

Pre-Grant Data Sharing Agreement for CDBG-DR Allocatees

DATA SHARING AGREEMENT

BETWEEN

THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AND

THE STATE OF MISSISSIPPI

Pertaining to Allocations for Community Development Block Grant Disaster Recovery Grants

- 1. INTRODUCTION AND PURPOSE.** The U.S. Department of Housing and Urban Development (HUD) and the State of Mississippi (Grantee), voluntarily enter into this Data Sharing Agreement.

The purpose of the Data Sharing Agreement is to enable HUD to share with the Grantee the data it receives from the Federal Emergency Management Agency (FEMA), including personally identifiable information (PII) that is protected by the Privacy Act of 1974 (Privacy Act), as amended, 5 U.S.C. § 552a, for two purposes:

- a. To assess unmet needs resulting from major disasters for which the Grantee receives a Community Development Block Grant disaster recovery (CDBG-DR) allocation and to plan for the use of one or more CDBG-DR grants, including funds for electric power systems, mitigation (MIT), or resilience purposes allocated or awarded as CDBG-DR, CDBG-MIT, or CDBG- National Disaster Resilience grants (Grant(s)); and
 - b. To market activities to potential applicants that may be eligible for assistance funded by the Grant(s).
- 2. AUTHORITIES.** This Data Sharing Agreement is authorized by the Disaster Relief Supplemental Appropriations Act, 2022 (Pub. L. 117-43), approved on September 30, 2021, and any other appropriations act(s) that makes funding available for the Grants (the Appropriations Act(s)), title I of the Housing and Community Development Act of 1974, as amended, and the Computer Matching Agreement between HUD and the U.S. Department of Homeland Security, FEMA effective March 14, 2022 that is included as Attachment 1 to this Data Sharing Agreement, or successor agreement (HUD-FEMA Agreement). The HUD-FEMA Agreement terminates eighteen (18) months after its effective date and may be extended for a period of twelve (12) months. HUD and FEMA may enter a successor agreement authorizing FEMA to provide data to HUD that HUD, in turn, will provide to the

Grantee under this Data Sharing Agreement. To ensure compliance with data sharing authority in the HUD-FEMA Agreement, HUD may suspend sharing FEMA data with the Grantee until this Data Sharing Agreement can be amended to reflect requirements in the HUD-FEMA Agreement (as used in this Data Sharing Agreement, the term HUD-FEMA Agreement includes any amended or successor agreement). This Data Sharing Agreement does not require HUD to share FEMA data with the grantee except as authorized by FEMA in the HUD-FEMA Agreement.

3. BACKGROUND.

- a. After the President declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq. (Stafford Act), if HUD receives an appropriation for CDBG-DR assistance, and if the Grantee qualifies to receive such assistance under HUD's allocation methodology, HUD allocates CDBG-DR assistance to the Grantee. For purposes of this Data Sharing Agreement, the term "Major Disaster(s)" shall mean the disaster or disasters for which the Grantee receives an allocation of CDBG-DR funds and for which the Grantee requests that HUD share FEMA data with the Grantee.
- b. As described in section II.C.4. of the HUD-FEMA Agreement included as Attachment 1, FEMA collects, maintains, uses, and disseminates PII from its survivors/registrants. FEMA survivor/registrant PII is protected by the Privacy Act and by a system of records titled, "Department of Homeland Security/Federal Emergency Management Agency—008 Disaster Recovery Assistance Files System of Records" described in the System of Records Notice (SORN) published at 87 Fed. Reg. 7852 on February 10, 2022 (FEMA SORN). The FEMA SORN authorizes FEMA to provide HUD with access to FEMA's electronic records of individuals and households registration/applicant data to make available any additional assistance to the affected individuals and households and to prevent duplication of benefits. Pursuant to the HUD-FEMA Agreement, HUD can provide this information to the Grantee.
- c. In accordance with the FEMA SORN, FEMA can provide FEMA survivor/registrant PII data to HUD, and HUD can share that data with the Grantee for purposes in paragraphs 1. a. and b. of this Data Sharing Agreement because these purposes are necessary for the Grantee to obtain grant funding from HUD that can be used to provide additional assistance to individuals and households affected by the Major Disaster(s). As required by the Appropriations Act(s), the Grantee must submit to HUD a plan describing the use of all CDBG-DR funds in most impacted and distressed areas resulting from the Major Disaster(s), which plan shall include assistance that can be provided to individuals and households affected by the Major Disaster(s).

4. RESPONSIBILITIES.

- a. By signing this Data Sharing Agreement, HUD agrees that it will:
 - i. Obtain, from FEMA, individuals and households' registrant and assistance data in areas identified by HUD or the Grantee as most impacted and distressed as a result of the Major Disaster(s), in accordance with the HUD-FEMA Agreement (or any successor agreement).
 - ii. Once obtained from FEMA, share with the Grantee the disaster survivor/registrant PII and other data elements found in Appendix B of the HUD-FEMA Agreement. HUD will transmit or otherwise make the data available to authorized users of the Grantee in a password protected file via secure and encrypted means.
 - iii. Identify any amendments to this Data Sharing Agreement that are required by the HUD-FEMA Agreement, as it may be modified from time to time.
 - iv. Monitor the Grantee's compliance with this Data Sharing Agreement, as appropriate.
- b. By signing this agreement, the Grantee agrees that it will:
 - i. Use and maintain the data it receives under this Data Sharing Agreement only to support the purposes described in paragraphs 1. a. and b.
 - ii. Maintain an accurate list of the Authorized Users of data received under this Data Sharing Agreement. Authorized Users are employees, agents (including contractors or subcontractors), or subrecipients (including an agent or employee of its subrecipients) who have entered an agreement with the Grantee to comply with all requirements on the use of data contained in this Data Sharing Agreement and acknowledged that under the Privacy Act, unlawful disclosure of PII data is a misdemeanor and subject to a fine of up to \$5,000, and who have signed an enforceable agreement with the Grantee that when given access to the subject HUD database or file, the Authorized User will not –
 - A. Use or reveal any individually identifiable information furnished, acquired, retrieved, or assembled by the Authorized User or others for any purpose other than those in

paragraphs 1. a. and b. of this Data Sharing Agreement;

- B. Make any disclosure or publication whereby an individual or household could be identified, or the data furnished by or related to any particular person could be identified; or
 - C. Permit anyone other than the Grantee's Authorized Users to access the data.
- iii. Authorize no more than the number of Authorized Users of data that the Grantee determines is necessary to accomplish the purposes in 1. a. and b. HUD may periodically request that the Grantee update its list of Authorized Users and revoke access to individuals that are not identified as Authorized Users. HUD will prohibit data access to data on its systems by any individual that is not identified by the Grantee as an Authorized User.
- iv. Comply with all applicable laws, regulations, and provisions of this Data Sharing Agreement to protect the confidentiality of FEMA survivor/registrant PII that is protected by the Privacy Act.
- v. Establish and implement the following MINIMUM STANDARDS:
- A. Encrypt and store the survivor/registrant PII that is protected by the Privacy Act, whether in physical or electronic form, in a secure manner consistent with this type of data, and only in places and in a manner that is safe from access by unauthorized persons or for unauthorized use. At a minimum, access to subject data maintained in computer memory must be controlled by password protection, and all printouts, CD-ROMS, or other physical products containing PII derived from subject data must be locked in cabinets and file drawers or other secure locations when not in use.
 - B. Take reasonable precautions to ensure that only Authorized Users have access to PII data, that PII data is encrypted prior to allowing authorized users access, and that authorized users only access PII data with an officially sanctioned application for the purposes described in paragraphs 1. a. and b.
 - C. Instruct all Authorized Users regarding the confidential nature of the information, the requirements of this Agreement, and the criminal

penalties and civil remedies specified in federal, state, and local laws against unauthorized disclosure of PII covered by this Data Sharing Agreement and require Authorized Users to take any mandatory training offered by HUD regarding proper information security and privacy protections.

- vi. Employ appropriate technical, physical, and administrative safeguards to secure any and all PII shared under the provisions of this Data Sharing Agreement, whether in physical or electronic form. PII is only permitted to be used in places and in a manner that is safe from access by unauthorized persons or for unauthorized use.
- vii. Prevent disclosure of PII provided under this Data Sharing Agreement to any person or entity that is not an Authorized User.
- viii. Edit all printouts, tabulations, and reports to ensure they do not contain unauthorized disclosures of data provided under this Data Sharing Agreement.
- ix. Destroy the data provided under this Data Sharing Agreement for any Major Disaster(s) at the time of the closeout of the Grant that assists the Major Disaster(s) for which the data was provided. The Grantee shall notify HUD when the data provided under this agreement is destroyed. Where recordkeeping periods extend beyond grant closeout, the Grantee shall retain records of decisions based on the use of the data for the recordkeeping period required by the Grant(s).
- x. Submit to a monitoring or inspection by HUD. This Data Sharing Agreement gives HUD and FEMA the right to make unannounced and unscheduled inspections of any location in which the Grantee or its Authorized Users use data, including any associated computer center, to evaluate compliance with the terms of this Agreement and the requirements of the Privacy Act of 1974.
- xi. Establish and implement policies and procedures to comply with the requirements of this agreement.
- xii. **Comply with the following PRIVACY INCIDENT HANDLING requirements.** In the event of a breach of this Data Sharing Agreement or any exposure, unauthorized release, or misuse of PII shared under the provisions of this Data Sharing Agreement, the Grantee will immediately report the incident to the HUD Privacy Officer at 1-888-297-8689 or privacy@hud.gov. HUD will investigate the incident and will consult the Grantee and FEMA in a timely and ongoing basis in order to diagnose, mitigate and manage the privacy

incident until its conclusion. The Grantee shall be responsible for cooperating with HUD to allow HUD to comply with section XIII of the HUD-FEMA Agreement. The Grantee may be responsible for carrying out the necessary measures to remedy the effects of the privacy incident, including notification, unless mutually agreed upon otherwise, and may be responsible for bearing any costs associated with such measures. The Grantee and HUD shall each pay its own costs and expenses associated with its handling of PII, in accordance with paragraph 9.

- A. **PRIVACY INCIDENT.** A privacy incident occurs when there is a loss of control, compromise, unauthorized disclosure or exposure, unauthorized acquisition, unauthorized access, or failure to secure PII in readable form, whether physical or electronic, or when authorized users access survivor/registrant PII for an unauthorized purpose. The term encompasses both suspected and confirmed incidents involving PII, which raise a reasonable risk of harm.
- B. **BREACH.** A privacy incident, involving PII that is in the possession and/or control of the Grantee or any Authorized User of the Grantee or any other person or entity with which the Grantee shares the PII, constitutes a breach of this Agreement, notwithstanding whether such incident is the result of a negligent or intentional act or omission on the part of the Grantee and/or aforementioned entities.

5. **GRANTEE CERTIFICATION.** By signing this agreement, the Grantee certifies that:
- a. The Grantee and its Authorized Users will use the data provided pursuant to this Agreement only for the purposes described in paragraphs 1. a. and b. and shall not use the data for determining the benefits available to any individual or household or for any use not described in paragraph 1;
 - b. The Grantee understands the personal and confidential nature of the FEMA survivor/registrant PII and that it is responsible for any privacy incidents concerning survivor/registrant PII while in the possession and/or control of the data; and
 - c. The Grantee shall comply with all applicable laws, regulations, policies, and provisions of this Agreement to protect the confidentiality of survivor/registrant PII.

6. POINTS OF CONTACT.

- a. HUD's point of contact is as follows:

Name: Tennille S. Parker
Title: Director, Disaster Recovery and Special Issues Division
Phone: (202) 402-4649
E-mail Address: tennille.s.parker@hud.gov

- b. The Grantee's point of contact is as follows:

Name: Charles L. Bearman
Title: Director, Disaster Recovery Division
Mississippi Development Authority
Phone: (601)359-9345
E-mail Address: cbearman@mississippi.org

7. **SEVERABILITY.** Nothing in this Data Sharing Agreement is intended to conflict with current law or the directives of HUD. If a term in this Data Sharing Agreement contradicts such authority, then that term shall be invalid, but the remaining terms and conditions of this Data Sharing Agreement shall remain in full force and effect.

8. **NO PRIVATE RIGHT.** This Data Sharing Agreement is an agreement between HUD and the Grantee. It does not create or confer any right or benefit that is substantive or procedural, enforceable by any third party against the Grantee, HUD or the United States, or other officers, employees, agents, or associated personnel thereof. Nothing in this Data Sharing Agreement restricts the authority of either party to act as provided by law, statute, regulation or restricts any party from administering or enforcing any laws within its authority or jurisdiction.

9. FUNDING AND GRANT AGREEMENTS.

- a. This Data Sharing Agreement does not obligate, commit nor transfer funds. The Data Sharing Agreement is not a promise to obligate, commit, or transfer funds in the future. Each party shall bear its own costs in relation to this Data Sharing Agreement, except that if HUD and the Grantee enter Grant(s), nothing in this paragraph shall prohibit the Grantee from charging allowable costs to those Grant(s). A party may expend funds subject to its budgetary processes and availability pursuant to applicable laws, regulations, and policies. The parties acknowledge that this does not imply that Congress will appropriate funds for such expenditures.
- b. By signing this Data Sharing Agreement, the Grantee and HUD agree that existing Grant(s) governing the CDBG-DR assistance for any disaster(s) for which the Grantee will request and receive data under this

Data Sharing Agreement are amended to incorporate this Data Sharing Agreement and include its requirements as part of the Grant terms and conditions. All other terms and conditions and obligations set forth in the Grant(s) remain unchanged. The parties also agree that when the Grantee requests and receives data under this Data Sharing Agreement for disaster(s) covered by Grant(s) that are not amended by this provision, HUD may unilaterally impose a specific condition on the Grant(s) to incorporate this Data Sharing Agreement and include its requirements as part of the Grant terms and conditions.

- 10. ISSUE RESOLUTION.** HUD and the Grantee understand that during the course of this Data Sharing Agreement, they may have to resolve issues such as scope, interpretation, technical matters, and other proposed modifications. HUD and the Grantee agree to appoint their respective points of contact to faithfully resolve such issues.
- 11. ENTIRE AGREEMENT.** This Data Sharing Agreement constitutes the entire agreement between the parties with regard to information sharing for the purposes described in paragraphs 1. a. and b.
- 12. MODIFICATION.** This Data Sharing Agreement may be modified upon the mutual written consent of the parties.
- 13. EFFECTIVE DATE, DURATION, AND TERMINATION.** This Data Sharing Agreement will become effective upon the signature of both parties, and it will remain in effect until the closeout of the last grant(s) for which the grantee receives data under the Data Sharing Agreement. Either party may terminate this agreement at an earlier date upon written notice to the other party; however, in all cases of termination, the responsibilities described in Paragraph 4. b. shall survive termination until such time as the Grantee has either returned the data to HUD or destroyed it, and the penalties described in paragraph 14. shall survive termination and are available to enforce the requirements in paragraph 4. b. (or impose corrective actions for violations) after termination. If the mandatory recordkeeping period extends beyond the closeout of the Grant(s), the parties may include the Grantee's continuing obligations under Paragraph 4. b. of this Agreement and the penalties in paragraph 14. into the applicable Grant closeout agreement.

PENALTIES. The Privacy Act provides for criminal penalties for the unauthorized disclosure of Privacy Act protected information to unauthorized third parties. Any person who knowingly or willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be subject to criminal penalties under the Privacy Act and may be subject to prosecution under other statutes such as 18 U.S.C. § 494, § 495, and § 1001. The penalty for violation of the Privacy Act is a fine of not more than \$5,000. In addition, Grantee understands that if it or one of its employees, agents (including contractors or subcontractors), or subrecipients (including an agent or employee of its subrecipients) willfully discloses any such PII

to a third party not authorized to receive it or otherwise violates the terms of this Data Sharing Agreement, HUD may revoke the Grantee's access to data under this Data Sharing Agreement and pursue remedies for noncompliance under any grant agreement with the Grantee that incorporates this Data Sharing Agreement.

APPROVED BY:

The signatories for HUD and for the State of Mississippi, Mississippi Development Authority (MDA), warrant and represent that they have the competent authority to agree to and enter the obligations set forth in this Agreement, on behalf of HUD or the Grantee, as applicable. The signatories hereby enter this agreement, which shall be effective as of the date it is signed by the Secretary.

Department of Housing and Urban Development

Kevin Bush

Digitally signed by Kevin Bush

Date: 2022.08.11 09:27:49 -04'00'

Date

Kevin J. Bush

Deputy Assistant Secretary for Grant Programs

Mississippi Development Authority

Charles L. Bearman

7/25/22

Date

Charles L. Bearman

Director, Disaster Recovery Division

Pre-Grant Data Sharing Agreement for CDBG-DR Allocatees

Attachment 1

[attach COMPUTER MATCHING AGREEMENT BETWEEN UNITED STATES DEPARTMENT OF HOMELAND SECURITY (DHS), FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), AND UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)]