

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6066–N–01]

Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Disaster Recovery Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice allocates \$7.39 billion in Community Development Block Grant disaster recovery (CDBG–DR) funds appropriated by the Supplemental Appropriations for Disaster Relief Requirements, 2017, for the purpose of assisting in long-term recovery from 2017 disasters. This notice describes applicable waivers and alternative requirements, relevant statutory provisions for grants provided under this notice, the grant award process, criteria for action plan approval, and eligible disaster recovery activities. Given the extent of damage to housing in the eligible disaster areas and the very limited data at present regarding unmet infrastructure and economic revitalization needs, this notice requires each grantee to primarily consider and address its unmet housing recovery needs.

DATES: *Applicability Date:* February 14, 2018.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Acting Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW, Room 10166, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech

impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Ms. Kome at 202–401–2044. (Except for the “800” number, these telephonenumber are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Allocations
- II. Use of Funds
- III. Management and Oversight of Funds
- IV. Authority To Grant Waivers
- V. Overview of Grant Process
- VI. Applicable Rules, Statutes, Waivers, and Alternative Requirements
 - A. Grant Administration
 - B. Housing and Related Floodplain Issues
 - C. Infrastructure
 - D. Economic Revitalization
 - E. Certifications and Collection of Information
- VII. Duration of Funding
- VIII. Catalog of Federal Domestic Assistance
- IX. Finding of No Significant Impact
- Appendix A—Allocation of CDBG–DR Funds to Most Impacted and Distressed Areas Due to 2017 Federally Declared Disasters

I. Allocations

The Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115–56), approved September 8, 2017 (Appropriations Act) makes available \$7.4 billion in Community Development Block Grant disaster recovery (CDBG–DR) funds for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCD Act) related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the “most impacted and distressed” areas (identified by HUD using the best available data) resulting from a major

disaster declared in 2017. This notice allocates \$7,390,000,000 in CDBG–DR funds to assist in long-term recovery from 2017 disasters. In addition to the funds allocated in this notice, and in accordance with the Appropriations Act, \$10,000,000 will be transferred to the Department’s Office of Community Planning and Development (CPD), Program Office Salaries and Expenses, for necessary costs of administering and overseeing CDBG–DR funds made available under the Appropriations Act. This notice requires each grantee to primarily consider and address its unmet housing recovery needs. A grantee may also allocate funds to address unmet economic revitalization and infrastructure needs, but in doing so, the grantee must identify how unmet housing needs will be addressed or how its economic revitalization or infrastructure activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas. The law provides that grants shall be awarded directly to a State, local government, or Indian tribe at the discretion of the Secretary.¹ Any award of funds provided pursuant to the Appropriations Act to Indian tribes will be provided pursuant to the requirements of the Indian Community Development Block Grant program. To comply with statutory direction that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD allocates funds using the best available data that cover all of the eligible affected areas.

Based on further review of the impacts from the eligible disasters, and estimates of unmet need, HUD is making the following allocations:

TABLE 1—ALLOCATIONS UNDER PUBLIC LAW 115–56

Disaster No.	Grantee	Allocation	Minimum amount that must be expended for recovery in the HUD-identified “most impacted and distressed” areas
4332	State of Texas	\$5,024,215,000	(\$4,019,372,000) Harris, Jefferson, Orange, Galveston, Fort Bend, Brazoria, Montgomery, Liberty, Hardin, Chambers, Aransas, Wharton, San Patricio, San Jacinto, Nueces, and Victoria Counties; 78945, 77423, 77612, 78934, 75956, 77632, 75979, 77414, 77335, 78377, and 77979 Zip Codes.
4337	State of Florida	615,922,000	(\$492,737,600) Monroe, Miami-Dade, Duval, Lee, Polk, Collier, Brevard, Broward, Orange, and Volusia counties; 32068, 34266, 32136, and 32091 Zip Codes.

¹ Section 306(a) of division A, title III of the Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (Pub. L.

115–72, approved October 26, 2017) amended the Appropriations Act to permit the Secretary to award

grants directly to a State, unit of general local government, or Indian tribe.

TABLE 1—ALLOCATIONS UNDER PUBLIC LAW 115–56—Continued

Disaster No.	Grantee	Allocation	Minimum amount that must be expended for recovery in the HUD-identified "most impacted and distressed" areas
4336, 4339	Commonwealth of Puerto Rico.	1,507,179,000	(\$1,205,743,200) Toa Baja, Canovanas, San Juan, Arecibo, Ponce, Bayamon, Caguas, Humacao, Vega Baja, Mayaguez, Corozal, Anasco, Toa Alta, Guayama, Naranjito, Juana Diaz, Salinas, Morovis, Carolina, Aguada, Yabucoa, Barranquitas, Rio Grande, Dorado, Cayey, Guaynabo, Vega Alta, Comerio, Loiza, Manati, Ciales, Aibonito, Aguadilla, Santa Isabel, Orocovis, Coamo, Cidra, Juncos, Utuado, Naguabo, Trujillo Alto, Barceloneta, Las Piedras, Hatillo, Patillas, Gurabo, Catano, San Sebastian, San Lorenzo, Aguas Buenas, Moca, Villalba, Isabela, Arroyo, Adjuntas, Camuy, Fajardo, Maunabo, Yauco, Lares Municipios; 00650, 00624, 00765, 00656, 00664, 00678, 00773, 00677, 00735, 00623, 00670, 00660, 00667, 00683, 00606, 00653 Zip Codes.
4335, 4340	United States Virgin Islands.	242,684,000	(\$242,684,000) St. Thomas, St. Croix, and St. John Islands.
Total *	7,390,000,000	

* Of the \$7,400,000,000 appropriated, \$10 million is provided for HUD administrative costs.

Pursuant to the Appropriations Act, HUD has identified the most impacted and distressed areas based on the best available data for all eligible affected areas. A detailed explanation of HUD's allocation methodology is provided in Appendix A of this notice. Other than the United States Virgin Islands, at least 80 percent of the total funds provided to the grantees under this notice must address unmet disaster needs within the HUD-identified most impacted and distressed areas, as identified in the last column in Table 1. The United States Virgin Islands must use 100 percent of the total funds provided under this notice to address unmet disaster needs within the HUD-identified most impacted and distressed areas identified in the last column in Table 1. Grantees, other than the United States Virgin Islands, may determine where to use the remaining 20 percent of the allocation, but that portion of the allocation may only be used to address unmet disaster needs in those areas that the State determines are "most impacted and distressed" and received a presidential major disaster declaration pursuant to the disaster numbers listed in Table 1.

Grantees may use up to 5 percent of the total grant award for grant administration. Therefore, other than for the United States Virgin Islands, HUD will include 80 percent of a grantee's expenditures for grant administration in its determination that 80 percent of the total award has been expended in the most impacted and distressed areas identified in Table 1. Additionally, other than the United States Virgin Islands, expenditures for planning activities may be counted towards a grantee's 80 percent expenditure requirement, provided that the grantee describes in its action plan how those planning activities benefit the HUD-

identified most impacted and distressed areas.

Grantees that received an allocation pursuant to Public Law 114–113, 114–223, 114–254, or 115–31 ("Prior Appropriations") must submit an action plan for disaster recovery not later than 90 days after the effective date of this notice. All other grantees receiving an allocation under this notice must submit an action plan not later than 120 days after the effective date of this notice. HUD will only approve action plans that meet the specific requirements identified in this notice under section VI, "Applicable Rules, Statutes, Waivers, and Alternative Requirements.

II. Use of Funds

Grants under the Appropriations Act are only available for activities authorized under title I of the HCD Act related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from an eligible disaster. The Appropriations Act requires that prior to the obligation of CDBG–DR funds a grantee shall submit a plan detailing the proposed use of all funds, including criteria for eligibility, and how the use of these funds will address long-term recovery and restoration of infrastructure and housing and economic revitalization in the most impacted and distressed areas. Therefore, grantees may only use funds for activities included in the action plan that are approved by the Secretary for disaster recovery that: (1) Are authorized under title I of the HCD Act or allowed by a waiver or alternative requirement published in this notice; and (2) respond to a disaster-related impact to infrastructure, housing, or economic revitalization in the most

impacted and distressed areas. To inform the plan, grantees must conduct an assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities, pursuant to paragraph A.2.a. in section VI below.

Grantees are advised that pursuant to this notice, CDBG–DR funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency (FEMA) or the US Army Corps of Engineers (USACE). As such, the grantee must verify whether FEMA or USACE funds are available prior to awarding CDBG–DR funds to specific activities or beneficiaries.

Consistent with the policy framework of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), HUD is underscoring that disaster recovery is a partnership between Federal, state and local government, and reminding CDBG–DR grantees they should invest in their own recovery. In developing this Notice, HUD evaluated options to promote policies that require state and local financial participation to ensure their shared commitment and responsibility for long-term recovery and future disaster risk reduction. This Notice does not limit, except as required by Public Law 105–276, the use of CDBG–DR funds toward the state or local contribution for other Federal programs (e.g., FEMA Public Assistance). However, HUD expects grantees to financially contribute to their recovery through the use of reserve or "rainy day" funds, borrowing authority, or retargeting of existing financial resources. The Administration aims to rebalance Federal, state, and local government roles and responsibilities not only for long-term recovery but across the broader

landscape of Federal programs that provide financial assistance to state and local governments.

III. Management and Oversight of Funds

The Appropriations Act requires the Secretary to certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes, and adequate procedures for proper grant management as detailed in paragraph A.1.a of section VI. If HUD recently certified for a grantee that received a CDBG-DR grant pursuant to Prior Appropriations, the grantee may request that HUD rely on its previous certification and supporting documentation for purposes of this allocation, as modified by any updates provided by the grantee. To submit such a request, the grantee should follow the instructions under paragraph A.1.a of section VI of this notice. Until grant closeout, all grantees shall adhere to the controls, processes, and procedures described in the grantee's financial controls and procurement processes documentation submitted in response to paragraph A.1.a. of section VI (including any previous documentation the grantee requests HUD to rely on), unless amended with HUD's approval.

Additionally, in advance of signing a grant agreement and consistent with 2 CFR 200.205 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Requirements), HUD will evaluate each grantee's capacity to effectively manage the funds through a review of the grantee's implementation plan and capacity assessment detailed in paragraph A.1.b of section VI. The grant terms and specific conditions of the award will reflect HUD's risk assessment of the grantee based upon its submission and the grantee shall adhere to the description of its implementation plan and capacity assessment documentation until grant closeout, unless amended with HUD's approval. For all grantees receiving an allocation of funds pursuant to this notice, HUD will undertake an annual risk analysis as well as on-site monitoring of grantee management to further guide oversight of these funds.

IV. Authority To Grant Waivers

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of

these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCD Act. HUD also has regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5. Grantees may request waivers as described in section VI of this notice.

The Appropriations Act provides that the Secretary "may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (*except for requirements related to fair housing, nondiscrimination, labor standards, and the environment*)." Accordingly, grantees are reminded that all fair housing and nondiscrimination requirements continue to apply in administering the funds described in this notice.

V. Overview of Grant Process

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

- Grantee follows citizen participation plan for disaster recovery in accordance with the requirements in paragraph A.4 of section VI of this notice.
- Grantee consults with stakeholders, including required consultation with affected local governments, Indian Tribes, and public housing authorities (as identified in paragraph A.7 of section VI of this notice).
- Within 60 days of the effective date of this notice (or when the grantee submits its action plan, whichever is earlier), the grantee submits documentation for the certification of financial controls and procurement processes, and adequate procedures for grant management in accordance with the requirements in paragraph A.1.a of section VI. A grantee that previously received a certification of its financial controls and procurement processes pursuant to a Prior Appropriation may request that HUD rely on that certification for purposes of this allocation, with updates provided by the grantee as appropriate.
- Within 60 days of the effective date of this notice (or when the grantee submits its action plan, whichever is earlier) the grantee submits its implementation plan and capacity assessment submissions, in accordance

with the requirements in paragraph A.1.b of section VI. A grantee that previously received a certification of its financial controls and procurement processes pursuant to a Prior Appropriation may request that HUD rely on that certification for purposes of this allocation, with updates provided by the grantee as appropriate.

- Grantee publishes its action plan for disaster recovery on the grantee's required disaster recovery website for no less than 14 calendar days to solicit public comment.
- Grantee responds to public comment and submits its action plan and projection of expenditures and outcomes (which includes Standard Form 424 (SF-424) and certifications) to HUD.
- Grantee requests and receives Disaster Recovery Grant Reporting (DRGR) system access (if the grantee does not already have DRGR access) and may enter activities into the DRGR system before or after submission of the action plan to HUD.
- HUD expedites review (allotted 45 days from date of receipt) and approves the action plan according to criteria identified in this notice.
- HUD sends an action plan approval letter and grant agreement to the grantee. If the action plan is not approved, HUD will notify the grantee of the deficiencies. The grantee must then resubmit the action plan within 45 days of the notification.
- Grantee signs and returns the grant agreement to HUD.
- Grantee ensures that the final HUD-approved action plan is posted on its official website.
- HUD establishes the grantee's line of credit.
- Grantee enters the activities from its approved action plan into the DRGR system if it has not previously done so and submits its DRGR action plan to HUD (funds can be drawn from the line of credit only for activities that are established in the DRGR system).
- Grantee must draft and publish (on their website) policies and procedures for programs and key recovery operations implemented by the grantee with CDBG-DR funds.
- The grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58 or as authorized by the Appropriations Act and, as applicable, receives from HUD the Authority to Use Grant Funds (AUGF) form and certification.
- The grantee should begin to draw down funds from DRGR no later than 180 days after the effective date of this

notice. Additionally, the Appropriations Act requires all funds to be expended within two years of the date of obligation as described in paragraph A.28 of section VI of this notice.

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

This section of the notice describes requirements imposed by the Appropriations Act, as well as applicable waivers and alternative requirements. For each waiver and alternative requirement, the Secretary has determined that good cause exists and the waiver or alternative requirement is not inconsistent with the overall purpose of the HCD Act. The waivers and alternative requirements provide flexibility in program design and implementation to support full and swift recovery following eligible disasters, while ensuring that statutory requirements are met. The following requirements apply only to the CDBG-DR funds appropriated in the Appropriations Act, and not to funds provided under the annual formula State or Entitlement CDBG programs, the Indian Community Development Block Grant program, or those provided under any other component of the CDBG program, such as the Section 108 Loan Guarantee Program, or any prior CDBG-DR appropriation.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities, accompanied by data to support the request. Grantees should work with the assigned CPD representative to request any additional waivers or alternative requirements from HUD headquarters. Except where noted, waivers and alternative requirements described below apply to all grantees under this notice. Under the requirements of the Appropriations Act, waivers and alternative requirements are effective five days after they are published in the **Federal Register**.

Except as described in this notice, statutory and regulatory provisions governing the State CDBG program shall apply to State grantees receiving an allocation under this notice. Pursuant to an alternative requirement established by this notice, all references to states and State grantees shall include the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Applicable statutory provisions (title I of the HCD Act) can be found at 42 U.S.C. 5301 *et seq.* Applicable State and Entitlement CDBG regulations can be found at 24 CFR part 570. References to the action plan in these regulations shall refer to the action plan required by this notice. All

references in this notice pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted. The date of this notice shall mean the effective date of this notice unless otherwise noted.

A. Grant Administration

1. *Preaward Evaluation of Management and Oversight of Funds*
 a. *Certification of financial controls and procurement processes, and adequate procedures for proper grant management.* The Appropriations Act requires that the Secretary certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, 42 U.S.C. 5155, to ensure timely expenditure of funds, maintain a comprehensive website regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. To enable the Secretary to make this certification, each grantee must submit to HUD the certification documentation listed below. This information must be submitted within 60 days of the effective date of this notice, or with the grantee's submission of its action plan, whichever date is earlier. Grant agreements will not be executed until HUD has approved the grantee's certifications. For each of the items (1) through (6) below, the grantee must also provide a table that clearly indicates which unit and personnel are responsible for each task along with contact information.

In the alternative, if HUD recently certified the controls, processes, and procedures for a grantee that received an allocation of CDBG-DR funds pursuant to Prior Appropriations, the grantee may request that HUD rely on its previous certification(s) and supporting documentation required by (1) through (6) below for purposes of allocations under this notice, as modified by any updates provided by the grantee. To submit the request, a grantee must indicate in the P.L. 115-56 Financial Management and Grant Compliance Certification that the past submissions pursuant to Prior Appropriations remain unchanged (except where updates are specified and supported with revised submissions), and that the submissions on which HUD based its previous certification, or new submissions as appropriate, will apply to the grantee's CDBG-DR grant under this notice. In either case, the grantee must certify to the accuracy of its documentation as required by paragraph E.51 of section VI

of this notice. Additionally, the grantee must submit with its action plan the certifications in paragraph E.51 of section VI of this notice.

(1) Proficient Financial Management Controls. A grantee has proficient financial management controls if each of the following criteria is satisfied:

(a) The grantee submits its most recent single audit and consolidated annual financial report (CAFR), which in HUD's determination indicates that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of the CDBG program. If the single audit or CAFR identified weaknesses or deficiencies, the grantee must provide documentation satisfactory to HUD showing how those weaknesses have been removed or are being addressed; and

(b) The grantee has assessed its financial standards and has submitted the completed Public Law 115-56 Financial Management and Grant Compliance Certification (Compliance Certification) available on the HUD Exchange website at <https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>, together with all documentation required in the Compliance Certification. The grantee's standards must comply with the requirements and standards of the Compliance Certification to be proficient, and the grantee must continue to maintain these standards until grant closeout. The grantee must identify which sections of its financial standards address applicable questions in the document.

(2) Procurement. Each grantee must provide HUD its procurement process/standards for review, so HUD may evaluate the overall effect of the grantee's procurement process/standards to determine that they uphold the principles of full and open competition and include an evaluation of the cost or price of the product or service. The grantee must also provide a legal opinion that it has proficient procurement policies and procedures.

A State grantee (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) has proficient procurement policies and processes if HUD determines that its procurement processes uphold the principles of full and open competition and include an evaluation of the cost and price of the product or service, and if its procurement processes reflect that it: (a) Adopted 2 CFR 200.318 through 200.326; or (b) follows its own

procurement policies and procedures and establishes requirements for procurement policies and procedures for local governments and subrecipients based on full and open competition pursuant to 24 CFR 570.489(g), and the requirements applicable to the state, its local governments, and subrecipients include evaluation of the cost or price of the product or service; or (c) adopted 2 CFR 200.317, meaning that it will follow its own State procurement policies and procedures and evaluate the cost or price of the product or service, but impose 2 CFR 200.318 through 200.326 on its subgrantees and subrecipients. A grantee must demonstrate that its procurement policies and procedures will allow the grantee to comply with the procurement requirements at paragraph A.26 of Section VI of this notice.

(3) Duplication of benefits. A grantee has adequate procedures to prevent the duplication of benefits if the grantee submits uniform processes that reflect the requirements of paragraph A.25 in section VI of this notice, including: (a) Verifying all sources of disaster assistance received by the grantee or applicant prior to the award of CDBG-DR funds to the applicant, as applicable; (b) determining a grantee's or an applicant's unmet need(s) before committing funds or awarding assistance; and (c) ensuring beneficiaries agree to repay any duplicative assistance if they later receive other disaster assistance for the same purpose. Grantee procedures shall provide that prior to the award of assistance, the grantee will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of funding to prevent the duplication of benefits.

(4) Timely expenditures. A grantee has adequate procedures to determine timely expenditures if it submits procedures that indicate to HUD how the grantee will track expenditures each month; how it will monitor expenditures of its subrecipients; how it will account for and manage program income; how it will reprogram funds in a timely manner for activities that are stalled; and how it will project expenditures to provide for the expenditure of all CDBG-DR funds within the period provided for in paragraph A.28 of section VI of this notice.

(5) Comprehensive disaster recovery website. A grantee has adequate procedures to maintain a comprehensive website regarding all disaster recovery activities if it submits procedures that indicate that the grantee

will have a separate page dedicated to its disaster recovery activities assisted with CDBG-DR funds provided under this notice that includes the information described at paragraph A.27 of section VI of this notice. The procedures should also indicate the frequency of website updates. At minimum, grantees must update their website monthly.

(6) Procedures to detect and prevent fraud, waste and abuse. A grantee has adequate procedures to detect and prevent fraud, waste, and abuse if it submits procedures that indicate how the grantee will verify the accuracy of information provided by applicants; if it provides a monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring, and which items are monitored; if it demonstrates that it has an internal auditor that provides both programmatic and financial oversight of grantee activities; and includes a document signed by the internal auditor that describes his or her role in detecting fraud, waste, and abuse. Instances of fraud, waste, and abuse should be referred to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov).

To address any potential duplication, beneficiaries must enter a signed agreement to repay any assistance later received for the same purpose as the CDBG-DR funds. The grantee must identify a method to monitor compliance with the agreement for a reasonable period, and should articulate this method in its written administrative procedures. This agreement must also include the following language: "*Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.*"

b. *Implementation Plan and Capacity Assessment.* Before signing a grant agreement, HUD is requiring each grantee to demonstrate that it has sufficient capacity to manage these funds and the associated risks.

Evidence of grantee management capacity will be provided through the grantee's implementation plan and capacity assessment submissions. These submissions must meet the criteria in (1) and (2) below, and must be submitted within 60 days of the effective date of this notice or with the grantee's submission of its action plan, whichever date is earlier.

A grantee has sufficient management capacity if it submits documentation showing that each of the following criteria is satisfied:

(1) Timely information on application status. A grantee has adequate procedures to enable applicants to

determine the status of their applications for recovery assistance, at all phases, if its procedures indicate methods for communication (*i.e.*, website, telephone, case managers, letters, etc.), ensure the accessibility and privacy of individualized information for all applicants, indicate the frequency of applicant status updates, and identify which personnel or unit is responsible for informing applicants of the status of recovery applications.

(2) Implementation Plan. To enable HUD to assess risk as described in 2 CFR 200.205(c), the grantee will submit an implementation plan to the Department. The plan must describe the grantee's capacity to carry out the recovery and how it will address any capacity gaps. HUD will determine a plan is adequate to reduce risk if, at a minimum it addresses (a) through (e) below:

(a) Capacity Assessment. The grantee has conducted an assessment of its capacity to carry out CDBG-DR recovery efforts and has developed a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified. The assessment must include a list of any open CDBG-DR findings and an update on the corrective actions undertaken to address each finding. HUD may include additional requirements in the grantee's grant terms and conditions in order to prevent similar findings for this grant.

(b) Staffing. The plan shows that the grantee has assessed staff capacity and identified personnel for the purpose of case management in proportion to the applicant population; program managers who will be assigned responsibility for each primary recovery area (housing, economic revitalization, and infrastructure); staff who have demonstrated experience in housing, economic revitalization, and infrastructure (as applicable); and staff responsible for procurement/contract management, compliance with the regulations implementing Section 3 of the Housing and Urban Development Act of 1968 (24 CFR part 135) (Section 3), fair housing compliance, and environmental compliance; as well as staff responsible for monitoring and quality assurance, and financial management. An adequate plan will also provide for an internal audit function with responsible audit staff reporting independently to the chief elected official or executive officer or board of the governing body of any designated administering entity.

(c) Internal and Interagency Coordination. The grantee's plan describes how it will ensure effective communication between different

departments and divisions within the grantee's organizational structure that are involved in CDBG-DR-funded recovery efforts; between its lead agency and subrecipients responsible for implementing the grantee's action plan; and with other local and regional planning efforts to ensure consistency.

(d) Technical Assistance. The grantee's implementation plan describes how it will procure and provide technical assistance for any personnel that the grantee does not employ at the time of action plan submission, and to fill gaps in knowledge or technical expertise required for successful and timely recovery implementation where identified in the capacity assessment.

(e) Accountability. The grantee's plan identifies the lead agency responsible for implementation of the CDBG-DR award and indicates that the head of that agency will report directly to the chief executive officer of the jurisdiction.

2. Action Plan for Disaster Recovery waiver and alternative requirement.

Requirements for CDBG actions plans, located at 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 42 U.S.C. 5306(a)(1), 42 U.S.C. 12705(a)(2), and 24 CFR 91.320, are waived for these disaster recovery grants. Instead, grantees must submit to HUD an action plan for disaster recovery which will describe disaster recovery programs that conform to applicable requirements as specified in this notice. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the plan does not satisfy all the required elements identified in this notice. During the course of the grant, HUD will monitor the grantee's actions and use of funds for consistency with the plan, as well as meeting the performance and timeliness objectives therein.

a. *Action Plan.* The action plan must identify the proposed use of all funds, including criteria for eligibility, and how the uses address 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 in 2017. Funds dedicated for uses not described in accordance with paragraphs b. or c. under this section will not be obligated until the grantee submits, and HUD approves, an action plan amendment programming the use of those funds, at the necessary level of detail.

The action plan must contain:

(1) An impact and unmet needs assessment. Each grantee must develop

a needs assessment to understand the type and location of community needs and to target limited resources to those areas with the greatest need. Grantees receiving an allocation under this notice must conduct a needs assessment to inform the use of CDBG-DR funds.

Grantees must cite data sources. Grantees may use HUD's AFFH mapping tool (<https://egis.hud.gov/affht/>) or the CPD Mapping tool (<https://egis.hud.gov/cpdmaps/>) to inform their analysis. At a minimum, the needs assessment must:

- Evaluate all aspects of recovery including housing (interim and permanent, owner and rental, single-family and multifamily, affordable and market rate, and housing to meet the needs of persons who were homeless pre-disaster), infrastructure, and economic revitalization;

- Estimate unmet needs to ensure CDBG-DR funds meet needs that are not likely to be addressed by other sources of funds by accounting for the various forms of assistance available to, or likely to be available to, affected communities (e.g., projected FEMA funds) and individuals (e.g., estimated insurance) and use the most recent available data to estimate the portion of need unlikely to be addressed by insurance proceeds, other Federal assistance, or any other funding sources (thus producing an estimate of unmet need);

- Assess whether public services (e.g., housing counseling, legal counseling, job training, mental health, and general health services) are necessary to complement activities intended to address housing, infrastructure, and economic revitalization and how those services are to be made accessible to individuals having wide-ranging disabilities including mobility, sensory, developmental, emotional, and other impairments;

- Describe the extent to which expenditures for planning activities will benefit the HUD-identified most impacted and distressed areas;

- Describe impacts geographically by type at the lowest level practicable (e.g., county level, zip code, neighborhood, or census tract); and

- Take into account the costs of incorporating mitigation and resilience measures to protect against the anticipated effects of future extreme weather events and other natural hazards and long-term risks.

CDBG-DR funds may be used to reimburse planning and administration costs for developing the action plan, including the needs assessment, environmental review, and citizen participation requirements. HUD has

developed a Disaster Impact and Unmet Needs Assessment Kit to guide CDBG-DR grantees through a process for identifying and prioritizing critical unmet needs for long-term community recovery. The Kit is available on the HUD Exchange website at: https://www.hudexchange.info/resources/documents/Disaster_Recovery_Disaster_Impact_Needs_Assessment_Kit.pdf.

Disaster recovery needs evolve over time and therefore grantees are expected to amend the needs assessment and action plan as conditions change, additional needs are identified, and additional resources become available.

(2) A description of the connection between identified unmet needs and the allocation of CDBG-DR resources. Grantees must propose an allocation of CDBG-DR funds that primarily considers and addresses unmet housing needs. Grantees may also allocate funds for economic revitalization and infrastructure activities, but in doing so, must identify how any remaining unmet housing needs will be addressed or how its economic revitalization and infrastructure activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas. Grantee action plans may provide for the allocation of funds for administration and planning activities and for public service activities, subject to the caps on such activities as described below.

(3) Each grantee must include a description of how it will identify and address the rehabilitation, reconstruction, replacement, and new construction of housing and shelters in the areas affected by the disaster. This includes any rental housing that is affordable to low- or moderate-income households as provided for in B.34 of section VI of this notice; public housing as provided for in B.33 of Section VI of this notice; emergency shelters and housing for the homeless; private market units receiving project-based assistance or with tenants that participate in the Section 8 Housing Choice Voucher Program; and any other housing that is assisted under a HUD program.

(4) A description of how the grantee's programs will promote housing for vulnerable populations, including a description of activities it plans to address: (a) The transitional housing, permanent supportive housing, and permanent housing needs of individuals and families (including subpopulations) that are homeless and at-risk of homelessness; (b) the prevention of low-income individuals and families with children (especially those with incomes below 30 percent of the area median)

from becoming homeless; and (c) the special needs of persons who are not homeless but require supportive housing (e.g., elderly, persons with disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents. Grantees must also assess how planning decisions may affect members of protected classes, racially and ethnically concentrated areas, as well as concentrated areas of poverty; will promote the availability of affordable housing in low-poverty, nonminority areas where appropriate; and will respond to natural hazard-related impacts. Grantees are reminded that the use of recovery funds must meet accessibility standards, provide reasonable accommodations to persons with disabilities, and take into consideration the functional needs of persons with disabilities in the relocation process. Guidance on relocation considerations for persons with disabilities may be found in Chapter 3 of HUD's Relocation Handbook 1378.0 (available on the HUD Exchange website at: https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780). A checklist of accessibility requirements under the Uniform Federal Accessibility Standards (UFAS) is available at: <http://www.hudexchange.info/resources/796/ufas-accessibility-checklist/>. The HUD Deeming Notice.79 FR 29671 (May 23, 2014) explains when HUD recipients can use 2010 ADA Standards with exceptions, as an alternative to UFAS to comply with Section 504.

(5) A description of how the grantee plans to minimize displacement of persons or entities, and assist any persons or entities displaced.

(6) A description of the maximum amount of assistance available to a beneficiary under each of the grantee's disaster recovery programs. A grantee may find it necessary to provide exceptions on a case-by-case basis to the maximum amount of assistance and must describe the process it will use to make such exceptions in its action plan. At minimum, each grantee must adopt policies and procedures that communicate how it will analyze the circumstances under which an exception is needed and how it will demonstrate that the amount of assistance is necessary and reasonable.

(7) A description of how the grantee plans to: Promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially construction standards and land-use decisions that reflect responsible floodplain and wetland

management and take into account continued sea level rise, if applicable; and coordinate with other local and regional planning efforts to ensure consistency. This information should be based on the history of FEMA flood mitigation efforts and take into account projected increase in sea level (if applicable) and the frequency and intensity of precipitation events.

(8) A description of how the grantee plans to adhere to the advanced elevation requirements established in paragraph B.32.e of section VI of this notice. Grantee decisions to elevate structures in a particular neighborhood or local government must be cost reasonable relative to other alternatives strategies, such as demolition of substantially-damaged structures with reconstruction of an elevated structure on the same site, property buyouts, or infrastructure improvements to prevent loss of life and mitigate future property damage.

The action plan should include an estimate of the average costs associated with elevating structures (updated as additional information becomes available through subsequent action plan amendments) and provide a description of how it will document on a neighborhood or local government level that elevation, as opposed to alternative strategies, is cost reasonable to promote a community's long-term recovery.

(9) A description of how the grantee will: (a) Design and implement programs or activities with the goal of protecting people and property from harm; (b) emphasize high quality, durability, energy efficiency, sustainability, and mold resistance; (c) support adoption and enforcement of modern and/or resilient building codes and mitigation of hazard risk, including possible sea level rise, high winds, storm surge, and flooding, where appropriate; and (d) implement and ensure compliance with the Green Building standards required in paragraph B.32.a of section VI of this notice. All rehabilitation, reconstruction, and new construction should be designed to incorporate principles of sustainability, including water and energy efficiency, resilience, and mitigating the impact of future disasters. Whenever feasible, grantees should follow best practices such as those provided by the U.S. Department of Energy's Guidelines for Home Energy Professionals—Professional Certifications and Standard Work Specifications found at <https://energy.gov/eere/wipo/guidelines-home-energy-professionals-standards-work-specifications>. HUD also encourages

grantees to implement green infrastructure policies to the extent practicable.

(10) Additionally, a grantee using grant funds for infrastructure must include a description of how the proposed infrastructure activities will advance long-term resilience to natural hazards and how the grantee intends to align these investments with other planned State or local capital improvements. Grantees should describe how preparedness and mitigation measures will be integrated into rebuilding activities and how the grantee will promote community-level and/or regional (e.g. multiple local jurisdictions) post-disaster recovery and mitigation planning.

Grantees must also describe how they will address the construction or rehabilitation of storm water management systems in flood impacted areas. State grantees must work with local governments in the most impacted and distressed areas to identify the unmet needs and associated costs of needed storm water infrastructure improvements.

(11) A description of the grantee's proposed use of CDBG-DR funds to develop a disaster recovery and response plan that addresses long-term recovery and pre- and post-disaster hazard mitigation, if one does not currently exist.

(12) A description of how the grantee will leverage CDBG-DR funds with funding provided by other Federal, State, local, private, and nonprofit sources to generate a more effective and comprehensive recovery. Examples of other Federal sources are those provided by HUD, FEMA (specifically the Public Assistance Program, Individual Assistance Program, Permanent Housing Construction Repair, where applicable, and Hazard Mitigation Grant Program), SBA (specifically the Disaster Loans program), Economic Development Administration, USACE, and the U.S. Department of Agriculture. The grantee should seek to maximize the outcomes of investments and the degree to which CDBG funds are leveraged. Grantees shall identify leveraged funds for each activity, as applicable, in the DRGR system.

(13) A description of the standards to be established for construction contractors performing work in the jurisdiction and a mechanism for homeowners and small business owners to challenge construction work that does not meet these standards. HUD strongly encourages the grantee to require a warranty period post-construction, which includes a formal notification that is provided to homeowners on a

periodic basis (e.g., 6 months and one month prior to expiration date of the warranty).

b. Funds Awarded Directly to a State. For State grantees, the action plan shall describe the method of distribution of funds to local governments and Indian tribes and/or descriptions of specific programs or activities the grantee will carry out directly. The description must include:

(1) How the needs assessment informed grantee funding determinations, including the rationale behind the decision(s) to provide funds to areas that were identified by the grantee as being most impacted and distressed, if applicable (i.e., how the grantee determined that these areas are most impacted and distressed). All grant funds shall be expended in areas that received a presidential disaster declaration pursuant to the disaster numbers specified in Table 1 of this notice.

(2) The threshold factors and recipient or beneficiary grant size limits that are to be applied.

(3) The projected uses for the CDBG-DR funds, by responsible organization, activity, and geographic area, when the grantee carries out an activity directly.

(4) For each proposed program and/or activity carried out directly, its respective CDBG activity eligibility category (or categories), national objective(s), and specific aspects of disaster recovery as described in subparagraph d. of this paragraph.

(5) How the method of distribution to local governments and Indian tribes or programs/activities carried out directly will result in long-term recovery from specific impacts of the disaster.

(6) When funds are subgranted to local governments or Indian tribes, all criteria used to distribute funds to local governments or Indian tribes including the relative importance of each criterion.

(7) When applications are solicited for programs carried out directly, all criteria used to select applications for funding, including the relative importance of each criterion.

c. Clarification of disaster-related activities. All CDBG-DR funded activities must clearly address an impact of the disaster for which funding was allocated. Given standard CDBG requirements, this means each activity must: (1) Be a CDBG-eligible activity (or be eligible under a waiver or alternative requirement in this notice); (2) meet a national objective; and (3) address a direct or indirect impact from the major disaster in a Presidentially-declared county. A disaster-related impact can be addressed through any eligible CDBG-

DR activity. Additional details on disaster-related activities are provided under section VI, parts B through D. Additionally, HUD has developed a series of CDBG-DR toolkits that guide grantees through specific grant implementation activities. These can be found on the HUD Exchange website at <https://www.hudexchange.info/programs/cdbg-dr/toolkits/>.

(1) **Housing.** Typical housing activities include new construction and rehabilitation of single-family or multifamily units. Most often, grantees use CDBG-DR funds to rehabilitate damaged homes and rental units. However, grantees may also fund new construction (see paragraph B.32 of section VI of this notice) or rehabilitate units *not* damaged by the disaster if the activity clearly addresses a disaster-related impact and is located in a disaster-affected area. This impact can be demonstrated by the disaster's overall effect on the quality, quantity, and affordability of the housing stock and the resulting inability of that stock to meet post-disaster needs and population demands.

Grantees are also required to coordinate with HUD-certified housing counseling organizations to ensure that information and services are made available to both renters and homeowners. Additional information for each grantee is available here: <https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?weblistaction=summary>.

(2) **Economic Revitalization.** The attraction, retention and return of businesses and jobs to a disaster-impacted area is critical to long term recovery. Accordingly, for CDBG-DR purposes, economic revitalization may include any CDBG-DR eligible activity that demonstrably restores and improves some aspect of the local economy through the attraction, retention and return of businesses and jobs. The activity may address job losses, or negative impacts to tax revenues or businesses. Examples of eligible activities include providing loans and grants to businesses to carry out eligible economic development activities, funding job training, making improvements to commercial/retail districts, and financing other efforts that attract/retain workers in devastated communities.

All economic revitalization activities must address an economic impact(s) caused by the disaster (e.g., loss of jobs, loss of public revenue). Through its needs assessment and action plan, the grantee must clearly identify the economic loss or need resulting from the disaster, and how the proposed activities will address that loss or need.

In proposing the use of CDBG-DR funds for economic revitalization under this notice, a grantee must identify how any remaining unmet housing needs will be addressed or how its economic development activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas.

(3) **Infrastructure.** Typical infrastructure activities include the rehabilitation, replacement, or relocation of damaged public facilities and improvements including, but not limited to, bridges, water treatment facilities, roads, sewer and water lines, and storm water management systems. In proposing an allocation of CDBG-DR funds under this notice for infrastructure, a grantee must identify how any remaining unmet housing needs will be addressed or how its infrastructure activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas.

(4) **Preparedness and Mitigation.** To ensure that CDBG-DR funds are used for authorized disaster recovery purposes, all assisted activities must respond to the impacts of the declared disaster identified in Table 1. HUD encourages grantees to incorporate preparedness and mitigation measures into CDBG-DR assisted activities to rebuild communities that are more resilient to future disasters. Mitigation measures that are not incorporated into those rebuilding activities must be a necessary expense related to disaster relief or long-term recovery that responds to the eligible disaster.

(5) **Connection to the Disaster.** Grantees must maintain records about each activity funded, as described in paragraph A.16 of section VI of this notice. In regard to physical losses, damage or rebuilding estimates are often the most effective tools for demonstrating the connection to the disaster. For housing market, economic, and/or nonphysical losses, post-disaster analyses or assessments may best document the relationship between the loss and the disaster.

d. Clarity of Action Plan. All grantees must include sufficient information so that all interested parties will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the grantee. The action plan (and subsequent amendments) must include a single chart or table that illustrates, at the most practical level, how all funds are budgeted (e.g., by program, subrecipient, grantee-administered activity, or other category).

e. *Review and Approval of Action Plan.* The action plan (including SF-424 and certifications) must be submitted to HUD for review and approval. Grantees that received an allocation pursuant to a Prior Appropriation must submit an action plan within 90 days of the effective date of this notice. All other grantees receiving an allocation under this notice must submit an action plan within 120 days of the effective date of this notice. HUD will review each action plan within 45 days from the date of receipt. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the action plan does not meet the requirements of this notice.

f. *Obligation and expenditure of funds.* Once HUD makes the required certifications and approves the action plan, it will then sign a grant agreement obligating allocated funds to the grantee. In addition, HUD will establish the line of credit and the grantee will receive DRGR system access (if it does not already have DRGR system access). The grantee must also enter its action plan activities into the DRGR system in order to draw funds for those activities. Each activity must meet the applicable environmental requirements prior to the use of funds. After the Responsible Entity (usually the grantee) completes environmental review(s) pursuant to 24 CFR part 58 (as applicable) or adopts the environmental review performed by another federal agency, as authorized by the Appropriations Act, and receives from HUD or the State an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for an activity. The disbursement of grant funds should begin no later than 180 days after the effective date of this notice. Failure to draw funds within 180 days of the effective date of this notice will result in the Department's review of the grantee's certification of its financial controls, procurement processes and capacity, and may result in a recommended corrective actions deemed appropriate by the Department pursuant to 24 CFR 570.495, 24 CFR 570.910, or 24 CFR 1003.701.

g. *Amending the Action Plan.* The grantee must amend its action plan to update its needs assessment, modify or create new activities, or reprogram 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: (1) Section that identifies exactly what content is being added, deleted, or changed; (2) chart or table that clearly illustrates where funds are

coming from and where they are moving to; and (3) revised budget allocation table that reflects the entirety of all funds, as amended. A grantee's current version of its entire action plan must be accessible for viewing as a single document at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments.

h. *Projection of expenditures and outcomes.* Each grantee must submit projected expenditures and outcomes with the action plan. The projections must be based on each quarter's expected performance—beginning with the quarter funds are available to the grantee and continuing each quarter until all funds are expended. The projections will enable HUD, the public, and the grantee to track proposed versus actual performance. The published action plan must be amended for any subsequent changes, updates or revision of the projections. Guidance on the preparation of projections is available on the HUD website.

3. *HUD performance review authorities and grantee reporting requirements in the Disaster Recovery Grant Reporting (DRGR) System.*

a. *Performance review authorities.* 42 U.S.C. 5304(e) requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner, whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCD Act and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

This notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), 24 CFR 91.520, and 24 CFR 1003.506. Alternatively, HUD is requiring that grantees enter information in the DRGR system in sufficient detail to permit the Department's review of grantee performance on a quarterly basis through the Quarterly Performance Report (QPR) and to enable remote review of grantee data to allow HUD to assess compliance and risk. HUD-issued general and appropriation-specific guidance for DRGR reporting requirements can be found on the HUD exchange at: <https://www.hudexchange.info/programs/drggr/>.

b. *DRGR Action Plan.* Each grantee must enter its action plan for disaster recovery, including performance measures, into HUD's DRGR system. As more detailed information about uses of

funds is identified by the grantee, it must be entered into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports and permits HUD review of compliance requirements.

The action plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG-DR funds. The grantee may enter activities into the DRGR system before or after submission of the written action plan to HUD, but will not be able to budget grant funds to these activities until after the grant agreement has been executed. To enter an activity into the DRGR system, the grantee must know the activity type, national objective, and the organization that will be responsible for the activity.

Grantees will gain access to its line of credit upon review and approval of the initial DRGR action plan. Each activity entered into the DRGR system must also be categorized under a "project." Typically, projects are based on groups of activities that accomplish a similar, broad purpose (e.g., housing, infrastructure, or economic revitalization) or are based on an area of service (e.g., Community A). If a grantee describes just one program within a broader category (e.g., single family rehabilitation), that program is entered as a project in the DRGR system. Further, the budget of the program would be identified as the project's budget. If a grantee has only identified the Method of Distribution (MOD) upon HUD's approval of the published action plan, the MOD categories typically serve as the projects in the DRGR system, rather than activity groupings. Activities are added to MOD projects as specific CDBG-DR programs and projects are identified for funding.

c. *Tracking oversight activities in the DRGR system; use of DRGR data for HUD review and dissemination.* Each grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its disaster recovery programs. The grantee's Quarterly Performance Report (QPR) will include a summary indicating the number of grantee oversight visits and reports (see subparagraph e. for more information on the QPR). HUD will use data entered into the DRGR action plan and the QPR, transactional data from the DRGR system, and other information provided by the grantee, to provide reports to Congress and the public, as well as to: (1) Monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets,

obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department's monitoring. Any instances of fraud, waste, or abuse identified should be referred to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hud.oig.gov). No personally identifiable information shall be reported in DRGR.

d. *Tracking program income in the DRGR system.* Grantees must use the DRGR system to draw grant funds for each activity. Grantees must also use the DRGR system to track program income receipts, disbursements, revolving loan funds, and leveraged funds (if applicable). If a State permits local governments to retain program income, or a State permits subrecipients to retain program income prior to grant closeout, the grantee must establish program income accounts in the DRGR system. The DRGR system requires grantees to use program income before drawing additional grant funds, and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

e. *DRGR system Quarterly Performance Report (QPR).* Each grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee's official website. In the event the QPR is rejected by HUD, the grantee must post the revised version, as approved by HUD, within 3 days of HUD approval. The grantee's first QPR is due after the first full calendar year quarter after HUD signs the grant agreement. For example, a grant agreement signed in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to CDBG-DR funds until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory report.

Each QPR will include information about the uses of funds in activities identified in the DRGR action plan during the applicable quarter. This includes, but is not limited to, the project name, activity, location, and national objective; funds budgeted,

obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as number of housing units completed or number of low- and moderate-income persons served; and the race and ethnicity of persons assisted under direct-benefit activities. For all housing and economic development activities, the address of each CDBG-DR assisted property must be recorded in the QPR. Grantees must not include such addresses in its public QPR; when entering addresses in the QPR, grantees must select "Not Visible on PDF" to exclude them from the report required to be posted on its website. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed in the QPR. Grantees must include a description of actions taken in that quarter to affirmatively further fair housing, within the section titled "Overall Progress Narrative" in the DRGR system.

4. *Citizen participation waiver and alternative requirement.* To permit a more streamlined process, and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 1003.604, and 24 CFR 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings but do require the grantee to provide a reasonable opportunity (at least 14 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for a grant under this notice are:

a. *Publication of the action plan, opportunity for public comment, and substantial amendment criteria.* Before the grantee adopts the action plan for this grant or any substantial amendment to the action plan, the grantee will publish the proposed plan or amendment. The manner of publication must include prominent posting on the grantee's official website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of disaster recovery should be navigable by citizens from the grantee's (or relevant agency's) homepage. Grantees are also encouraged

to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations. Plan publication efforts must meet the effective communications requirements of 24 CFR 8.6 and other fair housing and civil rights requirements, such as the effective communication requirements under the Americans with Disabilities Act.

Grantees are responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency (LEP). Each grantee must ensure that program information is available in the appropriate languages for the geographic areas to be served and take appropriate steps to ensure effective communications with persons with disabilities pursuant to 24 CFR 8.6 and other fair housing and civil rights requirements, such as the effective communication requirements under the Americans with Disabilities Act. Since State grantees under this notice may make grants throughout the State, including to entitlement communities, States should carefully evaluate the needs of persons with disabilities and those with limited English proficiency. For assistance in ensuring that this information is available to LEP populations, recipients should consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, published on January 22, 2007, in the **Federal Register** (72 FR 2732) and at: https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.

Subsequent to publication of the action plan, the grantee must provide a reasonable time frame (again, no less than 14 days) and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: A change in program benefit or eligibility criteria; the addition or deletion of an activity; or the allocation or reallocation of a monetary threshold specified by the grantee in its action plan. The grantee may substantially amend the action plan if it follows the same procedures required in this notice for the

preparation and submission of an action plan for disaster recovery.

b. *Nonsubstantial amendment.* The grantee must notify HUD, but is not required to seek public comment, when it makes any plan amendment that is not substantial. HUD must be notified at least 5 business days before the amendment becomes effective. However, every amendment to the action plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's website. The Department will acknowledge receipt of the notification of nonsubstantial amendments via email within 5 business days.

c. *Consideration of public comments.* The grantee must consider all comments, received orally or in writing, on the action plan or any substantial amendment. A summary of these comments or views, and the grantee's response to each must be submitted to HUD with the action plan or substantial amendment.

d. *Availability and accessibility of the Action Plan.* The grantee must make the action plan, any substantial amendments, and all performance reports available to the public on its website and on request. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and those with limited English proficiency. During the term of the grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the action plan and to the grantee's use of grant funds.

e. *Public website.* The grantee must maintain a public website that provides information accounting for how all grant funds are used and managed/administered, including links to all action plans, action plan amendments, CDBG-DR program policies and procedures, performance reports, citizen participation requirements, and activity/program information for activities described in its action plan, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must have a separate page dedicated to disaster recovery that includes the information described at paragraph A.27 of section VI of this notice.

f. *Application status.* The grantee must provide multiple methods of communication, such as websites, toll-free numbers, or other means that provide applicants for recovery assistance with timely information to determine the status of their application, as provided for in

paragraph A.1.b in section VI of this notice.

g. *Citizen complaints.* The grantee will provide a timely written response to every citizen complaint. The response must be provided within 15 working days of the receipt of the complaint. Complaints regarding fraud, waste, or abuse of government funds should be forwarded to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov).

5. *Direct grant administration and means of carrying out eligible activities – applicable to State grantees only.* Requirements at 42 U.S.C. 5306(d) are waived to the extent necessary to allow a State to use its disaster recovery grant allocation directly to carry out State-administered activities eligible under this notice, rather than distribute all funds to local governments. Pursuant to this waiver, the standard at 24 CFR 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the State carries out directly. Activities eligible under this notice may be carried out by the State, subject to State law and consistent with the requirement of 24 CFR 570.200(f), through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489(g) and (h) relating to conflicts of interest and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

A State grantee may also carry out activities in tribal areas. The State should coordinate with the Indian tribe with jurisdiction over the tribal area when providing CDBG-DR assistance to beneficiaries in tribal areas. State grantees carrying out projects in tribal areas, either directly or through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients, must obtain the consent of the Indian tribe with jurisdiction over the tribal area to allow the State to carry out or to fund CDBG-DR projects in the area. Indian tribes that receive CDBG-DR funding from a State grantee must comply with the Title II of the Civil Rights Act of 1968 (25 U.S.C. 1301 *et seq.*) (Indian Civil Rights Act).

For activities carried out by entities eligible under section 105(a)(15) of the HCD Act, such entities will be subject to the description of a nonprofit under that section rather than the description located in 24 CFR 570.204, even in a case in which the entity is receiving

assistance through a local government that is an entitlement grantee.

6. *Consolidated Plan waiver.* HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5) and 91.225(a)(5)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. However, this waiver applies only until the grantee submits its next full (3-5 year) consolidated plan, or for 24 months after the effective date of this notice, whichever is sooner. If the grantee is not scheduled to submit a new 3-5 year consolidated plan within the next 2 years, HUD expects each grantee to update its existing 3-5 year consolidated plan to reflect disaster-related needs no later than 24 months after the effective date of this notice. Additionally, grantees are encouraged to incorporate disaster-recovery needs into their consolidated plan updates as soon as practicable, but any unmet disaster-related needs and associated priorities must be incorporated into the grantee's next consolidated plan update no later than its Fiscal Year 2020 update. HUD has issued guidance for incorporating CDBG-DR funds into consolidated plans via HUD's eCon Planning Suite. This guidance is on the HUD Exchange at: <https://www.hudexchange.info/resource/4400/updating-the-consolidated-plan-to-reflect-disaster-recovery-needs-and-associated-priorities/>. This waiver does not affect the current applicability of HUD's July 16, 2015, final rule on Affirmatively Furthering Fair Housing (80 FR 42272) to grantees.

7. *Requirement for consultation during plan preparation.* Currently, the HCD Act and regulations require State grantees to consult with affected local governments in nonentitlement areas of the State in determining the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b)(2), and 24 CFR 91.110, and instituting the alternative requirement that States receiving an allocation under this notice consult with all disaster-affected local governments (including any CDBG entitlement grantees), Indian tribes, and any local public housing authorities in determining the use of funds. This ensures that State grantees sufficiently assess the recovery needs of all areas affected by the disaster. Additional guidance on consultation

with local stakeholders can be found in the National Disaster Recovery Framework and its discussion of pre- and post-disaster planning, at: <https://www.fema.gov/national-disaster-recovery-framework>.

Grantees must consult with States, Indian tribes, local governments, Federal partners, nongovernmental organizations, the private sector, and other stakeholders and affected parties in the surrounding geographic area to ensure consistency of the action plan with applicable regional redevelopment plans. Grantees are encouraged to establish a recovery task force with representative members of each sector to advise on how recovery activities can best contribute towards the goals of regional redevelopment plans.

8. *Overall benefit requirement.* The primary objective of the HCD Act is the “development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income” (42 U.S.C. 5301(c)). To carry out this objective, the statute requires that not less than 70 percent of the aggregate of CDBG program funds be used to support activities benefitting low- and moderate-income persons. The 70 percent overall benefit requirement shall remain in effect for this allocation, unless waived pursuant to a request by an individual grantee to authorize a lower overall benefit for its CDBG-DR grant based on a determination by HUD of compelling need for the reduction.

A grantee may seek to reduce the overall benefit requirement below 70 percent of the total grant, but must submit a justification that, at a minimum: (a) Identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee’s long-term disaster recovery plan; (c) describes how the activities/ programs identified in (b) prevent the grantee from meeting the 70 percent requirement; and (d) demonstrates that low- and moderate-income persons’ disaster-related needs have been sufficiently met and that the needs of non- low- and moderate-income persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them.

9. *Use of the “upper quartile” or “exception criteria” for low- and moderate-income area benefit activities.* Section 101(c) of the HCD Act requires each funded activity to meet a national

objective of the CDBG program, including the national objective of benefiting low- and moderate-income persons. Grantees may meet this national objective on an area basis, through an activity which is available to benefit all the residents of an area where at least 51 percent of the residents are low- and moderate income. In some cases, HUD permits an exception to the low- and moderate-income area benefit requirement that an area contain at least 51 percent low- and moderate-income residents. This exception applies to entitlement communities that have few, if any, areas within their jurisdiction that have 51 percent or more low- and moderate-income residents. These communities are allowed to use a percentage less than 51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the “exception criteria” or the “upper quartile.” A grantee qualifies for this exception when fewer than one quarter of the populated-block groups in its jurisdictions contain 51 percent or more low- and moderate-income persons. In such a community, activities must serve an area that contains a percentage of low- and moderate-income residents that is within the upper quartile of all census-block groups within its jurisdiction in terms of the degree of concentration of low- and moderate-income residents. HUD assesses each grantee’s census-block groups to determine whether a grantee qualifies to use this exception and identifies the alternative percentage the grantee may use instead of 51 percent for the purpose of qualifying activities under the low- and moderate-income area benefit. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee, accordingly. Disaster recovery grantees are required to use the most recent data available in implementing the exception criteria (<https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees/>). The “exception criteria” apply to disaster recovery activities funded pursuant to this notice in jurisdictions covered by such criteria, including jurisdictions that receive disaster recovery funds from a State.

10. *Grant administration responsibilities and general administration cap.*

a. *Grantee responsibilities.* Each grantee shall administer its award in compliance with all applicable laws and regulations and shall be financially accountable for the use of all funds provided in this notice.

b. *General administration cap.* For all grantees under this notice, the CDBG program administration requirements must be modified to be consistent with the Appropriations Act. Accordingly, 5 percent of the grant (plus program income) may be used for administrative costs by the grantee, units of general local government, or by subrecipients. Thus, the total of all costs classified as administrative for any grantee under this notice must be less than or equal to the 5 percent cap.

(1) *Combined technical assistance and administrative expenditures cap for States only.* The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap administration and technical assistance expenditures, limit a State’s ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding \$100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed 5 percent of the grant plus program income. Under this alternative requirement, a State is limited to spending a maximum of 15 percent of its total grant amount on planning costs. Planning costs subject to the 15 percent cap are those defined in 42 U.S.C. 5305(a)(12).

11. *Planning-only activities-applicable to State grantees only.* The State CDBG program requires that local government grant subrecipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project-specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. These plans may guide long-term community development efforts comprising multiple activities funded by multiple sources. In the CDBG Entitlement program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4).

The Department notes that almost all effective recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment

independent of the ultimate source of implementation funds. To assist State grantees, the Department is waiving the requirements at 24 CFR 570.483(b)(5) or (c)(3), which limit the circumstances under which the planning activity can meet a low- and moderate-income or slum-and-bligh national objective. Instead, States must comply with 24 CFR 570.208(d)(4) when funding disaster recovery-assisted, planning-only grants, or directly administering planning activities that guide recovery in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or undertake are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205. Plans should include an assessment of natural hazard risks, including anticipated effects of future extreme weather events and other hazards. Additional resources to assist in this process are available on the HUD exchange website: <https://www.hudexchange.info/programs/cdbg-dr/resources/#natural-hazard-risk-and-resilience-tools>.

12. *Use of the urgent need national objective.* The CDBG certification requirements for documentation of urgent need, located at 24 CFR 570.483(d), are waived for the grants under this notice and replaced with the following alternative requirement. In the context of disaster recovery, the standard urgent need certification requirements may impede recovery. Since the Department only provides CDBG-DR awards to grantees with documented disaster-related impacts and each grantee is limited to spending funds only for the benefit of areas that received a presidential disaster declaration as identified in Table 1 of this notice, the following streamlined alternative requirement recognizes the urgency in addressing serious threats to community welfare following a major disaster.

A grantee need not issue formal certification statements to qualify an activity as meeting the urgent need national objective. Instead, it must document how each program and/or activity funded under the urgent need national objective responds to a disaster-related impact. For each activity that will meet an urgent need national objective, the grantee must reference in its action plan needs assessment the type, scale, and location of the disaster-related impacts that each program and/or activity is addressing over the course of the applicable deadline for the expenditure of obligated grant funds. Grantees are advised to use the low- and moderate-income benefit national objective for all

activities that qualify under the criteria for that national objective. At least 70 percent of the entire CDBG-DR grant must be used for activities that benefit low- and moderate-income persons.

13. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties-applicable to State grantees only.* 42 U.S.C. 5302(a)(7) (definition of “nonentitlement area”) and provisions of 24 CFR part 570, including 24 CFR 570.480, are waived to permit a State to distribute CDBG-DR funds to units of local government and Indian tribes.

14. *Use of subrecipients – applicable to State grantees only.* The State CDBG program rule does not make specific provision for the treatment of entities that the CDBG Entitlement program calls “subrecipients.” The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, for States taking advantage of the waiver to carry out activities directly, the requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply.

15. *Waiver and alternative requirement for the U.S. Virgin Islands to administer CDBG-DR funds pursuant to the regulatory and statutory requirements of the State CDBG program.* The provisions of 24 CFR part 570 subpart F are waived to authorize the U.S. Virgin Islands to administer a CDBG-DR allocation in accordance with the regulatory and statutory provisions governing the State CDBG program, as modified by this notice. This includes the requirement that the aggregate total for administrative and technical assistance expenditures by the U.S. Virgin Islands must not exceed 5 percent of any CDBG-DR grant made pursuant to the Appropriations Act, plus program income.

16. *Recordkeeping.* When a State carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: the State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State’s administration of CDBG-DR funds, under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the State; and (3) show how activities funded are consistent with the descriptions of activities proposed for

funding in the action plan and/or DRGR system. For fair housing and equal opportunity (FHEO) purposes, as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. All grantees must report FHEO data in the DRGR system at the activity level.

17. *Change of use of real property-applicable to State grantees only.* This alternative requirement conforms the change of use of real property rule to the waiver allowing a State to carry out activities directly. For purposes of this program, all references to “unit of general local government” in 24 CFR 570.489(j), shall be read as “State, unit of general local government (UGLG) or State subrecipient.”

18. *Responsibility for review and handling of noncompliance-applicable to State grantees only.* This change is in conformance with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies for any State receiving a direct award under this notice: The State shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and local governments, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCD Act, as amended, as modified by this notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or local governments. The State shall attend and require subrecipients to attend fraud related training provided by HUD OIG to assist in the proper management of CDBG-DR grant funds. Additional information about this training will be posted on the HUD website.

19. *Program income alternative requirement.* The Department is waiving applicable program income rules at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), 570.500 and 570.504 only to the extent necessary to provide additional flexibility to State and local government as described below. The alternative requirements provide guidance regarding the use of program income received before and after grant close out and address revolving loan funds.

a. Definition of program income.

(1) For purposes of this notice, “program income” is defined as gross income generated from the use of

CDBG-DR funds, except as provided in subparagraph (d) of this paragraph, and received by a State or a subrecipient of a State. When income is generated by an activity that is only partially assisted with CDBG-DR funds, the income shall be prorated to reflect the percentage of CDBG-DR funds used (*e.g.*, a single loan supported by CDBG-DR funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(a) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG-DR funds.

(b) Proceeds from the disposition of equipment purchased with CDBG-DR funds.

(c) Gross income from the use or rental of real or personal property acquired by a State, local government, or subrecipient thereof with CDBG-DR funds, less costs incidental to generation of the income (*i.e.*, net income).

(d) Net income from the use or rental of real property owned by a State, local government, or subrecipient thereof, that was constructed or improved with CDBG-DR funds.

(e) Payments of principal and interest on loans made using CDBG-DR funds.

(f) Proceeds from the sale of loans made with CDBG-DR funds.

(g) Proceeds from the sale of obligations secured by loans made with CDBG-DR funds.

(h) Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account.

(i) Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households not low- and moderate-income, where the special assessments are used to recover all or part of the CDBG-DR portion of a public improvement.

(j) Gross income paid to a State, local government, or a subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG-DR assistance.

(2) "Program income" does not include the following:

(a) The total amount of funds that is less than \$35,000 received in a single year and retained by a State, local government, or a subrecipient thereof.

(b) Amounts generated by activities eligible under section 105(a)(15) of the HCD Act and carried out by an entity under the authority of section 105(a)(15) of the HCD Act.

b. *Retention of program income.* State grantees may permit a local government

or Indian tribe that receives or will receive program income to retain the program income, but are not required to do so.

c. *Program income – use, close out, and transfer.*

(1) Program income received (and retained, if applicable) before or after close out of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional CDBG-DR funds subject to the requirements of this notice and must be used in accordance with the grantee's action plan for disaster recovery. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in subparagraph d. of this paragraph.

(2) In addition to the regulations addressing program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: A State grantee may transfer program income to its annual CDBG program before close out of the grant that generated the program income. In addition, a State grantee may transfer program income before close out to any annual CDBG-funded activities carried out by a local government within the State. Program income received by a grantee after close out of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. In all cases, any program income received that is *not* used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of this notice. Rather, those funds will be subject to the State grantee's regular CDBG program rules.

d. *Revolving loan funds.* State grantees and local governments may establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities generate payments used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities.

State grantees may also establish a revolving fund to distribute funds to local governments to carry out specific, identified activities. The same requirements, outlined above, apply to

this type of revolving loan fund. Note that no revolving fund established per this notice shall be directly funded or capitalized with CDBG-DR grant funds, pursuant to 24 CFR 570.489(f)(3).

20. *Reimbursement of disaster recovery expenses.* The provisions of 24 CFR 570.489(b) are applied to permit a State grantee to charge to the grant otherwise allowable costs incurred by itself, its recipients or subrecipients (including public housing authorities (PHAs)) on or after the incident date of the covered disaster. A local government grantee is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable costs incurred on or after the incident date of the covered disaster. Section 570.200(h)(1)(i) will not apply to the extent that it requires pre-agreement activities to be included in a consolidated plan. The Department expects a grantee to include all pre-agreement activities in its action plans.

21. *Reimbursement of pre-application costs of homeowners, businesses, and other qualifying entities.* A grantee is permitted to charge to grants the preaward and preapplication costs of homeowners, businesses, and other qualifying entities for eligible costs it has incurred in response to an eligible disaster covered under this notice.

However, a grantee may not charge such preaward or preapplication costs to grants if the preaward or preapplication action results in an adverse impact to the environment. Grantees receiving an allocation under this notice are also subject to HUD's guidance on preaward expenses published in CPD Notice 2015-07, "Guidance for Charging Pre-Application Costs of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants," as amended (<https://www.hud.gov/sites/documents/15-07CPDN.PDF>). Grantees are required to consult with the State Historic Preservation Officer, Fish and Wildlife Service, and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) when designing a reimbursement program. Grantees may not use CDBG-DR funds to provide compensation to beneficiaries meaning that funds may not be provided to a beneficiary based on the estimated or actual amount of loss from the declared disaster. Grantees may, however, reimburse beneficiaries for pre-application costs incurred by the beneficiary for completing an eligible

activity, not for the amount of loss incurred by the beneficiary.

22. *Prohibition on forced mortgage payoff.* In some instances, a homeowner with an outstanding mortgage balance is required, under the terms of their loan agreement, to repay the balance of the mortgage loan prior to using assistance to rehabilitate or reconstruct their home. CDBG-DR funds, however, may not be used for a forced mortgage payoff. The ineligibility of a forced mortgage payoff with CDBG-DR funds does not affect HUD's longstanding guidance that when other non-CDBG disaster assistance is taken by lenders for a forced mortgage payoff, those funds are not considered to be available to the homeowner and do not constitute a duplication of benefits for the purpose of housing rehabilitation or reconstruction.

23. *One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements.* Activities and projects undertaken with CDBG-DR funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) ("URA") and section 104(d) of the HCD Act (42 U.S.C. 5304(d))(Section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for section 104(d) are at 24 CFR part 42, subpart C. For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and section 104(d) requirements with respect to the use of CDBG-DR funds allocated under this notice:

a. *Section 104(d) one for one replacement.* One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) of the HCD Act and 24 CFR 42.375 are waived in connection with funds allocated under this notice for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The section 104(d) one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable lower-income dwelling units. This waiver exempts disaster-damaged units that meet the grantee's definition of "not suitable for rehabilitation" from the one-for-one replacement requirements. Before carrying out activities that may be subject to the one-for-one replacement requirements, the grantee must define "not suitable for rehabilitation" in its action plan or in policies/procedures governing these activities. A grantee with questions about the one-for-one replacement requirements is encouraged to contact the HUD regional relocation

specialist responsible for its jurisdiction.

HUD is waiving the section 104(d) one-for-one replacement requirement for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation because it does not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Further, the requirement may discourage grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and to economic revitalization. Grantees should reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note that the demolition and/or disposition of PHA-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

b. *Relocation assistance.* The relocation assistance requirements at section 104(d)(2)(A) of the HCD Act and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this notice, for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (*e.g.*, buyouts and relocation). Both FEMA and CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to section 104(d), while FEMA funds are not. The URA provides at 49 CFR 24.402(b) that a displaced person is eligible to receive a rental assistance payment that is calculated to cover a period of 42 months. By contrast, section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the section 104(d) relocation assistance requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under this notice.

c. *Tenant-based rental assistance.* The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(vii), 24.2(a)(6)(ix), and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a

grantee's replacement housing payment obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (*e.g.*, Section 8 rental voucher or certificate), provided that comparable replacement dwellings are made available to the tenant in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash replacement housing payments are limited and such payments are required by the URA to be based on a 42-month term.

d. *Arm's length voluntary purchase.* The requirements at 49 CFR 24.101(b)(2)(i) and (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses funds allocated under this notice and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements following a disaster. Grantees are reminded that tenants occupying real property acquired through voluntary purchase may be eligible for relocation assistance.

e. *Optional relocation policies.* The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee level. Unlike the regular CDBG program, States may carry out disaster recovery activities directly or through subrecipients, but 24 CFR 570.606(d) does not account for this distinction. This waiver makes clear that grantees receiving CDBG-DR funds under this notice may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. This waiver is intended to provide States with maximum flexibility in developing optional relocation policies with CDBG-DR funds.

f. *Waiver of Section 414 of the Stafford Act.* Section 414 of the Stafford Act (42 U.S.C. 5181) provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) [42 U.S.C. 4601 *et seq.*] ["URA"] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the

President, to meet the occupancy requirements set by [the URA]". Accordingly, homeowner occupants and tenants displaced from their homes as a result of the identified disaster and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA. Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to real property acquisition, rehabilitation or demolition of real property for a CDBG-DR funded project commencing more than one year after the Presidentially declared disaster undertaken by the grantees, or subrecipients, provided that the project was not planned, approved, or otherwise underway prior to the disaster. The Department has surveyed other federal agencies' interpretation and implementation of Section 414 and found varying views and strategies for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. The Secretary has the authority to waive provisions of the Stafford Act and its implementing regulations that the Secretary administers in connection with the obligation of funds made available by this notice, or the grantees' use of these funds. The Department has determined that good cause exists for a waiver and that such waiver is not inconsistent with the overall purposes of title I of the HCD Act.

(1) The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster considering the majority of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence.

(2) This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

24. Environmental requirements.

a. *Clarifying note on the process for environmental release of funds when a*

State carries out activities directly. Usually, a State distributes CDBG funds to local governments and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD will allow a State grantee to also carry out activities directly, in addition to distributing funds to subrecipients. Thus, per 24 CFR 58.4, when a State carries out activities directly, the State must submit the Certification and Request for Release of Funds to HUD for approval.

b. *Adoption of another agency's environmental review.* In accordance with the Appropriations Act, grant recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the HCD Act. The grant recipient must notify HUD in writing of its decision to adopt another agency's environmental review. The grant recipient must retain a copy of the review in the grantee's environmental records.

c. *Unified Federal Review.* Section 1106 or the Sandy Recovery Improvement Act (Div. B of Pub. L. 113-2, enacted January 29, 2013) directed the Administration to "establish an expedited and unified interagency review process to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law." The process aims to coordinate environmental and historic preservation reviews to expedite planning and decision-making for disaster recovery projects. This can improve the Federal Government's assistance to States, local, and tribal governments; communities; families; and individual citizens as they recover from future Presidentially declared disasters. Grantees receiving an allocation of funds under this notice are encouraged to participate in this process as one means of expediting recovery. Tools for the unified interagency review process (UFR) process can be found here: <http://www.fema.gov/unified-federal-environmental-and-historic-preservation-review-presidentially-declared-disasters>.

d. *Release of funds.* In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2),

the Secretary may, upon receipt of a Request for Release of Funds and Certification, immediately approve the release of funds for an activity or project assisted with allocations under this notice if the recipient has adopted an environmental review, approval, or permit under subparagraph b. above, or the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

e. *Historic preservation reviews.* To facilitate expedited historic preservation reviews under section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. Section 306108), HUD strongly encourages grantees to allocate general administration funds to retain a qualified historic preservation professional, and support the capacity of the State Historic Preservation Officer/Tribal Historic Preservation Officer to review CDBG-DR projects. For more information on qualified historic preservation professional qualifications standards see https://www.nps.gov/history/local-law/arch_stnds_9.htm.

f. *Tiered environmental reviews.* HUD strongly encourages grantees as Responsible Entities to develop a Tiered approach to streamline the environmental review process for single family housing programs. Tiering, as defined in 40 CFR 1508.28, is a means of making the environmental review process more efficient by allowing parties to "eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review" (40 CFR 1502.20). Tiering is appropriate when a Responsible Entity is evaluating a single-family housing program with similar activities within a defined local geographic area and timeframe (*e.g.*, rehabilitating single-family homes within a city district or county over the course of 1 to 5 years) but where the specific sites and activities are not yet known.

A tiered review consists of two stages: A broad-level review and subsequent site-specific reviews. The broad-level review should identify and evaluate the issues that can be fully addressed and resolved, notwithstanding possible limited knowledge of the project. In addition, it must establish the standards, constraints, and processes to be followed in the site-specific reviews. An 8-Step Decision Making Process for Floodplains and Wetlands, including early and final public notices can be completed on a county-wide basis for single-family housing programs funded through CDBG-DR. As individual sites are selected for review, the site-specific

reviews evaluate the remaining issues based on the policies established in the broad-level review. Together, the broad-level review and all site-specific reviews will collectively comprise a complete environmental review addressing all required elements. Public notice and the Request for Release of Funds (HUD-Form 7015.15) are processed at the broad-level, eliminating the need for publication at the site-specific level. However, funds cannot be spent or committed on a specific site or activity until the site-specific review have been completed for the site.

25. *Duplication of benefits.* Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which such person, business concern, or other entity has received financial assistance under any other program or from insurance or any other source. To comply with Section 312, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met. Grantees are subject to the requirements of a separate notice explaining the duplication of benefit requirements, entitled "Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees" (76 FR 71060, published November 16, 2011).

26. *Procurement.* State grantees must comply with the procurement requirements at 24 CFR 570.489(g) and evaluate the cost or price of the product or service. State grantees shall establish requirements for procurement policies and procedures for local governments and subrecipients based on full and open competition consistent with the requirements of 24 CFR 570.489(g), and shall require an evaluation of the cost or price of the product or service. Additionally, if the State agency designated as the administering agency chooses to provide funding to another State agency, the administering agency may specify in its procurement policies and procedures whether the agency implementing the program must follow the procurement policies and procedures that the administering agency is subject to, or whether the agency must follow the same policies and procedures to which other local governments and subrecipients are subject.

HUD may request periodic updates from any grantee that uses contractors. A contractor is a third-party person or

organization from which the grantee acquires good or services through a procurement process, consistent with the procurement requirements in the CDBG program regulations. HUD is establishing an additional alternative requirement for *all* contracts with contractors used to provide discrete services or deliverables only, as follows:

a. The grantee (or procuring entity) is required to clearly state the period of performance or date of completion in all contracts;

b. The grantee (or procuring entity) must incorporate performance requirements and liquidated damages into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to this requirement; and

c. The grantee (or procuring entity) may contract for administrative support but may not delegate or contract to any other party any inherently governmental responsibilities related to management of the grant, such as oversight, policy development, monitoring, internal auditing, and financial management. Technical assistance resources for procurement are available to grantees either through HUD staff or through technical assistance providers engaged by HUD or a grantee.

27. *Public website.* HUD is requiring each grantee to maintain a public website that provides information accounting for how all grant funds are used and managed/administered. The creation and maintenance of the public website is one component of the Department's certification of a grantee's proficient financial controls and procurement processes and adequate procedures for proper grants management as provided in paragraph A.1.a of section VI. of this notice. To meet this requirement, each grantee must make the following items available on its website: The action plan (including all amendments); the current approved DRGR action plan; each QPR (as created using the DRGR system); citizen participation requirements; procurement policies and procedures; description of services or goods currently being procured by the grantee; a copy of contracts the grantee has procured directly; and a summary of all procured contracts, including those procured by the grantee, recipients, or subrecipients (*e.g.*, a summary list of procurements, the phase of the procurement, requirements for proposals, and any liquidation of damages associated with a contractor's failure or inability to implement the contract, etc.). The grantee should post only contracts as defined in 24 CFR 200.22. To assist grantees in preparing

the procurement summary, HUD has developed a template (the Contract Reporting Template). The template can be accessed at: <https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>. Each grantee is required to use this template and attach an updated version to the DRGR system each quarter as part of its QPR submissions. Updated summaries must also be posted monthly on each grantee's website.

28. *Timely distribution of funds.* The Appropriations Act, as amended, requires that funds provided under the Act be expended within two years of the date that HUD obligates funds to a grantee and authorizes the Office of Management and Budget (OMB) to provide a waiver of this requirement. In the absence of a waiver for this requirement, each grantee is required to expend all obligated funds within two years of HUD's execution of the grant agreement or amended grant agreement that obligates those funds. In addition, the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution and expenditure of funds are waived and an alternative requirement established, providing that each grantee must also expend 100 percent of its allocation of CDBG-DR funds on eligible activities within 6 years of HUD's execution of the initial grant agreement.

29. *Review of continuing capacity to carry out CDBG-funded activities in a timely manner.* If HUD determines that the grantee has not carried out its CDBG-DR activities and certifications in accordance with the requirements in this notice, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken, and the success or likely success of such actions, and apply the corrective and remedial actions specified in paragraph A.30 (below) of section VI of this notice.

30. *Corrective and remedial actions.* To ensure compliance with the requirements of the Appropriations Act and to effectively administer the CDBG-DR program in a manner that facilitates recovery, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for States in accordance with the

authorities applicable to entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. In response to a deficiency, HUD may issue a warning letter followed by a corrective action plan that may include a management plan which assigns responsibility for further administration of the grant to specific entities or persons. Failure to comply with a corrective action may result in the termination, reduction or limitation of payments to grantees receiving funds under this notice.

31. *Reduction, withdrawal, or adjustment of a grant, or other appropriate action.* Prior to a reduction, withdrawal, or adjustment of a CDBG-DR grant, or other actions taken pursuant to this section, the recipient shall be notified of the proposed action and be given an opportunity for an informal consultation. Consistent with the procedures described in this notice, the Department may adjust, reduce, or withdraw the CDBG-DR grant or take other actions as appropriate, except for funds that have been expended for eligible, approved activities.

B. Housing and Related Floodplain Issues

32. *Housing-related eligibility waivers.* The broadening of eligible activities under the HCD Act is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case of the disasters eligible under this notice.

Therefore, 42 U.S.C. 5305(a)(24)(A) and (D) is waived to the extent necessary to allow: (1) Homeownership assistance for households earning up to 120 percent of the area median income; and (2) down payment assistance for up to 100 percent of the down payment. While homeownership assistance may be provided to households earning up to 120 percent of the area median income, only those funds used for households with up to 80 percent of the area median income may qualify as meeting the low- and moderate-income person benefit national objective.

In addition, 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) is waived and alternative requirements adopted to the extent necessary to permit new housing construction, and to require the following construction standards on structures constructed or rehabilitated with CDBG-DR funds as part of activities eligible under 42 U.S.C. 5305(a). All references to "substantial damage" and "substantial

improvement" shall be as defined in 44 CFR 59.1 unless otherwise noted.

a. *Green Building Standard for Replacement and New Construction of Residential Housing.* Grantees must meet the Green Building Standard in this subparagraph for: (i) All new construction of residential buildings and (ii) all replacement of substantially damaged residential buildings. Replacement of residential buildings may include reconstruction (*i.e.*, demolishing and rebuilding a housing unit on the same lot in substantially the same manner) and may include changes to structural elements such as flooring systems, columns, or load bearing interior or exterior walls.

b. *Meaning of Green Building Standard.* For purposes of this notice, the Green Building Standard means the grantee will require that all construction covered by subparagraph a, above, meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High-Rise), (ii) Enterprise Green Communities, (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC-700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite), or (vi) any other equivalent comprehensive green building program acceptable to HUD. Grantees must identify which Green Building Standard will be used in the program policies and procedures.

c. *Standards for rehabilitation of nonsubstantially damaged residential buildings.* For rehabilitation other than that described in subparagraph a, above, grantees must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available at <https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-building-checklist/>. Grantees must apply these guidelines to the extent applicable to the rehabilitation work undertaken, including the use of mold resistant products when replacing surfaces such as drywall. When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances. For example, if the furnace, air conditioner, windows, and appliances are replaced, the replacements must be ENERGY STAR-labeled or FEMP-designated products; WaterSense-labeled products (*e.g.*, faucets, toilets, showerheads) must be used when water products are replaced. Rehabilitated housing may

also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).

d. *Implementation of green building standards.* (i) For construction projects completed, underway, or under contract prior to the date that assistance is approved for the project, the grantee is encouraged to apply the applicable standards to the extent feasible, but the Green Building Standard is not required. (ii) For specific required equipment or materials for which an ENERGY STAR- or WaterSense-labeled or FEMP-designated product does not exist, the requirement to use such products does not apply.

e. *Elevation standards for new construction, repair of substantial damage, or substantial improvement.* The following elevation standards apply to new construction, repair of substantial damage, or substantial improvement of structures located in an area delineated as a flood hazard area or equivalent in FEMA's data source identified in 24 CFR 55.2(b)(1). All structures, defined at 44 CFR 59.1, designed principally for residential use and located in the 100-year (or 1 percent annual chance) floodplain that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the base flood elevation. Mixed-use structures with no dwelling units and no residents below two feet above base flood elevation, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation. Please note that grantees should review the UFAS accessibility checklist available at <https://www.hudexchange.info/resource/796/ufas-accessibility-checklist/> and the HUD Deeming Notice, 79 FR 29671 (May 23, 2014) to ensure that these structures comply with accessibility requirements.

All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Critical Actions are defined as an "activity for which even a slight

chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property." For example, Critical Actions include hospitals, nursing homes, police stations, fire stations and principal utility lines.

Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, must be followed.

f. *Broadband infrastructure in housing.* Any substantial rehabilitation, as defined by 24 CFR 5.100, or new construction of a building with more than four rental units must include installation of broadband infrastructure, except where the grantee documents that: (a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (b) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (c) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

g. *Resilient Home Construction Standard.* Grantees are strongly encouraged to incorporate a Resilient Home Construction Standard, meaning that all construction covered by subparagraph (a) meet an industry-recognized standard such as those set by the FORTIFIED Home™ Gold level for new construction of single-family, detached homes; and FORTIFIED Home™ Silver level for reconstruction of the roof, windows and doors; or FORTIFIED Home™ Bronze level for repair or reconstruction of the roof; or any other equivalent comprehensive resilient or disaster resistant building program. Further, grantees are strongly encouraged to meet the FORTIFIED Home™ Bronze level standard for roof repair or reconstruction, for all construction covered under subparagraph B.32.c. FORTIFIED Home™ is a risk-reduction program providing construction standards for new homes and retrofit standards for existing homes, which will increase a home's resilience to natural hazards, including high wind, hail, and tropical storms. Insurers can provide discounts for homeowner's insurance for properties certified as FORTIFIED. Grantees should advise property owners to contact their insurance agent for current information on what discounts may be available. More information is also available at: [https://](https://disastersafety.org/fortified/fortified-home/)

disastersafety.org/fortified/fortified-home/.

33. *Addressing Unmet Public Housing Needs.* The grantee must identify in its action plan how it will address the rehabilitation, mitigation, and new construction needs of each disaster-impacted PHA within its jurisdiction, if applicable. The grantee must work directly with impacted PHAs in identifying necessary and reasonable costs and ensure that adequate funding from all available sources, including CDBG-DR grant funds, are dedicated to addressing the unmet needs of damaged public housing (e.g., FEMA, insurance, and funds available from programs administered by HUD's Office of Public and Indian Housing). In the rehabilitation, reconstruction and replacement of public housing provided for in the action plan pursuant to paragraph A.2.a.3 of section VI of this notice, each grantee must identify funding to specifically address the unmet needs described in this subparagraph.

34. *Addressing Unmet Affordable Rental Housing Needs.* The grantee must identify in its action plan how it will address the rehabilitation, reconstruction, replacement, and new construction rental housing that is affordable to low- and moderate-income households in the most impacted and distressed areas and ensure that adequate funding from all available sources, including CDBG-DR grant funds, are dedicated to addressing the unmet needs identified in its action plan pursuant to paragraph A.2.a.3 of section VI of this notice. To meet the low-moderate housing national objective, affordable rental housing funded under this notice must be rented to a low- and moderate-income person at affordable rents. The grantee must impose a minimum affordability period of twenty (20) years enforced with recorded use restrictions or other mechanisms to ensure that rental housing remains affordable for the required period of time. The action plan must, at a minimum, provide (1) a definition of "affordable rents"; (2) the income limits for tenants of rental housing; (3) and minimum affordability period of twenty (20) years.

35. *Housing incentives in disaster-affected communities.* Incentive payments are generally offered in addition to other programs or funding (such as insurance), to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan. For example, a grantee may offer an incentive payment (possibly in addition

to a buyout payment) for households that volunteer to relocate outside of floodplain or to a lower-risk area.

Therefore, 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to allow the provision of housing incentives. These grantees must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable, and the incentives must be in accordance with the grantee's approved action plan and published program design(s). This waiver does not permit a compensation program. Additionally, a grantee may require the housing incentive to be used for a particular purpose by the household receiving the assistance.

In undertaking a larger scale migration or relocation recovery effort that is intended to move households out of high-risk areas, the grantee should consider how it can protect and sustain the impacted community and its assets. Grantees must also weigh the benefits and costs, including anticipated insurance costs, of redeveloping high-risk areas that were impacted by a disaster. Accordingly, grantees are prohibited from offering incentives to return households to disaster-impacted floodplains, unless the grantee can demonstrate to HUD how it will resettle such areas in a way that mitigates the risks of future disasters and increasing insurance costs resulting from continued occupation of high-risk areas, through mechanisms that can reduce risks and insurance costs, such as new land use development plans, building codes or construction requirements, protective infrastructure development, or through restrictions on future disaster assistance to such properties.

When undertaking housing incentive activities, to demonstrate that an incentive meets the low- and moderate-income housing national objective, grantees must meet all requirements of the HCD Act and the criteria for the Low/Mod Housing Incentive (LMHI) national objectives for the use of housing incentives as described in paragraph B.38 of section VI.

36. *Limitation on emergency grant payments – interim mortgage assistance.* 42 U.S.C. 5305(a)(8), 24 CFR 570.207(b)(4), and 24 CFR 1003.207(b)(4) are modified to the extent necessary to extend interim mortgage assistance to qualified individuals from 3 months to up to 20 months. Interim mortgage assistance is typically used in conjunction with a buyout program, or when the rehabilitation or reconstruction of single-family housing extends beyond 3

months, during which mortgage payments may be due but the home is uninhabitable. Thus, this interim assistance will be critical for many households facing financial hardship during this period. Grantees may use interim housing mortgage assistance payments along with rehabilitation/reconstruction assistance to expedite recovery assistance to homeowners, but must establish performance milestones for the rehabilitation/reconstruction that are to be met by the homeowner in order to receive the interim mortgage assistance payments. A grantee using this alternative requirement must document, in its policies and procedures, how it will determine the amount of assistance to be provided is necessary and reasonable.

37. *Acquisition of real property; flood and other buyouts.* Grantees under this notice are able to carry out property acquisition for a variety of purposes. However, the term “buyouts” as referenced in this notice refers to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding or the acquisition of properties in Disaster Risk Reduction Areas as designated by the grantee and defined below. HUD is providing alternative requirements for consistency with the application of other Federal resources commonly used for this type of activity.

Grantees are encouraged to use buyouts strategically, as a means of acquiring contiguous parcels of land for uses compatible with open space, recreational, natural floodplain functions, other ecosystem restoration, or wetlands management practices. To the maximum extent practicable, grantees should avoid circumstances in which parcels that could not be acquired through a buyout remain alongside parcels that have been acquired through the grantee’s buyout program. Grantees are reminded that real property acquisition with CDBG-DR funding, including buyout, is subject to the URA, including the real property acquisitions requirements at 49 CFR part 24, subpart B, as modified at paragraph A.23 of section VI of this notice.

a. Clarification of “Buyout” and “Real Property Acquisition” activities.

Grantees that choose to undertake a buyout program have the discretion to determine the appropriate valuation method, including paying either pre-disaster or post-disaster fair market value (FMV). In most cases, a program that provides pre-disaster FMV to buyout applicants provides compensation at an amount greater than the post-disaster FMV. When the

purchase price exceeds the current FMV, any CDBG-DR funds in excess of the FMV are considered assistance to the seller, thus making the seller a beneficiary of CDBG-DR assistance. If the seller receives assistance as part of the purchase price, this may have implications for duplication of benefits calculations or for demonstrating national objective criteria, as discussed below. However, a program that provides *post*-disaster FMV to buyout applicants merely provides the actual value of the property; thus, the seller is not considered a beneficiary of CDBG-DR assistance.

Regardless of purchase price, all buyout activities are a type of acquisition of real property (as permitted by 42 U.S.C. 5305(a)(1)). However, only acquisitions that meet the definition of a “buyout” are subject to the post-acquisition land use restrictions imposed by this notice (subparagraph b. below). The key factor in determining whether the acquisition is a buyout is whether the intent of the purchase is to reduce risk of property damage in a floodplain or a Disaster Risk Reduction Area. To conduct a buyout in a Disaster Risk Reduction Area, the grantee must establish criteria in its policies and procedures to designate the area subject to the buyout, pursuant to the following requirements: (1) The hazard must have been caused or exacerbated by the Presidentially declared disaster for which the grantee received its CDBG-DR allocation; (2) the hazard must be a predictable environmental threat to the safety and well-being of program beneficiaries, as evidenced by the best available data (e.g. FEMA Repetitive Loss Data) and science; and (3) the Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

The distinction between buyouts and other types of acquisitions is important, because grantees may only redevelop an acquired property if the property is *not* acquired through a buyout program (i.e., the purpose of acquisition was something other than risk reduction). When acquisitions are not acquired through a buyout program, the purchase price must be consistent with applicable uniform cost principles (and the pre-disaster FMV may not be used).

b. Buyout requirements:

(1) Any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.

(2) No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than: (a) A public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (b) a rest room; or (c) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream and that the local floodplain manager approves, in writing, before the commencement of the construction of the structure.

(3) After receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or relocation program, no subsequent application for additional disaster assistance for any purpose or to repair damage or make improvements of any sort will be made by the owner of the buyout property (including subsequent owners) to any Federal entity in perpetuity.

The entity acquiring the property may lease it to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may also be sold.

In all cases, a deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses in perpetuity.

(4) Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value or post-flood value as a basis for property value). However, in using CDBG-DR funds for buyouts, the grantee must uniformly apply whichever valuation method it chooses.

(5) All buyout activities must be classified using the “buyout” activity type in the DRGR system.

(6) Any State grantee implementing a buyout program or activity must consult with affected local governments.

(7) When undertaking buyout activities, to demonstrate that a buyout meets the low- and moderate-income housing national objective, grantees must meet all requirements of the HCD Act and applicable regulatory criteria described below. Grantees are encouraged to consult with HUD prior to undertaking a buyout program with the intent of using the low- and moderate-income housing (LMH) national objective. 42 U.S.C. 5305(c)(3) provides that any assisted activity that involves the acquisition or

rehabilitation of property to provide housing shall be considered to benefit persons of low- and moderate-income only to the extent such housing will, upon completion, be occupied by such persons. In addition, the State CDBG regulations at 24 CFR 570.483(b)(3), entitlement CDBG regulations at 24 CFR 570.208(a)(3), and Indian CDBG regulations at 24 CFR 1003.208(c) apply the LMH national objective to an eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low- and moderate-income households. Therefore, a buyout program that merely pays homeowners to leave their existing homes does not result in a low- and moderate-income household occupying a residential structure and, thus, cannot meet the requirements of the LMH national objective. Buyout programs that assist low- and moderate-income persons can be structured in one of the following ways:

(a) The buyout program combines the acquisition of properties with another direct benefit—Low- and Moderate-Income housing activity, such as down payment assistance—that results in occupancy and otherwise meets the applicable LMH national objective criteria;

(b) The program meets the low- and moderate-income area benefit criteria as defined in this notice, to demonstrate national objective compliance, provided that the grantee can document that the properties acquired through buyouts will be used in a way that benefits all of the residents in a particular area where at least 51 percent of the residents are low- and moderate-income persons. When using the area benefit approach, grantees must define the service area based on the end use of the buyout properties; or

(c) The program meets the criteria for the low- and moderate-income limited clientele national objective, including the prohibition on the use of the limited clientele national objective when an activity's benefits are available to all residents of the area. A buyout program could meet the national objective criteria for the limited clientele national objective if it restricts buyout program eligibility to exclusively low- and moderate-income persons, and the buyout provides an actual benefit to the low- and moderate-income sellers by providing pre-disaster valuation uniformly to those who participate in the program.

(d) The program meets the criteria for the Low/Mod Buyout (LMB) or Low/Mod Housing Incentive (LMHI) national objectives for buyouts and the use of

housing incentives as authorized in the Department's August 7, 2017 **Federal Register** notice at 82 FR 36825 and described in paragraph B.38 of section VI in this notice.

c. Redevelopment of acquired properties.

(1) Grantees may redevelop an acquired property if the property is not acquired through a buyout program and the purchase price is based on the property's post-disaster value, consistent with applicable cost principles (the pre-disaster value may not be used). In addition to the purchase price, grantees may opt to provide relocation assistance or housing incentives to the owner of a property that will be redeveloped if the property is purchased by the grantee or subrecipient through voluntary acquisition, and the owner's need for additional assistance is documented.

(2) In carrying out acquisition activities, grantees must ensure they are in compliance with their long-term redevelopment plans.

38. Additional LMI National Objective Criteria for Buyouts and Housing Incentives.

In this notice, HUD is establishing an alternative requirement to clarify the criteria under which buyout activities and housing incentives can meet an LMI national objective. Grantees authorized to use housing incentives in this notice must follow guidelines outlined in paragraph 35 of section VI of this notice. The CDBG regulations limit activities that meet the LMI national objective to only the activities meeting the four established criteria in 24 CFR 570.208(a)(1) through (4) and 570.483(b)(1) through (4). Prior **Federal Register** notices have advised grantees of the criteria under which a buyout activity can meet a LMI housing (LMH) national objective (80 FR 72102). Notwithstanding that guidance, however, HUD has determined that providing CDBG-DR grantees with an additional method to demonstrate how buyouts and housing incentives can assist LMI households, beyond those described in the previous notices, will ensure that grantees and HUD can account for and assess the benefit that CDBG-DR assistance may have on LMI households when buyouts and housing incentives are used in long term recovery. Given the primary objective of the HCD Act to assist low- and moderate income persons, the Secretary has determined that there is good cause to establish an alternative requirement under which CDBG-DR grantees are authorized to qualify the assistance provided to LMI persons through buyout and housing incentive programs, due to the benefits received by the

individuals that receive buyout and housing incentive awards that allow them to move from areas that are likely to be affected by future disasters.

In addition to the existing criteria at 24 CFR 570.208(a)(1)-(4) and 570.483(b)(1)-(4), HUD is establishing an alternative requirement to include the two new LMI national objective criteria for buyouts (LMB) and housing incentives (LMHI) that benefit LMI households that use CDBG-DR funding provided pursuant to this notice.

For a buyout award or housing incentive to meet the new LMB and LMHI national objectives, grantees must demonstrate the following:

(1) The CDBG-DR funds have been provided for an eligible activity that benefits LMI households supporting their move from high risk areas. The following activities shall qualify under this criterion, and must also meet the eligibility criteria of the notices governing the use of the CDBG-DR funds:

(a) Low/Mod Buyout (LMB). When CDBG-DR funds are used for a buyout award to acquire housing owned by a qualifying LMI household, where the award amount (including optional relocation assistance) is greater than the post-disaster (current) fair market value of that property.

(b) Low/Mod Housing Incentive (LMHI). When CDBG-DR funds are used for a housing incentive award, tied to the voluntary buyout or other voluntary acquisition of housing owned by a qualifying LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.

(2) Activities that meet the above criteria will be considered to benefit low and moderate-income persons unless there is substantial evidence to the contrary. Any activities that meet the newly established national objective criteria described above will count towards the calculation of a CDBG-DR grantee's overall LMI benefit.

39. Alternative requirement for housing rehabilitation – assistance for second homes. The Department is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a)(4) as follows: Properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance or housing incentives. A second home is defined under this notice as a home that is not the primary

residence of the owner, a tenant, or any occupant at the time of the storm or at the time of application for assistance. Grantees may adopt policies and procedures that provide for limited exceptions to providing assistance to a second home in order to meet specific disaster recovery needs (e.g., adding affordable housing capacity); provided however that such exceptions are developed in consultation with and approved by HUD prior to implementation. Grantees can verify a primary residence using a variety of documentation including, but not limited to, voter registration cards, tax returns, homestead exemptions, driver's licenses and rental agreements.

40. *Flood insurance.* Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, prior to providing assistance. For additional information, please consult with the field environmental officer in the local HUD field office or review the guidance on flood insurance requirements on HUD's website.

a. *Flood insurance purchase requirements.* HUD does not prohibit the use of CDBG-DR funds for existing residential buildings in a Special Flood Hazard Area (or 100-year floodplain). However, Federal, State, local, and tribal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner of a property located in a Special Flood Hazard Area must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for any HUD-assisted property within a Special Flood Hazard Area. HUD strongly recommends the purchase of flood insurance *outside* of a Special Flood Hazard Area for properties that have been damaged by a flood, to better protect property owners from the economic risks of future floods and reduce dependence on Federal disaster assistance in the future, but this is not a requirement.

b. *Federal assistance to owners remaining in a floodplain.*

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance

made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. This means that a grantee may not provide disaster assistance for the repair, replacement, or restoration of a property to a person who has failed to meet this requirement and must implement a process to check and monitor for compliance.

(2) The Department is instituting an alternative requirement to 42 U.S.C. 5305(a)(4) as follows: Grantees receiving funds under this notice are prohibited from providing CDBG-DR assistance for the rehabilitation/reconstruction of a house, if (a) the combined household income is greater than 120% AMI or the national median, (b) the property was located in a floodplain at the time of the disaster, and (c) the property owner did not maintain flood insurance on the damaged property, even when the property owner was not required to obtain and maintain such insurance. When a homeowner located in the floodplain allows their flood insurance policy to lapse, it is assumed that the homeowner is unable to afford insurance and/or is accepting responsibility for future flood damage to the home. HUD is establishing this alternative requirement to ensure that adequate recovery resources are available to assist lower income homeowners who reside in a floodplain but who are unlikely to be able to afford flood insurance. Higher income homeowners who reside in a floodplain, but who failed to secure or decided to not maintain their flood insurance, should not be assisted at the expense of those lower income households. Therefore, a grantee may only provide assistance for the rehabilitation/reconstruction of a house located in a floodplain if: (a) The homeowner had flood insurance at the time of the qualifying disaster and still has unmet recovery needs; or (b) the household earns less than the greater of 120% AMI or the national median and has unmet recovery needs.

(3) Section 582 also imposes a responsibility on a grantee that receives CDBG-DR funds or that designates annually appropriated CDBG funds for disaster recovery. That responsibility is

to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance in writing and to maintain such written notification in the documents evidencing the transfer of the property, and that the transferring owner may be liable if he or she fails to do so. These requirements are enumerated at <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section5154a&num=0&edition=prelim>.

C. *Infrastructure (Public Facilities, Public Improvements)*

41. *Elevation of Nonresidential Structures.* Nonresidential structures must be elevated to the standards described in this paragraph or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 100-year (or 1 percent annual chance) floodplain. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Critical Actions are defined as an "activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property." For example, Critical Actions include hospitals, nursing homes, police stations, fire stations and principal utility lines.

Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, will be followed.

42. *Use of CDBG-DR as Match.* As provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity. This includes programs or activities administered by the FEMA or USACE. By law, (codified in the HCD Act as a note to 105(a)), the amount of CDBG-DR funds that may be contributed to a USACE project is \$250,000 or less. Note that the Appropriations Act prohibits the use of CDBG-DR funds for any

activity reimbursable by, or for which funds are also made available by FEMA or USACE.

43. *Requirements for flood control structures.* Grantees that use CDBG–DR funds to assist flood control structures (*i.e.*, dams and levees) are prohibited from using CDBG–DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed prior to the disaster event. Grantees that use CDBG–DR funds for levees and dams are required to: (1) Register and maintain entries regarding such structures with the U.S. Army Corps of Engineers National Levee Database or National Inventory of Dams; (2) ensure that the structure is admitted in the U.S. Army Corps of Engineers PL 84–99 Rehabilitation Program (Rehabilitation Assistance for Non-Federal Flood Control Projects); (3) ensure the structure is accredited under the FEMA National Flood Insurance Program; (4) enter into DRGR system the exact location of the structure and the area served and protected by the structure; and (5) maintain file documentation demonstrating that the grantee has conducted a risk assessment prior to funding the flood control structure and documentation that the investment includes risk reduction measures.

D. Economic Revitalization

44. *National Objective Documentation for Economic Development Activities.* 24 CFR 570.483(b)(4)(i), 24 CFR 570.506(b)(5), and 24 CFR 1003.208(d) are waived to allow the grantees under this notice to identify the low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement—in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (*i.e.*, the number of persons). Thus, it streamlines the documentation process because it allows the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

45. *Public benefit for certain Economic Development activities.* The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the aggregate. Currently, public benefit standards limit

the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds were set two decades ago and can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

This notice waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f), 24 CFR 570.209(b) and (d), and 24 CFR 1003.302(c) for only those economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects). However, grantees shall collect and maintain documentation in the project file on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; and the types of jobs. Additionally, grantees shall report the total number of jobs created and retained and the applicable national objective in the DRGR system. Paragraph (g) of 24 CFR 570.482 is also waived to the extent these provisions are related to public benefit.

46. *Clarifying note on Section 3 resident eligibility and documentation requirements.* The definition of “low-income persons” in 12 U.S.C. 1701u and 24 CFR 135.5 is the basis for eligibility as a section 3 resident. A section 3 resident means: (1) A public housing resident; or (2) an individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is: (i) A low-income person or (ii) a very-low-income person. This notice authorizes grantees to determine that an individual is eligible to be considered a section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction. This authority does not impact other section 3 resident eligibility requirements in 24 CFR 135.5. All direct recipients of CDBG–DR funding must submit form HUD–60002 annually through the Section 3 Performance Evaluation and Registry System (SPEARS) which can be found on HUD's website: https://www.hud.gov/program_offices/fair_housing_equal_opp/section3/section3/spears.

47. *Waiver and modification of the job relocation clause to permit assistance to help a business return.* CDBG requirements prevent program participants from providing assistance

to a business to relocate from one labor market area to another if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, 24 CFR 570.482, and 24 CFR 1003.209 are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another State or to a labor market area within the same State to continue business.

48. *Prioritizing small businesses.* To target assistance to small businesses, the Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) to require grantees to prioritize assisting businesses that meet the definition of a small business as defined by SBA at 13 CFR part 121 or, for businesses engaged in “farming operations” as defined at 7 CFR 1400.3, and that meet the United States Department of Agriculture Farm Service Agency (FSA), criteria that are described at 7 CFR 1400.500, which are used by the FSA to determine eligibility for certain assistance programs. With regard to assistance to businesses engaged in “farming operations,” grantees are advised that in its allocation methodology HUD does not account for crop loss and other agricultural losses in its determination of unmet economic need. Accordingly, HUD advises grantees to pursue sources of assistance other than CDBG–DR funds in order to address needs arising from crop loss or other agricultural losses attributable to the disaster.

49. *Clarifying note on the provision of “working capital” grants and loans to businesses.* Grantees may provide many forms of assistance to businesses under the provisions of 105(a)(17) of the HCD Act, including “working capital.” In past recovery efforts, grantees have inquired as to how a business's working capital needs should be calculated. Working capital is one facet of a business's need after a disaster; it is not, however, the vehicle by which to fund all of a business's unmet needs. In its simplest form, working capital is defined as “Current Assets minus Current Liabilities” on the business's balance sheet. In other words, working capital is the amount of cash needed to fund one year's worth of liabilities (*i.e.*, one year's worth of mortgage payments and other debt, tax and utilities, yearly wages, and accounts payable) after

subtracting other current assets such as inventory and accounts receivable. Working capital does not include any expense for any form of construction or expansion of existing facilities, whether “hard” or “soft” costs. Therefore, grantees should not include expenses for construction or expansion of existing facilities in any calculation involving working capital, unless the grantee intends to provide a comprehensive assistance package that is subject to the environmental review requirements of 24 CFR part 58. The provision of working capital constitutes an economic development activity under 24 CFR 58.35(b)(4) and may provide operating costs under 24 CFR 58.35(b)(3) and therefore, per 24 CFR 55.12(c)(1), are not subject to Part 55 unless it includes expenses for construction or expansion of existing facilities. A grantee’s environmental review record must document the determination of this exclusion from environmental review.

50. *Prohibiting assistance to private utilities.* Funds made available under this notice may not be used to assist a privately-owned utility for any purpose.

E. Certifications and Collection of Information

51. *Certifications waiver and alternative requirement.* 24 CFR 91.225 and 91.325 are waived. Each grantee receiving a direct allocation under this notice must make the following certifications with its action plan:

a. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.

b. The grantee certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

c. The grantee certifies that the action plan for disaster recovery is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG-DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this notice. The grantee certifies that activities to be undertaken with funds under this notice are consistent with its action plan.

d. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers

or alternative requirements are provided for in this notice.

e. The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

f. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each local government receiving assistance from a State grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

g. State grantee certifies that it has consulted with affected local governments in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the uses of funds, including the method of distribution of funding, or activities carried out directly by the State.

h. The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely 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 for which the President declared a major disaster in 2016 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*).

(2) With respect to activities expected to be assisted with CDBG-DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

(3) The aggregate use of CDBG-DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent (or another percentage permitted by HUD in a waiver published in an applicable **Federal Register** notice) of the grant amount is expended for activities that benefit such persons.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG-DR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) Disaster

recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

i. The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations, and that it will affirmatively further fair housing.

j. The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, must certify that they will require local governments that receive grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

(2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

k. The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and that the grantee has reviewed the requirements of this notice. The grantee certifies to the accuracy of its Public Law 115–56 Financial Management and Grant Compliance certification checklist, or other recent certification submission, if approved by HUD, and related supporting documentation referenced at A.1.a. under section VI and its Implementation Plan and Capacity Assessment and related submissions to HUD referenced at A.1.b. under section VI.

l. The grantee certifies that it will not use CDBG-DR funds for any activity in an area identified as flood prone for land use or hazard mitigation planning purposes by the State, local, or tribal government or delineated as a Special Flood Hazard Area (or 100-year floodplain) in FEMA’s most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part

55. The relevant data source for this provision is the State, local, and tribal government land use regulations and hazard mitigation plans and the latest-issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

m. The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

n. The grantee certifies that it will comply with environmental requirements at 24 CFR part 58.

o. The grantee certifies that it will comply with applicable laws.

Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.

VII. Duration of Funding

The Appropriations Act, as amended, requires that funds provided under the Act be expended within two years of the date that HUD obligates funds to a grantee. The Act as amended further authorizes the Office of Management and Budget (OMB) to provide a waiver of this requirement. This notice also requires each grantee to expend 100 percent of its allocation of CDBG-DR funds on eligible activities within 6 years of HUD's initial obligation of funds pursuant to an executed grant agreement. However, in accordance with 31 U.S.C. 1555, HUD shall close the appropriation account and cancel any remaining obligated or unobligated balance if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for two consecutive fiscal years. In such case, the funds shall not be available for obligation or expenditure for any purpose after the account is closed.

VIII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.228 for State CDBG grantees.

IX. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for

public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Dated: February 2, 2018.

Neal J. Rackleff,
Assistant Secretary.

Appendix A – Allocation of CDBG-DR Funds to Most Impacted and Distressed Areas Due to 2017 Federally Declared Disasters

Background

The Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115-56) appropriated \$7,400,000,000 through the Community Development Block Grant disaster recovery (CDBG-DR) program for necessary expenses for authorized activities 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 in 2017, specifically:

For an additional amount for “Community Development Fund”, \$7,400,000,000 . . . , 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 in 2017 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*): Provided, That funds shall be awarded directly to the State or unit of general local government at the discretion of the Secretary: . . . Provided further, That such funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers: . . .

It should be noted that the language of Public Law 115-56 permits HUD to deduct up to \$10 million from the \$7.4 billion for purposes of administration and oversight of the appropriation. HUD has opted to deduct the full \$10 million, resulting in a total of \$7.39 billion available for allocation.

Most Impacted and Distressed Areas

As with prior CDBG-DR appropriations, HUD is not obligated to allocate funds for all major disasters declared in 2017. HUD is directed to use the funds “in the most impacted and distressed areas.” HUD has implemented this directive by limiting CDBG-DR formula allocations to jurisdictions with major disasters that meet two standards:

(1) Individual Assistance/IHP designation. HUD has limited allocations to those disasters where FEMA had determined the damage was sufficient to declare the disaster as eligible to receive Individual and Households Program (IHP) funding.

(2) Concentrated damage. HUD has limited the allocations to counties and zip codes with high levels of damage, collectively referred to as “most impacted areas”. For this allocation, HUD is using the amount of serious unmet housing need as its measure of concentrated damage and limits the data used for the allocation only to counties exceeding a “natural break” in the data for their total amount of serious unmet housing needs. For purposes of this allocation, the serious unmet housing needs break occurs at \$16 million at the county level and \$3.5 million for Zip Codes for Texas and Florida and \$10 million for counties and \$2 million for Zip Codes for the Commonwealth of Puerto Rico (Puerto Rico) and the United States Virgin Islands (Virgin Islands). The calculation for serious unmet housing needs are described below.

These allocations are thus based on the unmet costs to repair seriously damaged properties in most impacted areas. These do not capture expected resiliency costs, although grantees may choose to use the CDBG funds for resiliency expenses. The estimated damage is based on the following factors:

(1) Repair estimates for seriously damaged owner-occupied units without insurance (with some exceptions) in most impacted areas after FEMA and SBA repair grants or loans;

(2) Repair estimates for seriously damaged rental units occupied by renters with income less than 50% of Area Median Income in most impacted areas; and

(3) Repair and content loss estimates for small businesses with serious damage denied by SBA.

Methods for Estimating Unmet Needs for Housing

The data HUD staff have identified as being available to calculate unmet needs for qualifying disasters come from the FEMA Individual Assistance program data on housing-unit damage as of November 8, 2017 for Texas and Florida and as of December 22, 2017 for Puerto Rico and the Virgin Islands.

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA's Individual Assistance program, and supplemented by SBA data from its Disaster Loan Program. HUD calculates “unmet housing needs” as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA and SBA.

For the continental U.S., HUD finds its traditional approach of just using real property damage assessments for owner-occupied units continues to be effective. Each of the FEMA inspected owner units are categorized by HUD into one of five categories:

- *Minor-Low:* Less than \$3,000 of FEMA inspected real property damage

- *Minor-High*: \$3,000 to \$7,999 of FEMA inspected real property damage
- *Major-Low*: \$8,000 to \$14,999 of FEMA inspected real property damage and/or 1 to 4 feet of flooding on the first floor
- *Major-High*: \$15,000 to \$28,800 of FEMA inspected real property damage and/or 4 to 6 feet of flooding on the first floor
- *Severe*: Greater than \$28,800 of FEMA inspected real property damage or determined destroyed and/or 6 or more feet of flooding on the first floor

For Puerto Rico and the Virgin Islands, owner damage is calculated based on both real property and personal property on findings by HUD that this likely is a more accurate estimate of serious homeowner damage in those areas. For these owner-occupied units, the damage grouping would be the higher damage categorization based on the calculation above or:

- *Minor-Low*: Less than \$2,500 of FEMA inspected personal property damage
- *Minor-High*: \$2,500 to \$3,499 of FEMA inspected personal property damage
- *Major-Low*: \$3,500 to \$4,999 of FEMA inspected personal property damage or 1 to 4 feet of flooding on the first floor
- *Major-High*: \$5,000 to \$8,999 of FEMA inspected personal property damage or 4 to 6 feet of flooding on the first floor
- *Severe*: Greater than \$9,000 of FEMA inspected personal property damage or determined destroyed and/or 6 or more feet of flooding on the first floor

To meet the statutory requirement of “most impacted” in this legislative language, homes are determined to have a most impacted or serious level of damage if they have damage of “major-low” or higher.

Furthermore, a homeowner is determined to have unmet needs if they reported damage and no insurance to cover that damage and was outside the 1% risk flood hazard area. For all disasters, for homeowners inside the flood hazard area, only homeowners without insurance below 120% of Area Median Income are included in the estimated unmet needs.

FEMA does not inspect rental units for real property damage so personal property damage is used as a proxy for unit damage. Each of the FEMA inspected renter units are categorized by HUD into one of five categories:

- *Minor-Low*: Less than \$1,000 of FEMA inspected personal property damage
- *Minor-High*: \$1,000 to \$1,999 of FEMA inspected personal property damage

- *Major-Low*: \$2,000 to \$3,499 of FEMA inspected personal property damage or 1 to 4 feet of flooding on the first floor
- *Major-High*: \$3,500 to \$7,499 of FEMA inspected personal property damage or 4 to 6 feet of flooding on the first floor
- *Severe*: Greater than \$7,500 of FEMA inspected personal property damage or determined destroyed and/or 6 or more feet of flooding on the first floor

For rental properties, to meet the statutory requirement of “most impacted” in this legislative language, homes are determined to have a high level of damage if they have damage of “major-low” or higher. That is, they have a FEMA personal property damage assessment of \$2,000 or greater or flooding over 1 foot.

Furthermore, landlords are presumed to have adequate insurance coverage unless the unit is occupied by a renter with income less than 50% of Area Median Income. Units are occupied by a tenant with income less than 50% of Area Median Income are used to calculate likely unmet needs for affordable rental housing. In Puerto Rico and the Virgin Islands, units are occupied by a tenant with income less than the greater of the Federal poverty level or 50% of Area Median Income are used to calculate likely unmet needs for affordable rental housing.

The average cost to fully repair a home for a specific disaster to code within each of the damage categories noted above is calculated using the average real property damage repair costs determined by the Small Business Administration for its disaster loan program for the subset of homes inspected by both SBA and FEMA for each eligible disaster. Because SBA is inspecting for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally more than the FEMA estimates on the cost to make the home habitable.

For each household determined to have unmet housing needs (as described above), their estimated average unmet housing need less assumed assistance from FEMA and SBA was calculated for Texas as \$58,956 for major damage (low); \$72,961 for major damage (high); and \$102,046 for severe damage. For Florida: \$44,810 for major damage (low); \$45,997 for major damage (high); and \$67,799 for severe damage. For Puerto Rico and the Virgin Islands: \$38,249 for major damage (low); \$41,595 for major damage (high); and \$66,066 for severe damage.

Methods for Estimating Unmet Economic Revitalization Needs

Based on SBA disaster loans to businesses, HUD calculates the median real estate and

content loss by the following damage categories for each state:

- *Category 1*: real estate + content loss = below 12,000
- *Category 2*: real estate + content loss = 12,000–30,000
- *Category 3*: real estate + content loss = 30,000–65,000
- *Category 4*: real estate + content loss = 65,000–150,000
- *Category 5*: real estate + content loss = above 150,000

For properties with real estate and content loss of \$30,000 or more, HUD calculates the estimated amount of unmet needs for small businesses by multiplying the median damage estimates for the categories above by the number of small businesses denied an SBA loan, including those denied a loan prior to inspection due to inadequate credit or income (or a decision had not been made), under the assumption that damage among those denied at pre-inspection have the same distribution of damage as those denied after inspection.

Allocation Calculation

Once eligible entities are identified using the above criteria, the allocation to individual grantees represents their proportional share of the estimated unmet needs. For the formula allocation, HUD calculates total serious unmet recovery needs as the aggregate of:

- Serious unmet housing needs in most impacted counties or county-equivalents
- Serious unmet business needs

For Texas, HUD announced an allocation on November 17, 2017, that reflected the 100% calculation of serious unmet housing and business needs as calculated using the methods above less \$57.8 million allocated from an earlier appropriation. For Florida, HUD announced an allocation on November 28, 2017, that reflected a 100% calculation of serious unmet housing and business needs. Data were not available for Puerto Rico and the Virgin Islands until late December 2017. The remaining funds (\$1.7 billion of \$7.4 billion appropriated) are significantly less than the calculated serious unmet housing and business needs, and thus the allocations are only 57% of the estimated serious unmet housing and business needs for Puerto Rico and the Virgin Islands.

[FR Doc. 2018–02693 Filed 2–7–18; 11:15 am]

BILLING CODE 4210–67–P