



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

PRINCIPAL DEPUTY ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

MEMORANDUM FOR: Commonwealth of Kentucky for Disasters Occurring in 2021 and 2022 (Allocations announced in the May 2022 Notice, January 2023 Notice, and May 2023 Notice); Community Planning and Development Field Office Directors, Deputy Directors, Regional Directors, and Program Managers.

FROM: David C. Woll Jr., Principal Deputy Assistant Secretary for
for Community Planning and Development, D

SUBJECT: *D.C.W. 3/12/2025*
Waiver and Alternative Requirement on Use of Standardized Area Median Income for Disasters Occurring in 2021/2022 (Commonwealth of Kentucky Only)

APPLICABILITY DATE: March 18, 2025 - 5 days from the date of posting of this Memo signed by the Principal Deputy Assistant Secretary for Community Planning and Development on the Department's website.

PURPOSE

This waiver and alternative requirement memorandum governs Community Development Block Grant Disaster Recovery (CDBG-DR) funds, including CDBG-DR mitigation set-asides, allocated to the Commonwealth of Kentucky pursuant to the Disaster Relief Supplemental Appropriations Act, 2022 (Public Law (Pub. L.) 117-43, Div. B), approved September 30, 2021, for major disasters that occurred in 2020 and 2021, and the Continuing Appropriations Act, 2023 (Pub. L. 117-180, Div. A) approved September 30, 2022, for major disasters that occurred in 2021 and 2022 (collectively, the "Appropriations Acts").

This memorandum provides a waiver of, and alternative requirement for 42 U.S.C. 5302(a)(20)(A). The Secretary of the Department of Housing and Urban Development (HUD) finds that good cause exists for the waiver and alternative requirement and the waiver and alternative requirement is not inconsistent with the overall purposes of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCDA). This memorandum creates the following alternative requirement: the Commonwealth may make low- and moderate-income (LMI) determinations based on statewide median income instead of otherwise applicable area median income (AMI) when the applicable county AMI is below statewide median income data (as published by HUD annually with adjustments for smaller and larger families). This will allow the Commonwealth to standardize the median income for the counties impacted by disasters occurring in 2021 and 2022 that have an AMI below the statewide median income. However, if those counties have an AMI above the statewide median income, LMI eligibility will continue to be defined by the county's higher AMI standard.

WAIVER AUTHORITY

The Disaster Relief Supplemental Appropriations Act, 2022 made available \$5,000,000,000 in CDBG-DR funds for 2020 and 2021 disasters. The Continuing Appropriations Act, 2023 made available \$2,000,000,000 in CDBG-DR funds for 2021 and 2022 disasters. The CDBG-DR funds made available by these acts (the “Appropriations Acts”) are for necessary expenses for activities authorized under title I of the HCDA related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the “most impacted and distressed” (MID) areas resulting from qualifying major disasters.

The Appropriations Acts authorize the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, if the Secretary finds that good cause exists for the waiver or alternative requirement and such waiver or alternative requirement would not be inconsistent with the overall purpose of title I of the HCDA. The waiver and alternative requirement included below are based upon a determination by the Secretary that good cause exists, and that the waiver and alternative requirement is not inconsistent with the overall purposes of title I of the HCDA.

The Appropriations Acts require the Secretary to publish any waiver or alternative requirement via a *Federal Register* notice or on the Department’s website no later than five days before the effective date of such waiver or alternative requirement. For the waiver and alternative requirement included below, HUD is exercising its authority to publish on the Department’s website.

In March 2022, HUD allocated \$2,213,595,000 for 2021 disasters, which are governed by a *Federal Register* notice published May 24, 2022 (87 FR 31636) (“May 2022 Notice”). Subsequently, the Department allocated an additional \$1,446,629,000 in CDBG-DR funds appropriated by Pub. L. 117-180 for major disasters occurring in 2021, which are governed by requirements in a *Federal Register* notice published January 18, 2023 (88 FR 3198) (“January 2023 Notice”); and \$3,391,220,000 appropriated by Public Laws 117–180 and 117–328 for disasters occurring in 2022, which are governed by a *Federal Register* notice published May 18, 2023 (88 FR 32046) (“May 2023 Notice”).

HUD allocated the Commonwealth of Kentucky \$123,936,000 for disasters occurring in 2021 governed by the May 2022 Notice and the January 2023 Notice; and \$297,994,000 for disasters occurring in 2022 governed by the May 2023 Notice. Each of these *Federal Register* notices include the Consolidated Notice as Appendix B and made the Consolidated Notice applicable to these allocations. This memorandum modifies the requirements for the CDBG-DR funds awarded to the Commonwealth of Kentucky under the Appropriations Acts by adding a new waiver and alternative requirement.

Use of Standardized Area Median Income for Disasters Occurring in 2021/2022
(Commonwealth of Kentucky)

Background

The Department received a request from the Commonwealth to modify requirements and coordinate recovery efforts for CDBG-DR funds appropriated under Public Laws 117-43 and 117-180, through use of a standardized area median income for purposes of meeting the low- and moderate-income national objective.

As defined in 42 U.S.C. 5302(a)(20)(A), the terms “persons of low- and moderate-income” and “low- and moderate-income persons” mean families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary with adjustments for smaller and larger families.

The Commonwealth has presented data indicating a large range in AMI in the 2021 and 2022 disaster-impacted areas, ranging from \$64,650 to \$90,400 for a family of four. This statewide variation can have unintended consequences for participation in CDBG-DR funded activities, for example, the Commonwealth affirms that “construction and reconstruction of single-family costs throughout Kentucky are consistent, regardless of the income of the disaster survivors.” As the Commonwealth seeks to primarily serve LMI individuals and areas in the disaster impacted counties, the variation between county-level AMI limits the participation of families and individuals in the Commonwealth’s recovery programs in those counties with very low AMI, because these families and individuals have incomes that are above the 80 percent of AMI in the respective county even though their incomes are less than 80 percent of the statewide median income.

Based on the above circumstance, the Commonwealth has requested a waiver and alternative requirement to allow the Commonwealth to make LMI determinations across the MID areas for disasters occurring in 2021 and 2022 based on a determination that the incomes of households are below 80 percent of statewide median income. In its request, the Commonwealth emphasizes the importance of providing assistance to the households most in need through its housing programs.

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After reviewing the grantee’s request, based on the circumstances outlined in the Commonwealth’s request, the broadening of 42 U.S.C. 5302(a)(20)(A) is warranted given the variance in AMIs across the affected counties. Thus, HUD finds that good cause exists and waives 42 U.S.C. 5302(a)(20)(A) to the extent necessary to enable the Commonwealth of Kentucky to make LMI determinations based on statewide median income instead of otherwise applicable AMI when county AMI is below statewide median income data (as published by the Department annually with adjustments for smaller and larger families). In areas where this waiver and alternative requirement permits the Commonwealth to use statewide median income for LMI determinations, it may also use statewide median income data (as published by HUD

annually with adjustments for smaller and larger families) to calculate 120 percent of statewide median income, and to use 120 percent of statewide median income as a substitute for 120 percent of AMI. This will allow the Commonwealth of Kentucky to standardize the median income for the counties impacted by 2021 Severe Storms, Flooding, Landslide/Mudslides, Straight-line Winds, and Tornadoes and 2022 Flooding that have an AMI below the statewide median income. However, if those counties have an AMI above the statewide median income, eligibility will continue to be defined by the county's higher AMI standard.

This waiver and alternative requirement is provided for the purpose of assisting the populations who are in need of recovery assistance in each of the MID areas identified by the Department and the Commonwealth for disasters occurring in 2021 and 2022. In granting this flexibility to the Commonwealth of Kentucky, HUD will not consider any request to lower the Commonwealth's requirement in regard to the overall percentage of funds that must be used for activities that benefit low- and moderate-income persons for its CDBG-DR funds for disasters occurring in 2021 and 2022.

FOR FURTHER INFORMATION CONTACT

Tennille Smith Parker, Director, Office of Disaster Recovery, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202-708-3587 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. Email inquiries may be sent to Disaster_Recovery@hud.gov.