



The Honorable Neal Rackleff
Assistant Secretary for Community Planning and Development
U.S. Department of Housing and Urban Development
451 7th St. S.W., Room 7100
Washington, DC 20410

September 28, 2018

Dear Assistant Secretary Rackleff,

On behalf of Enterprise Community Partners, thank you for your forward-thinking leadership on disaster recovery. Your stewardship of tens of billions of dollars in disaster recovery and mitigation funds is unprecedented, and we commend you on your unrelenting focus on low- and moderate-income people in impacted communities. We submit for your consideration ten recommendations for how to best guide and support grantees in their use of Community Development Block Grant – Disaster Recovery (CDBG-DR) Program funds for mitigation. The recommendations seek to provide context, requirements, and incentives that would allow HUD and grantees to have a greater impact in reducing risk to natural hazards for a generation or more.

These recommendations were developed by Enterprise along with other experts with significant experience in disaster recovery, mitigation, and resilience planning at the federal, state, and local level both inside and outside of government. Our recommendations are predicated on the notion that these taxpayer dollars are down payments on disaster mitigation and must be invested with long-term risks and goals in mind and must be oriented toward activities that improve the local understanding and capacity of grantees and communities to address their risks. As we wait for funding from Congress to facilitate rebuilding from Hurricane Florence, it is a disheartening reality that some taxpayer funds may be used to replace homes that were also harmed by Hurricane Matthew and rebuilt with FEMA or HUD funds. This time, we can collectively raise our standards to give affected families and communities the best chances of facing less destruction and disruption from future events.

While these recommendations are wide-ranging, they are presented at a high level and focus on activities that might not already be explicitly permitted by CDBG-DR. We thank you for considering the recommendations and would be honored to discuss them with you in the near future.

Sincerely,

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Ten recommendations for maximizing HUD investments in mitigation.

These recommendations were developed by Enterprise Community Partners along with other experts with significant disaster recovery, mitigation, and resilience planning experience are predicated on the notion that the HUD mitigation dollars are just a down payment on the full mitigation needs of communities nationwide; that they are intended to encourage mitigation actions that cannot be funded (or are unlikely to be funded) with conventional CDBG-DR funds, or with normal FEMA Hazard Mitigation Grant Program funds; that the HUD funds are not intended to fund the same activities as the funds appropriated for Corps of Engineers flood and storm damage reduction projects; and that at some point HUD or others will report on the relative benefits that these mitigation dollars provide (relative to recovery expenditures). These recommendations are also biased toward use of the funds that deliver on-going, long-term benefits to grantees in terms of future risk and hazard understanding and mitigation.

1) Require and support local determinations of current and future risk from all hazards.

Risk and vulnerability vary among communities. A community with fewer resources faces greater vulnerability to hazards like floods, wind, and fire than a community with more resources. Resources should therefore be parsed out to support the underlying vulnerabilities faced by communities. Grantees should invest mitigation funds in projects relative to risk and benefit to LMI communities, and each overall mitigation plan must consider the regional systems affecting risk, including co-dependencies and cascading impacts, such as water, power, health, and the environment. Maximizing the use of resources for planning will allow grantees to better comprehend their current and future risk and ensure that this unprecedented investment of taxpayer dollars will not throw good money after bad. The mitigation and resilience field is growing by leaps and bounds due to advances in science and technology, and requiring grantees to incorporate multidisciplinary perspectives on mitigation will ensure best efforts to protect people, property, jobs, and sensitive natural habitats from harm, lessening the possibility that federal funds will be needed to rebuild and recovery these areas in the future.

Specific recommendations:

- Direct grantees to spend a fixed percentage of their grant on planning. That percentage should be set by Notice, taking into consideration the size of the grant. For grants below \$1 billion, we recommend that grantees be required to spend 15 percent on planning. For grants greater than \$1 billion, grantees should be required to spend a minimum of \$150 million or three percent, whichever is greater.
- If not already developed and in use, require grantees to develop a comprehensive mitigation plan as well as other plans that address specific storm impacts (e.g. drainage plans in areas subject to repetitive flooding); are forward looking taking into account the likelihood of disasters based on a prospective rather than retrospective evaluation of risk; and require that these plans be used to form the basis for any proposed projects. Grantees lacking these plans, should be required to develop such a plan as part of their initial implementation plan. We recommend that

HUD explicitly include universities in this planning process to tap into existing technical and local expertise. Grantees should ensure that new mitigations are aligned with existing comprehensive, land use, transportation, and economic development plans.

- Require grantees to conduct an upstream risk assessment to rank order the risks facing each impacted area and use that assessment to fund projects in an objective manner
- Clarify that states may use these CDBG-DR Mitigation funds towards projects addressing risks and hazards across the entire jurisdiction, not just the most impacted and distressed areas affected by prior disasters, given that the benefits to low- and moderate-income communities is demonstrated.
- Use a portion of the CDBG-DR TA set-aside to educate grantees about successful planning efforts from past grants, including through Iowa's recovery from the midwest floods, the Greater New Orleans Water Plan, HUD's Rebuild by Design competition and National Disaster Resilience Competition, and NY Rising.

2) Maintain a continuous feedback loop on whether programs are sufficient to meet community needs and provide continuous protection

CDBG-DR community participation requirements end at the planning phase of any given program or project (whether in the initial action plan or subsequent amendments). Given the historic scale of CDBG projects possible with these funds and the experience of past communities recovering from major disasters, we recommend carving out a role for public engagement throughout the life of the grants. This ongoing engagement can take many forms but must facilitate and document ongoing community input in both the planning and implementation of mitigation projects. Structured bodies for feedback on multi-million dollar initiatives will help ensure that they achieve their objectives and best positions the grantees to see what their programs and projects may be missing. This may also reduce litigation risk.

Specific recommendations:

- Direct grantees to conduct a minimum number of public hearings to maximize community input and buy-in and for all major projects and programs.
- Direct grantees to create advisory bodies of affected populations (including homeowners participating in buy-out programs, small business owners receiving loans for their properties, residents and businesses living near infrastructure projects with \$50 million or more of federal funding, etc.) to consider ongoing decisions and input as programs and projects progress. Advisory bodies should produce periodic reports detailing why proposed changes were accepted or not accepted.

3) Encourage grantees to maximize the use of one-time funding through loans, guarantees, and creative financing vehicles that allow one dollar to support multiple projects over time

Specific recommendations:

- Incentivize states/localities to put their own funds towards mitigation through a disaster resilience enhancement fund. Such a program could include a 1:1 match for each dollar grantees put towards mitigation and require a local/state match of HUD funds. Specify that eligible activities include creation and capitalization of mitigation banks (which may require waivers) as well as grants to CDFIs and other economic development entities for loans or other forms of credit subsidies to individual property owners.
- Allow funds to be used for payments in lieu of taxes (PILOTs) for up to 10 years as a result of lost tax base from private property buyouts.
- Require that program income generated must be used for mitigation, so that CDBG-DR Mitigation funds do not lose their designated purpose for mitigation.
- Allow funding to be used to capitalize a local, regional, or state-level Resilience Revolving Loan Fund to incentivize states/localities to put their own funds towards mitigation through a disaster resilience enhancement fund. Such a program could include a 1:1 match for each dollar grantees put towards mitigation and require a local/state match of HUD funds.
- Permit communities across jurisdictions to pool mitigation resources to address regional watershed and other multi-jurisdictional challenges.

4) Identify and expedite activities known to mitigate risk.

Spelling out known mitigation activities in the CDBG-DR Mitigation Notice will save grantees from facing uncertainty about major categories of activities or the burden of requesting waivers or making lengthy determinations beyond initial benefit-cost analyses that projects do in fact mitigate risk.

Specific recommendations:

- Explicitly state that eligible hazard mitigation projects include all activities permitted in FEMA's Hazard Mitigation Grant Program and Pre-Disaster Mitigation Program.
- Create catalogue of best practice mitigation strategies states can pre-approve and pre-authorize for grantees.
- Maintain properties that have flooded multiple times as open space in perpetuity and deed restricted, or used productively for water management or similar mitigation purposes.
- Encourage grantees to use funds for green infrastructure projects or other nonstructural, nature-based flood protections that are known to adapt to as well as mitigate flood risk and provide multiple co-benefits. Also allow funds to be used for operation and maintenance of green infrastructure projects.
- Allow and encourage other activities that reduce risk and benefit LMI communities.

5) Set physical standards for mitigation projects that meet or exceed the standards laid out in previous CDBG-DR Federal Register notices and permit the use of funds for adoption and enforcement of forward-looking building codes and land use regulations

We recommend that HUD continue its strong standards for requiring elevation of flood-prone buildings and infrastructure above the base flood elevation, taking into consideration future risk. We note that Congress recently codified standards similar to HUD's own for the military in National Defense Authorization Act. Recovery and mitigation dollars will have the greatest possible impact if they can influence the use of non-HUD funds. As knowledge about risk and mitigation measures increases, so must building codes and land use regulations.

Specific recommendations:

- Require that rebuilding and replacement of substantially damaged structures (i.e., structures damaged in excess of 50% of their value, including both buildings and infrastructure) be conducted in accordance with HUD's February 9, 2018 Federal Register Notice.
- Where appropriate, mandate that future environmental conditions over the design life of new facilities and infrastructure be incorporated into hazard mitigation planning, construction designs, and modifications, such as language that is included in the recent FY 2019 National Defense Authorization Act (NDAA).
- Allow funds to be used for preparation of educational materials and briefings about the connection between known risk and available mitigation options and technical drafting service for the appropriate legislative body.
- Incentivize grantees to require adoption of forward-looking building codes and land use regulations that mitigate risk as a condition of receipt of funds by governmental subrecipients.
- Incentivize grantees to use funds for time-delineated initiatives that include the enforcement of existing building codes and standards, staff and administrative purposes, and the development and adoption of more protective building codes and land use ordinances.
- Require projects to consider design standards and approaches so that they can accommodate future adaptations and modifications to address changing future conditions (e.g. flooding from extreme precipitation events and sea level rise beyond 2050 could follow a range of trajectories, so it may make sense in certain circumstances to build to a certain level now and use a design that could be built to a more protective standard at a later date). Grantees may use funds for technical assistance to assist in developing forward-looking codes.

6) Prioritize use of taxpayer dollars for projects that both reduce risk and deliver other needed benefits for low- and moderate-income communities

The influx of millions or even hundreds of millions of dollars into local communities presents what may be a once-in-a-lifetime opportunity to address systemic challenges like jobs available to entry-level workers and areas safe from natural hazards for vulnerable populations, in keeping with the statutory purpose of the CDBG Program to create livable communities. The mitigation projects in Norfolk, Virginia and New Orleans, Louisiana are good examples of neighborhood-based initiatives that, not only create a

healthier, greener environment, but also create jobs for residents. These mitigation projects and others conducted by CDBG-DR grantees have demonstrated model approaches to realizing multiple benefits and spending each dollar multiple ways (such as parks that absorb flood waters during storms and provide recreation to the community every day).

Specific recommendations:

- Require that mitigation projects deliver a benefit greater than risk reduction alone.
- Encourage CDBG-eligible activities that produce risk reduction along with other co-benefits to low-income communities.
- Prioritize mitigation investments in communities with the highest vulnerability to hazards.

7) Strengthen Section 3 requirements to ensure that training and job opportunities created with CDBG-DR Mitigation funds are actually made available to and occupied by low-income residents

CDBG-DR funding provides exactly the kind of funding that can be used to ensure that it is feasible to connect low-income local residents to training and job opportunities across a grantee's mitigation platform. CDBG-DR grantees must also address the needs of affected small businesses. While programs do exist to support small businesses after disasters, most small businesses have never applied for a loan and past recovery efforts show that small businesses usually need help understanding and applying for disaster recovery loans.

Specific recommendations:

- Require dedicated Section 3 coordinators who actively train contractors and subrecipients on requirements and best practices; host job fairs to match employees with opportunities; report regularly to HUD; and share lessons learned with HUD on an annual basis.
- Create a network of peer-to-peer exchange among Section 3 coordinators and hold annual conferences and webinars so that the rest of the nation can understand and learn from their efforts to implement the statutory purpose of Section 3.
- Encourage grantees to address the small businesses climate disaster vulnerabilities by setting aside grant funds to community organizations that work closely with small businesses to offer technical assistance and business counseling.
- To ensure that best efforts are made and result in actual advancement of low-income workers, the CDBG-DR Section 3 requirements can be more direct – and align with evolving industry practices:
 - Instead of 30% local hire being a “best effort” by CDBG-funded contractors, require that it is a minimum industry standard.
 - Require compliance by ensuring that the contractors provide certified payrolls that will demonstrate when an eligible individual is hired, retained over time, and properly compensated for their work.
 - Provide ongoing monitoring to enhance compliance and quickly address any questions or clarifications.

- For bid opportunities, provide weight and value in a contractor having met, if not exceeded, the local hire requirements. In effect, contractors that meet the letter and intent of the local hire requirements will be providing a needed local community economic and employment benefit – as well as future competitive benefit and advantage for themselves during future CDBG-funded competitions. If key stakeholders believe these requirements may pose a challenging regulatory barrier, make the CDBG-DR mitigation local hire require a pilot – and then rigorously evaluate each funded projects work requirement formation and outcomes to determine best practices, which can be applied in the future.

8) Require grantees and any jurisdiction receiving funding as a subgrantee to use a portion of their funding to gather, assess, and disseminate updated hazard risk information.

Many homeowners and small business owners do not know or accurately understand their natural hazard risk, while many others don't know what they can do to address it. For flooding, providing survey elevation certificates or other types of elevation information informs individual owners of the base flood elevation and allows the grantee to create or supplement a centralized database of flood risk. Grantees can then better assess the need for community-scale infrastructure solutions (such as berms, flood walls, pumps, levee setbacks, living shorelines, etc.) and tailor site-specific solutions for individual property owners (such as loans for small business owners or non-LMI homeowners to elevate their properties). In addition, the degree to which mitigation measures reduce a community's overall natural hazard risk profile can only be determined if such a profile has been developed. It is important that cities, counties, and states all understand their risk profile and have established methods by which to measure its change over time.

Specific recommendations:

- Require survey elevation certificates for all properties that receive HUD funding or are insured by the National Flood Insurance Program.
- Allow funding to be used for acquisition of area-wide elevation data, using technologies such as LIDAR, for use in hazard mitigation planning or advisory flood map creation.
- Allow funding to be used to create Advisory Flood Maps that account for future conditions that exacerbate flood risk, like sea level rise, land subsidence, extreme weather events and projected development as well as socio-economic factors that identify areas of vulnerable populations. *Advisory maps do not affect FEMA/NFIP flood insurance premiums.*
- Allow funds to be used to update existing Flood Insurance Rate Maps (FIRMs) or update wildfire hazard maps.
- Encourage funding for resilience audits of single and multi-family residential properties to identify both specific and area-wide solutions and recommendations.
- Encourage funds to be used to establish standardized multi-hazard risk profiles at city, county, and state levels.

- Encourage funds to be used for hydrologic and drainage studies, particularly in urban areas for which none exist.

9) Educate property owners of the importance of implementing both individual and area-wide mitigation measures as a means of reducing the cost of flood insurance.

Given the tremendous amount of taxpayer dollars used to repair and rebuild private properties without flood insurance, we recommend that the Department coordinate with FEMA to require specific reporting on flood insurance coverage and implement requirements related to flood insurance coverage.

Specific recommendations:

- Allow funding to be used for flood insurance outreach and enrollment events and activities, including funding sub-recipients to undertake these activities.
- Require grantees to set and meet targets for increasing flood insurance coverage among the general public—not just among recipients of federal funds who are required to obtain and maintain flood insurance.
- Require that subrecipients certify that any buildings or infrastructure built, rebuilt, retrofitted, or repaired are covered by flood insurance, that subrecipients certify that they are self-insuring, or that they have secured other financial instruments (such as catastrophe bonds or resilience bonds) that will provide funding to address future repairs or replacement.
- Set up educational programs that teach mitigation in schools.

10) Conduct performance measurement on mitigation investments.

Grantees must conduct an impact and outcome analysis with every project and the overall program using a HUD-prescribed approach so that success can be measured across grantees and time. While previous Federal Register Notices established measures for reporting on CDBG-DR grants for unmet need, the performance of the mitigation investments needs to be measured over a longer period of time in order to capture the full impact of the mitigation projects on risk reduction. These longer-term performance measurements will be essential to informing future mitigation investments.

Specific recommendations:

- Require grantees to report mitigation activities in the DRGR system to collect data for HUD review, including Quarterly Performance Reports.
- Require grantees to continue tracking mitigation investments for no less than 10 years following project completion data to measure the performance of mitigation investments.
- Share performance data among grantees so that grantees can learn from best practices.