

III. Program Allocation and Administration

A. Funding Appropriation

HUD issued a Federal Register Notice listing the 13 awardees of Phase 2 of the NDRC on June 7, 2016. Pursuant to the Disaster Relief Appropriations Act, 2013, Public Law 113-2 (Appropriations Act), awardees were collectively allocated almost \$1 billion.

NDRC awardees were allocated CDBG–NDR grant funds on a competitive basis. These funds were made available by the Appropriations Act for disaster recovery from major disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (Stafford Act) in 2011, 2012, and 2013.

On January 17, 2017, HUD executed a grant agreement with HCD for \$70,359,459 in CDBG NDR funding for the Community and Watershed Health Resilience Program for activities throughout Tuolumne County, which was designated as the Most Impacted and Distressed with Unmet Recovery Needs (MID URN) area of the Rim Fire Disaster. Because HUD award was approximately half of what was originally requested in the Phase 2 application, HUD and HCD agreed to the following allocation of awarded funds to the three project activities:

- Forest and watershed health work (\$28,604,459)
- Biomass Utilization Facility (\$22,000,000).
- Community Resilience Center (\$19,755,000).

As part of the competitive process, CDBG NDR applicants were required to include a proposed method of distribution Partners who were committed to the activities in the application. Thus, the method of distribution for NDR funding was pre-determined in the Phase 2 application, which is why HUD used it as the official NDR Action Plan for HCD.

After execution of HUD grant agreement, HCD entered into Standard Agreements with each Partner identified in the Application who is administering NDR activities. HCD serves as the overall grant administrator, managing each subgrantee as well as consultants hired to assist in NDR implementation. The first consultant hired after HUD executed the CDBG NDR grant agreement with HCD was GCR Inc. GCR was hired as a technical assistance consultant to support HCD and all Partners in NDR implementation work.

The full CDBG NDR Application, along with all SA and Contracts, HUD reports and compliance documents are posted on [HCD's NDR website](http://www.hcd.ca.gov/community-development/disaster-recovery-programs/ndrc.shtml).

Full URL: <http://www.hcd.ca.gov/community-development/disaster-recovery-programs/ndrc.shtml>

B. NDR Grant Requirements

1. Use of Funds

a. General

The Appropriations Act made funds available for necessary expenses related to disaster relief, long term recovery, restoration of infrastructure and housing, and economic revitalization in the Most Impacted and Distressed Unmet Recovery Needs (MID-URN) areas resulting from a major disaster declared pursuant to the Stafford Act, due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013, which includes the Rim Fire Disaster. The Appropriations Act also requires that the awardee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act. The State of California submitted the financial certifications required and completed a Certification Checklist.

b. Action Plan, Amendments, and Benefit Cost Analysis

i. Action Plan

Phase 1 and Phase 2 submissions by the State of California for the NDRC constitute, together, the Action Plan, which reflects the components funded through the CDBG–NDR grant and ensures clear communication of CDBG–NDR activities to the public. Changes to the Action Plan are completed as substantial or nonsubstantial amendments.

ii. Substantial Amendments

HCD must receive approval from HUD and follow the same citizen participation requirements required by the NOFA for the preparation and submission of an NDRC application prior to making a substantial amendment to the Action Plan.

Per the July 7, 2016, Federal Register Notice (and as amended in the [August 7, 2017, Federal Register Notice](#)), certain modifications constitute a substantial amendment:

- Any change to the funded portions of the application that HUD determines, based generally on the guidelines of the NOFA (as adjusted for HUD's scaling and scoping of the award), would present a significant change to HCD's capacity to carry out the grant (including loss of a partner without addressing lost capacity through replacement or contingency plan identified in the application).
- Any change to the funded portions of the application that HUD determines, based generally on the guidelines of the NOFA (as adjusted for HUD's scaling and scoping of the award), would undermine HCD's soundness of approach (including the benefit cost analysis).

- Any change to the Most Impacted and Distressed target area(s) (a revised area must meet Most Impacted and Distressed threshold requirements in the NOFA, including Appendix G to the NOFA).
- Any change in program benefit, beneficiaries, or eligibility criteria, and the allocation or reallocation of more than 10 percent of the grant award.
- Any change to the leverage that was pledged and approved in HCD's grant agreement.
- The addition or deletion of an eligible activity.

To facilitate HUD's review of a substantial amendment, HCD must submit adequate documentation that demonstrates the following:

- Capacity of HCD, its partners USFS, CalEPA and OPR, and its subgrantees to implement the funded activities.
- Changes to partners who will assist in the amended activity
- Scope and beneficiaries of the funded activities.
- Committed direct and supporting leverage.
- An updated BCA (if requested by HUD).

iii. Nonsubstantial Amendments

Amendments that do not fall within the definition of substantial amendment are referred to as nonsubstantial amendments. HCD must notify HUD at least five business days before a nonsubstantial amendment becomes effective.

iv. Information Required for Amendments

HCD follows the following process for making nonsubstantial amendments:

- Highlight, or otherwise identify, each proposed amendment within the context of the approved Action Plan.
- Include a section that identifies exactly what content is being added, deleted, or changed, and whether HCD believes that the proposed amendment would result in a significant change to its capacity or soundness of approach.
- Include a chart or table that clearly illustrates where funds are coming from and to where they are moving.
- Include a revised budget allocation table that reflects the entirety of all funds, as amended.
- Make the most recent version of HCD's approved CDBG NDR application and its Action Plan accessible for public viewing as a single document.

- Amendments to the Action Plan (substantial and nonsubstantial) are numbered sequentially and posted on HCD's website.

v. Benefit Cost Analysis

HCD completed a benefit cost analysis (BCA) as part of its Phase 2 application, which included a narrative description of the proposal and expected costs and benefits. The benefits included environmental, economic, social, and resilience values – both quantitative and qualitative. HUD reviewed the BCA as part of its process for determining NDRC awards. At the direction of HUD, the completed BCA may need to be revised as part of substantial amendments Action Plan.

2. Timeline for Expenditure of Funds

The Appropriations Act (Section 904(c) of title IX in division A) requires that all funds be expended within two years of the date HUD obligates funds (September 30, 2017). CDBG NDR funds are subject to 31 U.S.C. 1552(a), and, therefore, are to remain available for expenditure for five years following the period of availability for obligation. All funds under the Appropriations Act must be expended by September 30, 2022. Based on this HUD expenditure deadline, all SAs and Contracts executed by HCD will end on or prior to the September 30, 2022.

3. CDBG NDR Waivers

Waivers, along with alternative requirements, provide additional flexibility in program design and implementation to support full and swift, resilient disaster recovery, while meeting the unique requirements of the Appropriations Act. Waivers provided through the Stafford Act that are applicable to HCD were listed in two Federal Register Notices (FRN) for this appropriation, 81 FR 36557 and 82 FR 36812. The waivers that apply to the State of California are detailed in the sections below.

a. *Overall Benefit to Low and Moderate Income Persons.*

Pursuant to explicit authority in the Supplemental Appropriations Act, HUD granted an overall benefit waiver that allows for up to 50 percent of the grant to assist activities under the urgent need, or the prevention or elimination of slums and blight national objectives, rather than the 30 percent allowed in the annual state CDBG program. The primary objective of Title I of the Housing and Community Development Act and of the funding program of each grant recipient is “development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.” The statute goes on to set the standard of performance for this primary objective at 70 percent of the aggregate of the funds used for support of activities producing benefit to low and moderate income persons. Since extensive damage to community structures and housing affected those with varying incomes, and income producing jobs are often lost for a period of time following a disaster, HUD waived the 70 percent overall benefit requirement, leaving the 50 percent

requirement, to give grant awardees even greater flexibility to carry out recovery activities within the confines of the CDBG program national objectives. HUD would only provide additional waivers of this requirement if it finds a compelling need. The requirement that each activity meet one of the three national objectives is not waived.

b. Low to Moderate Income Area Benefit

Additionally, Section 105(c)(2) of the HCDA requires activities that will be available to benefit all of the residents of an area that is predominately residential (referred to as a “low to moderate area benefit,” or “LMA” activities), meet the standard of at least 51 percent of the residents are low to moderate income (LMI) persons. The state’s approved NDRC application included a waiver requesting that the percentage of LMI persons for the determination of area benefit be lowered from 51 percent to 38 percent. This request was based on the fact that the most impacted and distressed areas with remaining unmet disaster recovery needs to be served by the project encompasses the nonentitlement jurisdictions of Tuolumne, Mariposa and Calaveras counties, where 38 percent of the residents are LMI. The state received a waiver permitting activities carried out in service areas with an LMI percentage of not less than 38 percent to qualify under the LMA benefit national objective. HCD will utilize this waiver for the CRC pillar.

c. Use of Subgrantees

HUD granted a waiver allowing states to carry out activities directly, which creates a situation in which the state may use subgrantees to carry out CDBG NDR activities in a manner similar to entitlement communities rather than using a method of distributing funds to local governments.

HUD and its Office of Inspector General have long identified the use of subgrantees as a practice that increases the risk of abuse of funds. HUD’s experience is that this risk can be successfully managed by following the CDBG entitlement requirements and related guidance. Therefore, HUD is requiring the state to take advantage of the waiver, which allows it to carry out activities directly. The state must follow the alternative requirements, drawn from the CDBG entitlement rule and specified in the NDR March 5, 2013 Federal Register Notice when using subgrantees to implement activities.

d. Public Benefit for Economic Development Activities

HUD waived the \$35,000 public benefit rule and only requires that some reasonable level of public benefit be obtained when using NDR funding for economic activities that trigger public benefit compliance. HCD plans to utilize this waiver with the BUF pillar.

e. Use of Planning Activities

HUD granted a waiver allowing state planning activities to be conducted without having to document meeting a national objective. Like entitlements regulations, NDR state grantees can presume that the planning activity meets a national objective.

C. General Administration Costs Limitation

The State of California may use up to five percent of the total grant funds to administer the grant. CDBG NDR funds may be used to pay reasonable activity delivery costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under the CDBG NDR grant. This category includes both the state's costs of administering the CDBG NDR program as well as the subgrantees' costs of administering funds provided to them by HCD.

Examples of administration activities include:

- General management, oversight and coordination.
- Providing local officials and citizens with information about the program.
- Preparing budgets and schedules.
- Preparing reports and other HUD required documents.
- Financial management.
- Monitoring program activities.
- Fair housing activities.
- Submission of applications for Federal programs.
- Citizen participation costs.
- Indirect costs charged using an accepted cost allocation plan.
- Staff and overhead costs for project delivery.

Costs that are appropriately charged to this category are presumed to meet a CDBG national objective and the subgrantee does not have to maintain other documentation for this purpose.

Additionally, HCD uses administration funds to cover its internal staff costs associated with its oversight and management responsibilities. HCD documents costs and time charged through the appropriate means (e.g. invoices, receipts, time and attendance records, etc.). HCD's finance team maintains the documentation, which is submitted via HUD's DRGR system as part of draw down requests to HUD.

D. Public Services

HCD did not apply for public service funding in its NCRC Application and HUD did not include any funding for public services in its award or approved Action Plan. HCD may choose to request a substantial amendment to the Action Plan to allow for NDR public service activities, but that is not anticipated at this time.

If HCD and its Partners decide to use NDR funding for public services and HUD approved the amended Action Plan, then CDBG NDR funds could be used to pay for labor, supplies, and material, as well as to operate and/or maintain a portion of a public facility in which the public service is located. To utilize CDBG NDR funds for a

public service, the service must be either a new service or a quantifiable increase in the level of an existing service which has been provided by the state or another entity on its behalf through state or local government funds. An exception to this requirement may be made if HUD determines that any decrease in the level of a service was the result of events not within the control of the local government.

1. Public Services Cap

The CDBG NDR program has a statutory limitation on the percentage of any grant that may be used for eligible public service activities. The total amount of CDBG NDR funds expended statewide for public services activities must not exceed 15 percent of HCD's yearly allocation of funds, plus 15 percent of program income received by HCD under its method of distribution. Note that this cap applies to the entire HCD allocation, not just to the amount of funds allocated under the NDR grant. Public services carried out by subgrantees are also subject to the 15 percent public services cap.

2. Public Services in Action Plan

HCD did not include public service activities in the approved application. If a need is determined by HCD to reallocate funds from other activities to public services activities, a substantial amendment must be submitted and approved by HUD within the time period for expending funds. If HCD completes an amendment to its NDR Action Plan to include public services, this section of the manual will be updated to reflect the required standards.