



U.S. DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT  
OFFICE OF INSPECTOR GENERAL

May 15, 2018

**MEMORANDUM NO:**  
2018-FW-0802

*Memorandum*

TO: Irving L. Dennis,  
Chief Financial Officer, F

//signed//

FROM: Kilah S. White,  
Regional Inspector General for Audit, 6AGA

SUBJECT: Interim Report - Potential Antideficiency Act and Generally Accepted Accounting Principle Violations Occurred With Disaster Relief Appropriation Act, 2013, Funds

**INTRODUCTION**

While performing audit work to determine whether the U.S. Department of Housing and Urban Development's Office of Community Planning and Development (HUD CPD) monitored and ensured that grantees complied with the 24-month statutory expenditure requirement contained in the Disaster Relief Appropriations Act, 2013, we noted issues with (1) the recording of grants in the Line of Credit Control System (LOCCS) and (2) the grantees' recording of expenditures in the Disaster Recovery Grants Reporting (DRGR) system. These issues require immediate action by the Office of the Chief Financial Officer (OCFO) as they are potential violations of the Antideficiency Act (ADA)<sup>1</sup> and do not appear to follow generally accepted accounting principles (GAAP).

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

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<sup>1</sup> HUD Handbook 1830.2, REV-6, Administrative Control of Funds Policies, issued March 22, 2017, designated the Chief Financial Officer's Appropriations Law staff responsible for determining whether an ADA violation occurred. See appendix C.

## **METHODOLOGY AND SCOPE**

Our ongoing audit generally covered the period January 2013 through January 2018. We started our audit on May 7, 2017. We performed our fieldwork at CPD's offices in Washington, DC, and our Region 6, Fort Worth, TX, offices. We selected six Disaster Relief Appropriations Act, 2013, grantees for our audit work as they received the majority of the funding in multiple rounds. The grantees included (1) Connecticut, (2) Maryland, (3) New Jersey, (4) New York, (5) New York City, and (6) Rhode Island.

We reviewed

- the Disaster Relief Appropriations Act, 2013, the ADA,<sup>2</sup> and the U.S. Government Accountability Office's (GAO) Principles of Federal Appropriations Law;<sup>3</sup>
- the grant agreements for the six grantees, dated from May 14, 2013, to September 6, 2017;
- the August 2017 DRGR System Grantee User Manual, version 2.0;<sup>4</sup>
- the February 2017 Managing Expenditure Deadlines policy abstract for Public Law 113-2 grantees; and
- CPD's Office of Block Grant Assistance's (OBGA) 2-year tracking reports from December 2013 to October 2017.

On January 19, 2018, we obtained data downloads from the DRGR system's FinRept03 report for all six grantees. These reports showed the status of all six grantees' 43,103 voucher line items as of that date, which included more than \$8 billion completed and \$1.8 billion revised transactions. The DRGR report contained a data limitation as the report did not list an original completed transaction if the transaction was revised. Instead, it showed only the revision. Further, the report showed the revision occurring on the date the original line item processed and not on the date the revision processed. We tested a limited number of vouchers and determined that the detailed vouchers in the DRGR system contained both the debit and credit side of a revision and the date of the revision. Thus, we determined that the data limitation existed solely within the FinRept03 report, and it had a limited effect on our work and conclusions. However, we included revised transactions in our results when the grantee's original transactions would have been (1) before the grant was awarded, (2) after the grant expired, or (3) more than a year after the original entry. We tested the data reliability of the DRGR amounts paid by comparing the amounts paid in a DRGR voucher to the amounts reported paid by LOCCS.<sup>5</sup> We determined that the DRGR system data were generally reliable for the purposes of our testing. We then used computer analytical tools to review 100 percent of the transactions to identify (1) the total amount spent for each grant round, (2) all line item transactions that occurred before and after

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<sup>2</sup> The ADA prohibits Federal employees from making or authorizing an expenditure in excess of the amount available in the appropriation or fund or in excess of the amount permitted by agency regulations 31 U.S.C. (United States Code) 1341(a)(1)(A) and 1517(a).

<sup>3</sup> Known as the "Red Book," a multivolume treatise concerning Federal fiscal law, it contains text discussion with references to specific legal authorities to illustrate legal principles, their applications, and exceptions. Two versions of the Red Book covered the transactions reviewed in this memorandum: the Third Edition and the Fourth Edition. See appendix C.

<sup>4</sup> HUD requires grantees of Community Development Block Grant Disaster Recovery funds to use the DRGR system to submit recovery plans and quarterly reports and to draw Disaster Recovery funds.

<sup>5</sup> LOCCS processes grantees' draw requests from the DRGR system. If approved, LOCCS sends the payment requests to the U.S. Treasury, which then transmits the funds to the grantees.

each grant round, and (3) all transaction revisions that occurred a year or more after the initial transaction for our six grantees.

## **BACKGROUND**

In January 2013, Congress passed the Disaster Relief Appropriations Act, 2013, which awarded HUD \$15.2 billion to provide aid in the recovery from Hurricane Sandy and other disasters.<sup>6</sup> Generally, the Act allowed HUD to award the funds for necessary expenses related to Hurricane Sandy and other disasters.<sup>7</sup> The 2013 Act required, for the first time, that grantees expend their funds within 24 months of the date on which HUD obligated the funds to them.<sup>8</sup>

CPD OBGA has oversight of the 2013 Act's disaster recovery funds. OBGA issued Federal Register notices, which required each grantee to expend all funds within 2 years of the date on which CPD signed the grant agreement with the grantee.<sup>9</sup> Because of the 24-month expenditure deadline, OBGA decided to award the Act's funds in "tranches" or rounds of funding. Rather than enter into a separate grant for each round of funding, CPD entered into one grant with grant amendments for each additional round of funding. The six selected grantees and their various rounds of funding are shown in table 1.<sup>10</sup>

**Table 1: Grant amounts by grantee, round, and obligation and execution dates**

Grantee and grant no.	Grant round	Obligation amount	Grant execution by CPD	Expenditure deadline
Connecticut B-13-DS-09-0001	Round 1	\$ 15,000,000	8/22/2013	8/22/2015
	Round 2	15,000,000	6/30/2014	6/30/2016
	Round 3	35,000,000	12/2/2014	12/2/2016
	Round 4	3,000,000	4/20/2015	4/20/2017
	Round 4, Rebuild by Design <sup>11</sup>	2,000,000	3/20/2015	10/1/2022
	Round 5	30,000,000	4/18/2016	04/18/2018
	Round 6	20,000,000	3/1/2017	3/2/2019
	Round 7	39,279,000	9/5/2017	9/5/2019
Maryland B-13-DS-24-0001	Round 1	4,400,000	12/12/2013	12/12/2015
	Round 2	7,578,000	7/3/2014	7/3/2016
	Round 3	1,100,000	12/3/2014	12/3/2016
	Round 4	3,140,000	11/12/2015	11/12/2017
	Round 5	2,350,000	1/20/2016	1/20/2018
	Round 6	4,872,000	3/3/2016	3/3/2018
	Round 7	745,000	4/17/2017	4/17/2019
	Round 8	4,455,000	8/11/2017	8/11/2019

<sup>6</sup> The amount appropriated by Public Law 113-2 and reduced by sequestration according to the Balanced Budget and Emergency Deficit Control Act.

<sup>7</sup> Chapter 9. See appendix C.

<sup>8</sup> Title IX, section 904(c). See appendix C.

<sup>9</sup> See appendix C for excerpts from applicable Federal Register notices.

<sup>10</sup> The six grantees received a majority, not all, of the Act's funding. See methodology and scope.

<sup>11</sup> Rebuild by Design grants were competitive planning and design Disaster Recovery grants.

Grantee and grant no.	Grant round	Obligation amount	Grant execution by CPD	Expenditure deadline
New Jersey B-13-DS-34-0001	Round 1	1,006,236,000	5/13/2013	5/13/2015
	Round 2	500,000,000	7/29/2014	7/29/2016
	Round 3, Rebuild by Design	873,809,247	6/1/2015	6/2/2017
		474,990,753	6/1/2015	10/1/2022
		46,700,000	6/1/2015	10/1/2022
	Round 4	169,870,320	12/29/2016	12/29/2018
	Round 5	769,822,680	6/26/2017	6/26/2019
		333,000,000	6/26/2017	10/1/2022
New York B-13-DS-36-0001	Round 1	640,000,000	5/14/2013	5/15/2015
	Round 2	803,000,000	1/7/2014	1/7/2016
	Round 3	796,000,000	6/9/2015	6/9/2017
		4,000,000	6/9/2015	10/1/2022
	Round 4	536,000,000	7/27/2016	7/27/2018
		14,000,000	7/27/2016	10/1/2022
	Round 5	486,199,363	1/18/2017	1/18/2019
		1,137,682,637	1/18/2017	10/1/2022
New York City B-13-MS-36-0001	Round 1	425,000,000	8/16/2013	8/16/2015
	Round 2	986,979,545	6/8/2015	6/8/2017
		13,020,455	6/8/2015	10/1/2022
	Round 3	660,000,604	10/23/2015	10/23/2017
		27,999,396	10/23/2015	10/1/2022
		17,000,000	10/23/2015	10/1/2022
	Round 4	1,276,358,851	1/19/2017	1/19/2019
		482,537,604	1/19/2017	10/1/2022
		324,979,545	1/19/2017	10/1/2022
Rhode Island B-13-DS-44-0001	Round 1	625,612	9/3/2013	9/3/2015
	Round 2	2,692,595	7/10/2014	7/10/2016
	Round 3	4,050,573	5/12/2015	5/12/2017
		3,204,356	5/12/2015	9/13/2018
	Round 4	3,737,945	1/20/2016	1/20/2018
	Round 5	347,300	9/12/2016	9/12/2018
	Round 6	175,000	4/13/2017	4/13/2019
<b>Total</b>		<b>13,013,017,000</b>		

After CPD executed the initial grant agreement, OCFO entered the original obligation amount into LOCCS. CPD then entered into grant amendments for each later round of funding, which added the additional amount provided in each round to the amount previously obligated.

Although the initial grant agreement and various amendments stated that the funds obligated expired in 2 years, CPD did not enter a grant expiration date on the original grant and grant amendment forms, and OCFO did not record an expiration date for the grant funds in LOCCS.

Grantees entered detailed transaction vouchers into the DRGR system, which would then request funds from LOCCS. Grantees were able to edit vouchers in the DRGR system at any point as long as the grant remained open. OBGA monitored grantees' activity by reviewing quarterly performance reports prepared by the grantee, using data maintained in the detailed vouchers in the DRGR system.

## **RESULTS OF REVIEW**

As of January 19, 2018, two of the six grantees had recorded total expenses in the DRGR system in excess of what CPD had obligated for a grant round, which totaled more than \$160 million. Five grantees also recorded expenses in the DRGR system before CPD executed a grant round amendment and after a grant round expired, which totaled more than \$435 million. In addition, four grantees made revisions to completed and revised vouchers totaling more than \$496 million in the DRGR system a year or more after they entered the initial voucher. These issues had a variety of causes, including (1) systemic weaknesses in the DRGR system, (2) CPD's entering into one grant agreement with multiple amendments with multiple deadlines, (3) how CPD and OCFO treated the grants in LOCCS, (4) a lack of voucher monitoring by OBGA, and (5) OBGA's incorrect decisions on how to account for the funds. These expenses appeared to have been potential ADA and GAAP violations and could potentially have a negative effect on both HUD's and the grantees' financial statements. If OCFO does not require corrections to how it and CPD account for Disaster Recovery funds, these issues will continue to occur with the remaining \$6.4 billion in 2013 Disaster Recovery funding<sup>12</sup> and the future \$35.4 billion for 2017 and 2018 Disaster Recovery funding.

### **Two Grantees Entered Expenses in Excess of the Grant Round Amendment Amount**

As of January 19, 2018, two grantees had reported total grant round expenses in the DRGR system, which exceeded the amounts CPD had obligated for those grant rounds. We believe this may be an ADA violation because the ADA prohibited CPD from authorizing its grantees to make expenditures in excess of the amount funded to them for a grant round according to CPD's Federal Register notices.<sup>13</sup> As shown in table 2, the two grantees reported that they had spent \$160 million more than obligated for those three grant rounds.

**Table 2: Grantees with DRGR system expenditures that exceeded the approved grant amendment amount as of January 19, 2018**

Grantee	Round no.	Amount obligated per grant round amendment	DRGR system total expenditures by round	Obligation balance
Maryland	1	\$ 4,400,000	\$ 4,421,353	\$ (21,353)
New York	2	803,000,000	803,096,837	(96,837)
New York	4	550,000,000	710,242,524	(160,242,524)
<b>Totals</b>		<b>1,357,400,000</b>	<b>1,517,760,714</b>	<b>(160,360,714)</b>

### **Five Grantees Recorded Expenses for a Grant Round Before CPD Executed the Grant**

Five grantees entered 168 voucher line item expenses totaling more than \$28 million into the DRGR system and received reimbursement for them, although CPD had not executed a grant round amendment for that round. We believe this may be an ADA violation because the ADA prohibited CPD from authorizing its grantees to make expenditures for grants rounds before the rounds and amounts were funded according to CPD's Federal Register notices.<sup>14</sup> In addition, the grantees revised an additional 46 expense transactions totaling more than \$26 million, which were made before a grant round had been executed.

<sup>12</sup> The amount unspent was as of February 1, 2018.

<sup>13</sup> See appendix C.

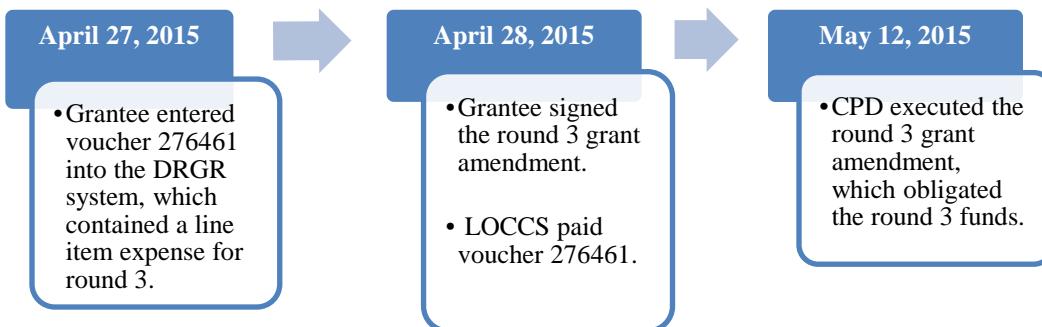
<sup>14</sup> Ibid.

**Table 3: Grantees and their expense transactions entered before grant round execution**

Grantee	No. of grant rounds affected	No. of revised transaction with errors	Revised transaction totals	No. of completed transaction with errors	Completed transactions totals
Connecticut	2	-	-	6	\$ 338,180
New Jersey	2	8	\$ 220,600	2	324
New York	3	8	3,825,484	41	10,553,340
New York City	2	29	22,733,466	112	17,546,494
Rhode Island	2	1	8,255	7	38,028
<b>Totals</b>	<b>11</b>	<b>46</b>	<b>26,787,805</b>	<b>168</b>	<b>28,476,366</b>

In some cases, the grantee clearly entered the expense before CPD executed the grant round agreement. As shown in figure 1, a grantee entered a voucher containing round 3 expenses into the DRGR system 13 days before CPD executed the grant for round 3.

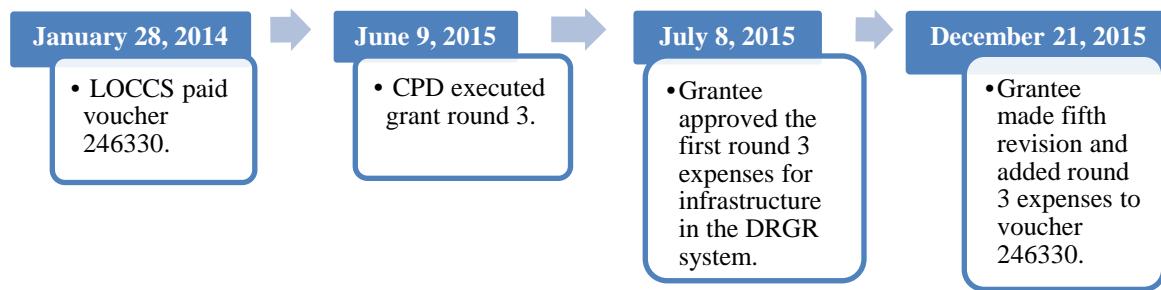
**Figure 1: Timeline of events for voucher 276461**



In other cases, the grantee revised a completed voucher after it had been paid by LOCCS and added one or more line item expenses to the voucher from a later round, which resulted in the grantee's recording a later round's costs to a voucher created in an earlier period. For example, as shown in figure 2, a grantee added a July 2015 round 3 infrastructure activity expense to voucher 246330, which was created in January 2014. The grantee entered the original voucher into DRGR almost 1.5 years before CPD obligated grant round 3.<sup>15</sup>

<sup>15</sup> See appendix D for all six revisions made over 3 fiscal years to vouchers 246330.

**Figure 2: Timeline of events for voucher 246330**



#### **Five Grantees Recorded Expenses for a Grant Round After the 24-Month Expenditure Deadline**

Five grantees entered 629 voucher line item expenses totaling more than \$334 million into the DRGR system after the grant round's expenditure deadline had expired.<sup>16</sup> We believe this may be a violation of the ADA because the ADA prohibited CPD from authorizing its grantees to make expenditures after a grant round expired as noted in CPD's Federal Register notices.<sup>17</sup> In addition, the grantees revised an additional 55 expense transactions totaling more than \$45 million, which were made after a grant round expired.

**Table 4: Grantees and their expense transactions entered after a grant round's deadline**

Grantee	No. of grant rounds affected	No. of revised transaction with errors	Revised transaction totals	No. of completed transaction with errors	Completed transactions totals
Connecticut	3	2	\$ 285,365	25	\$ 9,098,913
Maryland	2	-	-	10	571,549
New Jersey	2	33	17,050,511	311	57,915,566
New York	3	18	27,357,227	264	245,327,224
New York City	1	2	1,225,592	19	21,167,149
<b>Totals</b>	<b>11</b>	<b>55</b>	<b>45,918,696<sup>18</sup></b>	<b>629</b>	<b>334,080,401</b>

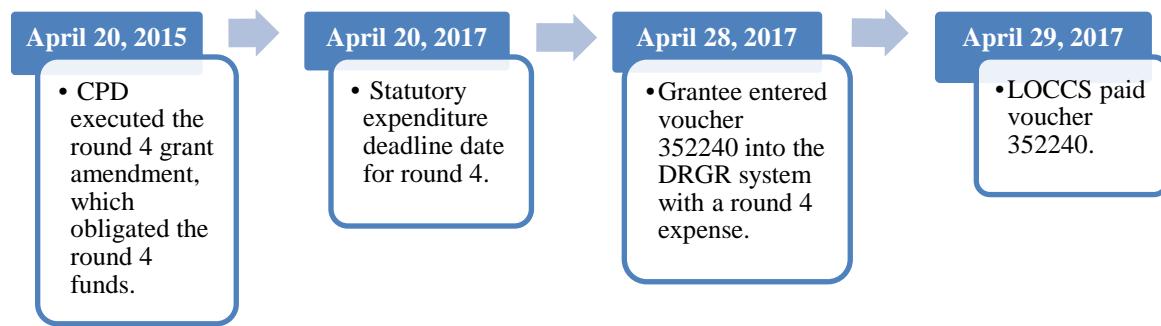
In some cases, the grantee's original voucher transaction occurred after the statutory deadline. As shown in figure 3, LOCCS paid a voucher 9 days after the statutory deadline for one grantee.

<sup>16</sup> Results excluded grant round 2 for New York City; round 3 for New Jersey, New York City, and Rhode Island; and round 4 for New York as these rounds had extensions granted. The completed transaction total reported for round 3 for New York was reduced by \$4 million as it had a \$4 million extension granted.

<sup>17</sup> See appendix C.

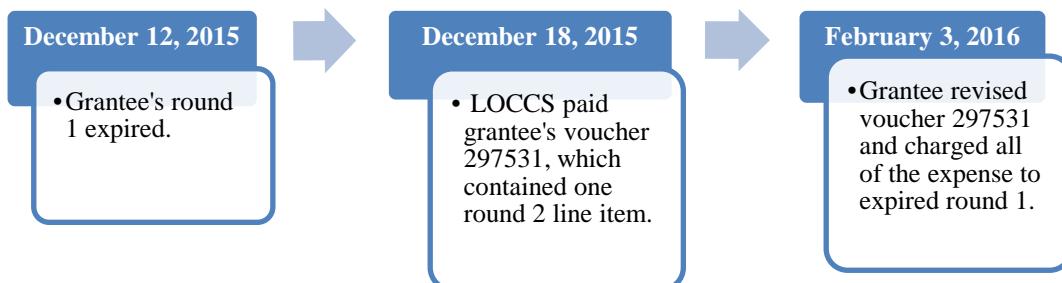
<sup>18</sup> Total amount was \$1 different due to rounding.

**Figure 3: Timeline of events for voucher 352240**



In other cases, the grantee revised a completed voucher, which resulted in its recording an earlier round's costs as spent in a later voucher, which was after the earlier round's 24-month deadline. As shown in figure 4, a grantee revised a voucher more than a month after it was paid and added a round that had expired before the original voucher was submitted.

**Figure 4: Timeline of expense for voucher 297531**



#### **Four Grantees' Revisions to Completed Vouchers Appeared To Violate Generally Accepted Accounting Principles**

Four of the six Disaster Recovery grantees either entered a new line item expense or revised an existing line item expense on a paid voucher a year or more after LOCCS paid the original voucher as shown in table 5. Some grantees entered changes more than 3.5 years after LOCCS paid the original voucher. None of the new DRGR system line item entries affected LOCCS as the total amount of the paid voucher did not change. However, GAAP requires that expenses be recorded in the period in which they are incurred.<sup>19</sup>

<sup>19</sup> GAAP's principle of revenue recognition requires that revenue be recognized when earned, and the matching principle requires that expenses be matched with revenues as long as it is reasonable to do so.

**Table 5: Grantees made voucher revisions and additions a year or more after the original voucher entry**

Grantee	Total no. of transactions	Revised transaction totals	Completed transactions totals
Connecticut	14	-	\$ 8,078,960
New Jersey	431	\$19,757,874	66,626,524
New York	322	26,789,246	257,805,975
New York City	284	22,983,735	94,870,921
<b>Totals</b>	<b>1,051</b>	<b>69,530,855</b>	<b>427,382,380</b>

The potential ADA and GAAP violations occurred for a variety of reasons. Grantees spent more than was obligated in a grant round and paid expenses before and after a grant because the DRGR system had systemic weaknesses. The DRGR system's weaknesses allowed grantees to make repeated adjustments to completed and paid transactions months and years after the initial transaction occurred, including adding projects or rounds that did not exist when the grantee paid the original voucher or adding expenses for rounds that had expired. In addition, the DRGR system did not flag or otherwise restrict grantee transactions by round. Although LOCCS has an expiration term field for grants, CPD's use of a single grant with many amendments in LOCCS prevented that field from being used as the grantee's single grant had multiple rounds, each of which had its own statutory expenditure deadline. CPD also did not appear to be fully monitoring the detailed voucher transactions. Although the DRGR system manual stated that grantees should consult with CPD before making voucher revisions, CPD provided approval comments on only a few of the voucher line item revisions reviewed. Additionally, CPD incorrectly allowed grantees to temporarily account for the Disaster Recovery funds in a cumulative manner and to make transfers between rounds that had overlapping obligation periods, regardless of the date on which the grantee incurred the costs. Both of these decisions did not comply with GAAP and GAO's Principles of Federal Appropriations Law.<sup>20</sup>

## **CONCLUSION**

As the Sandy grantees still have more than \$6.4 billion in unspent Disaster Recovery funds<sup>21</sup> and CPD is preparing to award an additional \$35.4 billion in Disaster Recovery funds as part of the Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (2017 Act) and the Bipartisan Budget Act of 2018 (2018 Act), OCFO needs to promptly take action to determine whether the identified transactions are ADA and GAAP violations. If OCFO determines that these transactions are violations, it should take and require CPD to take action to correct the issues identified for current and future Disaster Recovery grants, take action to correct its accounting systems data and financial statements, and report the issues as required by the ADA.

<sup>20</sup> GAO's Principles of Federal Appropriations Law, Third Edition, Volume II, chapters 6 and 10. See also appendix C.

<sup>21</sup> The amount unspent was as of February 1, 2018.

## **RECOMMENDATIONS**

We recommend that the Chief Financial Officer

- 1A. Determine whether the summary expenditures totaling \$160,360,714, which exceeded the grant round obligations for the two grantees, were ADA violations. If the transactions were violations, action should be taken as required by the ADA.
- 1B. Determine whether the revised and completed detail transactions totaling to \$435,263,268,<sup>22</sup> which occurred before and after grant rounds obligation and expenditure dates, were ADA violations. If the transactions were violations, actions should be taken as required by the ADA.
- 1C. Determine whether the revised and completed transactions totaling \$496,913,235<sup>23</sup> and made more than a year after the original voucher entry were GAAP violations. If the transactions were violations, appropriate actions should be taken, including but not limited to adjusting the transactions in LOCCS and HUD's financial statements.
- 1D. Enter a 24-month expiration term into LOCCS for Disaster Recovery funding provided by the 2017 Act and monitor to ensure that expenses are not entered before or after the grant period.

We recommend that the Chief Financial Officer require CPD to

- 1E. Enter into a separate grant agreement for each grantee's round of disaster funding for funding provided by the 2017 and 2018 Acts.
- 1F. Monitor the detailed voucher transactions in the DRGR system to ensure that grantees appropriately record transactions.
- 1G. Prohibit grantees from revising completed vouchers in the DRGR system and require adjustments to be entered as new vouchers into the DRGR system, which will ensure that LOCCS records and tracks revisions.

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<sup>22</sup> The amount is the total of revised and completed transactions as follows: \$26,787,805 + \$28,476,366 + \$45,918,696 + \$334,080,401.

<sup>23</sup> The amount is the total of revised and completed transactions as follows: \$69,530,855 + \$427,382,380.

## APPENDIXES

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### Appendix A

#### SCHEDULE OF QUESTIONED COSTS

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Recommendation number	Unsupported 1/
1A	\$160,360,714
1B	435,263,268
1C	496,913,235
<b>Total</b>	<b>1,092,537,217</b>

- 1/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

## Appendix B

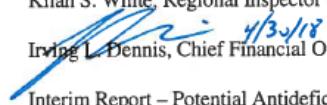
### AUDITEE COMMENTS AND OIG'S EVALUATION

#### Ref to OIG Evaluation

#### Auditee Comments

#### **Comment 1**

#### **Comment 1**

<p> U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, DC 20410-3000</p> <p>CHIEF FINANCIAL OFFICER</p> <hr/> <p><b>HUD OCFO Memo 18-03</b></p> <p>To: Kilah S. White, Regional Inspector General for Audit, 6 AGA From:  4/3/18 Irving L. Dennis, Chief Financial Officer, F Subject: Interim Report – Potential Antideficiency Act and Generally Accepted Accounting Principle Violations Occurred with Disaster Relief Appropriation Act, 2013, Funds Date: April 30, 2018</p> <hr/> <p>My office is in receipt of the interim draft audit memorandum report, submitted to me on April 13, 2018, entitled "Potential Antideficiency Act and Generally Accepted Accounting Principle Violations Occurred with Disaster Relief Appropriation Act, 2013, Funds". In this report, OIG identifies a number of transactions that OIG believes may be in violation of the Antideficiency Act (ADA) and/or Generally Accepted Accounting Principles (GAAP). OIG concludes by recommending that OCFO take action to determine if the transactions identified by OIG are ADA and/or GAAP violations and, based on the outcome of that determination, that certain steps should then be taken by OCFO.</p> <p>Based on this referral, my office will open an ADA investigation into these matters. Pursuant to HUD Handbook 1830.2, REV-6, <i>Administrative Control of Funds Policies</i>, Chapter 12, "Responding to Antideficiency Act Violations", the OCFO's Office of Appropriations Law Staff will lead this investigation.</p> <p>OCFO must come to a determination regarding whether ADA or GAAP violations did occur before it can fully consider and respond to OIG's specific recommendations, as OCFO's responses will be based, in part, on the outcome of that determination. OCFO will review the underlying transactions and associated materials provided by OIG and will coordinate with OIG and CPD as necessary to acquire any additional information necessary to complete this review. Once we have completed our review and made the necessary determinations, OCFO will provide to OIG its response to these findings and to the specific recommendations related to these findings listed in this draft audit memorandum report.</p> <p>Thank you for bringing this matter to my attention. If you or your staff have any questions, please contact Mike Moran, Director, Office of Appropriations Law Staff at 202-402-5150 or <a href="mailto:Michael.J.Moran@hud.gov">Michael.J.Moran@hud.gov</a>.</p>	
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### **OIG Evaluation of Auditee Comments**

**Comment 1** OCFO agreed to open an ADA investigation into the potential ADA and GAAP violations. It stated it had to review the underlying transactions and materials provided by OIG before it could respond to the specific recommendations. We acknowledge OCFO's response and will coordinate with OCFO to provide any additional information needed for it to conduct its review.

## **Appendix C**

### **CRITERIA**

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#### **The Disaster Relief Appropriations Act, 2013**

##### *Title IX, General Provisions - This Division*

Section 904(c) Funds for grants provided by this division shall be expended by the grantees within the 24-month period following the agency's obligation of funds for the grant, unless, in accordance with guidance to be issued by the Director of OMB, the Director waives this requirement for a particular grant program and submits a written justification for such waiver to the Committees on Appropriations of the House of Representatives and the Senate. In the case of such grants, the agency shall include a term in the grant that requires the grantee to return to the agency any funds not expended within the 24-month period.

##### *Chapter 9, Department of Housing and Urban Development, Community Planning and Development, Community Development Fund*

For an additional amount for "Community Development Fund", \$16,000,000,000, to remain available until September 30, 2017, for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. [United States Code] 5121 et seq.) due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013, for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.).

#### **Principles of Federal Appropriations Law, Third Edition, Volume II**

##### *Chapter 6*

##### *Availability of Appropriations: Amount*

###### *C. The Antideficiency Act*

###### *1. Introduction and Overview*

... In its current form, the law prohibits:

- Making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law. 31 U.S.C. § 1341(a)(1)(A)...
- Making obligations or expenditures in excess of an apportionment or reapportionment, or in excess of the amount permitted by agency regulations. 31 U.S.C. § 1517(a)...

###### *5. Penalties and Reporting Requirements...*

###### *b. Reporting Requirements*

Once it is determined that there has been a violation of 31 U.S.C. § 1341(a), 1342, or 1517(a), the agency head "shall report immediately to the President and Congress all relevant facts and a statement of actions taken." 31 U.S.C. §§ 1351, 1517(b). Further instructions on preparing the reports may be found in OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, § 145 (June 21, 2005). The reports are to be signed by the agency head. *Id.* § 145.7. The report to the President is to be forwarded through the Director of OMB. *Id.*

## *Chapter 10*

### *Federal Assistance: Grants and Cooperative Agreements*

#### *Availability of Appropriations*

##### *b. Time...*

It should be emphasized that the time availability of grant appropriations governs the grantor agency's obligation and expenditure of the funds; it does not limit the time in which the grantee must use the funds once it has received them... Of course, the grant statute or the grantor agency may impose time limits on a grantee's use of funds.

## **Federal Register Notices**

### **78 FR 14329, Issued March 5, 2013**

#### *III. Timely Expenditure of Funds and Prevention of Waste, Fraud, Abuse, and Duplication of Benefits*

To ensure the timely expenditure of funds, section 904(c) under Title IX of the Appropriations Act requires that all funds be expended within two years of the date HUD obligates funds to a grantee (funds are obligated to a grantee upon HUD's signing of the grantee's CDBG-DR [Community Development Block Grant Disaster Recovery] grant agreement). Action Plans must demonstrate how funds will be fully expended within two years of obligation. For any funds that the grantee believes will not be expended by the deadline, it must submit a letter to HUD justifying why it is necessary to extend the deadline for a specific portion of funds. The letter must detail the compelling legal, policy, or operational challenges for any such waiver, and must also identify the date by when the specified portion of funds will be expended. HUD will forward the request to the Office of Management and Budget (OMB) and publish any approved waivers in the **Federal Register** once granted...<sup>24</sup>

## *V. Overview of Grant Process*

To begin expenditure of CDBG-DR funds, the following expedited steps are necessary:...

- Grantee signs and returns the fully executed grant agreement;
- HUD establishes the proper amount in a line of credit for the grantee;
- Grantee requests and receives DRGR system access (if the grantee does not already have it);
- If it has not already done so, grantee enters the activities from its published Action Plan into DRGR and submits it to HUD within the system (funds can be drawn from the line of credit only for activities that are established in DRGR);

## *VI. Applicable Rules, Statutes, Waivers, and Alternative Requirements*

### *A. Grant Administration.*

*1. Action Plan for Disaster Recovery waiver and alternative requirement.* The requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR [Code of Federal Regulations] 91.220, and 91.320 are waived for funds provided under the Appropriations Act. Instead, each grantee must submit to HUD an Action Plan for Disaster Recovery. This streamlined Plan will allow grantees to more quickly and effectively implement disaster recovery programs while conforming to statutory requirements.

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<sup>24</sup> Section III was replaced on May 11, 2015, by section III in 80 FR 26942.

a. *Action Plan.* The Action Plan must identify the proposed use(s) of the grantee's allocation, including criteria for eligibility, and how the uses address long-term recovery needs. To develop and submit an acceptable Action Plan in a timely manner, a grantee may elect to program or budget only a portion of the grantee's CDBG-DR award in an Action Plan....Although a grantee may submit a partial Action Plan, the partial Action Plan must be amended one or more times until it describes uses for 100 percent of the grantee's CDBG-DR award, subject to the limitations that HUD may not obligate Appropriations Act funds after September 30, 2017 and the last date that grantees may submit an amendment is June 1, 2017. The requirement to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable....<sup>25</sup>

j. *Obligation and expenditure of funds.* Upon the Secretary's certification, HUD will issue a grant agreement obligating the funds to the grantee. Only the funds described by the grantee in its Action Plan, at the necessary level of detail, will be obligated. In addition, HUD will establish the line of credit and the grantee will receive DRGR system access (if it does not have access already). The grantee must also enter its Action Plan activities into the DRGR system before it may draw funds as described in paragraph A.2, below.<sup>26</sup>

k. *Amending the Action Plan.* As the grantee finalizes its long-term recovery goals, or as needs change through the recovery process, the grantee must amend its Action Plan to update its needs assessment, modify or create new activities, or re-program funds, as necessary. Each amendment must be highlighted, or otherwise identified, within the context of the entire Action Plan. The beginning of every Action Plan amendment must include a section that identifies exactly what content is being added, deleted, or changed. This section must also include a chart or table that clearly illustrates where funds are coming from and where they are moving to. The Action Plan must include a revised budget allocation table that reflects the entirety of all funds, as amended.

If a grantee amends its Action Plan to program additional funds that the Department has allocated to it, the grant agreement must also be revised. As stated in paragraph 1.a, the requirement for each grantee to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable...<sup>27</sup>

24. *Timely distribution of funds.* The provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with the alternative requirements under this Notice. Section 904(c) of the Appropriations Act requires that all funds be expended within two years of the date HUD obligates funds to a grantee. Therefore, each grantee must expend all funds within two years of the date its grant agreement with HUD is executed. Note that a grant agreement must be amended when the Department allocates additional funds to the grantee. As stated in paragraph A.1.a, in this section, the requirement for each grantee to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation. HUD expects each grantee to expeditiously obligate and expend all funds, including any recaptured funds or program

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<sup>25</sup> Section VI.A.1.a of 78 FR 14329, issued March 5, 2013, was revised by section II.4 of 81 FR 54114, issued August 15, 2016.

<sup>26</sup> Section VI.A1.j of 78 FR 14329, issued March 5, 2013, was revised by section V.1.d.78 FR 76154, issued December 16, 2013.

<sup>27</sup> Section VI.A.1.k of 78 FR 14329, issued March 5, 2013, was revised by section VI.3.e of 78 FR 69109, issued November 18, 2013, which was later revised by section II.4 of 81 FR 54114, issued August 15, 2016.

income, and to carry out activities in a timely manner to ensure this deadline is met. See sections III and VII of this Notice for additional details on expenditure of funds...

#### *VII. Duration of Funding*

The Appropriations Act requires that HUD obligate all funds provided under Chapter 9, Community Development Fund, not later than September 30, 2017. Concurrently, section 904(c) of the Appropriations Act requires that all funds be expended within two years of the date HUD obligates funds. Therefore, each grantee must expend all funds within two years of the date HUD signs the grant agreement with the grantee. Note that if a grantee amends its Action Plan to program additional funds that the Department has allocated to it, the grant agreement must also be revised. As stated in paragraph 1.a, under section VI of this Notice, the requirement for each grantee to expend funds within two years is triggered by each amendment to the grant agreement. That is, each grant amendment has its own expenditure deadline...

### **78 FR 69104, Issued November 18, 2013**

#### *III. Timely Expenditure of Funds*

The Appropriations Act requires that funds be expended within two years of the date HUD obligates funds to a grantee and funds are obligated to a grantee upon HUD's signing of a grantee's CDBG-DR grant agreement. In its Action Plan, a grantee must demonstrate how funds will be fully expended within two years of obligation and HUD must obligate all funds not later than September 30, 2017. For any funds that the grantee believes will not be expended by the deadline and that it desires to retain, the grantee must submit a letter to HUD not less than 30 days in advance justifying why it is necessary to extend the deadline for a specific portion of funds. The letter must detail the compelling legal, policy, or operational challenges for any such waiver, and must also identify the date by when the specified portion of funds will be expended. The Office of Management and Budget has provided HUD with authority to act on grantee waiver requests but grantees are cautioned that such waivers may not be approved. Approved waivers will be published in the **Federal Register**...<sup>28</sup>

#### *IV. Grant Amendment Process*

To access funds allocated by this Notice grantees must submit a substantial Action Plan Amendment to their approved Action Plan. Any substantial Action Plan Amendment submitted after the effective date of this Notice is subject to the following requirements:...

- Grantee signs and returns the grant agreement;
- HUD signs the grant agreement and revises the grantee's line of credit amount (this triggers the two year expenditure deadline for any funds obligated by this grant agreement);

#### *VI. Applicable Rules, Statutes, Waivers, and Alternative Requirements*

##### *3. Action Plan for Disaster Recovery waiver and alternative requirement—Housing, Business Assistance, and General Requirements.* The Prior Notices are modified as follows:...

- e. *Amending the Action Plan.* Paragraph 1(k) at 78 FR 14337 of the March 5, 2013 Notice is amended, as necessary, to require each grantee to submit a substantial Action Plan Amendment to HUD within 120 days of the effective date of this Notice. All Action Plan

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<sup>28</sup> Section III was replaced by section III in 80 FR 26942, issued on May 11, 2015.

Amendments submitted after the effective date of this Notice must be prepared in accordance with the Prior Notices, as modified by this Notice. In addition, they must budget all, or a portion, of the funds allocated under this Notice. Grantees are reminded that an Action Plan may be amended one or more times until it describes uses for 100 percent of the grantee's CDBG-DR award. The last date that grantees may submit an Action Plan Amendment is June 1, 2017 given that HUD must obligate all CDBG-DR funds not later than September 30, 2017. The requirement to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable...<sup>29</sup>

## **79 FR 62182, Issued October 16, 2014**

### *III. Timely Expenditure of Funds*

To ensure the timely expenditure of funds the Appropriations Act requires that funds be expended within two years of the date HUD obligates funds to a grantee. Funds are obligated to a grantee upon HUD's signing of a grantee's CDBG-DR grant agreement. In its Action Plan, a grantee must demonstrate how funds will be fully expended within two years of obligation and HUD must obligate all funds not later than September 30, 2017. For any funds that the grantee believes will not be expended by the deadline and that it desires to retain, the grantee must submit a letter to HUD not less than 30 days in advance of the deadline justifying why it is necessary to extend the deadline for a specific portion of funds. The letter must detail the compelling legal, policy, or operational challenges necessitating any such waiver, and must also identify the date by when the specified portion of funds will be expended. The Office of Management and Budget (OMB) has provided HUD with authority to act on grantee waiver requests but grantees are cautioned that such waivers may not be approved. If granted, waivers will be published in the **Federal Register**. Funds remaining in the grantee's line of credit at the time of its expenditure deadlines will be recaptured by HUD...<sup>30</sup>

### *IV. Grant Amendment Process*

To access funds allocated by this Notice grantees must submit a substantial Action Plan Amendment to their approved Action Plan. Submission to and review by HUD must follow the process outlined below. HUD approves the Amendment according to criteria identified in the Prior Notices and this Notice....

- HUD sends an amended unsigned grant agreement with revised grant conditions to the grantee; and the grantee signs and returns the amended grant agreement;
- HUD signs the grant agreement amendment and revises the grantee's line of credit amount (this triggers the two year expenditure deadline for any funds obligated by this amended grant agreement) and provides a copy of the executed grant agreement to the grantee;
- If it has not already done so, grantee enters the activities from its published Action Plan Amendment into the Disaster Recovery Grant Reporting (DRGR) system and submits it to HUD within the system;...

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<sup>29</sup> Section VI.3.e, issued November 18, 2013, was revised by section II.4 of 81 FR 54114, issued August 15, 2016.

<sup>30</sup> Section III was replaced by section III in 80 FR 26942, issued on May 11, 2015.

*VII. Applicable Rules, Statutes, Waivers, and Alternative Requirements...*

*2. Action Plan for Disaster Recovery Waiver and Alternative Requirements...*

*d. Amending the Action Plan.*

Except as otherwise provided for in this Notice, Section VI.A.1.k at 78 FR 14337 of the March 5, 2013 Notice is amended, as necessary, to require each grantee to submit a substantial Action Plan Amendment to HUD within 120 days of the effective date of this Notice. All Action Plan Amendments submitted after the effective date of this Notice must be prepared in accordance with the Prior Notices, as modified by this Notice. In addition, they must budget all, or a portion, of the funds allocated under this Notice. Grantees are reminded that an Action Plan may be amended one or more times until it describes uses for 100 percent of the grantee's CDBG-DR award. The last date that grantees may submit an Action Plan Amendment is June 1, 2017 given that HUD must obligate all CDBG-DR funds not later than September 30, 2017. The requirement to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable...<sup>31</sup>

**80 FR 26942, Issued May 11, 2015**

*II. Background*

...The Appropriations Act requires HUD to obligate all funds provided under the Appropriations Act by September 30, 2017. The Appropriations Act also requires that grantees expend funds within 24 months of the date on which HUD obligates funds to a grantee. Funds are obligated to a grantee on the date that HUD signs a grantee's CDBG-DR grant agreement or grant agreement amendment obligating additional funds. Each obligation carries its own expenditure deadline. For each obligation to a grantee, any funds remaining in the grantee's line of credit from that obligation at the time of the expenditure deadline for that obligation will be returned to the U.S. Treasury, or if before September 30, 2017, will be recaptured by HUD. In all instances, grantees must continue to meet the requirements for Federal cash management at 24 CFR 85.20(a)(7), as may be amended, and therefore may not draw down funds in advance of need to attempt to comply with the expenditure deadline in accordance with HUD's long-standing implementation of this requirement.

Section 904(c) of the Appropriations Act authorizes the Office of Management and Budget (OMB) to grant waivers of the 24-month expenditure deadline. To implement this provision of the Appropriations Act, OMB requested Federal agencies receiving an appropriation under the Appropriations Act to identify categories of activities that could be subject to a waiver of the 24-month expenditure deadline. OMB also requested that agencies estimate, for each category of activity, the total amount of funds provided under the Appropriations Act that would likely require a waiver. HUD submitted an analysis of different categories of CDBG-DR activities that would likely necessitate a waiver of the expenditure deadline to OMB. OMB authorized HUD to provide CDBG-DR grantees with expenditure deadline extensions for activities that are inherently long-term and where it would be impracticable to expend funds within the 24-month period and still achieve program missions.

Although HUD has authority to grant extensions of the 24-month expenditure deadline up to amounts approved by OMB for each of the activity categories described in Section III of this Notice, grantees are advised that 31 U.S.C. 1552(a) continues to apply to funds appropriated under the Appropriations Act. Specifically, CDBG-DR funds are to remain available for

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<sup>31</sup> Section VII.2.d was revised by 81 FR 54114, issued August 15, 2016.

expenditure for five years following the period of availability for obligation. All funds under the Appropriations Act, including those subject to a waiver of the expenditure deadline, must be expended by September 30, 2022. Any grant funds that have not been disbursed by September 30, 2022, will be canceled and will no longer be available for disbursement to the grantee for obligation or expenditure for any purpose...

#### *IV. Timeline for Submission*

The process for any funds that the grantee believes will not be expended by the 24-month expenditure deadline, as outlined in **Section III** of each of the prior **Federal Register** Notices published by HUD on March 5, 2013 (78 FR 14329), May 29, 2013 (78 FR 32262), November 18, 2013 (78 FR 69104), December 16, 2013 (78 FR 76154), June 3, 2014 (79 FR 31964), and October 16, 2014 (79 FR 62185), is hereby revised as follows:

“The Appropriations Act requires that funds be expended within two years of the date HUD obligates funds to a grantee; and funds are obligated to a grantee upon HUD’s signing of a grantee’s CDBG-DR grant agreement. In its Action Plan, a grantee must demonstrate how funds will be fully expended within two years of obligation and HUD must obligate all funds not later than September 30, 2017. For any funds that the grantee believes will not be expended by the 24-month deadline and that it desires to retain, the grantee must submit an extension request in a form acceptable to HUD not less than 120 calendar days in advance of the date of the expenditure deadline on those funds justifying why it is necessary to extend the deadline for a specific portion of the funds. In consideration of the timeline for funds with expenditure deadlines in 2015, extension requests for those funds must be submitted to HUD not less than 60 calendar days in advance of the date of the expenditure deadline on those funds. OMB has provided HUD with authority to act on grantee extension requests but grantees are cautioned that such extensions may not be approved. If granted, extensions will be published in the **Federal Register**. Funds remaining in the grantee’s line of credit at the time of its expenditure deadlines will be recaptured by HUD.”

#### *V. Requirements for Submission*

Grantees seeking an extension of the 24-month deadline for a project or program must provide HUD with detailed information on the compelling legal, policy, or operational challenges that prevent the grantee from meeting the expenditure deadline as well as identify the proposed date for the full expenditure of the specified portion of funds.

To expedite the review process, HUD has developed a CDBG-DR Expenditure Deadline Extension Request template. Grantees must submit one template per program or project for which a revised expenditure deadline is being requested. In certain cases, HUD may request that a grantee resubmit this template at a project-level if information provided at the programmatic level is insufficient for HUD to assess whether the request meets HUD’s criteria for approving an extension, as outlined in Section VII below. This template will ensure that each request captures all of the requirements outlined in this Notice. The template will be posted at:

<https://www.hudexchange.info/cdbg-dr/>. Each grantee must include the following elements, as delineated within the CDBG-DR Expenditure Deadline Extension Request template, as part of its submission:

- (1) A description of the individual program or project for which an extension is being requested, including information on relevant Disaster Recovery Grant Reporting System (DRGR) activity(ies).

- (2) An explanation for why an extension is being requested, including all relevant and compelling statutory, regulatory, policy, or operational challenges, and how the extension will promote a more effective and efficient recovery effort.
- (3) Description of how the provision of an extension would reduce the likelihood of waste, fraud, and abuse, if applicable.
- (4) An identification of all community stakeholders (including state or local entities, sub-recipients, nonprofits, and civic organizations) to be affected by the expenditure deadline extension, their role in program or project implementation, and the impact, if any, of the extension on these stakeholders.
- (5) A revised expenditure deadline for the CDBG-DR funds budgeted for the program or project (*i.e.* the DRGR ‘end date’) as well as a projection of quarterly expenditures for the program or project for which the waiver is requested, including incremental dollar amounts and percentage of funds budgeted for each DRGR activity. This information is required in order for HUD to ensure grantee compliance with revised expenditure deadlines in the DRGR system.
- (6) A description of the risks associated with not receiving the requested extension, such as the estimated percentage of funds which would be at risk of recapture or specific recovery needs that would not be met if the particular program or project cannot be completed or undertaken.
- (7) A description of the monitoring process and internal controls that the grantee and any sub-recipients will implement to ensure compliance with the revised expenditure deadline.

## *VI. Submission Process*

The submission of any grantee expenditure deadline extension request is subject to the following requirements:

- Grantee submits the completed CDBG-DR Expenditure Deadline Extension Request template and any attachments to HUD in order to request consideration of the extension request not less than 120 calendar days in advance of the expenditure deadline on the funds (or 60 days for funds expiring in calendar year 2015).
- HUD reviews the extension request within 45 (or sooner for funds expiring in calendar year 2015) calendar days from date of receipt and approves the request based on the parameters outlined in Section VII of this Notice.
- HUD sends an extension request approval letter to the grantee. HUD may disapprove the request if it is determined that it does not meet the requirements of this Notice. If the request is not approved, a letter will be sent identifying its deficiencies; the grantee must then re-submit the request within 30 calendar days (or 10 days for funds expiring in the calendar year 2015) of the notification letter;
- Within 30 calendar days of HUD’s approval, the grantee amends its Action Plan for disaster recovery to reflect the approval of the revised expenditure deadline. HUD considers any Action Plan amendments to reflect revised activity expenditure timelines to be non-substantial amendments.
- Immediately following this amendment, the grantee updates its DRGR Action Plan to reflect the revised ‘end date’ for each DRGR activity covered by the approved waiver.
- If approved, HUD will publish the extension approval in the **Federal Register**. HUD will consolidate grantee extension approvals for publication. Therefore, extension approval is

effective as of the date of the extension request approval letter, rather than as of the effective date of the published **Federal Register** notice.

#### *VII. Criteria for Approval*

Under the authority provided to HUD by OMB, HUD will consider expenditure deadline extension requests for projects or programs based on the Secretary's determination that the extension is necessary and that the request meets the conditions set forth by OMB. HUD will assess extension requests using the following criteria:

- (1) The program or project must be approved in the grantee's Action Plan for disaster recovery prior to the grantee's submission of an expenditure deadline extension request to HUD.
- (2) The CDBG-DR funds associated with the program or project must have been obligated by HUD through a grant agreement, and, therefore, be subject to an established expenditure deadline.
- (3) The information submitted on the CDBG-DR Expenditure Deadline Extension Request template is comprehensive and complete to the satisfaction of HUD, as outlined in Section V of this Notice.
- (4) The revised expenditure deadline for the CDBG-DR funds budgeted for the program or project (*i.e.* the DRGR 'end date') as well as the projection of quarterly expenditures are determined to be achievable based on the grantee's past performance and expenditure rate.
- (5) The grantee's capacity to implement monitoring processes and internal controls as outlined by the grantee in the template are sufficient to ensure compliance with the revised expenditure deadline.
- (6) The grantee has demonstrated that it has evaluated all reasonable alternatives prior to determining that an extension is the only remaining viable alternative.
- (7) HUD can determine, based on the grantee's submission, that the program or project covered by the request satisfies the OMB criteria for activities that are long-term by design, where it is impracticable to expend funds within the 24-month period and achieve program missions, and any other criteria imposed by OMB.

Regardless of the criteria outlined in this section, HUD retains the authority to deny requested extensions or to provide alternative expenditure deadlines to those proposed by grantees.

#### *VIII. Applicable Rules and Considerations...*

2. *Expenditure deadline extensions are program- and project-specific.* Any revised expenditure deadline is specific to the program or project as identified in the approval letter from HUD. Grantees may not reallocate funds with a revised expenditure deadline to other recovery programs or projects without HUD authorization. In order to reallocate such funds, the grantee must request an additional extension through the process described in Section VI of this Notice. Grant balances not used for a program or project that receives an expenditure deadline waiver will be canceled if the expenditure deadline on those funds has passed.

## **81 FR 7567, Issued February 12, 2016**

### *II. Applicable Rules (Including Clarifying Guidance), Statutes, Waivers, and Alternative Requirements*

*...1. Timeline for the submission of expenditure deadline extension requests.* The Appropriations Act requires the Department to obligate all funds provided under the Appropriations Act by September 30, 2017, and requires grantees to expend funds within 24-months of the date on which the Department obligates funds to a grantee. The Appropriations Act also authorizes the Office of Management and Budget (OMB) to grant waivers of the 24-month expenditure deadline. OMB authorized the Department to provide CDBG-DR grantees with expenditure deadline extensions for activities that are inherently long-term and where it would be impracticable to expend funds within the 24-month period and still achieve program missions, up to amounts approved by OMB. In the **Federal Register** notice published on May 11, 2015, (80 FR 26942), the Department established the process and criteria for the submission of expenditure deadline extension requests for CDBG-DR grantees in receipt of funds under the Appropriations Act. The May 11, 2015, notice requires these grantees to submit requests for the extension of an expenditure deadline at least 120 calendar days in advance of the expenditure deadline (80 FR 26944). Since the May 11, 2015, notice was published, the Department subsequently received, reviewed, and acted upon expenditure deadline extension requests from a number of CDBG-DR grantees in receipt of funds under the Appropriations Act. In some instances, the Department observed that events and circumstances beyond the control of the grantee may require grantees to request an extension of an expenditure deadline after the 120-calendar-day deadline has passed. The Department is therefore amending this requirement of the May 11, 2015, notice to provide that a grantee “submits the completed CDBG-DR Expenditure Deadline Extension Request template and any attachments to HUD in order to request consideration of the extension request at least 120 calendar days in advance of the expenditure deadline on the funds (or 60 days for funds expiring in calendar year 2015). HUD may, however, also accept requests from CDBG-DR grantees for the extension of an expenditure deadline *less than* 120 calendar days in advance of the deadline upon receipt of a letter from the chief executive officer of the grantee requesting the extension and a demonstration by the grantee that the request is required in order to achieve program missions. Grantees are advised however, that time constraints may not permit HUD to act upon requests that are received in close proximity to an expenditure deadline.”

*2. Urgent need national objective certification requirements.* The March 5, 2013, notice (78 FR 14329) provided grantees receiving funds under the Appropriations Act with a waiver of the certification requirements for the documentation of the urgent need national objective, located at §§ 570.208(c) and 570.483(d), until 2 years after the date the Department obligates funds to a grantee. The May 11, 2015, notice allowed grantees seeking a waiver of an expenditure deadline to simultaneously seek an extension of the urgent need certification waiver. The extension of the urgent need certification waiver, however, is currently only effective after its publication in the **Federal Register**. This approach presents challenges for CDBG-DR grantees who receive an extension of an expenditure deadline for an activity associated with the urgent need certification, with the extended expenditure deadline in effect but with the urgent need certification waiver still requiring publication in the **Federal Register**.

To accommodate the timely expenditure of funds, HUD is modifying the temporary, streamlined urgent need waiver and alternative requirement in paragraph VI.A.1.f. of the March 5, 2013, notice (78 FR 14336). This waiver and alternative requirement supersedes the information

published in the May 11, 2015, notice and will allow grantees to more effectively implement urgent recovery activities by aligning the applicable urgent need national objective criteria with the expenditure deadline on the use of funds. The March 5, 2013, notice is modified to add the following alternative requirement for grantees that receive an extension of the expenditure deadline: For activities designed to respond to a disaster-related impact that poses a serious and immediate threat to the health or welfare of the community, the grantee may continue to use the urgent need national objective until the end of the new expenditure deadline if the grantee meets the following requirements from the March 5, 2013, notice: (1) Before seeking the expenditure deadline extension, the grantee must reference in its Action Plan the type, scale, and location of the disaster-related impacts addressed by each program and/or activity that will meet the urgent need national objective; (2) before seeking the expenditure deadline extension, the grantee must identify these disaster related impacts in its Action Plan needs assessment; (3) the needs assessment must be updated as new or more detailed/accurate disaster-related impacts are known; and (4) the grantee must document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the grantee...

## **81 FR 54114, Issued August 15, 2016**

### *II. Applicable Rules, Statutes, Waivers, and Alternative Requirements*

4. *Submission of a Final Action Plan Amendment for Disaster Recovery.* HUD is modifying the language in paragraph VI.A.1.a of the March 5, 2013, **Federal Register** notice regarding the submission of Action Plan amendments after June 1, 2017. The March 5, 2013, notice does not currently allow grantees to submit Action Plan amendments after June 1, 2017.

While grantees must program the use of 100 percent of their allocated funds by June 1 in an approved Action Plan, HUD realizes that grantees will continue to need the flexibility of making both substantial and non-substantial Action Plan amendments as their programs continue to move forward and evolve after the June 1 deadline.

Accordingly, HUD is amending this language to allow grantees to submit Action Plan amendments after June 1, 2017. Subparagraph a of section VI.A.1 of the March 5, 2013, notice, as amended by the April 19, 2013, notice, is amended further to read:

Although a grantee may submit a partial Action Plan, the partial Action Plan must be amended one or more times until it describes uses for 100 percent of the grantee's CDBG-DR award. Due to the statutory requirement that HUD may not obligate Appropriations Act funds after September 30, 2017, grantees must submit an Action Plan amendment to HUD that provides for the allocation of 100 percent of its CDBG-DR funds for its recovery programs no later than June 1, 2017.

Grantees may continue to submit Action Plan amendments after that date. The requirement, however, to expend funds within 2 years of the date of obligation will continue to be enforced relative to each partial obligation made by HUD, as applicable.

HUD is also similarly modifying paragraph VI.3.e of the November 18, 2013, **Federal Register** notice (78 FR 69109) to read:

e. Amending the Action Plan. Paragraph 1(k) at 78 FR 14337 of the March 5, 2013, notice is amended, as necessary, to require each grantee to submit a substantial Action Plan amendment to HUD within 120 days of the effective date of this notice. All Action Plan amendments submitted after the effective date of this notice must be prepared in accordance with the prior notices, as modified by this notice. In addition, they must budget all, or a portion, of the funds allocated under this notice. Grantees are reminded that an

Action Plan may be amended one or more times until it describes uses for 100 percent of the grantee's CDBG-DR award. The last date by which grantees must submit the Action Plan amendment that provides for the allocation of 100 percent of its funds for its recovery programs is June 1, 2017, given that HUD must obligate all CDBG-DR funds no later than September 30, 2017. Grantees may continue to submit Action Plan amendments after that date. The requirement, however, to expend funds within 2 years of the date of obligation will continue to be enforced relative to each partial obligation made by HUD.

Paragraph V.4(d) of the June 3, 2014, **Federal Register** notice (79 FR 31969), is also modified to read:

d. Amending the Action Plan. The prior notices are amended, as necessary, to require each grantee to submit a substantial Action Plan amendment to HUD within 120 days of the effective date of this notice. All Action Plan amendments submitted after the effective date of this notice must be prepared in accordance with the prior notices, as modified by this notice. In addition, they must budget all, or a portion, of the funds allocated under this notice. Grantees are reminded that an Action Plan may be amended one or more times until it describes uses for 100 percent of the grantee's CDBG-DR award. The last date by which grantees must submit the Action Plan amendment that provides for the allocation of 100 percent of its funds for its recovery programs is June 1, 2017, given that HUD must obligate all CDBG-DR funds not later than September 30, 2017. Grantees may continue to submit Action Plan amendments after that date. The requirement, however, to expend funds within 2 years of the date of obligation will continue to be enforced relative to each partial obligation made by HUD.

Finally, paragraph VII.2.d of the October 16, 2014, **Federal Register** notice (79 FR 62191) is modified to read:

d. Amending the Action Plan. Except as otherwise provided for in this notice, paragraph VI.A.1.k of the March 5, 2013 notice (at 78 FR 14337) is amended, as necessary, to require each grantee to submit a substantial Action Plan amendment to HUD within 120 days of the effective date of this notice. All Action Plan amendments submitted after the effective date of this notice must be prepared in accordance with the prior notices, as modified by this notice. In addition, they must budget all, or a portion, of the funds allocated under this notice. Grantees are reminded that an Action Plan may be amended one or more times until it describes uses for 100 percent of the grantee's CDBG-DR award. The last date for grantees to submit the Action Plan amendment that provides for the allocation of 100 percent of its funds for its recovery programs is June 1, 2017, given that HUD must obligate all CDBG-DR funds not later than September 30, 2017. Grantees may continue to submit Action Plan amendments after that date. The requirement, however, to expend funds within 2 years of the date of obligation will continue to be enforced relative to each partial obligation made by HUD.

### **Language From CPD's Funding Approval/Agreement**

#### **HUD Form 7082**

**Grant Agreement:** This Grant Agreement between the Department of Housing and Urban Development (HUD) and the above named Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.). The Grantee's submissions for Title I assistance, the HUD regulations at 24 CFR Part 570 (as now in effect and as may be amended from time to time), and this Funding Approval,

including any special conditions/addendums, constitute part of the Agreement. Subject to the provisions of this Grant Agreement, HUD will make the funding assistance specified here available to the Grantee upon execution of the Agreement by the parties. The funding assistance specified in the Funding Approval may be used to pay costs incurred after the date specified in item 4 above provided the activities to which such costs are related are carried out in compliance with all applicable requirements. Pre-agreement costs may not be paid with funding assistance specified here unless they are authorized in HUD regulations or approved by waiver and listed in the special conditions to the Funding Approval. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to Section 104(g) of Title 1 and published in 24 CFR Part 58. The Grantee further acknowledges its responsibility for adherence to the Agreement by sub-recipient entities to which it makes funding assistance hereunder available.

***2013 Addendum:...***

2. The grantee is required to expend the funds obligated in the grant agreement within two years of the date of the obligation. If the grantee's two year expenditure deadline occurs prior to September 30, 2017, unexpended funds will be returned to the Department and may be reallocated. After September 30, 2017, any unexpended funds will be returned to the U.S. Treasury.  
...
7. This grant agreement covers a total amount \$[amount awarded]. The funds may be used for the activities described in the attached table and as provided in the Action Plan. Subsequent amendments to this grant agreement will obligate additional funds towards the State's full grant amount of \$[total amount awarded]. The grantee may request additional funds by submitting its amended action plan to the Department.

***2014 Addendum:...***

2. The grantee is required to expend the funds obligated in the grant agreement within two years of the date of the obligation. If the grantee's two year expenditure deadline occurs prior to September 30, 2017, unexpended funds will be returned to the Department and may be reallocated. After September 30, 2017, any unexpended funds will be returned to the U.S. Treasury. Funds previously obligated under this Grant Agreement and additional funds now obligated under this Grant Agreement must be expended by two-years from the date on which the Department signed the agreement to obligate the respective funds.  
...
8. This grant agreement covers a total amount of \$[amount awarded]. The funds may be used in the amounts listed and activities described in the attached table below and as provided in the Action Plan, as amended. The grant terms and conditions have been amended to adjust funding levels and activities described in the table below. The grantee may request that the Department amend the grant terms and conditions to adjust funding levels and activities described in the table below and may not adjust those levels or activities until receiving amended grant terms and conditions. Substantial amendments are subject to the additional requirements of the applicable CDBG-DR Notices. Subsequent amendments to this grant agreement will obligate additional funds towards the State's full grant amount of \$[total

*amount awarded].* The grantee may request additional funds by submitting its amended action plan to the Department

***2015 Addendum:...***

2. The grantee is required to expend the funds obligated in the grant agreement within two years of the date of the obligation. If the grantee's two year expenditure deadline occurs prior to September 30, 2017, unexpended funds will be returned to the Department and may be reallocated. After September 30, 2017, any unexpended funds will be returned to the U.S. Treasury. Funds previously obligated under this Grant Agreement and additional funds now obligated under this Grant Agreement must be expended by two-years from the date on which the Department signed the agreement to obligate the respective funds.  
...  
8. This grant agreement covers a total amount of \$[*amount awarded*]. The funds may be used in the amounts listed and activities described in the attached table and as provided in the Action Plan, as amended. The grant terms and conditions have been amended to adjust funding levels and activities described in the table below. The grantee may request that the Department amend the grant terms and conditions to adjust funding levels and activities described in the table below and may not adjust those levels or activities until receiving amended grant terms and conditions. Substantial amendments are subject to the additional requirements of the applicable CDBG-DR Notices. Subsequent amendments to this grant agreement will obligate additional funds towards the State's full grant amount of \$[*total amount awarded*]. The grantee may request additional funds by submitting its amended action plan to the Department.

***2016 Addendum:...***

2. The grantee is required to expend the funds obligated in the grant agreement within two years of the date of the obligation. If the grantee's two year expenditure deadline occurs prior to September 30, 2017, unexpended funds will be returned to the Department and may be reallocated. After September 30, 2017, any unexpended funds will be returned to the U.S. Treasury. Funds previously obligated under this Grant Agreement and additional funds now obligated under this Grant Agreement must be expended by within years from the date on which the Department signed the agreement to obligate the respective funds.  
...  
8. This grant agreement covers a total of [grant amount]. The funds may be used in the amounts listed and activities described in the table below and as provided in the Action Plan, as amended. The grant terms and conditions have been amended to adjust funding levels and activities described in the table below. The grantee may request that the Department amend the grant terms and conditions to adjust funding levels and activities described in the table below and may not adjust those levels or activities until receiving amended grant terms and conditions. Substantial amendments are subject to the additional requirements of the applicable CDBG-DR Notices. Subsequent amendments to this grant agreement will obligate additional funds towards the State full grant amount of [total grant amount]. The grantee may request additional funds by submitting its amended action plan to the Department.

## **HUD HANDBOOK 1830.2, REV-6, Administrative Control of Funds Policies**

### **Chapter 12, RESPONDING TO ANTIDEFICIENCY ACT VIOLATIONS...**

#### **12-3 REPORTING REQUIREMENTS OF THE ACT.**

HUD's Fiscal Year (FY) 2003 Appropriations Act provided that, notwithstanding any other provision of law, hereafter, HUD's CFO [Chief Financial Officer] shall, in consultation with the OCFO Budget Officer, have sole authority to investigate potential or actual violations of the Antideficiency Act and all other statutes and regulations related to the obligation and expenditure of funds in this or any other Acts; shall determine whether violations exist; and shall submit final reports on violations to the Secretary, the President, the OMB [Office of Management and Budget], and the Congress [and the Comptroller General] in accordance with applicable statutes and OMB circulars.

#### **12-5 ADA INVESTIGATIVE PROCESS.**

HUD's process for the disclosure, review, reporting, and action on potential and actual violations is as follows:....

1. Notification to OCFO of Possible Violations. Early reporting of any potential violation of the Antideficiency Act can help avoid or curtail an actual violation and is, therefore, an important element of the administrative control of funds. Any HUD employee having knowledge of a possible Antideficiency Act violation must immediately notify the ALS [Appropriations Law staff] in the OCFO about the activity in question. The employee should provide information and documentation that supports the belief that a possible Antideficiency Act violation exists. ....
7. Review to Determine Whether an Antideficiency Act Violation Occurred. ALS will review, gather additional information, and make an assessment regarding if an Antideficiency Act occurred.
8. Assessment of No Violation. If the assessment determines that no violation occurred, ALS will document in the file that an Antideficiency Act violation was alleged but not found, along with the basis for the determination. However, when opportunities for improvements in funds control and internal control processes are identified, if appropriate, recommendations will be forwarded to applicable program areas for review and approval. Once approved, the necessary control improvements shall be implemented.
9. Assessment that a Violation Occurred. If the review determines that a violation did occur, ALS will prepare a draft report from the CFO, based on the requirements of OMB Circular A-11, Section 145.7. In addition, and in consultation and coordination with the CFO, ALS will take the following actions:
  - a. The named offices and officials viewed as responsible for the violation will be provided with an opportunity to review the draft report and provide comments that may impact the final report of the investigation.
  - b. The allotment holder, program leadership, and supervisors of those viewed as responsible for the violation will recommend appropriate disciplinary actions, if any, and provide such recommendation to ALS for inclusion in the report. This recommendation will be considered by the OCFO in preparing the final report. If the review determines that a violation did occur and that possible

- criminal activity is suspected, the OCFO will refer such activity to the Office of the Inspector General (OIG) for investigation. ALS will carefully proceed with the actions described above, as appropriate and in coordination with the OIG.
- c. A copy of the draft report will be provided to the offices of the Secretary, Deputy Secretary, and General Counsel, with a courtesy copy to the affected allotment holder(s), to allow them an opportunity to review and provide comments.
  - d. The draft report will be sent to OMB for review.
  - e. After OMB review, the report will be submitted to Departmental leadership for final review.
10. Final Report. As provided in the FY 2003 Appropriations Act, the CFO will submit a final report on an Antideficiency Act violation to the Secretary, the President, the OMB, and the Congress in accordance with applicable statutes and OMB circulars. On the same date, OCFO will provide GAO, the allotment holder, the Deputy Secretary, the General Counsel, and any other appropriate officials with a copy of the final report.

#### 12-6 PENALTIES AND CORRECTIVE ACTIONS.

Based on the final report provided to the Secretary, the President, the OMB, and the Congress [and the GAO], the Department will impose any recommended penalties and implement all corrective actions identified to prevent the recurrence of this type of violation.

## Appendix D

### Grantee Voucher 246330

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Grantee approval date	LOCCS submit date	LOCCS transaction date	Project number	Activity number	Revised	Completed
<b>Original voucher</b>						
1/22/2014	1/27/2014	1/28/2014	R1-Single Family Housing	R1-HSG-UN		\$ 7,226,388
1/22/2014	1/27/2014	1/28/2014	R2-Single Family Housing	R2-HSG-LMI		38,377,388
1/22/2014	1/27/2014	1/28/2014	R2-Single Family Housing	R2-HSG-UN		30,312,059
<b>First revision</b>						
3/3/2014	1/27/2014	1/28/2014	R2-Single Family Housing	R2-HSG-LMI	\$38,377,388	
3/3/2014	1/27/2014	1/28/2014	R2-Single Family Housing	R2-HSG-LMI		30,180,962
3/3/2014	1/27/2014	1/28/2014	R2-Buyout	R2-BOH-AQU-UN-A		198,577
3/3/2014	1/27/2014	1/28/2014	R1-SmBusiness	R1-SBJ-UN-A		385,567
3/3/2014	1/27/2014	1/28/2014	R1-SmBusiness	R1-SBR-PLANNING A		385,567
3/3/2014	1/27/2014	1/28/2014	R2-ComRecon	R2-CR-Plan		2,068,506
3/3/2014	1/27/2014	1/28/2014	R2-Buyout	R2-BOH-AQU-UN-B		198,577
3/3/2014	1/27/2014	1/28/2014	R1-SmBusiness	R1-SBJ-UN-B		385,567
3/3/2014	1/27/2014	1/28/2014	R1-SmBusiness	R1-SBR-PLANNING B		385,567
3/3/2014	1/27/2014	1/28/2014	R1-Admin	R1-Admin		4,188,499 <sup>32</sup>
3/3/2014	1/27/2014	1/28/2014	R1-Admin	R1-Admin	4,188,499	
3/3/2014	1/27/2014	1/28/2014	R2-Single Family Housing	R2-HSG-LMI		4,188,499
3/3/2014	1/27/2014	1/28/2014	R2-Single Family Housing	R2-HSG-UN	30,312,059	
3/3/2014	1/27/2014	1/28/2014	R2-Single Family Housing	R2-HSG-UN		26,123,560
3/3/2014	1/27/2014	1/28/2014	R1-Admin	R1-Admin		4,188,499
3/3/2014	1/27/2014	1/28/2014	R2-Single Family Housing	R2-HSG-LMI	30,180,962	
3/3/2014	1/27/2014	1/28/2014	R2-Single Family Housing	R2-HSG-LMI		29,128,058
3/3/2014	1/27/2014	1/28/2014	R2-Buyout	R2-HSG-UN		1,052,904
<b>Second revision</b>						
09/23/2014	1/27/2014	01/28/2014	R1-Admin	R1-Admin	4,188,499	
09/23/2014	1/27/2014	01/28/2014	R2-Admin	R2-Admin		4,188,499

<sup>32</sup> Total of revised versus completed was \$1 different due to rounding.

Grantee approval date	LOCCS submit date	LOCCS transaction date	Project number	Activity number	Revised	Completed
<b>Third revision</b>						
5/13/2015	1/27/2014	1/28/2014	R1-SmBusiness	R1-SBJ-UN-B	385,567	
5/13/2015	1/27/2014	1/28/2014	R1-SmBusiness	R1-SBJ-UN-B		215,917
5/13/2015	1/27/2014	1/28/2014	R2-SmBusiness	R2-SBJ-UN-A		169,649 <sup>33</sup>
<b>Fourth revision</b>						
5/14/2015	1/27/2014	1/28/2014	R1-SmBusiness	R1-SBR-PLANNING A	385,567	
5/14/2015	1/27/2014	1/28/2014	R2-SmBusiness	R2-SBJ-UN-A		385,567
5/14/2015	1/27/2014	1/28/2014	R1-SmBusiness	R1-SBR-PLANNING B	385,567	
5/14/2015	1/27/2014	1/28/2014	R2-SmBusiness	R2-SBJ-UN-A		385,567
5/14/2015	1/27/2014	1/28/2014	R2-SmBusiness	R2-SBJ-UN-A	169,649	
5/14/2015	1/27/2014	1/28/2014	R1-SmBusiness	R1-SBJ-UN-A		169,649
5/14/2015	1/27/2014	1/28/2014	R2-SmBusiness	R2-SBJ-UN-A	385,567	
5/14/2015	1/27/2014	1/28/2014	R1-SmBusiness	R1-SBJ-UN-A		385,567
5/14/2015	1/27/2014	1/28/2014	R2-SmBusiness	R2-SBJ-UN-A	385,567	
5/14/2015	1/27/2014	1/28/2014	R1-SmBusiness	R1-SBJ-UN-A		385,567
<b>Fifth revision</b>						
12/21/2015	1/27/2014	12/21/2015	R2-Admin	R2-Admin	4,188,499	
12/21/2015	1/27/2014	12/21/2015	R2-Admin	R2-Admin		1,968,909
12/21/2015	1/27/2014	12/21/2015	R3-INFRA	R3-INFRA-Plan		2,219,590
<b>Sixth revision</b>						
9/27/2016	1/27/2014	9/27/2016	R1-SmBusiness	R1-SBJ-UN-A	385,567	
9/27/2016	1/27/2014	9/27/2016	R1-SmBusiness	R1-SBJ-MICRO-LMI		385,567
9/27/2016	1/27/2014	9/27/2016	R1-SmBusiness	R1-SBJ-UN-A	385,567	
9/27/2016	1/27/2014	9/27/2016	R1-SmBusiness	R1-SBJ-MICRO-LMI		385,567
9/27/2016	1/27/2014	9/27/2016	R1-SmBusiness	R1-SBJ-UN-A	385,567	
9/27/2016	1/27/2014	9/27/2016	R1-SmBusiness	R1-SBJ-MICRO-LMI		385,567
9/27/2016	1/27/2014	9/27/2016	R1-SmBusiness	R1-SBJ-UN-A	169,649	
9/27/2016	1/27/2014	9/27/2016	R1-SmBusiness	R1-SBJ-MICRO-LMI		169,649
9/27/2016	1/27/2014	9/27/2016	R1-SmBusiness	R1-SBJ-UN-B	215,917	
9/27/2016	1/27/2014	9/27/2016	R1-SmBusiness	R1-SBJ-MICRO-LMI		215,917

<sup>33</sup> Ibid.