STATE CDBG-CV IMPLEMENTATION QUICK GUIDE

This quick guide will summarize key components of the CARES Act as they relate to State CDBG-CV program implementation and give grantees an overview of the overall alternative requirements and flexibilities granted in Federal Register Notice F.R. 6218-N-01. The guide will also identify the state-specific alternative requirements and flexibilities granted in the CDBG-CV Federal Register Notice, review alternative models for state CDBG-CV program delivery and identify resources and technical assistance available to state CDBG-CV grantees.

BACKGROUND

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed on March 27, 2020. The CARES Act includes an appropriation of $5 billion in CDBG-CV funds. The allocation of CDBG-CV funds was carried out in three phases. The final round was announced on September 11, 2020. State grantees received funding from all three rounds of CDBG-CV allocations. CDBG-CV allocations are added through a substantial amendment to a State’s most recent Annual Action Plan (AAP) or included in a new APP submission for the coming year.

DUPLICATION OF BENEFITS

The CARES Act requires grantees to ensure that there are adequate procedures in place to prevent any Duplication of Benefits as described in the chart below. The Duplication of Benefits requirement applies to all state CDBG-CV funds and 2019 and 2020 state CDBG funds used to prevent, prepare for, and respond to coronavirus. Grantees should also expand DOB procedures to prevent and check for duplication of benefit when other annual formula CDBG funds are also used to address Presidentially declared disasters such as coronavirus. Grantees should gather information about all other resources, including other CARES Act assistance, to help determine potential risks of duplication. Target CDBG-CV resources where there are existing gaps or areas of unmet need.

<table>
<thead>
<tr>
<th>WHAT IS DOB?</th>
<th>GRANTEE RESPONSIBILITIES</th>
<th>RECOMMENDATIONS</th>
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| Duplication of Benefits (DOB) occurs when assistance from multiple sources is provided to a person/entity and total amount of financial assistance exceeds the total need for assistance. | Develop and maintain adequate procedures to prevent a duplication of benefits that address (individually or collectively) each activity or program. Procedures must include:  
  - A requirement that persons/entities receiving CDBG-CV or applicable FY 19/20 assistance must repay duplicative assistance  
  - A method to assess whether CDBG-CV or applicable FY 19/20 funds will duplicate financial assistance already received or likely to be received by evaluating need and available resources. | Maintain documentation of other CARES Act assistance, including eligible activities and availability of assistance to determine risk of duplication. Use CDBG-CV to address unmet needs or provide unduplicated assistance, with special attention to needs of low- and moderate-income persons. Expand DOB procedures to prevent and check for duplication of benefit when other annual formula CDBG funds are also used to address Presidentially-declared disasters such as coronavirus. |
CDBG-CV WAIVERS AND ALTERNATIVE REQUIREMENTS AND STATE SPECIFIC WAIVERS AND ALTERNATIVE REQUIREMENTS

On August 7, 2020, HUD published Federal Register Notice FR 6218-N-01. The Notice describes the program rules, statutory and regulatory waivers, and alternative requirements applicable to CDBG-CV funds and to annual formula CDBG grants awarded in fiscal years 2019 and 2020. This includes modifications and clarifications to national objectives, changes to eligible activities, and CDBG-CV-specific program requirements. The summary below provides an overview of most of the flexibilities included in the CDBG-CV notice that apply to all CDBG-CV grantees.

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<th>ELIGIBLE ACTIVITIES</th>
<th>NATIONAL OBJECTIVES</th>
<th>OTHER PROGRAM REQUIREMENTS</th>
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<td>All CDBG-CV activities must prevent, prepare for, and respond to coronavirus.</td>
<td><strong>Urgent Need documentation:</strong> The same documentation that is used to demonstrate that the CDBG-CV activity prevents, prepares for, or responds to coronavirus may be used to support URG criteria for an activity that:</td>
<td>Pre-award costs for eligible CDBG-CV activities are allowable back to 1/21/20. Subrecipient costs can be included at grantee’s discretion</td>
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<td><strong>Public Services</strong></td>
<td>- “alleviates existing conditions”</td>
<td>Program income earned with CDBG-CV funds is treated as annual formula CDBG program income</td>
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<td>The 15% cap is waived for CDBG-CV, 2019 and 2020 CDBG Public Service activities that prevent, prepare for, or respond to coronavirus.</td>
<td>and that grantee is:</td>
<td>CDBG-CV funds have a 6-year period of performance (POP).</td>
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<td>CDBG-CV funds may be used to make “Emergency Payments” for items such as food, clothing rent, mortgage and utilities for up to six consecutive months</td>
<td>- “unable to finance” activity on its own. (DOB documentation also supports this criteria.)</td>
<td>80% of CDBG-CV funds must be spent by the end of third year of the POP</td>
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<td><strong>Economic Development</strong></td>
<td><strong>“serious and immediate threat”</strong> criteria can be documented via federal, state or local emergency declarations</td>
<td>Timeliness: State CDBG-CV funds are Not subject to the requirement to make awards within 15-months.</td>
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<td>Underwriting standards must be applied to special economic development activities</td>
<td><strong>LMI job location assumptions:</strong> The poverty rate to presume LMI benefit for job creation/retention in qualified census tracts with a central business district is reduced to 20%</td>
<td>20% Administrative and Planning Cap for all CDBG-CV Grantees, including the State and funded UGLGs. State grantees may only use up to 5 percent for Administrative Costs and up to 2 percent for providing Technical Assistance.</td>
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<td>The Aggregate Public Benefit Test is eliminated for economic development activities</td>
<td><strong>Job creation/retention records:</strong></td>
<td>2 CFR 200 applicability has not changed.</td>
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<td>The Individual Public Benefit Standard for economic development activities is modified as follows:</td>
<td>- Document that the individual beneficiary’s income is considered LMI for a one-person family</td>
<td>Environmental review requirements are unchanged for CDBG-CV</td>
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<td>- One full-time equivalent job per $85,000 of CDBG used;</td>
<td>- Document that the type of job and annual wage/salary for that job is equal to or less than the LMI income limit for a one-person family</td>
<td>IDIS now includes the PR28 Grant Financial Summary which will be used for the CDBG-CV funds. Additional Financial Statement and CAPER reporting instructions are forthcoming.</td>
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<td>- One LMI person per $1,700 of CDBG funds used in qualified area; or</td>
<td>Note: The 70% overall benefit to low and moderate (LMI) income persons applies to CDBG-CV and is calculated as a percentage of the grantee’s total CDBG-CV allocation</td>
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<td>- Assistance was due to business disruption related to coronavirus</td>
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<td>Grantees may assist an E.D. project through for-profit and non-profit entities that pass funds through a financing mechanism (e.g. Opportunity Funds or New Markets Tax Credits)</td>
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<td>CDBG-CV funds can support payments on Section 108 notes for activities that prevent, prepare for, and respond to coronavirus.</td>
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STATE SPECIFIC WAIVERS AND ALTERNATIVES

The Federal Register Notice also provides several waivers and alternative requirements that are unique to states and are applicable to state CDBG-CV grants and to fiscal year 2019 and 2020 state CDBG grants that are used to prevent, prepare for, and respond to coronavirus. The summary below provides an overview of the flexibilities included in the CDBG-CV notice that only apply to state CDBG-CV grantees.

CITIZEN PARTICIPATION REQUIREMENTS FOR UGLGS

For as long as national or local health authorities recommend social distancing and limiting public gatherings for public health reasons, grantees may hold virtual hearings in lieu of in-person public hearings to fulfill public hearing requirements. Additionally, states may allow Units of General Local Government (UGLGs) to utilize virtual hearings for the two public hearing minimum. For each virtual hearing, a grantee 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.

DIRECT ADMINISTRATION OF CDBG-CV ACTIVITIES

States may use CDBG-CV funds to directly carry out activities in all areas of the state, including activities in entitlement areas, without contribution from the entitlement jurisdiction. States may also use CDBG-CV funds to directly carry out activities within tribal areas with consent of the tribe. A state may carry out activities directly through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients.

There are several key items to consider when choosing to act directly or within entitlement jurisdictions and tribal areas. Among the considerations are the amount of funding that will be allocated for direct administration and how the state will coordinate activity delivery with entitlement jurisdictions, tribal nations and nonprofit agencies in areas that are not traditionally funded by state CDBG resources. States have the opportunity to review existing policies and to use additional state or local waiver authority to expedite recordkeeping procedures and procurement practices to speed the delivery of CDBG-CV funds throughout the state.

A further discussion of possible scenarios for implementing a state CDBG-CV program appears in a later section of this quick guide under ‘Models for Implementation’.

REQUIREMENTS FOR DIRECT ADMINISTRATION

Each state must set aside a portion of its CDBG-CV grant for use by non-entitlement units of general local government (UGLGs). The non-entitlement set aside must be no less than the state’s first round CDBG allocation. The set aside may be distributed from any portion of the state’s entire CDBG allocation.

Pre-award costs may be paid for eligible CDBG-CV and 2019 and 2020 activities that prevent, prepare for, and respond to coronavirus back to 1/21/20. This alternative requirement includes subrecipients and UGLGs.

States must publish a description in the Method of Distribution (MOD) for activities that will be carried out directly. A state that has already submitted its application for CDBG-CV funds may amend its Annual Action Plan to modify its description in the MOD accordingly. A state’s proposal to act directly in entitlement areas must be published for public comment in its application for CDBG-CV funds or in a subsequent substantial amendment. States may also use the “upper quartile” or “exception criteria” when carrying out activities in entitlement areas. Under the exception criteria, certain entitlement grantees may use a percentage less than 51 percent to qualify activities under the LMI area benefit criteria. The most recent data available for implementing the exception criteria can be found on the HUD Exchange: https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees/

The use of interagency agreements, subrecipient agreements (including agreements with tribes), or contracts does not relieve the state of its responsibility to ensure CDBG-CV funds are used in accordance with all program requirements. States that use subrecipients (including Indian tribes) must meet the requirements in the CDBG regulations related to subrecipient oversight and monitoring. States must
review and audit subrecipients and local governments as necessary and appropriate and in cases of noncompliance, take appropriate actions to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence.

States must also fulfill all the requirements in the Act and Federal Register Notice regarding Duplication of Benefits and other federal requirements such as civil rights, labor standards, environmental protection, and conflict of interest.

State CDBG-CV funds have a 6-year period of performance (POP). 80% of the state’s CDBG-CV funds must be spent by the end of third year of the POP.

**INCREASE IN ADMINISTRATIVE CAP AND MATCH WAIVER**

The Federal Register Notice waives the administrative match requirement for state CDBG-CV grantees to expedite program delivery. The Notice also establishes the 20 percent cap for planning, management, and administrative costs. The maximum amount for state general administration is increased to 5% and technical assistance to 2%. The remaining amount (possibly 13%) may be made available to UGLGs for planning and administration.

**ALTERNATIVE RECORDKEEPING AND PROCUREMENT REQUIREMENTS**

The Federal Register Notice waives the recordkeeping requirements in the CDBG regulations when states carry out activities directly. States that choose to use the waiver must establish and maintain records as necessary to facilitate review and audit by HUD of CDBG-CV program delivery. As described in the notice, the content of records maintained by the state for direct administration must be sufficient to:

- Enable HUD to determine if states are following the CDBG program laws and regulations
- To make compliance determinations for activities carried out directly; and
- To show how activities funded are consistent with the descriptions of activities proposed for funding in the CDBG-CV application

States acting directly may also adopt state-wide procurement policies and pass those requirements on to other state agencies that administer CDBG-CV funds, as long as the requirements are based on full and open competition and meet the requirements in the CDBG regulations at 570.489(g).

**MODELS FOR IMPLEMENTATION**

States will need to consider the level of coordination needed with entitlement communities, tribes and potential subrecipients as they consider the waivers and alternative requirements available to them.

HUD does not prescribe models for states to follow in implementing their program. Possible scenarios to consider include the Pass-through Model used for the state CDBG program and the Direct Administration Model which is similar to the Entitlement Communities program.

Under the Pass-through Model, a state would receive its award of CDBG-CV funds and distribute that funding to a set of UGLGs according to a specified method of distribution. Like the state CDBG program:

- The state would not directly carry out CDBG-CV funded activities statewide;
- Rather, UGLGs to which funds are passed would separately administer local programs with the option of engaging subrecipients

The Direct Administration Model would require that the state specify a different method of distribution from that used for the state CDBG program, specifically:

- The state must specify what activities it will directly administer; and
- Likewise, the state must explain how it will carry out those activities (particularly those that will occur without the involvement of UGLGs).

This Model could include engaging additional state agencies to directly administer the CDBG-CV program or designating subrecipients to carry out activities statewide on behalf of the state, as well as enabling UGLGs that receive funding to carry out activities, including use of local subrecipients.
Under each model, the state must ‘set aside’ an amount of CDBG-CV funding equal to its first allocation (CDBG-CV1) for use by non-entitlement UGLGs. It is important to consider that a state’s administrative costs do not count towards the UGLG set-aside. For example, a state may have provided the first round of CDBG-CV funds to UGLGs for their use; and the state may intend to directly administer activities using the second and third rounds of CV funding. In this example, if state administrative costs were also budgeted into the first round, the state may need to budget additional amounts for new or amended awards to UGLGs in order to provide a total amount to UGLGs that is equal to the full amount of the first round.

A further comparison of these two scenarios assesses each model with respect to three factors: allocation, method of distribution, as well as advantages/disadvantages.

Pass-through Model

Because the Pass-through Model reflects the normal process required by the annual state CDBG program, a state would receive its single award of CDBG-CV grant allocations and distribute that funding to a set of UGLGs according to a specified method of distribution. (Although only three UGLGs are shown here, the number would range widely across the nation.)

In this scenario, the state would not directly carry out CDBG-CV funded activities statewide. UGLGs to which funds are passed would separately administer local programs with the option of engaging subrecipients.

The method of distribution in this scenario would allow for all the state’s activities to be carried out by its UGLGs. In turn, the UGLGs could use contractors and subrecipients to assist in program implementation. The portion of CDBG-CV funds kept by the state would be limited to general administration.

There are both advantages and disadvantages to this model. It follows the existing structure with the established roles and relationships (few changes would be necessary). However, the approach potentially would strain the capacity of local governments across the state.

*Award = CDBG-CV1+ CDBG-CV2+ CDBG-CV3

Direct Administration

The Direct Administration Model mirrors the process under the entitlement communities program. In this scenario, a state would not pass through most of its award of CDBG-CV funds to UGLGs.

The state would carry out activities directly either through its state agencies or designated subrecipients, while also setting aside the minimum portion of the award to its UGLGs.

Because this approach represents a departure from current policy for the state CDBG program, HUD has determined that a different method of distribution would be necessary. Amounts of funds allocated for state activities to be carried out directly would be included in a new method of distribution.

Establishing a new method of distribution (one that includes direct administration) will require a state to consider how it would use contractors and subrecipients to implement the program. A state’s direct use of contractors and subrecipients is not as limited as it is when implementing the traditional state CDBG program. The state’s lead agency can call upon other state agencies and subrecipients as needed to carry out activities state-wide, including:

- Public services (emergency payments, health-related services, job training, and more)
Economic development (assistance to small businesses and microenterprises as well as through special financing mechanisms like Opportunity Funds and New Market Tax Credit investment funds)

UGLGs receiving a share of the allocation set aside for non-entitlement areas could be allowed to carry out a full range of activities at the local level provided those activities are to prepare for, prevent and respond to coronavirus. Most states will define a limited number of eligible activities in their method of distribution. In this manner the state can direct funding towards specific community needs and reduce the administrative burden of operating the program.

Two types of subrecipients (state level and local level subrecipients) could extend to all geography of the state and possibly cover both entitlement communities and tribal areas.

*Award = CDBG-CV1+ CDBG-CV2+ CDBG-CV3

USEFUL RESOURCES

CDBG-CV Federal Register Notice

CDBG-CV Resources
https://www.hud.gov/program_offices/comm_planning/cdbg_programs_covid-19
https://www.hudexchange.info/programs/cdbg-cv/

UPCOMING WEBINARS, TOOLS AND GUIDES

Webinars
CDBG-CV Virtual Launch Conference
Duplication of Benefits
Economic Development Models
Housing Models
National Objectives

Quick Guides
Broadband
CDBG-CV Launch Toolkit
Duplication of Benefits
Economic Development
Financial Management
Public Facility Improvements with CV
Rental Assistance

CDBG-CV ASK-A-QUESTION
https://www.hudexchange.info/program-support/my-question/

CDBG-CV ON-CALL TA
https://www.hudexchange.info/hudexchange-portal/ta-Request/?taportalaction=tarequest%3Amain.requestta