CV allocation on April 2, 2020, 24 days before the 30-day allocation deadline in the CARES Act, in the amount of \$2 billion. HUD made the second round of CDBG-CV allocations on May 11, 2020, in the amount of \$1 billion. The allocations are

available on HUD's website at [https://www.hud.gov/program\\_offices/comm\\_planning/budget/fy20/](https://www.hud.gov/program_offices/comm_planning/budget/fy20/).

Q: How much is in the third allocation and when is it coming?

A: HUD will publish additional third round allocations and a description of the allocation formulas on HUD's website at

[https://www.hud.gov/program\\_offices/comm\\_planning/budget/fy20/](https://www.hud.gov/program_offices/comm_planning/budget/fy20/) and will provide a link to this site in any press release announcing an allocation.

### *III.B. CDBG-CV Grant Rules, Waivers, and Alternative Requirements*

Q: Should grantees use their normal CDBG funding distribution procedures for CDBG-CV?

A: Grantees should consider how to expedite use of funds, and not assume that their normal CDBG funding distribution procedures are adequate to swiftly distribute and use CDBG-CV grants. For example, if a grantee's existing policies mandate lengthy processes to select activities or complete procurements, grantees should try to expedite actions with local waiver authorities or emergency procedures that may be available without state or local rulemaking.

Q: What transparency and accountability measures is HUD taking for CDBG-CV?

A: In addition to HUD's normal CDBG monitoring and oversight, measures to increase transparency and accountability include:

- regular reporting on the use of CDBG-CV funds, including reporting required by the CARES Act; and
- a requirement that grantees prevent the duplication of benefits that is caused when a person, household, business, or other entity receives financial assistance from multiple sources for the same purpose, and the total assistance is more than the total need.

Q: My jurisdiction received a CDBG-CV allocation. How can the jurisdiction apply for the grant?

A: The Chief Elected Official will designate an agency to apply for the grant using a substantial amendment to an existing FY2019 CDBG Action Plan or by adding information to a new FY2020 Action Plan. The following procedures apply:

- All grantees may adopt and use expedited procedures to draft, propose, modify, or amend consolidated plans for CDBG-CV and fiscal year 2019 and 2020 CDBG grants. These expedited procedures amend the grantee's citizen participation plan and require it be published for no less than 5 calendar days to solicit public comment. Expedited procedures may include virtual public hearings.
- The grantee must publish its application for CDBG-CV funds for no less than 5 calendar days to solicit public comment. The comment period can run concurrently with the comment period on changes to add expedited procedures to the citizen participation plan. The grantee must respond to public comments.
- The grantee must submit its application for CDBG-CV funds to HUD for review. To receive a CDBG-CV grant, a grantee must also submit certain forms and certifications.
- HUD and the grantee will enter a grant agreement and HUD will establish the grantee's line of credit.

- The grantee may draw funds from the line of credit after any applicable steps for the environmental review(s) process are completed.

Q: When may a grantee hold a virtual public hearing rather than an in-person hearing?

A: For as long as national or local health authorities recommend social distancing and limiting public gatherings for public health reasons, the CARES Act authorizes the grantee to hold virtual hearings in lieu of in-person public hearings for CDBG-CV grants and for fiscal year 2019 and 2020 CDBG grants. The Notice expands this to include virtual hearings for other consolidated plan formula programs.

Q: Do grantees have to inform citizens how to join virtual hearings, answer their questions, and see the hearing records?

A: Virtual hearings shall provide reasonable notification and access for citizens in accordance with the grantee's certifications, timely responses from local officials to all citizen questions and issues, and public access to all questions and responses.

Q: What kind of online platforms or apps can host virtual hearings?

A: Grantees may use online platforms to hold virtual hearings that facilitate public access to all questions and responses and provide timely responses from local officials. Additionally, grantees 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, consistent with the jurisdiction's citizen participation plan. The CARES Act does not modify nondiscrimination requirements.

Q: Do expedited procedures also apply to non-entitlement units of government funded by States?

A: Yes. HUD and the CARES Act authorized States to use expedited procedures and virtual public hearings for citizen participation by units of general local government that receive CDBG-CV funds from a state through a method of distribution. Expedited procedures must still describe how units of local governments receiving funds from the state will meet the citizen participation requirements in 24 CFR 570.486.

Q: Do the expedited procedures also apply to insular areas?

A: Yes. HUD waived the requirement that an insular area must hold a public hearing on a substantial amendment. Instead, HUD is imposing an alternative requirement to permit the insular area to adopt expedited requirements by modifying its citizen participation plan to replace the hearing if it provides community residents with reasonable notice and an opportunity to comment on substantial amendments to the consolidated plan or annual action plan.

Q: Do expedited amendment and action plan procedures also apply to other programs covered by the Consolidated Plan?

A: Yes. In the FR Notice, HUD consolidated and extended prior waivers by issuing waivers and alternative requirements to expedite procedures to modify citizen participation plans for *all* 2020 fiscal year consolidated plan and annual action plan submissions that pertain to ESG, HOME, HTF, and HOPWA formula programs. Specifically:

- CDBG, HOME, HTF, HOPWA, and ESG grantees may modify their citizen participation plans to adopt expedited procedures that apply when the grantees prepare, propose, modify, or amend any consolidated plan submissions that contain uses of CDBG-CV funds or uses of fiscal year 2019 or 2020 CDBG funds to prevent, prepare for, and respond to coronavirus. The expedited procedures must, at a minimum, provide citizens with notice and a reasonable opportunity to comment of no less than 5 days.
- For as long as national or local health authorities recommend social distancing and limiting public gatherings for public health reasons, CDBG, ESG, HOME, HTF, and HOPWA grantees, and units of general local government receiving CDBG funds from state or insular area CDBG grantees, may hold virtual hearings in lieu of in-person public hearings to fulfill public hearing requirements or the grantee's citizen participation plan.

Q: Can citizen participation be eliminated for CDBG or CDBG-CV?

A: No. HUD cannot modify requirements for CDBG grantees to mirror the elimination of citizen participation for substantial amendments and new consolidated plan submissions for ESG-CV funds because HUD cannot waive the minimum requirements the CARES Act imposed on CDBG grantees. Therefore, the CDBG-CV Notice does not alter or expand the authority for ESG grantees to omit the citizen participation and consultation requirements for consolidated plan submissions that only pertain to ESG CARES Act (ESG-CV) funding.

Q: Do housing activities funded with CDBG-CV have to be consistent with the strategic plan portion of the Consolidated Plan?

A: Temporarily, no. As part of the application submission, HUD is temporarily waiving the requirements that grantees certify that housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan portion of the consolidated plan. HUD is imposing a related alternative requirement that allows grantees to submit those certifications when the grantee submits its next full (3-5 year) consolidated plan due after the 2020 program year.

Q: Where are the instructions for applying through a plan amendment?

A: Section III.B.4.(b)(i). of the Notice and <https://www.hud.gov/sites/dfiles/CPD/documents/Setting-Up-a-Substantial-Amendment-for-CARES-Act-Funding.pdf> on HUD.gov.

Q: Does a CDBG-CV substantial amendment have to be submitted to HUD for review prior to receiving a CDBG-CV grant?

A: Yes. HUD created an alternative requirement to require submission of a CDBG-CV substantial amendment and to provide for expedited HUD review.

Q: What must be included in a substantial amendment to apply for CDBG-CV funds?

A: In general, the substantial amendment must include the CDBG-CV allocation as an available resource for the year. The amendment must include the proposed use of all funds and how the funds will be used to prevent, prepare for, and respond to coronavirus. (There are some additional specific requirements for States.) HUD granted a range of waivers in the Notice to permit grantees to prepare substantial amendments to their most recent annual action plan

(including their 2019 annual action plan). To receive a CDBG-CV grant, a grantee must also submit a SF-424, SF-424D, and the certifications at 24 CFR 91.225(a) and (b) (entitlements) or 24 CFR 91.325(a) and (b) (states).

Q: What must an insular area include when it is applying for CDBG-CV?

A: The substantial amendment must include the CDBG-CV allocation as an available resource for the year. The amendment must include the proposed use of all funds and how the funds will be used to prevent, prepare for, and respond to coronavirus. To receive a CDBG-CV grant, it must submit a SF-424, SF-424D and the certifications at 24 CFR 570.440(e).

Q: Do existing cooperation agreements between a local government and an urban county cover CDBG-CV grants?

A: Yes. These cooperation agreements will continue to apply to the use of CDBG-CV funds for the duration of the CDBG-CV grant.

Q: May a grantee apply for a CDBG-CV grant through a new annual action plan submission?

A: Yes. The action plan submission procedures in 24 CFR part 91 (*including consultation and a public hearing*), as modified by the Notice, apply to grantees that choose to submit CDBG-CV applications by including CDBG-CV funds in a new annual action plan submission.

Q: When did HUD grant the initial action plan waivers for CDBG-CV?

A: The waivers and alternative requirements in the April 9, 2020, memorandum apply to all allocations of CDBG-CV funds. The CDBG-CV Notice includes and expands on the April 9 memorandum. The April 9 memo can be found here:

<https://www.hud.gov/sites/dfiles/CPD/documents/CARES-Act-Flexibilities-CDBG-Funds-Used-Support-Coronavirus-Response.pdf>.

Q: Should grantees wait to apply until all allocation rounds are announced?

A: No. HUD strongly encourages grantees to apply for allocations of CDBG-CV funds as they are announced by submitting substantial amendments to their most recent annual action plan. Grantees are advised that an application for an additional allocation of CDBG-CV funds should be submitted as a substantial amendment to the annual action plan that describes the first CDBG-CV allocation.

Q: May States carry out activities directly, rather than distributing almost all funds to non-entitlement units of general local government?

A: Yes. States may act directly for their CDBG-CV grant.

Q: Must a State distribute any funds to nonentitlement UGLGs?

A: Yes, the FR Notice provides for a set-aside for funds to be distributed to UGLGs for their use.

Q: If a State acts directly, what must it include in its CDBG-CV application?

A: A state shall submit a description of a method of distribution and 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. A state that has already submitted its application for CDBG-CV funds may amend its annual action plan that describes the use of CDBG-CV funds to

modify its description of a method of distribution and 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.

Q: What is the deadline for a grantee to apply to HUD for CDBG-CV and FY2020 CDBG grants?

A: Under the CARES Act, the deadline is August 16, 2021, for grantees to submit their CDBG-CV action plan and the annual Action Plan for fiscal year (FY) 2020 CDBG funds. (This deadline supersedes the August 16, 2020 deadline established by 24 CFR 91.15 in accordance with section 116(b) of the HCD Act.)

Q: What can CDBG-CV funds be used for?

A: The grantee is required to use all CDBG-CV funds for CDBG-eligible activities that are carried out to prevent, prepare for, and respond to coronavirus. CDBG-CV grants cannot be used for any other purpose.

Q: CDBG funds may not be used to supplant local financial support for community development activities. What if extra costs of dealing with the pandemic coupled with the economic downturn have caused a community to shift funding?

A: HUD weighed the purpose of the CARES Act to prevent, prepare for, and respond to coronavirus with the intent of Congress expressed in the HCD Act (42 U.S.C. 5301(c) that CDBG funds not be used to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance. Given the extreme and unexpected downturn in local and national economic conditions, local resources are strained. Jurisdictions must provide new and expanded support with fewer resources. Therefore, HUD has concluded that 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.

Q: May CDBG-CV funds reimburse any costs prior to grant execution?

A: Yes. The CARES Act provides that 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. This authority is broader than the authority to reimburse costs with other CDBG funds.

The FR Notice permits reimbursement of pre-application costs of subrecipients, units of general local government, and the grantee, in addition to pre-agreement and pre-award costs. However, an environmental review must be performed and a release of funds must be obtained in accordance with 24 CFR part 58 prior to committing CDBG-CV funds to reimburse such costs. After the grantee signs a CDBG-CV agreement it may reimburse a unit of general local government or subrecipient for costs incurred before the unit of general local government or subrecipient applies to the grantee for assistance.

Q: For purposes of CDBG-CV reimbursement, what is a “locality”?

A: The term “locality” is not defined by the CARES Act, the HCD Act, or the CDBG program regulations. The FR Notice says that for purposes of CDBG-CV grants, a “locality” shall mean units of general local government, as defined in section 102 of the HCD Act.

Q: For purposes of reimbursement, what CDBG-CV costs are “allowable”?

A: In addition to the normal allowability requirements applicable to grants, grantees shall not reimburse costs incurred before January 21, 2020, without written approval from HUD. To safeguard allowable use of funds, HUD imposed a presumption that costs of activities undertaken before January 21, 2020, the date the CDC confirmed the first case of coronavirus in the United States in the State of Washington, are highly unlikely to be eligible for reimbursement because they likely are not costs to prevent, prepare for, and respond to coronavirus.

Q: If a grantee wants to use CDBG-CV funds for costs incurred prior to January 21, 2020, what should it consider and do?

A: The FR Notice cautions that HUD will only consider granting written approval in extraordinary cases where the clear link to the purposes of the CARES Act is documented by substantial evidence provided to HUD by the grantee. Inquiries related to this requirement can be submitted to the assigned local field office or to the contact provided in the FR Notice.

Q: How will pre-award costs be handled for entitlement communities?

A: For grantees subject to the entitlement CDBG regulation at 24 CFR 570.200(h), in lieu of the effective date described at 570.200(h), the grantee shall use the date in box 4 of form HUD-7082, Funding Approval/Agreement. The activity for which costs were incurred must be included in the grantee’s CDBG-CV application before CDBG-CV funds are used to reimburse those costs. Or, if the use of CDBG-CV funds for reimbursements is not included in the CDBG-CV application, this use may be included in a subsequent amendment to the annual action plan that describes the use of the CDBG-CV funds (following the grantee’s citizen participation plan procedures for amendments).

The FR Notice waived the time limitation and the monetary limitation on reimbursements in 24 CFR 570.200(h)(1)(v) and (vi) and related provisions at 24 CFR 570.200(h)(2). The Notice did not waive the requirement at 24 CFR 570.200(h)(1)(iii) to comply with the environmental review procedures stated in 24 CFR Part 58.

Q: May subrecipients incur pre-award costs?

A: All grantees may authorize subrecipients to incur pre-award costs in accordance with pre-agreement cost authority under 24 CFR 570.489(b) (states) and pre-award cost authority under 24 CFR 570.200(h) (entitlements) (as modified by the Notice).

Q: Does the waiver to act directly affect how States deal with pre-agreement costs?

A: Yes. The FR Notice authorized a state to charge to the grant pre-agreement costs of its subrecipients in addition to the pre-agreement costs of units of general local government, in accordance with procedures established by the state and subject to the requirements that apply to pre-agreement costs of units of general local government in 24 CFR 570.489(b), and the requirements that apply to the use of CDBG-CV funds.



While provisions of 24 CFR 570.489(b) requiring compliance with 24 CFR Part 58 do not apply prior to an application for CDBG-CV funds, a unit of general local government or state must document compliance with the environmental review requirements at 24 CFR Part 58 following the application to the state or unit of general local government for funding and prior to reimbursement of pre-application costs, per 24 CFR 570.200(h)(1)(iii) and 24 CFR 570.489(b). If a grantee cannot meet all requirements at 24 CFR Part 58 and cannot demonstrate there was no environmental harm committed, the pre-application costs cannot be reimbursed with CDBG-CV or other HUD funds.

Q: Does the CDBG eminent domain limitation apply to CDBG-CV funds?

A: Yes. The CARES Act provides that a grantee shall ensure that no CDBG-CV funds are used to support any Federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For the purposes of this requirement, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfield as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107-118) shall be considered a public use for purposes of eminent domain.

Q: May a grantee transfer or trade its funds with another grantee? For example, an urban county and a metro city located within its boundaries?

A: No. The CARES Act includes the same statutory limitation for CDBG-CV as applies to CDBG. Therefore, a grantee or unit of general local government that directly or indirectly receives CDBG-CV funds may not sell, trade, or otherwise transfer all or any such portion of such funds to another such entity in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under title I of the HCD Act or permitted by waiver and alternative requirements that apply to the use of CDBG-CV funds.

Q: Will HUD waive the underwriting requirements for special economic development assistance to small businesses affected by the pandemic?

A: HUD cannot waive this CARES Act and HCD Act requirement. CDBG-CV funds may not be provided to a for-profit entity pursuant to section 105(a)(17) of the HCD Act (as implemented at 24 CFR 570.203(b) for entitlements) unless such activity or project has been evaluated and selected in accordance with Appendix A to 24 CFR 570 - "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements."

Given the likelihood that CDBG-CV funds will be used to assist businesses needing working capital financing for everyday operations, such as payroll costs, HUD intends to provide advice or technical assistance on the application of the guidelines and objectives set forth in Appendix A to such assistance.

Q: Given the current public health emergency, will HUD please provide guidance on documenting how an activity that prepares for, prevents, or responds to the coronavirus meets the Urgent Need national objective?

A: The FR Notice goes into greater detail about the existing certification and recordkeeping requirements before providing the records HUD will accept to support the required grantee and/or state grant recipient certification. To demonstrate each criteria of the Urgent Needs national objective:

*Criteria 1. Is the activity designed to alleviate existing conditions?*

Use 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?* Use one of the below:

- Referral to a U.S. Department of Health and Human Services issued press release declaring a public health emergency for the entire United States found at <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>. 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 dates 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 are not available to carry out the activity?* Use the documentation that the activity will prevent, prepare for, and respond to the coronavirus to demonstrate that a grantee or unit of general local government is unable to finance the activity on its own. Use the required records of compliance with mandatory duplication of benefits requirements to demonstrate that no other funds are available for an activity.

Q: How was the location-based presumption for LMI benefit for job creation/retention changed by the FR Notice?

A: HUD removed the higher poverty rate (30%) required in some cases for census tracts that contain at least a portion of a central business district. Instead, the FR Notice applies an alternative requirement that such a census tract qualifies for the same presumptions available to other tracts under the criteria established in regulations at 24 CFR 570.208(a)(4)(v) and 24 CFR 570.483(b)(4)(v) if the poverty rate is at least 20 percent and if the area evidences pervasive poverty and general distress using the criteria described in 24 CFR 570.208(a)(4)(v)(C) (entitlement) and 24 CFR 570.483(b)(4)(v)(C) (states).

Q: Why did HUD decrease the percentage associated with the central business district presumption for LM jobs?

A: HUD has determined that eliminating the 30 percent requirement for tracts that contain central business districts will standardize the required poverty rate to meet the presumption regardless of where the persons or the business is located, which facilitates the use of grant funds to assist desperate businesses. Central business districts are hubs that contain many coronavirus-affected businesses and facilitating assistance to businesses that seek to retain jobs is consistent with the purposes of the CARES Act. Standardizing the poverty rate for the LMI benefit presumption may help to avoid wholesale collapse of central business districts at a time when many businesses have closed or are at risk of closing due to insufficient revenues.

Q: How does the FR Notice simplify recordkeeping requirements for the LM Jobs national objective?

A: The normal job creation and retention recordkeeping requirements consider family income when determining whether a beneficiary is a person of low or moderate income, but these requirements are likely to be burdensome during a time when unemployment has surged and family income is more difficult to document. Collection of income information directly from assisted businesses can streamline assistance.

For activities that prevent, prepare for, and respond to coronavirus, grantees and employers may consider individuals that apply for or hold jobs to be members of one-person families. HUD has also modified related recordkeeping requirements at 24 CFR 570.506(b)(7) (entitlement) and the jointly agreed upon requirements referenced in 24 CFR 570.490 (state) by adding the following additional presumption: the recipient may substitute records showing the type of job and the annual wages or salary of the job in lieu of maintaining records showing the person's family size and income to demonstrate that the person who filled or held/retained the job was a low- or moderate-income person. 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. Under this alternative requirement, a grantee will have substantially reduced documentation requirements because they will be working with assisted businesses rather than each person, and potentially their households, who received a job.

Q: Does the overall benefit requirement apply to CDBG-CV? If yes, how?

A: Yes, the overall LMI benefit requirement applies to each CDBG-CV grant. However, the FR Notice establishes an alternative requirement to modify the calculation of overall LMI benefit. A grantee must demonstrate compliance with the overall benefit requirement separately for a grantee's total CDBG-CV grant allocation and not in combination with annual formula CDBG funding or commitments under the Section 108 Loan Guarantee program.

CDBG-CV grants are subject to the requirement that 70 percent of funds are for activities that benefit LMI persons. The grantee is required to ensure that 70 percent of its CDBG-CV grant is expended for activities that benefit LMI persons.

There is no option for grantees to select the timeframe for compliance. HUD previously instructed grantees to submit certifications required by 24 CFR 91.225 (entitlements) or 24 CFR 91.325 (states). The regulations at 24 CFR 91.225(b)(4)(ii) and 24 CFR 91.325(b)(4)(ii) require

grantees to certify that the aggregate use of CDBG funds will comply with the overall benefit requirement during a period specified by the jurisdiction, consisting of one, two, or three specific consecutive program years. As of the effective date of the FR Notice, grantees are not required to carry out the CDBG-CV grant consistent with the mandatory overall benefit certification because HUD has changed the requirement related to overall benefit.

Q: What changes does the FR Notice make to the aggregate Public Benefit test for economic development activities?

A: The FR Notice waives the standard for aggregate public benefit that applies to economic development activities described in 24 CFR 570.209(b)(1)-(2) (entitlement) and in 24 CFR 570.482(f)(2)-(3) (state). This applies to CDBG-CV grants and to FY2019 and FY2020 CDBG activities to prevent, prepare for, or response to coronavirus.

Q: What changes does the FR Notice make to the individual Public Benefit standards for economic development activities?

A: Certain economic development activities described in 24 CFR 570.209 (entitlement) and in 24 CFR 570.482(f)(1) (state) are subject to individual public benefit standards at 24 CFR 570.209(b)(3) (entitlement) and 24 CFR 570.482(f)(4) (state).

The FR Notice provides that for CDBG-CV activities (and for FY2019 or FY2020 activities to prevent, prepare for, and respond to coronavirus) 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).

Q: Will HUD waive the CARES Act requirement that CDBG-CV funds must be used only for those activities carried out to prevent, prepare for, and respond to coronavirus?

A: By law, use of funds for any other purpose is unallowable and HUD is not authorized to grant a waiver of this provision. To satisfy these purposes, grantees may assist activities that respond to direct effects, such as the need to rehabilitate a building to add isolation rooms for recovering coronavirus patients. A grantee may also undertake activities to address indirect effects of the virus, such as the economic and housing market disruptions caused by social distancing measures and stay at home orders implemented to prevent the spread of coronavirus. HUD cautions grantees that the recordkeeping requirements of the Notice require clear documentation that all uses of funds satisfy the statutory purposes of the CARES Act.

Q: Are all of the activity types listed as eligible in the HCD Act still eligible for CDBG-CV?

A: Some activities clearly tie back to the purposes of the CARES Act, such as public services, economic development and microenterprise assistance, public facilities, and the rehabilitation of private buildings to provide housing. However, HUD is not prohibiting grantees from carrying out any particular CDBG eligible activity described in the HCD Act and the 24 CFR part 570 regulations, because other CDBG eligible activities, such as acquisition, can justifiably be used to fulfill the CARES Act purposes depending upon the circumstances.

Q: What if our CDBG program has never included emergency payments or health services? Does HUD have program models and technical assistance?

A: The current needs to prevent, prepare for, and respond to coronavirus may require use of CDBG-CV funds for uncommon activities. HUD is preparing a series of technical assistance products that describe opportunities to quickly deploy CDBG-CV funds to address immediate needs. As this technical assistance is developed, it will be posted on the CDBG-CV page on the [https://www.hud.gov/program\\_offices/comm\\_planning/cdbg\\_programs\\_covid-19](https://www.hud.gov/program_offices/comm_planning/cdbg_programs_covid-19).

Q: Will HUD extend the duration allowed for emergency payments beyond three months?

A: The FR Notice extends the period that grantees can make emergency grant payments on behalf of individuals and families from three consecutive months to six consecutive months.

Q: What are the requirements related to an emergency payments activity in addition to meeting a national objective?

A: As a public services activity designed to prevent, prepare for, or respond to coronavirus:

- Activity may be assisted with CDBG-CV or FY2019 or FY2020 grant funds.
- 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.
- Emergency payments must be made to the provider of such items or services on behalf of an individual or family, and not directly to an individual or family in the form of income payments, debit cards, or similar direct income payments.
- Grantees must ensure that proper documentation is maintained to ensure that all costs incurred are eligible.
- Grantees using this alternative requirement must document, in their policies and procedures, how they will determine the amount of assistance to be provided is necessary and reasonable.

HUD will be providing more technical assistance related to emergency payments, such as questions regarding payment of arrearages as part of such an activity in the near future.

Q: What is the difference between an “income payment” and an “emergency payment” in the CDBG regulations?

A: Normally, CDBG funds may not be used for income payments, which are not included among eligible activities in section 105(a) of the HCD Act for states, and which are expressly prohibited by 24 CFR 570.207(b)(4) in the Entitlement CDBG regulations. The phrase income payments means a series of subsistence-type grant payments made to an individual or family for items such

as food, clothing, housing (rent or mortgage) or utilities, but excludes emergency payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

Q: May funds assist an economic development activity by being passed through a for-profit entity to a financing mechanism?

A: In the FR Notice, HUD provided a clarification about financing mechanisms. 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). The regulations at 24 CFR 570.203(b) already list forms of support by which grantees can provide assistance to private, for-profit businesses where the assistance is appropriate to carry out an economic development project. HUD has previously interpreted this provision to allow for CDBG assistance to NMTC investment vehicles. This clarification makes clear that such assistance through any financing mechanism (which is not limited to NMTC investment vehicles) is eligible under 24 CFR 570.203(b). The regulation also does not apply to states, but states may consider 24 CFR 570.203(b), as clarified by the following alternative requirement, as guidance in the same way that they may consider other Entitlement CDBG regulations.

Q: May funds assist an economic development activity by being passed through a nonprofit organization to a financing mechanism?

A: The FR Notice establishes an alternative requirement that expands the authority in section 105(a)(15) of the HCD Act and 24 CFR 570.204 to permit grantees subject to entitlement CDBG regulations to assist nonprofit organizations serving the development needs of their jurisdiction by carrying out community economic development projects through a financing mechanism. The qualified nonprofit may pass assistance through a financing mechanism to another entity based on the language in section 105(a)(15) of the HCD Act. Grantees subject to entitlement regulations must document that the assisted nonprofit is serving the development needs of the jurisdiction and that the assistance is used for a community economic development project that is necessary to prevent, prepare for, and respond to coronavirus.

Q: Does the 15 percent public services limitation apply to CDBG-CV grants?

A: No. The CARES Act provides that there shall be no per centum limitation for the use of funds for public services activities to prevent, prepare for, and respond to coronavirus. The CARES Act provides this flexibility for all CDBG-CV funds.

Q: Does the 15 percent public services limitation apply to FY2019 and FY2020 CDBG grants?

A: The public services limitation does not apply to CDBG funds appropriated in fiscal years 2019 and 2020, or program income for FY2019 and FY2020, to the extent that grantees use these funds to carry out public service activities to prevent, prepare for, and respond to coronavirus. For fiscal years 2019 and 2020, the cap shall still be calculated and shall apply to public service activities carried out for activities that do NOT prevent, prepare for, and respond to coronavirus.

Q: Can CDBG-CV assist existing public services?

A: CDBG and CDBG-CV funds may only be used for those public service activities that are new or that represent a quantifiable increase above the level of an existing service that has been

provided by or on behalf of the unit of general local government (through funds raised by the unit or received by the unit from the state in which it is located) in the 12 calendar months before the submission of the action plan, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government.

Q: Is it eligible to use grant funds to purchase personal property or equipment?

A: Purchase of personal property and equipment is generally ineligible. However, the entitlement CDBG regulation at 24 CFR 570.207(b)(1) (which may be used as guidance by state grantees), allows grantees to purchase or to pay depreciation in accordance with 2 CFR part 200, subpart E, for personal property, fixtures, and equipment when necessary when such items constitute all or part of a public service.

Thus, it is important for the grantee to define the public service activity and the role of the equipment in providing it. Examples of use of equipment that constitute all or part of a public service include equipment and supplies owned by the grantee or subrecipient that provides the public service, e.g., ventilators or other medical equipment and supplies that will be used in providing health care at a field clinic, or a vehicle outfitted with medical equipment to provide mobile health care.

Q: How will program income be treated under CDBG-CV?

A: The receipt and expenditure of program income that is generated by the use of CDBG-CV funds shall be treated as annual formula CDBG program income and recorded as part of the financial transactions of the annual formula CDBG grant program. Any program income generated from the use of CDBG-CV funds will be receipted in HUD's Integrated Disbursement and Information System (IDIS) as program income to the annual formula CDBG grant program. This provision paired with the requirement that 80 percent of a CDBG-CV grant be expended within three years facilitate expeditious use of funds.

Q: May CDBG-CV funds be used for float-funded activities?

A: Grantees shall not use CDBG-CV funds for float-funded activities or guarantees.

Q: May CDBG-CV subrecipients retain program income?

A: A grantee may permit subrecipients (including units of general local government receiving funds from a state) to retain program income from the use of CDBG-CV funds under this paragraph if the amount held does not exceed the subrecipient's projected cash needs for CDBG activities including activities to prevent, prepare for, and respond to coronavirus.

Q: May States act directly to carry out CDBG-CV activities rather than passing nearly all funds through to local governments?

A: States are significant coordinators of statewide and regional activities to prevent, prepare for, and respond to coronavirus. The FR Notice provides waivers and alternative requirements that permit a state grantee to use a portion of its funds to act directly to carry out activities through employees, contractors, and subrecipients in all geographic areas within its jurisdiction, including entitlement areas and tribal populations.

Q: When are the waivers and alternative requirements to act directly available?

A: They are only available to a state if it complies with the “conforming changes” and with the following alternative requirements:

- *Nonentitlement set aside*: A state must set aside a portion of its grant for use by nonentitlement units of general local government.
- *Inclusion in CDBG-CV Application*: A state’s proposal to act directly and to distribute or use CDBG-CV funds in entitlement areas must be published for public comment in its application for CDBG-CV funds or in a subsequent substantial amendment to the annual action plan that includes the CDBG-CV funds.
- *Activities carried out in tribal areas*: A state grantee may carry out activities in tribal areas. States carrying out projects in tribal areas through employees, contractors, or subrecipients must obtain the consent of the Indian tribe with jurisdiction over the tribal area.

Q: What is the amount of the nonentitlement set aside?

A: The nonentitlement 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. The nonentitlement set aside fulfills the intent reflected by the formula to address needs in urban and rural areas, while giving states the flexibility to determine how to expend each allocation as it is made based on needs within its jurisdiction.

Q: What are the “conforming changes” and alternative requirements made for States that act directly?

A: The following are the “conforming changes” and alternative requirements for States that choose to carry out some or all CDBG-CV activities directly:

- *Carry out*. A state may carry out eligible activities directly, consistent with the entitlement program requirement of 24 CFR 570.200(f), through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients. Pursuant to section 102(c) of the HCD Act, one or more public agencies may be designated by the chief executive officer of a state to undertake activities assisted under this chapter. A state is responsible for ensuring that CDBG-CV funds are used in accordance with all program requirements. The use of interagency agreements, subrecipient agreements (including agreements with Indian tribes and designated public agencies, as described in section III.B.6.(b)(ii)) or contracts does not relieve the state of this responsibility. States are responsible for determining the adequacy of performance under subrecipient agreements and procured contracts, and for taking appropriate action when performance problems arise. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with all applicable requirements, including conflict of interest provisions in 24 CFR 570.489(g) and (h).
- *National objective*. The national objective criteria in 24 CFR 570.483 are modified by the following alternative requirement when states carry out activities directly: the state must fulfill all requirements that 570.483 imposes on units of general local government to demonstrate compliance with national objective criteria.



- *Recordkeeping.* 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. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the state shall be sufficient to: (1) enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly; and (3) show how activities funded are consistent with the descriptions of activities proposed for funding in the CDBG-CV application. For fair housing and equal opportunity (FHEO) purposes, as applicable, such records shall include data on the race, ethnicity, and sex of persons who are applicants for, participants in, or beneficiaries of the activity.
- *Change of use.* The change of use of real property rule at 24 CFR 570.489(j) is modified to include instances when a state carries out activities directly. All references to “unit of general local government” shall be read as “state, unit of general local government (UGLG) or state subrecipient.”
- *Reviews and audits.* To include instances when a state carries out activities directly, 24 CFR 570.492 is waived and the following alternative requirement applies: the state shall make reviews and audits, including on-site reviews of any subrecipients and local governments, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCD Act, as amended. In the case of noncompliance with these requirements, the state shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The state shall establish remedies for noncompliance by any subrecipients or local governments.
- *Procurement.* To include instances when a state carries out activities directly in accordance with the waiver in this paragraph, 24 CFR 570.489(g) is modified to revise the requirement that “[t]he state shall establish requirements for procurement policies and procedures for units of general local government” so that it applies to “units of general local government and subrecipients.” To facilitate grant administration by adopting state-wide procurement policies, a state agency designated to oversee the use of all its CDBG-CV funds pursuant to section 102(c) of the HCD Act may impose its procurement requirements on all uses of CDBG-CV funds by the state, including by other state agencies that administer a portion of the CDBG-CV grants, so long as those requirements comply with 24 CFR 570.489(g).
- *Subrecipients.* States carrying out activities through subrecipients must comply with 24 CFR 570.489(m) relating to monitoring and management of subrecipients. The definition of subrecipient at 24 CFR 570.500(c) applies when states carry out activities through subrecipients, and the requirements of 24 CFR 570.489(g) (as modified by section III.B.6.(b)(i)) shall apply. For purposes of this alternative requirement, the definition of subrecipients at 24 CFR 570.500(c) is modified to expressly include Indian tribes. Indian tribes that receive CDBG-CV funding from a state grantee must comply with the Indian Civil Rights Act (Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301 et seq.). This conforming requirement is necessary because the state CDBG regulations do not

anticipate states distributing funds through means other than a method of distribution to units of general local government.

- *Entitlement share not required.* States, either directly or through units of general local government, may use CDBG-CV funding for activities located in entitlement areas without contribution from the entitlement jurisdiction.
- *Exception criteria.* If the area in which an activity is carried out would benefit from the “exception criteria” that permit a grantee to use a percentage less than 51 percent to qualify activities under the LMI area benefit criteria, those exception criteria apply to the use of CDBG-CV funds by a state the same way that they apply to the use of CDBG funds by the entitlement grantee in the same area. CDBG-CV grantees are required to use the most recent data available in implementing the exception criteria. For more information on the data set, please visit <https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees/>.

Q: Are States required to provide match for State administration for their CDBG-CV grant?

A: The FR Notice waived program requirements to the extent necessary to eliminate the state match requirement for general administrative costs.

Q: What administrative cap requirements apply to State CDBG-CV grants?

A: A state and its funded units of general local government and subrecipients are, in aggregate, permitted to expend no more than 20 percent of the CDBG-CV grant for planning, management, and administrative costs. A state may use up to 7 percent of its CDBG-CV grant combined for general administration and technical assistance costs; of that 7 percent, a state may use up to 5 percent of CDBG-CV funds for general administration costs and up to 2 percent of the grant for technical assistance activities. The remainder of the amount may be used by units of general local government for administrative and technical assistance costs, provided that a state and its funded units of general local government and subrecipients expend no more than 20 percent of the CDBG-CV grant for planning, management, and administrative costs. A grantee must meet this alternative requirement over the life of its grant, as amended to incorporate additional allocations of CDBG-CV funds.

Q: Are there any circumstances under which a State’s CDBG-CV grant may be used to pay administrative costs of the annual formula CDBG program?

A: CDBG-CV grant funds shall not be used to pay planning and program administrative costs allocable to another grant under the CDBG annual formula program; however, CDBG-CV funds may be used to pay costs that benefit both the CDBG-CV grant and another CDBG award and can be distributed between the grants in proportions that may be reasonably approximated.

Q: How much can CDBG-CV entitlements and counties of the State of Hawaii use for planning and program administrative costs and how will the cap be calculated?

A: For grants subject to subpart D (entitlement grants and grants to the nonentitlement counties of the State of Hawaii): no more than 20 percent of the total CDBG-CV grant shall be expended for planning and program administrative costs. There is no program year obligation test for planning and administrative costs of CDBG-CV grants. Additionally, CDBG-CV funds shall not be included in the compliance determination of the program year obligation test applicable to annual formula CDBG funds. Additionally, program income, regardless of the source funding of

the activity that generated the 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.

Q: Are there any circumstances under which an entitlement's CDBG-CV grant may be used to pay administrative costs of the annual formula CDBG program?

A: CDBG-CV grant funds shall not be used to pay planning and program administrative costs allocable to another grant under the CDBG annual formula program; however, CDBG-CV funds may be used to pay costs that benefit both the CDBG-CV grant and another CDBG award and can be distributed between the grants in proportions that may be reasonably approximated.

Q: When a State carries out activities directly, does this change its environmental review responsibilities?

A: Yes. Usually, a state distributes CDBG funds to local governments and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. Because the FR Notice will allow a State CDBG-CV grantee to carry out activities directly in addition to distributing funds to subrecipients, per 24 CFR 58.4, when a state carries out activities directly, the state must submit the Certification and Request for Release of Funds to HUD for approval.

Q: Are there any ways to streamline environmental review for CDBG-CV?

A: The FR Notice clarifies that environmental review regulations in 24 CFR part 58 include two provisions that may be relevant for activities to prevent, prepare for, and respond to coronavirus.

1. 24 CFR 58.34(a)(10) provides an exemption for certain activities undertaken in response to a national or locally declared public health emergency. Except for the applicable requirements of 24 CFR 58.6, a responsible entity does not have to comply with the requirements of part 58 or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in 24 CFR 58.5 for exempt activities or projects consisting solely of exempt activities. Exempt activities include assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from imminent threats to public safety.
2. A streamlined public notice and comment period is in the regulation at 24 CFR 58.33, which may apply in some cases for emergency activities undertaken to prevent, prepare for, and respond to coronavirus. The application of these two provisions following a presidentially-declared or locally-declared public health emergency is discussed in the FR Notice, Guidance on conducting environmental review pursuant to 24 Part 58 for activities undertaken in response to the public health emergency as a result of COVID-19 (CPD-20-07) posted at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-07cpdn.pdf>.

Q: Can HUD waive Davis-Bacon for CDBG-CV?

A: CDBG-CV grants are subject to the Davis-Bacon prevailing wage requirements imposed by section 110(a) of the HCD Act. HUD cannot waive this or other labor laws.

Q: Do the Davis-Bacon requirements apply to reimbursements? Is so, how?

A: Under regulations of the Department of Labor (DOL) at 29 CFR 1.6(g), where Federal assistance is not approved prior to contract award (or the beginning of construction if there is no contract award), Davis-Bacon wage rates apply retroactively to the beginning of construction and must be incorporated retroactively in the contract specifications. However, if there is no evidence that the owner intended to apply for the CDBG-CV assistance prior to the contract award or the start of the construction, HUD may request that DOL allow prospective, rather than retroactive, application of the Davis-Bacon wage rates. DOL may allow prospective application of Davis-Bacon requirements where it finds that it is necessary and proper in the public interest to prevent injustice or undue hardship and it finds no intent to apply for the federal assistance before contract award or the start of construction. The CDBG-CV Grantee should contact a HUD Labor Relations Specialist if such a situation arises.

Q: Do the CDBG-CV grants affect a grantee's borrowing authority in the Section 108 Loan Guarantee Program.

A: No. Under the Section 108 Loan Guarantee Program, CDBG grantees can borrow up to five times their most recent CDBG grant by issuing federally guaranteed notes. The Notice provides that CDBG-CV funds shall not be factored into a grantee's Section 108 borrowing authority.

Q: May a grantee use CDBG-CV funds to make a Section 108 payment?

A: Yes, in some cases. A grantee may use CDBG-CV funds to make a direct payment of principal, interest, or any fees due under a Section 108 note only if the use of funds is to prevent, prepare for, and respond to coronavirus. The necessity of such use shall be documented by the grantee or the subrecipient that provided the assistance (e.g., if Section 108 funds were used by the grantee to provide assistance to a for-profit business in the form of a loan and the business is unable to make a payment due to the reduction in revenue caused by coronavirus, any restructuring of that loan must be supported by modification to loan documents that document the relationship to coronavirus). When CDBG-CV funds are used to subsidize or replace principal, interest, or fees due under a loan previously made with guaranteed loan funds as part of an activity to assist a for-profit or a subrecipient, and the CDBG-CV assistance is necessary to respond to the impact of coronavirus (e.g., a third-party business borrower whose loan is the intended source for repayment of a Section 108 loan is not collecting sufficient revenue due to local public health conditions), the documentation that the original assisted activity satisfies national objective criteria shall be sufficient to demonstrate that the use of the guaranteed loan funds and the additional CDBG-CV assistance meet a CDBG national objective.

Q: What is the period of performance of a CDBG-CV grant?

A: A CDBG-CV grantee must expend all CDBG-CV funds (including CDBG-CV funds from additional allocations that are obligated by HUD through amendments to the grant agreement) within the 6-year period of performance established by the CDBG-CV grant agreement. Grant funds are not available for expenditure after the period of performance.

Q: What is the expedited expenditure requirement for a CDBG-CV grant?

A: Each CDBG-CV grantee must expend at least 80 percent of all CDBG-CV funds (including CDBG-CV funds from additional allocations that are obligated by HUD through amendments to the grant agreement) no later than the end of the third year of the period of performance established by the CDBG-CV grant agreement.

Q: What is the corrective action or sanction for failure to meet the 80 percent expenditure requirement?

A: If this three-year requirement is not met, and evidence meeting the criteria for extension described in the FR Notice is not provided, an amount equivalent to the difference between the total amount expended at the end of the third year and 80 percent of all CDBG-CV funds will be recaptured from the CDBG-CV grant.

Q: Do the annual formula CDBG timeliness requirements apply to CDBG-CV?

A: No. CDBG-CV grants are available for limited purposes under the CARES Act. They are subject to a shortened period of performance. CDBG-CV funds will not be included in determining compliance with the requirements of 24 CFR 570.902 and 570.494. (Note that income generated from CDBG-CV activities will be included in timely expenditure compliance determinations for each entitlement grantee's annual formula CDBG program. Grantees should consider the potential effects of additional program income to compliance with timeliness requirements applicable to their annual formula CDBG grant program when they select and design CDBG-CV assisted activities.)

Q: What are the applicable grant closeout requirements?

A: For grantees subject to entitlement regulations, HUD will close out grants in accordance with grant closeout requirements of 2 CFR 200.343. This approach is consistent with the state regulation at 24 CFR 570.489(o). Grantees subject to this alternative requirement must submit all financial, performance, and other reports as required by 24 CFR 91.520.

Q: What if a grantee cannot meet the expenditure requirement or the period of performance?

A: In general, HUD expects all grantees to comply with all grant requirements and fully close out a grant at the end of the period of performance. However, HUD recognizes that there are many things that could disrupt a grantee's intended timeline for activity completion: litigation, disasters, limited construction seasons due to weather, or other extenuating circumstances. Therefore, HUD may authorize an extension of the three-year expenditure requirement or the overall period of performance if the grantee provides evidence of such extenuating circumstances that would warrant the extension and that they could demonstrate they would meet all program requirements within the extended expenditure period or period of performance.

Q: What reporting requirements apply to CDBG-CV?

A: The reporting requirements that apply to the use of annual formula CDBG grants also apply to CDBG-CV grants. This includes the annual CAPER (for entitlements) or PER (for States). In addition, the CARES Act requires that 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.

Existing reporting requirements are anticipated to meet the CARES Act requirements, but the content and format for this reporting is still under development and will need to be reviewed

against current program practices. The Department will work in coordination with OMB to ensure that this requirement can be fulfilled by recipients of CARES Act funding in a manner that utilizes to the greatest extent possible existing reporting streams, providing the necessary transparency and accountability with minimal additional burden. If additional reporting is necessary, further advice or technical assistance will be provided by the Department.

Q: Can a grantee combine funds from multiple sources in a single activity?

A: It is possible. However, 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. A grantee's policies and procedures are not adequate unless they include, at a minimum: (1) 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 (2) 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.

Q: How does CDBG-CV define duplication of benefits?

A: Duplication of benefits occurs when Federal financial assistance is provided to a person or entity through a program to address losses resulting from a Federally-declared emergency or disaster, and the person or entity has received (or would receive, by acting reasonably to obtain available assistance) financial assistance for the same costs from any other source (including insurance), and the total amount received exceeds the total need for those costs.

Q: What does the FR Notice say about citizenship requirements?

A: Please note that the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services provides that the 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. Fiscal Year 2019 and Fiscal Year 2020 CDBG Grants**

### *IV.A. General Requirements*

Q: What requirements apply to FY 2019 and FY2020 CDBG annual formula grants other than the FR Notice?

A: Except as described in the FR Notice or other applicable waivers and alternative requirements (in memos), the normal statutory and regulatory provisions governing the CDBG program apply to fiscal year 2019 and 2020 CDBG grants, including regulations at 24 CFR part 570 subpart I (states), 24 CFR part 570 subparts A, C, D, E, J, K, and O (entitlements), and 24 CFR subpart F (insular areas and Hawaii counties).

Q: Is HUD aware that some grantees may struggle with timely expenditures for annual formula CDBG grants in 2020?

A: Because of the coronavirus many local governments are operating under extenuating circumstances and may need additional time for certain administrative requirements, so HUD is suspending for fiscal year 2020 all corrective actions, sanctions, and informal consultations for timeliness effective January 21, 2020. Grantees are advised that this suspension does not eliminate the timely expenditure requirements set forth in 24 CFR 570.902 (entitlements). HUD will continue to run expenditure reports and will continue to notify grantees of deficiencies.

Going forward, HUD will monitor changing conditions. Before the end of the fiscal year, HUD will determine whether to extend this suspension for all or a portion of fiscal year 2021. HUD may consider regional and local conditions when determining when to begin scheduling informal consultations.

#### *IV.B. Flexibilities, Waivers, and Alternative Requirements*

Q: What is the deadline set by the CARES Act for grantees to submit FY2019, FY2020, and CDBG-CV action plans?

A: The deadline for grantees to submit action plans and other updates to their consolidated plans submissions for fiscal years 2019 and 2020 to include CDBG-CV funds is August 16, 2021.

Q: Has HUD extended the deadline for submitting the annual Consolidated Annual Performance and Evaluation Report (Performance Report (CAPER))?

A: On May 7, 2020, Acting Assistant Secretary John Gibbs issued a memorandum to all Community Planning and Development Field Office Directors, Deputy Directors and Program Managers with the subject “Availability of a Waiver and Alternate Requirement for the Consolidated Annual Performance and Evaluation Report (Performance Report) for Community Planning and Development (CPD) Grant Programs in Response to the Spread of Coronavirus.” This memorandum authorized a waiver of the regulatory requirement at 24 CFR 91.520(a) that grantees submit a performance report known as the Consolidated Annual Performance and Evaluation Report (CAPER) within 90 days of the end of a jurisdiction’s program year. Under this memorandum, for program year 2019 CAPERs, the requirement that grantees submit a performance report within 90 days after the close of a jurisdiction’s program year is waived, subject to the condition that within 180 days after the close of a jurisdiction’s program year the jurisdiction shall submit its performance report.

Q: Do a grantee’s CDBG activities to prevent, prepare for, and respond to coronavirus need to be consistent with its Consolidated Plan?

A: The Notice temporarily waived the requirement for consistency with the consolidated plan when fiscal year 2019 and 2020 CDBG funds are used to prevent, prepare for, and respond to coronavirus, because grantees may not have considered the needs associated with this special purpose funding when developing their current consolidated plan strategic plan and needs assessment. In conjunction, HUD is temporarily waiving 42 U.S.C. 5304(e) to the extent that it would require HUD to annually review grantee performance under the consistency criteria. These waivers apply only until the grantee submits its next full (3-5 year) consolidated plan due after the 2020 program year.

In addition, the regulations at 24 CFR 91.225(b)(5) (entitlements) and 24 CFR 91.325(b)(5) (states) require grantees to certify that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan portion of the consolidated plan. The Notice provided an alternative requirement that grantees are not required to carry out the portions of their fiscal year 2019 and 2020 annual formula CDBG grants that are used to prevent, prepare for, and respond to coronavirus in a manner consistent with the certifications in 24 CFR 91.225(b)(5) and 24 CFR 91.325(b)(5), because HUD has changed the requirement related to consistency.

Q: Will CDBG-CV grants be included in the base for calculating the annual formula program's public service cap compliance?

A: No. CDBG-CV grant funds shall not be included in the public service cap compliance determination which is applicable to annual formula CDBG funds used for activities not related to coronavirus.

Q: How will program income generated by the use of CDBG-CV grants affect the public services cap compliance calculation for the annual formula grants?

A: Program income generated by the use of CDBG-CV grants is considered program income to the grantee's annual formula CDBG program. Program income, regardless of the source funding of the activity that generated the income, shall be included in the compliance determination of the public service cap applicable to the annual formula CDBG grants and program income, separately from CDBG-CV funds. For purposes of calculating the public services cap, the treatment of program income generated by the CDBG-CV grant and received (i.e., documented in IDIS) by the annual formula CDBG program shall be considered as any other program income received by the annual formula CDBG program.

Q: Do you have a quick list of the CDBG-CV requirements that ALSO apply to CDBG FY2019 and FY2020 grants?

A: These Section III provisions of the Notice apply to the use of fiscal year 2019 and 2020 CDBG funds for activities to prevent, prepare for, and respond to coronavirus; these provisions shall also apply to the use of Section 108 guaranteed loan funds when they are used together with fiscal year 2019 and 2020 CDBG funds for activities to prevent, prepare for, and respond to coronavirus. Where these paragraphs refer to CDBG-CV funds, they apply equally to fiscal years 2019 and 2020 CDBG grants.

- III.B.5.(d)(i) Use of Urgent Need National Objective.
- III.B.5.(d)(ii) Modification of Location-Based Presumption of LMI Benefit for Job Creation and Retention National Objective Criteria.
- III.B.5.(d)(iii) LMI Job Creation and Retention Records.
- III.B.5.(e)(i) Elimination of Aggregate Public Benefit Test.
- III.B.5.(e)(ii) Modification of Individual Public Benefit Standards.
- III.B.5.(f)(i) Extension of Emergency Payments.
- III.B.5.(f)(ii) Opportunity Zones and Related Flexibilities for Economic Development.
- III.B.5.(f)(iii) Public Services Cap.
- III.B.5.(f)(iv) Other Public Services Considerations.
- III.B.5.(f)(v) Clarification on Application of Cost Principles.



- III.B.6.(d)(iii) Clarifying note on emergency environmental review procedures.
- III.B.9. Duplication of Benefits (applies for programs and activities with annual formula CDBG funds when the grantee uses these funds to carry out programs to respond to losses caused by disasters and emergencies).
- III.B.10. Citizenship Requirements.

Q: Do you have a quick list of the CDBG-CV requirements that do **NOT** apply to CDBG FY2019 and FY2020 grants?

A: Waivers and alternative requirements and other provisions in the following paragraphs of Section III of the Notice do **not** apply to fiscal year 2019 CDBG Grants and fiscal year 2020 CDBG grants:

- III.A. Allocations of CDBG-CV Funds
- III.B.1. General Grant Requirements
- III.B.2. Responsible Use of CARES Act Funds
- III.B.3. Overview of Process to Receive CDBG-CV Grants
- III.B.4.(b) CDBG-CV Application Content and Submission
- III.B.5.(a) Use of Funds for CARES Act Purposes
- III.B.5.(b) Reimbursements
- III.B.5.(c) Terms and Conditions Made Applicable by the CARES Act
- III.B.5.(d)(iv) Overall Benefit to LMI Persons.
- III.B.6.(a) Program Income
- III.B.6.(b) Rules Applicable to State CDBG-CV Grants
- III.B.6.(c) Rules for Entitlements, Insular Areas, and Nonentitlement Hawaii Counties
- III.B.6.(d)(ii) Clarifying note on the process for environmental release of funds when a state carries out activities directly.
- III.B.6.(e) Compliance with Labor Laws
- III.B.6.(f) Relationship to Section 108 Loan Guarantees
- III.B.7. Period of Performance, Timeliness, and Closeout
- III.B.8. Reporting