

# The Community Development Block Grant Disaster Recovery Program

GUIDE FOR ATTORNEYS  
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## **Executive Summary**

The Community Development Block Grant Disaster Relief (CDBG-DR) Program provides flexible grant-based assistance to help cities, counties, and states recover from certain disasters declared by the President of the United States, subject to congressional funds appropriation. CDBG-DR grant funds can support a wide range of recovery activities including housing, small business, infrastructure, and economic assistance, especially in low-income areas which may otherwise have more difficulty recovering.

The CDBG-DR Program, which is administered through the U.S. Department of Housing and Urban Development (HUD) focuses on long-term recovery and revitalization. Funding may be used to address recovery needs otherwise unmet through other federal, state, or private disaster recovery programs. HUD awards grants to state and local governments (“grantees”), which in turn distribute the aid to individuals and organizations in the impacted disaster areas. Grantees determine the application process and requirements that individuals and organizations must follow to receive aid. The grantees must publish an action plan describing the application process and requirements, which must be available on the grantee’s website.

## **Overview**

The Community Development Block Grant Disaster Relief Program, authorized under Title I of the Housing and Community Development Act of 1974 (HCD Act)<sup>1</sup>, allows Congress to appropriate funding for a broad range of recovery activities, including immediate disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization to the most impacted and distressed areas.<sup>2</sup> Unlike other recovery assistance programs administered by the U.S. Federal Emergency Management Agency (FEMA) or the U.S. Small Business Administration (SBA), CDBG-DR funds are not permanently authorized.<sup>3</sup> Instead, Congress may choose to authorize CDBG-DR funds<sup>4</sup> on an ad hoc

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<sup>1</sup> 42 U.S.C. § 5301

<sup>2</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) POLICY GUIDANCE FOR GRANTEEES 2019, 1-2 (2019), <https://files.hudexchange.info/resources/documents/CDBG-DR-Policy-Guide.pdf>.

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *See, e.g.*, Bipartisan Budget Act of 2018, Pub. L. No. 115-123 (appropriating funds to assist areas affected by Hurricanes Harvey, Irma, and Maria in 2017).



basis after the President of the United States declares a major emergency.<sup>5,6</sup> Once there is a congressional authorization of funds, HUD issues a Federal Register notice, which outlines the requirements and waivers for awarding grants.<sup>7</sup>

CDBG-DR can be viewed as “last defense funding” to address needs not addressed by other federal programs.<sup>8</sup> As such, CDBG-DR funds cannot supplant other federal funds.<sup>9</sup> In fact, HUD requires CDBG-DR grantees to perform a duplication of benefits analysis for each applicant, as part of grantees’ funds distribution process.<sup>10</sup> CDBG-DR funds can only be awarded to state and local governments—individuals, communities, and organizations cannot apply directly to HUD, but can receive assistance from local governments, who received CDBG-DR funds.<sup>11</sup>

The CDBG program was enacted in 1974 by President Gerald Ford, through Title I of Housing and Community Development Act of 1974.<sup>12</sup> The program went into effect in January 1975.<sup>13</sup> As of June

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<sup>5</sup> A major emergency is defined as “any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of catastrophe in any part of the United States.” 42 U.S. § 5112(1).

<sup>6</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) FACT SHEET, <https://files.hudexchange.info/resources/documents/CDBG-DR-Fact-Sheet.pdf> (last visited June 25, 2020). Note that a Presidential declaration of emergency is a necessary to trigger congressional authorization. State or local declaration is insufficient.

<sup>7</sup> Alexander Williams, *Senate Legislation Introduced to Permanently Authorize the Community Development Block Grant – Disaster Recovery Program*, ENTERPRISE (July 30, 2019), <https://www.enterprisecommunity.org/blog/senate-legislation-introduced-to-permanently-authorize-CDBG-DR>.

<sup>8</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY CDBG-DR OVERVIEW, 9 (Mar. 5, 2020), <https://files.hudexchange.info/resources/documents/CDBG-Disaster-Recovery-Overview.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> Duplication of benefits occurs when a beneficiary receives assistance from multiple sources, including the Federal Emergency Management Agency (FEMA), the National Flood Insurance Program (NFIP), the Small Business Administration (SBA), private insurance companies, non-profits, as well as city, state, or local governments. CITY OF MINOT, DUPLICATION OF BENEFIT POLICY, (last visited July 9, 2020), <http://cdbg.minotnd.org/pdf/policy/general/duplication-of-benefit.pdf>. To violate HUD’s duplication of benefits requirement, the cumulative amount of aid received from other sources must exceed the total need for the recovery purpose in question. *Id.*

<sup>11</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) FACT SHEET, <https://files.hudexchange.info/resources/documents/CDBG-DR-Fact-Sheet.pdf> (last visited June 25, 2020).

<sup>12</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, GOING LOCAL (July 12, 2016), <https://archives.hud.gov/local/or/goodstories/2014-08-22.cfm>.

<sup>13</sup> *Id.*



2019, HUD, which manages grant distribution, has awarded 137 grants totaling \$89.7 billion to 58 grantees.<sup>14</sup> Grantees included 30 states and 28 local governments.<sup>15</sup>

### **CDBG-DR Eligibility**

Individual members of the public or communities impacted by disaster are ineligible to receive CDBG-DR funds directly from HUD.<sup>16</sup> Funds can only be awarded to state and local governments, which then have the option to either administer the CDBG-DR grant program directly or distribute funds to sub-recipients or subgrantees.<sup>17</sup> Individuals and organizations can apply directly to the state and/or sub-recipients who manage fund distribution to receive funds. Application procedures and requirements vary by state.<sup>18</sup>

### **CDBG-DR Award Process**

After Congress appropriates funding to the CDBG-DR program, HUD calculates and announces grant awards, which are published as notices in the Federal Register.<sup>19</sup> These notices describe the rules that govern the specific CDBG-DR appropriation, including any additional or alternative requirements, and/or regulatory waivers granted by HUD.<sup>20</sup> States then have the option to either administer the CDBG-

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<sup>14</sup> Alexander Williams, *Senate Legislation Introduced to Permanently Authorize the Community Development Block Grant – Disaster Recovery Program*, ENTERPRISE (July 30, 2019), <https://www.enterprisecommunity.org/blog/senate-legislation-introduced-to-permanently-authorize-CDBG-DR>.

<sup>15</sup> *Id.*

<sup>16</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) FACT SHEET, <https://files.hudexchange.info/resources/documents/CDBG-DR-Fact-Sheet.pdf> (last visited June 25, 2020).

<sup>17</sup> *Id.*; see also DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY CDBG-DR OVERVIEW, 6 (Mar. 5, 2020), <https://files.hudexchange.info/resources/documents/CDBG-Disaster-Recovery-Overview.pdf>.

<sup>18</sup> Individuals residing in federally declared natural disaster areas can find more information on their state’s website. For instance, Texas lists information under the Texas General Land Office, <https://recovery.texas.gov/local-government/resources/overview/index.html>. Georgia lists available information under the Department of Community Affairs, <https://www.dca.ga.gov/community-economic-development/funding-programs/community-development-block-grant-disaster-recovery>. The best way to locate relevant information appears to be conducting a general Internet search with the name of the state in question and the key word “CDBG-DR.”

<sup>19</sup> *Id.*; see also DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY CDBG-DR OVERVIEW, 6 (Mar. 5, 2020), <https://files.hudexchange.info/resources/documents/CDBG-Disaster-Recovery-Overview.pdf>.

<sup>20</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) POLICY GUIDANCE FOR GRANTEEES 2019, 2 (2019), <https://files.hudexchange.info/resources/documents/CDBG-DR-Policy-Guide.pdf>.



DR grant program directly or distribute funds to subrecipients or subgrantees, such as local nonprofits, community organizations, and/or contractors for the grantee.<sup>21</sup>

HUD will notify States, cities, and counties of their eligibility to receive CDBG-DR funds.<sup>22</sup> HUD allocates funds based on a potential grantee's unmet recovery needs.<sup>23</sup> In addition, the allocation method for each award is published in a Federal Register Notice, which also outlines the eligible recovery activities, program requirements (including the portion of funds that must be spent in low and moderate income communities), and appropriation-specific waivers or alternative requirements.<sup>24</sup>

### **National Objectives**

To qualify for CDBG-DR funding, activities must meet at least one of three national objectives, identified in § 104(b)(3) of the HCD Act:

1. Benefit low and moderate-income persons,
2. Aid in the prevention or elimination of "slums or blight,"<sup>25</sup> or
3. Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to address the problem.<sup>26</sup>

Typically, general planning activities, such as land-use, historical preservation, and zoning plans, and program administrative costs are presumed to meet national objectives.<sup>27</sup>

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<sup>21</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY CDBG-DR OVERVIEW, 6 (Mar. 5, 2020), <https://files.hudexchange.info/resources/documents/CDBG-Disaster-Recovery-Overview.pdf>.

<sup>22</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) FACT SHEET, <https://files.hudexchange.info/resources/documents/CDBG-DR-Fact-Sheet.pdf> (last visited June 25, 2020).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> The term reflects the original wording in the HCD Act. There is no universally-accepted definition of this term. For CDBG-DR purposes, the area must be officially designated by the grantee and must meet a definition of a slum, blighted, deteriorated or deteriorating area under State or local law. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, MEETING A NATIONAL OBJECTIVE (last visited Jul. 17, 2020), <https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-3.pdf>.

<sup>26</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) POLICY GUIDANCE FOR GRANTEEES 2019, 3 (2019), <https://files.hudexchange.info/resources/documents/CDBG-DR-Policy-Guide.pdf>.

<sup>27</sup> *Id.*



## **Eligible Geographic Areas**

The Federal Register Notice governing the use of specific CDBG-DR funds identifies any geographic restrictions for the use of the funds.<sup>28</sup> Generally, funds must be used in the areas declared a major disaster area pursuant to the Stafford Act, which provides the legal framework for the federal government to provide assistance to states during declared major disasters and emergencies.<sup>29</sup> Typically, appropriations further limit the use of the “most impacted and distressed areas resulting from a major disaster.”<sup>30</sup>

The activities for which the funds were used are wide-ranging and typically decided on the state level. For instance, the State of Texas received a \$5.676 billion grant in 2017 to address damages caused by Hurricane Harvey.<sup>31</sup> Approximately \$1.334 billion were used for rehabilitation and reconstruction of owner-occupied single family homes damaged by Harvey.<sup>32</sup> A further \$100 million was used to reimburse homeowners for eligible out-of-pocket costs for home repairs up to \$50,000.<sup>33</sup> Approximately \$586 million was used to repair, reconstruct, and build new affordable multifamily housing units.<sup>34</sup> Finally, \$513 million was dedicated to economic revitalization, including deferred forgivable loans for businesses in exchange for job creation, and local infrastructure repairs.<sup>35</sup>

Similarly, following Hurricane Irma, HUD awarded Florida \$616 million in CDBG-DR funding.<sup>36</sup> HUD later awarded a further \$791 million to address unmet needs remaining after the first grant.<sup>37</sup> Florida used the funds for housing repair and replacement, including assistance for homeowners and tenants;

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* (internal quotation marks omitted).

<sup>31</sup> TEXAS GENERAL LAND OFFICE, HURRICANE HARVEY STATE ACTION PLAN (last visited Jul. 9, 2020), <https://recovery.texas.gov/files/hud-requirements-reports/hurricane-harvey/harvey-state-action-plan-overview.pdf>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> STATE OF FLORIDA, ACTION PLAN FOR DISASTER RECOVERY AMENDMENTS 1–7, 7 (last visited Jul. 9, 2020), [http://www.floridajobs.org/docs/default-source/office-of-disaster-recovery/hurricane-irma/action-plan---current-full-document/state-of-florida-action-plan-irma-final-1-16-20-english.pdf?sfvrsn=f52c40b0\\_2](http://www.floridajobs.org/docs/default-source/office-of-disaster-recovery/hurricane-irma/action-plan---current-full-document/state-of-florida-action-plan-irma-final-1-16-20-english.pdf?sfvrsn=f52c40b0_2).

<sup>37</sup> *Id.*



temporary housing assistance, including funds for individuals to use at eligible hotels; and infrastructure repairs.<sup>38</sup>

### **CDBG-DR Program Requirements**

Each CDBG-DR grantee<sup>39</sup> is subject to:

- The requirements of the applicable appropriation statute;
- The Federal Register Notice allocating funds to that grantee, as well as any subsequent Notice providing additional waivers and/or alternative requirements;
- Title I of the HCD Act and the CDBG regulations in 24 CFR Part 570, unless modified by waivers or alternative requirements in the Federal Register Notice;
- 2 CFR Part 200, outlining the federal government’s administrative, cost, and audit requirements; and
- Section 312 of the Stafford Act, which prohibits the duplication of benefits.<sup>40</sup>

All CDBG-DR activities must address a direct or indirect impact of the disaster for which the funding was authorized.<sup>41</sup> HUD outlines the plan for allocating funding to a combination of housing, economic development, infrastructure, and services programs by requiring all grantees to draft, publish and document (“Action Plan”).<sup>42</sup> Grantees must make their Action Plans available for public comment and address public feedback.<sup>43</sup> HUD requires grantees to make annual updates to the Action Plan, which should include any changes to the program or requirements. For instance, following Hurricane Harvey, Texas authorized its General Land Office to develop a Method of Distribution of funds, in partnership with the University of Texas at Austin.<sup>44</sup> The method of distribution relies on census data, FEMA Individual

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<sup>38</sup> *Id.* 116–120

<sup>39</sup> For the purposes of this document, the term “grantee” refers to state and local governments eligible for CDBG-DR grants.

<sup>40</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) POLICY GUIDANCE FOR GRANTEEES 2019, 2 (2019), <https://files.hudexchange.info/resources/documents/CDBG-DR-Policy-Guide.pdf>.

<sup>41</sup> *Id.* at 10.

<sup>42</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, KEY THINGS TO DO WHEN YOU RECEIVE CDBG-DR FUNDS, 1 (2019), <https://files.hudexchange.info/resources/documents/Key-Things-to-Do-When-You-Receive-CDBG-DR-Funds.pdf>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*



Assistance data, FEMA Public Assistance data, the Social Vulnerability Index, and the case-specific impact of Hurricane Harvey for each applicant.<sup>45</sup> Similarly, following Hurricane Michael, Florida published their Action Plan for the \$735 million grant they received from HUD.<sup>46</sup> To prioritize limited funding in areas with highest damage, Florida limited assistance to counties (and municipalities within those counties) that received FEMA Individual Assistance (IA) declarations in addition to their Public Assistance (PA) declaration.<sup>47</sup> Florida's Action Plan required individual municipalities to notify residents and create specific application procedures for funding distribution.<sup>48</sup>

Under the Stafford Act duplication of benefits requirement, applicants<sup>49</sup> (both individuals and organizations) must have spent all funds received from government sources, private insurance, the National Flood Insurance Program, and any other sources, and must have a persisting unmet need before they can apply for CDBG-DR funds.<sup>50</sup> Because insurance coverage and federal funding eligibility vary greatly between individual applicants, grantees (states or municipalities) must conduct a separate duplication of benefits analysis for each applicant before disbursing funds.<sup>51</sup> The Stafford Act prohibits grantees from making blanket duplication of benefits determinations for all applicants.<sup>52</sup>

HUD also requires grantees to establish procedures requiring applicants to sign subrogation agreements, where the applicant agrees to reimburse the grantee if the applicant later receives additional funds from any other source.<sup>53</sup> The grantee must monitor compliance with subrogation agreements for a reasonable period of time.<sup>54</sup>

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<sup>45</sup> TEXAS GENERAL LAND OFFICE, CDBG-DR OVERVIEW (last visited Jul. 2, 2019), <https://recovery.texas.gov/local-government/resources/overview/index.html>.

<sup>46</sup> STATE OF FLORIDA, ACTION PLAN FOR DISASTER RECOVERY (last visited Jul. 2, 2019), [https://floridajobs.org/docs/default-source/office-of-disaster-recovery/hurricane-michael/draft-action-plan\\_hurricane-michael\\_3\\_11\\_20.pdf?sfvrsn=35c343b0\\_6](https://floridajobs.org/docs/default-source/office-of-disaster-recovery/hurricane-michael/draft-action-plan_hurricane-michael_3_11_20.pdf?sfvrsn=35c343b0_6).

<sup>47</sup> *Id.* at 9.

<sup>48</sup> *Id.*

<sup>49</sup> For the purposes of this document, the term “applicants” refers to individuals, communities, organizations, etc. who apply to state and/or local government grantees for funds distribution.

<sup>50</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY (CDBG-DR) POLICY GUIDANCE FOR GRANTEES 2019, 11 (2019), <https://files.hudexchange.info/resources/documents/CDBG-DR-Policy-Guide.pdf>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

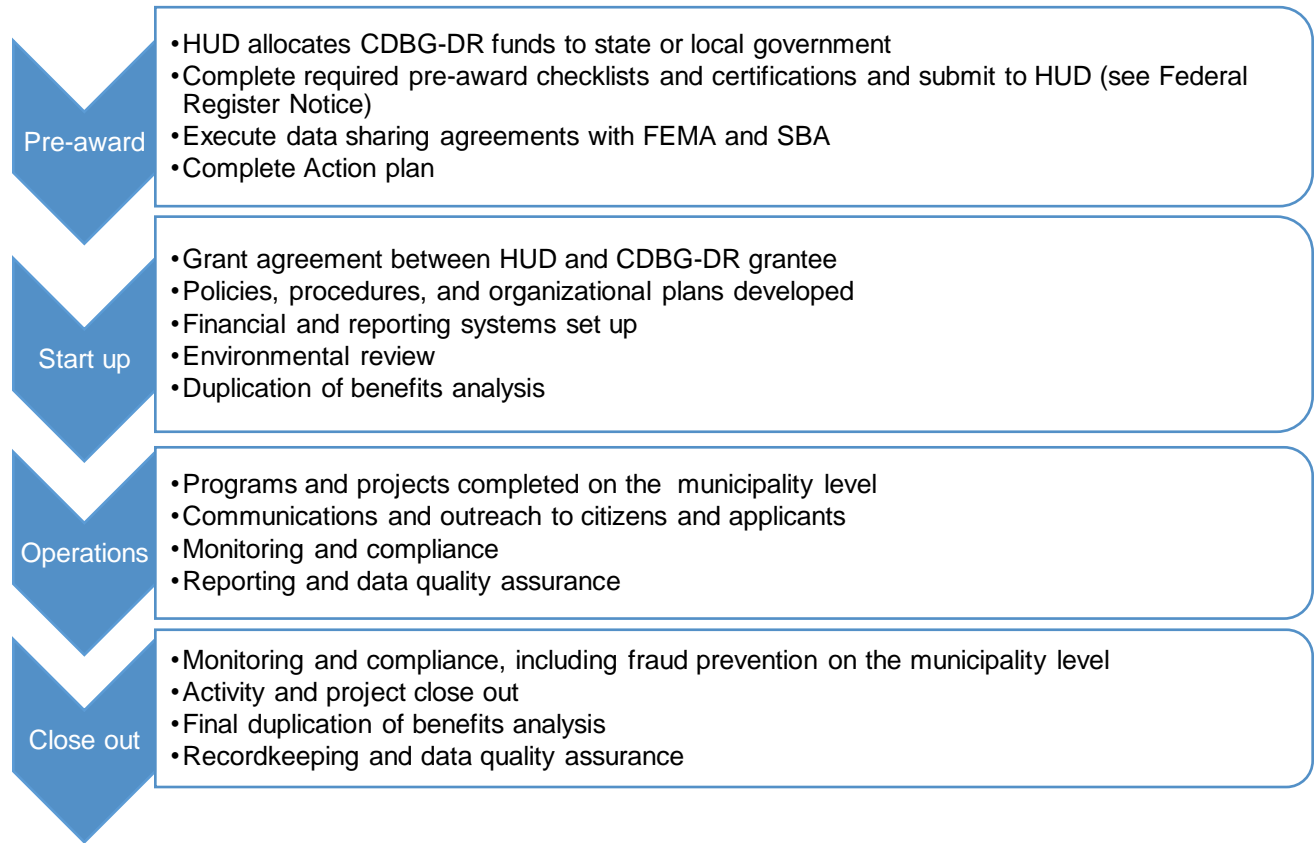
<sup>53</sup> *Id.*

<sup>54</sup> *Id.*





**Fig. 1: CDBG-DR Allocation Process<sup>55</sup>**



**Low- and Moderate-Income Individuals**

While there are no low- and/or moderate-income requirements specific to the CDBG-DR program, the Community Development Block Grant (CDBG) program generally requires that each funded activity either principally benefits low- and moderate-income individuals, aids in the prevention or elimination of “slums or blight,” or meets another urgent community development.<sup>56</sup> Most funded activities are designed

<sup>55</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, WELCOME TO THE CDBG-DR PROGRAM (last visited Jul. 2, 2020), <https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-launch/>.

<sup>56</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, CDBG LOW- AND MODERATE-INCOME DATA (last visited Jul. 2, 2020), <https://www.hudexchange.info/programs/cdbg/cdbg-low-moderate-income-data/>.



to benefit low- and moderate-income individuals.<sup>57</sup> Examples include programs providing housing, jobs, and services.<sup>58</sup> States and/or local governments can create additional eligibility requirements.

### **Eligible Activities**

HUD has identified nineteen categories of activities that are generally eligible for CDBG-DR funding.<sup>59</sup> These include:

1. Acquisition of real property (including land, air rights, easements, water rights, rights-of-way, buildings and other real property improvements, and other interest in real property.) Funds may be used by a grantee or a public or private nonprofit entity to acquire real property in whole or in part by purchase, long-term lease, donation, or otherwise.<sup>60</sup> However, funds in this category may not be used to cover the cost of movable equipment, furniture, or machinery, or to purchase an interest in newly constructed housing.<sup>61</sup>
2. Disposition of real property acquired with CDBG funds, including disposition at less than fair market value, provided the property would be used to meet a national objective of CDBG.<sup>62</sup> Disposition can include sale, lease, donation, or otherwise.<sup>63</sup>
3. Public facilities and improvements (except for buildings for the general conduct of government).<sup>64</sup> Neither the statute nor associated regulations define the term “public facilities” or “public improvements.”<sup>65</sup> However, they have generally been interpreted to include all improvements and facilities that are either publicly owned by the government or a nonprofit organization and are

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, CATEGORIES OF ELIGIBLE ACTIVITIES, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, 2 (last visited June 25, 2020), <https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-2.pdf>.

<sup>60</sup> *Id.* at 3.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 9.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 11.

<sup>65</sup> *Id.*



open to the public.<sup>66</sup> These include public schools, firehouses, libraries, parks, water and sewer lines, playgrounds, utility lines, etc.<sup>67</sup>

4. Clearance, including the demolition of buildings, removal of demolition products and other debris, removal of environmental contaminants, and movement of structures.<sup>68</sup>
5. Public services, where the service in question is either a new service or a measurable increase in the level of public service previously available.<sup>69</sup> Examples of public services include healthcare, job training, child care, public safety, education programs, recreational programs, fair housing activities, senior citizen activities, drug abuse counseling and treatment, welfare, etc.<sup>70</sup>
6. Interim assistance including limited improvements to a deteriorating area and activities intended to alleviate emergency conditions.<sup>71</sup>
7. Relocation for displaced individuals, families, businesses, non-profit organizations, and farms.<sup>72</sup> This may include assistance for temporary relocation.<sup>73</sup>
8. Loss of rental income (including payments to housing owners whose units are used for the temporary relocation of displaced individuals).<sup>74</sup>
9. Privately-owned utilities (including acquisition, construction, reconstruction, repair, or installation).<sup>75</sup> Privately-owned utilities are defined as publicly-regulated services that are owned and operated through a non-public entity and are provided through the use of physical distribution lines to private properties.<sup>76</sup>

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 18.

<sup>69</sup> *Id.* at 22.

<sup>70</sup> *Id.* at 23.

<sup>71</sup> *Id.* at 30.

<sup>72</sup> *Id.* at 33.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 35.

<sup>75</sup> *Id.* at 36.

<sup>76</sup> *Id.*



10. Rehabilitation of residential, commercial/industrial, or other (nonprofit-owned nonresidential) property.<sup>77</sup>
11. Construction of housing, where the project has received funding through a Housing Development Grant or the housing is necessary to provide a suitable replacement for displaced persons.<sup>78</sup>
12. Code enforcement, which includes the payment of salaries or overhead costs directly related to the enforcement of state and/or local code.<sup>79</sup>
13. Special economic development activities, which includes commercial or industrial improvements carried out by the grantee or a nonprofit subrecipient; and assistance to private for-profit entities for an activity that the grantee has determined was appropriate to carry out as an economic development project.<sup>80</sup>
14. Microenterprise assistance (for virtually any kind of existing microenterprise or the establishment of a new microenterprise).<sup>81</sup> A microenterprise is defined as a business with five or fewer employees, one of whom owns the business.<sup>82</sup>
15. Special activities by Community-Based Development Organizations (CBDOs).<sup>83</sup> HUD authorizes grantees to designate entities as CBDOs, tasked with assisting grantees with neighborhood revitalization, community economic development, and energy conservation.<sup>84</sup> To qualify as a CBDO, an entity must (1) be organized under state or local law to carry out community development activities; (2) maintain at least 51% of its governing body's membership as low- and moderate-income residents of its area of operation or owners, or senior officers of private establishments of the area.<sup>85</sup>
16. Homeownership assistance for low and moderate-income households.<sup>86</sup>

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<sup>77</sup> *Id.* at 38.

<sup>78</sup> *Id.* at 47.

<sup>79</sup> *Id.* at 51.

<sup>80</sup> *Id.* at 56.

<sup>81</sup> *Id.* at 63.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 67.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 68.

<sup>86</sup> *Id.* at 73.



17. Planning and capacity building, including studies, analysis, data gathering, and preparation of plans for community improvement and disaster relief.<sup>87</sup>
18. Program administration costs related to community development activities, assisted in whole or in part with CDBG funds.<sup>88</sup>
19. Miscellaneous other activities.<sup>89</sup>

Individuals are encouraged to first reach out to the individual grantee with any concerns of funds misuse and/or fraud.<sup>90</sup> However, any persisting issues should be reported to HUD's Office of Inspector General.<sup>91</sup>

### **Funds Distribution**

HUD's regulation defines a state's distribution of CDBG funds as timely if "all of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15 months of the state signing its grant agreement with HUD."<sup>92</sup> Grantees are encouraged, but not required, to obligate and announce 95 percent of funds within 12 months of the state signing its grant agreement with HUD.<sup>93</sup>

Distribution mechanisms and timelines differ by state. However, HUD requires grantees to publish that information in their Action Plan, which is available to the public.<sup>94</sup>

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<sup>87</sup> *Id.* at 75.

<sup>88</sup> *Id.* at 77.

<sup>89</sup> *Id.* at 77.

<sup>90</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF INSPECTOR GENERAL GRANTEE DISASTER FRAUD PRESENTATION, 6, p. 69 (July 31, 2019), <https://files.hudexchange.info/course-content/2019-cdbg-dr-problem-solving-clinic-days-2-and-3-active-cdbg-dr-grantees/Prevention-Fraud-Waste-Abuse-2019-CDBG-DR-Clinic-Slides.pdf>.

<sup>91</sup> *Id.*

<sup>92</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, TIMELY DISTRIBUTION OF STATE CDBG FUNDS, 2 (last visited June 25, 2020), <https://files.hudexchange.info/resources/documents/Notice-CPD-18-11-Timely-Distribution-of-State-CDBG-Funds.pdf>.

<sup>93</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, TIMELY DISTRIBUTION OF STATE CDBG FUNDS, 2 (last visited June 25, 2020), <https://files.hudexchange.info/resources/documents/Notice-CPD-18-11-Timely-Distribution-of-State-CDBG-Funds.pdf>.

<sup>94</sup> DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, TIMELY DISTRIBUTION OF STATE CDBG FUNDS, 2 (last visited June 25, 2020), <https://files.hudexchange.info/resources/documents/Notice-CPD-18-11-Timely-Distribution-of-State-CDBG-Funds.pdf>.



## **Legal Challenges**

Federal Register Notice, Volume 83, No. 28, dated February 9, 2018, requires the States to create and monitor remedies for noncompliance by subrecipients, public agencies, or local governments.<sup>95</sup> In addition, both grantees and subrecipients are required to attend fraud related trainings provided by HUD's Office of Inspector General (OIG), and self-certify that they have completed the training.<sup>96</sup>

With respect to CDBG-DR, OIG investigates a variety of alleged crimes, including contract/grant fraud, mortgage fraud, theft, embezzlement, false claims, bankruptcy fraud, equity skimming, landlord/tenant fraud, identity theft, bribery, and larceny.<sup>97</sup> Investigations can originate through audits, informants, law enforcement action, and public complaints.<sup>98</sup> According to OIG, fraud schemes present a particularly high risk.<sup>99</sup> Potential fraud schemes include bribery, kickbacks, bid rigging, conflicts of interest, billing schemes, formation of a new company to conceal previous violations, and small business or disability/minority/women-owned front.<sup>100</sup>

During the five year period of the Gulf Coast Disaster (between 2005 and 2010), OIG received 1,464 complaints, which generated a total of 381 investigations, 269 indictments, and 264 convictions.<sup>101</sup> These convictions resulted in \$2,377,872 in court-ordered restitution and \$4,500 in court-ordered fines.<sup>102</sup> For more information or to report potential funds misuse, please contact OIG<sup>103</sup>.

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<sup>95</sup> U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OFFICE OF INSPECTOR GENERAL GRANTEE DISASTER FRAUD PRESENTATION (Jul. 31, 2019), <https://files.hudexchange.info/course-content/2019-cdbg-dr-problem-solving-clinic-days-2-and-3-active-cdbg-dr-grantees/Prevention-Fraud-Waste-Abuse-2019-CDBG-DR-Clinic-Slides.pdf>.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> To contact OIG, please email [HOTLINE@hudoig.gov](mailto:HOTLINE@hudoig.gov), visit [www.hudoig.gov](http://www.hudoig.gov), or call 866-720-4721.

