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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5989-N-01]

Allocations, Common Application, Waivers, and Alternative Requirements for 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 \$500 million in Community Development Block Grant disaster recovery (CDBG-DR) funds appropriated by the Continuing Appropriations Act, 2017 for the purpose of assisting long-term recovery in Louisiana, Texas and West Virginia. This notice describes applicable waivers and alternative requirements, relevant statutory provisions for grants provided under this notice, the grant award process, criteria for plan approval, and eligible disaster recovery activities. Given the extent of damage to housing in the largest eligible disaster and the very limited data at present on unmet infrastructure and economic revitalization needs, this notice requires each grantee to primarily consider and address its unmet housing recovery needs.

DATES: *Effective Date:* November 28, 2016.

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 7286, 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 telephone numbers are not toll-free.). Email inquiries may be sent to disaster_recovery@hud.gov.

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I. Allocations

Section 145 of the Continuing Appropriations Act, 2017 (Pub. L. 114-223, approved September 29, 2016) (Appropriations Act) makes available \$500 million in Community Development Block Grant (CDBG) 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.) 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 2016 and occurring prior to enactment of the Appropriations Act, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (Stafford Act). Given the extent of damage to housing in the largest eligible disaster and the very limited data at present on unmet infrastructure and economic revitalization needs, HUD is requiring each grantee to primarily consider and address its unmet housing recovery needs. This notice allows grantees to 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 or unit of general local government at the discretion of the Secretary. The Secretary has elected to award funds only to States in this allocation. Unless noted otherwise, the term “grantee” refers to the State receiving a direct award from HUD under this notice. 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 a review of the impacts from these disasters, and estimates of unmet need, HUD is making the following allocations:

TABLE 1—ALLOCATIONS UNDER PUBLIC LAW 114-223

Disaster No.	State	Grantee	Allocation	Minimum amount that must be expended for recovery in the HUD-identified “most impacted” areas
4277, 4263, 4272	Louisiana	State of Louisiana	\$437,800,000	(\$350,240,000) East Baton Rouge, Livingston, Ascension, Tangipahoa, Ouachita, Lafayette (Parishes)
4269, 4266	Texas	State of Texas	\$45,200,000	(\$36,160,000) Harris, Newton, Montgomery (Counties)
4273	West Virginia	State of West Virginia	\$17,000,000	(\$13,600,000) Kanawha, Greenbrier (Counties)
TOTAL			\$500,000,000	

Table 1 also shows the HUD-identified “most impacted and distressed” areas impacted by the disasters that did not receive a direct award. At least 80 percent of the total funds provided within each State under this notice must address unmet needs within the HUD-identified “most impacted and distressed” areas, as identified in the last column in Table 1. Grantees may determine where the remaining 20 percent may be spent by identifying areas it determines to be “most impacted and distressed.” A detailed explanation of HUD’s allocation methodology is provided at Appendix A.

Each grantee receiving an allocation under this notice must submit an action plan for disaster recovery, or “action plan,” no later than 90 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

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. This action plan for disaster recovery must describe uses and activities that: (1) are authorized under title I of the Housing and Community Development Act of 1974 (HCD Act) or allowed by a waiver or alternative requirement published in this notice; and (2) respond to disaster-related impact to infrastructure, housing, and 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.

In accordance with the HCD Act, funds may be used to meet a matching, share, or contribution requirement for any other Federal program when used to carry out an eligible CDBG-DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) and the U.S. Army Corps of Engineers (USACE), among other Federal sources. CDBG-DR funds, however, may not be used for activities reimbursable by or for which funds are made available by FEMA or USACE.

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 execution of the grant agreement.

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 has established adequate procedures to prevent any duplication of benefits as defined by

section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. To provide a basis for the certification, each grantee must submit documentation to the Department demonstrating its compliance with the above requirements. For a complete list of the required certification documentation, see paragraph A.1.a. under section VI of this notice. The certification documentation must be submitted within 60 days of the effective date of this notice, or with the grantee's submission of its action plan, whichever is earlier.

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 and the associated risks they pose through a review of supplemental risk analysis documentation. This notice requires each grantee to submit risk analysis documentation demonstrating that it can effectively manage the funds, ensure timely communication of application status to applicants for disaster recovery assistance, and that it has adequate capacity to manage the funds and address any capacity needs. For a complete listing of the required risk analysis documentation, see paragraph A.1.b. under section VI of this notice. Documentation applicable to the risk analysis must be submitted within 60 days of the effective date of this notice, or with the grantee's submission of its action plan, whichever is earlier.

Additionally, this notice requires grantees to submit to the Department for approval a projection of expenditures and outcomes as part of its action plan. Any subsequent changes, updates or revision of the projections will require the grantee to amend its action plan to reflect

the new projections. This will enable HUD, the public, and the grantee to track planned versus actual performance.

Grantees must also enter expected completion dates for each activity in HUD's Disaster Recovery Grant Reporting (DRGR) system. When target dates are not met or are extended, a grantee is required to explain the reason for the delay in the Quarterly Performance Report (QPR) activity narrative. For additional guidance on DRGR system reporting requirements, see paragraph A.3 under section VI of this notice. More information on the timely expenditure of funds is included in paragraphs A.24 of section VI of this notice. Other reporting, procedural, and monitoring requirements are discussed under "Grant Administration" in section VI of this notice.

The grant terms and specific conditions of the award will reflect HUD's risk assessment of the grantee and will require the grantee to adhere to the description of its implementation plan submitted in its certification and risk analysis documentation. HUD will also institute 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.

V. Overview of Grant Process

To begin expenditure 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 and public housing authorities (as identified in 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 certification documentation providing a basis for the Secretary's certification 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, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds;
- 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 risk analysis documentation allowing HUD to evaluate the grantee's risk and capacity to effectively manage the funds.
- 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 (which includes Standard Form 424 (SF-424) and certifications) to HUD no later than 90 days after the date of this notice.
- HUD expedites review (allotted 60 days from date of receipt) and approves the action plan according to criteria identified in this notice.
- HUD sends an action plan approval letter, grant terms and conditions, and grant agreement to the grantee. If the action plan is not approved, a letter will be sent identifying its deficiencies; the grantee must then resubmit the action plan within 45 days of the notification letter.
- Grantee signs and returns the grant agreement.
- Grantee ensures that the final HUD-approved action plan is posted on its official website.
- HUD establishes the grantee's line of credit.
- Grantee requests and receives DRGR system access (if the grantee does not already have DRGR access).
- Grantee enters the activities from its published action plan into the DRGR system 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).
- 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 or the State an approved Request for Release of Funds and certification.

- The grantee must begin to draw down funds no later than 180 days after the effective date 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 is consistent with the overall purpose of the HCD Act. The waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift recovery following the disasters, while also 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, 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. 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 grantees receiving an allocation under this notice. Applicable statutory provisions can be found at 42 U.S.C. 5301 et seq. Applicable State 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 proficient controls, processes and procedures.* 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, ensure timely expenditure of funds, maintain comprehensive Web sites 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 issued a certification in response to the grantee's submission. 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. The grantee must certify to the accuracy of its certification documentation as required by paragraph E.47 of section VI of this notice.

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

a. The grantee's most recent single audit and consolidated annual financial report (CAFR) 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 showing how those weaknesses have been removed or are being addressed; and

b. The grantee has assessed its financial standards and has completed the HUD monitoring guide for financial standards (FY2017 Guide for Review of Financial Management (the Financial Management Guide), available on the HUD Exchange website at <https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>). The grantee's standards must conform to the requirements of the Financial Management Guide. The grantee must identify which sections of its financial standards address each of the questions in the guide.

(2) Procurement. A grantee has in place a proficient procurement process if it has either: (a) adopted 2 CFR 200.318 through 200.326 (subject to 2 CFR 200.110, as applicable); or (b) the effect of the grantee's procurement process/standards are equivalent to the effect of procurements under 2 CFR 200.318 through 200.326, meaning that the process/standards, while not identical, operate in a manner that provides for full and open competition. The grantee must provide its procurement process/standards for HUD review so HUD may evaluate the overall effect of the grantee's procurement/process standards. The grantee's provided procurement process/standards must comply with the procurement requirements at 24 CFR 570.489(g), as provided in paragraph A.22 of Section VI of this notice.

(3) Duplication of benefits. A grantee has adequate procedures to prevent the duplication of benefits where the grantee identifies its uniform processes for each of the following: (a) verifying all sources of disaster assistance received by the grantee or applicant, as applicable; (b) determining an applicant's unmet need(s) before awarding assistance; and (c) ensuring beneficiaries agree to repay the 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 other sources of funding to prevent the duplication of benefits.

Departmental guidance to assist in preventing a duplication of benefits is provided in a notice published in the Federal Register at 76 FR 71060 (November 16, 2011), in HUD Guidance on Duplication of Benefits Requirements and Provision of CDBG Disaster Recovery (DR) Assistance, as amended, (<https://www.hudexchange.info/resource/3137/cdbg-dr-duplication-of-benefit-requirements-and-provision-of-assistance-with-sba-funds/>) and in paragraph A.21 of section VI of this notice.

(4) Timely expenditures. A grantee has adequate procedures to determine timely expenditures if it indicates to HUD how the grantee will track expenditures each month, how it will monitor expenditures of its recipients and subrecipients, 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.24 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 its procedures indicate that the grantee will have a separate page dedicated to its disaster recovery that includes the information described at paragraph A.23 of section VI of this notice. The procedures should also indicate the frequency of website updates. At minimum, grantees must update their website quarterly.

(6) Procedures to detect fraud, waste and abuse. A grantee has adequate procedures to detect fraud, waste and abuse if its procedures 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; and if it demonstrates that it has an internal auditor and includes a document signed by the internal auditor that describes his or her role in detecting fraud, waste, and abuse.

b. *Evaluation of Risk and Management Capacity.* 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 risk analysis documentation which 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. The grantee must certify to the accuracy of its risk analysis documentation submissions as required by paragraph E.47 in section VI of this notice. A grantee has sufficient management capacity if each of the following criteria is satisfied:

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

(2) Preaward 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. Capacity Assessment. The grantee has conducted an assessment of its capacity to carry out recovery efforts, and has developed a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified.

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 (i.e., housing, economic revitalization, and infrastructure, as applicable); and staff responsible for procurement/contract management, 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 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 principal lead agency responsible for implementation of the State's CDBG-DR award and indicates that the head of that agency will report directly to the Governor of the State.

2. *Action Plan for Disaster Recovery waiver and alternative requirement.* Requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 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. 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. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the plan does not satisfy all of the required elements identified in this notice.

a. *Action Plan.* The action plan must identify the proposed use of all funds, including criteria for eligibility, and how the uses address long-term recovery needs. 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 award

under this notice must conduct a needs assessment to inform the allocation of CDBG-DR resources. 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;
- Account 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) to ensure CDBG-DR funds meet needs that are not likely to be addressed by other sources of funds;
- 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;
- Use the most recent available data (cite data sources) to inform the action plan, particularly with regard to estimating the portion of need likely to be addressed by insurance proceeds, other Federal assistance, or any other funding sources (thus producing an estimate of unmet need);
- Describe impacts geographically by type at the lowest level practicable (e.g., county level or lower if available for States, and neighborhood or census tract level for cities); and

- Take into account the costs of incorporating mitigation and resilience measures to protect against future hazards, including the anticipated effects of climate change on those hazards.

CDBG-DR funds may be used to reimburse 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, and it 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 the needs assessment and action plan are expected to be amended as conditions change and additional needs are identified.

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 (as defined at 24 CFR 570.202), 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 defined by the grantee as provided in B.31 of section VI of this notice); public housing (including administrative offices); 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, as identified in 24 CFR 91.315(e)). 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. A checklist of relocation considerations for persons with disabilities may be found in Chapter 3 of HUD's Relocation Handbook 1378.0. Grantees must also assess how planning decisions may affect racial, ethnic, and low-income concentrations, and ways to promote the availability of affordable housing in low-poverty, nonminority areas where appropriate and in response to natural hazard-related impacts.

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: (a) adhere to the advanced elevation requirements established in paragraph B.28 of section VI of this notice; (b) promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account continued sea level rise, if applicable; and (c) 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 frequency and intensity of precipitation events, which are not considered in current FEMA maps and National Flood Insurance Program premiums.

Additionally, a grantee proposing an allocation of 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.

The action plan must provide for the 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.

8. 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, 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 number of activities and the degree to which CDBG funds are leveraged. Grantees shall identify leveraged funds for each activity, as applicable, in the DRGR system.

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 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.28 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. HUD also encourages grantees to implement green infrastructure policies to the extent practicable.

Additional tools for green infrastructure are available at the Environmental Protection Agency's website <https://www.epa.gov/green-infrastructure>; the Indoor AirPlus website

<https://www.epa.gov/indoorairplus>; the Healthy Indoor Environment Protocols for Home Energy Upgrades website [\[12/documents/epa_retrofit_protocols.pdf\]\(https://www.epa.gov/sites/production/files/2014-12/documents/epa_retrofit_protocols.pdf\); and the ENERGY STAR website \[www.epa.gov/greenbuilding\]\(http://www.epa.gov/greenbuilding\).](https://www.epa.gov/sites/production/files/2014-</p></div><div data-bbox=)

10. 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 appeal rehabilitation contractor work. HUD strongly encourages the grantee to require a warranty period post-construction, with formal notification to homeowners on a periodic basis (e.g., 6 months and one month prior to expiration date of the warranty).

11. A description of how the grantee will manage program income, and the purpose(s) for which it may be used. Waivers and alternative requirements related to program income can be found in this notice at paragraph A.17 of section VI.

12. A description of monitoring standards and procedures that are sufficient to ensure program requirements, including an analysis for duplication of benefits, are met and that provide for continual quality assurance and adequate program oversight.

b. *Method of Distribution.* The action plan shall describe the method of distribution of funds to units of general local government (UGLG) and/or descriptions of specific programs or activities the State will carry out directly. The description must include:

1. How the needs assessment informed allocation determinations, including the rationale behind the decision(s) to provide funds to State-identified “most impacted and distressed” areas that were not defined by HUD as being “most impacted and distressed,” if applicable.

2. The threshold factors and grant size limits that are to be applied.

3. The projected uses for the CDBG-DR funds, by responsible entity, activity, and geographic area, when the State carries out an activity directly.

4. For each proposed program and/or activity carried out directly, its respective CDBG activity eligibility category (or categories) as well as national objective(s).

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

6. When funds are allocated to UGLGs, all criteria used to distribute funds to local governments 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 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.28 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.

a. *Prohibition on forced mortgage payoff.* In some instances, homeowners with an outstanding mortgage balance are 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 homes. *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.

b. *Housing Counseling Services.* Grantees are encouraged to coordinate with HUD-approved housing counseling services to ensure that information and services are made available to both renters and homeowners. Additional information is available for Louisiana at: <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?&webListAction=search&searchstate=LA>, for

Texas at:

<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=TX>,

and for West Virginia at:

<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=WV>.

2. Economic Revitalization. For CDBG-DR purposes, economic revitalization may include any CDBG-DR eligible activity that demonstrably restores and improves some aspect of the local economy. 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, 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 an allocation 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 revitalization 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 repair, replacement, or relocation of damaged public facilities and improvements including, but not limited to, bridges, water treatment facilities, roads, and sewer and water lines. 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.

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 Program (Levee Rehabilitation and Improvement Program); (3) ensure the structure is accredited under the FEMA National Flood Insurance Program; (4) upload into DRGR 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 both conducted a risk assessment prior to funding the flood control structure and that the investment includes risk reduction measures.

4. Preparedness and Mitigation. The Appropriations Act states that funds shall be used for recovering from a Presidentially declared major disaster and all assisted activities must respond to the impacts of the declared disaster. HUD encourages grantees to incorporate preparedness and mitigation measures into the aforementioned rebuilding 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. Furthermore, the costs associated with these measures may not prevent the grantee from meeting unmet needs.

5. Connection to the Disaster. Grantees must maintain records about each activity funded, as described in paragraph A.14 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.* For funds provided under the Appropriations Act, the action plan must be submitted to HUD (including SF-424 and certifications) within 90 days of the date of the effective date this notice. HUD will review each action plan within 60 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 approves the action plan, it will then issue a grant agreement obligating all 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 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 must begin no later than 180 days after the effective date of this notice.

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 amend its published action plan to project expenditures and outcomes within 90 days of action plan approval. 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 projection 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 and 24 CFR 91.520. 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/drgr/>.

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 permit 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 action plan to HUD. 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.

All funds programmed or budgeted at a general level in the DRGR system will be restricted from access on the grantee's line of credit. Grantees must describe activities in DRGR at the necessary level of detail in order for HUD to release funds and make them available for use by the grantee.

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 State grantee has only identified the Method of Distribution (MOD) upon HUD's approval of the published action plan, the MOD itself typically serves as the projects in the DRGR system, rather than activity groupings. Activities are added to MOD projects as subrecipients decide which specific CDBG-DR programs and projects will be funded.

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 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. 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 grantee permits local governments or subrecipients to retain program income, 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 enters the grant award into the DRGR system. For example, a grant award made 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. 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, 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 providing 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 (or relevant agency) 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.

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. Since State grantees under this notice may make grants throughout the State, including to entitlement communities, States should carefully evaluate the needs of disabled persons 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).

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 their 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 undertake 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.* HUD is requiring grantees to 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, performance reports, citizen participation requirements, and activity/program information for activities described in the action plan, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must have a separate page dedicated to its disaster recovery that includes the information described at paragraph A.23 of section VI of this notice.

f. *Application status.* HUD is requiring grantees to provide multiple methods of communication, such as websites, toll-free numbers, or other means that provide applicants for recovery assistance with timely information on the status of their application, as provided for in paragraph A.1.b(2) in section VI of this notice.

g. *Citizen complaints.* The grantee will provide a timely written response to every citizen complaint. The response will be provided within 15 working days of the receipt of the complaint.

5. *Direct grant administration and means of carrying out eligible activities.*
Requirements at 42 U.S.C. 5306 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, subject to State law, by the State through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients or recipients. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489 relating to conflicts of interest and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

For activities carried out by entities eligible under section 105(a)(15) of the HCD Act, such entity will be subject to the definition of a nonprofit under that section rather than the definition located in 24 CFR 570.204, even in cases where the entity is receiving assistance through a local government that is an Entitlement jurisdiction.

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 24 CFR 91.325(b)(2)), 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 less. 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 2019 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 requirements of HUD's July 16, 2015, final rule on Affirmatively Furthering Fair Housing (80 FR 42272), which requires grantees, among other requirements, to complete an Assessment of Fair Housing in accordance with the requirements of 24 CFR 5.160 and incorporate fair housing strategies and actions consistent with the AFH into the Consolidated Plan.

7. Requirement for consultation during plan preparation. Currently, the HCD Act and regulations require States 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), and 24 CFR 91.110, with the alternative requirement that States receiving an allocation under this notice consult with all disaster-affected local governments (including any CDBG-entitlement communities 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>

Consistent with the approach encouraged through the National Disaster Recovery Framework and National Preparedness Goal, all grantees must consult with States, 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 the grantee on how its 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 70 percent of the aggregate of CDBG program funds be used to support activities benefitting low- and moderate-income persons. To ensure that maximum assistance is provided initially to low- and moderate-income persons, the 70 percent overall benefit requirement shall remain in effect for this allocation, subject to a waiver 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 of 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 less than one quarter of the populated-block groups in its jurisdictions contain 51 percent or more low- and moderate-income persons. In such communities, 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. 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 annual CDBG program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant (plus program income) to be used for administrative costs, by the grantee, UGLGs or by subrecipients. Thus, the total of all costs classified as administrative must be less than or equal to the 5 percent cap.

(1) *Combined technical assistance and administrative expenditures cap.* 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. A State remains limited to spending a maximum of 20 percent of its total grant amount on a combination of planning and program administration costs. Planning costs subject to the 20 percent cap are those defined in 42 U.S.C. 5305(a)(12).

11. *Planning-only activities.* The annual State CDBG program requires that local government grant recipients 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 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.

As provided in paragraph A.2 of section VI of this notice, grantees are required to use their planning funds to develop a disaster recovery and response plan that addresses long-term recovery and pre- and post-disaster hazard mitigation.

Plans should include an assessment of natural hazard risks, including risks expected to increase due to climate change, to low- and moderate-income residents based on an analysis of

data and findings in (1) the National Climate Assessment (NCA),¹ the U.S. Climate Resilience Toolkit,² The Impact of Climate Change and Population Growth on the National Flood Insurance Program Through 2100,³ or the Community Resilience Planning Guide for Buildings and Infrastructure Systems prepared by the National Institute of Standards and Technology (NIST);⁴ or (2) other climate risk related data published by the Federal Government, or other State or local government climate risk related data, including FEMA-approved hazard mitigation plans that incorporate climate change; and (3) other climate risk data identified by the jurisdiction. For additional guidance also see: the Coastal Hazards Center's *State Disaster Recovery Planning Guide*⁵ and FEMA's *Guide on Effective Coordination of Recovery Resources for State, Tribal, Territorial and Local Incidents*.⁶

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 in the most impacted and distressed areas, the following streamlined alternative requirement recognizes the urgency in addressing serious threats to community welfare following a major disaster.

¹ See <http://nca2014.globalchange.gov/highlights#submenu-highlights-overview>

² See <https://toolkit.climate.gov>

³ See http://www.acclimatise.uk.com/login/uploaded/resources/FEMA_NFIP_report.pdf

⁴ See <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1197.pdf>

⁵ http://coastalhazardscenter.org/dev/wp-content/uploads/2012/05/State-Disaster-Recovery-Planning-Guide_2012.pdf

⁶ <https://www.fema.gov/media-library/assets/documents/101940>

Grantees need not issue formal certification statements to qualify an activity as meeting the urgent need national objective. Instead, grantees 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, grantees must reference in their action plan needs assessment the type, scale, and location of the disaster-related impacts that each program and/or activity is addressing within 24-months of its first obligation of grant funds. Following this 24-month period, no new program or activity intended to meet the urgent need national objective may be introduced and allocated funds without a waiver from HUD. 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 award 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.* 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 tribes.

14. *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 purposes, and 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.

15. *Change of use of real property.* This waiver conforms to 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 “unit of general local government (UGLG) or State.”

16. *Responsibility for review and handling of noncompliance.* 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 UGLGs, 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 UGLGs.

17. *Program income alternative requirement.* The Department is waiving applicable program income rules at 42 U.S.C. 5304(j) and 570.489(e) to the extent necessary to provide additional flexibility as described under this notice. 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 subpart, “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, local government, tribe or a subrecipient of a State, local government, or tribe. 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, UGLG, or tribe or subrecipient of a State, local government, or tribe 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 tribe or subrecipient of a State, local government, or tribe, 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 of 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 tribe, or paid to 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, tribe, or retained by 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 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 disaster recovery CDBG 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 dealing with program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: A grantee may transfer program income before close out of the grant that generated the program income to its annual CDBG program. In addition, State grantees may transfer program income before close out to any annual CDBG-funded activities carried out by a local government or tribe within the State. Program income received by a grantee, or received and retained by a subrecipient, 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 grantee's regular CDBG program rules.

d. Revolving loan funds. State grantees, and local governments or tribes (provided assistance by a State grantee) 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, which will be 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 or tribes 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).

18. *Reimbursement of disaster recovery expenses.* The provisions of 24 CFR 570.489(b) are applied to permit a State 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. The Department expects State grantees to include all preagreement activities in their action plans. Additionally, grantees are permitted to charge to grants the preaward and preapplication costs of homeowners, businesses, and other qualifying entities for eligible costs they have 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.hudexchange.info/resource/4777/notice-cpd-1507-guidance-for-charging-preapplication-costs-to-cdbg-disaster-recovery-grants/>). 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 (16 U.S.C. 1536) when designing a reimbursement program. Grantees may also not use CDBG-DR funds to provide compensation to beneficiaries.

19. *One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements.* Activities and projects assisted by CDBG-DR 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 for grantees under this notice:

a. *One-for-one replacement.* One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) 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 a program or activity 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 programs and activities. Grantees with questions about the one-for-one replacement requirements are encouraged to contact the HUD regional relocation specialist responsible for their State.

HUD is waiving the one-for-one replacement requirements because they do 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, however, 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 that a displaced person is eligible to receive a rental assistance payment that covers 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) 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. *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.

d. Rental assistance to a displaced person. The requirements at sections 204(a) and 206 of the URA, 49 CFR 24.2(a)(6)(viii), 24.402(b)(2), and 24.404 are waived to the extent that they require the grantee to use 30 percent of a low-income, displaced person's household income in computing a rental assistance payment if the person had been paying rent in excess of 30 percent of household income without "demonstrable hardship" before the project. Thus, if a tenant has been paying rent in excess of 30 percent of household income without demonstrable hardship, using 30 percent of household income to calculate the rental assistance would not be required. Before carrying out a program or activity in which the grantee provides rental assistance payments to displaced persons, the grantee must define "demonstrable hardship" in its action plan or in the policies and procedures governing these programs and activities. The grantee's definition of demonstrable hardship applies when implementing these alternative requirements.

e. 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 financial assistance 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 the tenant is provided referrals to comparable replacement dwellings 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 relocation assistance are limited.

f. *Moving expenses.* The requirements at section 202(b) of the URA and 49 CFR 24.302, which require that a grantee offer a displaced person the option to receive a fixed moving-cost payment based on the Federal Highway Administration's Fixed Residential Moving Cost Schedule instead of receiving payment for actual moving and related expenses, are waived. As an alternative, the grantee must establish and offer the person a "moving expense and dislocation allowance" under a schedule of allowances that is reasonable for the jurisdiction and that takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Without this waiver and alternative requirement, disaster recovery may be impeded by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established "moving expense and dislocation allowance."

g. *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 grantees, including subrecipients, receiving CDBG disaster funds may establish separate optional relocation policies. This waiver is intended to provide States with maximum flexibility in developing optional relocation policies with CDBG-DR funds.

20. *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, 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 grantee must notify HUD in writing of its decision to adopt another agency's environmental review. The grantee must retain a copy of the review in the grantee's environmental records.

c. *Unified Federal Review.* The Sandy Recovery Improvement Act was signed into law on January 29, 2013, and directed the Administration to "establish an expedited and unified interagency review process (UFR) 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 and allocation of funds under this notice are encouraged to in this process as one means of expediting recovery. Tools for the UFR process can be found at 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 standards see https://www.nps.gov/history/local-law/arch_stnds_9.htm.

21. *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 and the limitation on the use of

CDBG-DR funds under the Appropriations Act for necessary expenses, 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 (76 FR 71060, published November 16, 2011). As a reminder, and as noted in the November 16, 2011, notice, in paragraph B of section VI, *CDBG-DR funds may not be used to pay an SBA home or business loan*. Additionally, this notice does not require households and businesses to apply for SBA assistance prior to applying for CDBG-DR assistance. However, CDBG-DR grantees may institute such a requirement in order to target assistance to households and businesses with the greatest need. In addition to the requirements described here and in the November 16, 2011 notice, grantees must comply with HUD's guidance published on July 25, 2013, "HUD Guidance on Duplication of Benefits and CDBG Disaster Recovery (DR) Assistance," as amended, in regards to declined SBA loans (<https://www.hudexchange.info/resource/3137/cdbg-dr-duplication-of-benefit-requirements-and-provision-of-assistance-with-sba-funds/>).

22. *Procurement*. States must comply with the procurement requirements at 24 CFR 570.489(g).

Additionally, if a State grantee chooses to provide funding to another State agency, the State may specify in its procurement policies and procedures whether that State agency must follow the procurement policies and procedures that the State is subject to, or whether the State agency must follow the same policies and procedures to which all other subrecipients are subject.

HUD may request periodic updates from grantees that employ contractors. A contractor is a third-party firm that the grantee acquires through a procurement process to perform specific functions, consistent with the procurement requirements in the CDBG program regulations. For

contractors employed to provide discrete services or deliverables only, HUD is establishing an additional alternative requirement to expand on existing provisions of 2 CFR 200.317 through 200.326 and 24 CFR 570.489(g) as follows:

a. Grantees are also required to ensure all contracts and agreements (with subrecipients, recipients, and contractors) clearly state the period of performance or date of completion;

b. Grantees must incorporate performance requirements and liquidated damages into each procured contract or agreement. Contracts that describe work performed by general management consulting services need not adhere to this requirement; and

c. Grantees may contract for administrative support but may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight, policy development, 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 the grantee.

23. *Public website.* HUD is requiring grantees to 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, performance reports, citizen participation requirements, and activity/program information for activities described in the action plan, including details of all contracts and ongoing procurement policies. 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 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); each QPR (as created using the DRGR system); 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.). Grantees should post only contracts as defined in 2 CFR 200.22. To assist grantees in preparing this summary, HUD has developed a template. The template can be accessed at: <https://www.hudexchange.info/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notice/>. Grantees are required to use this template, and attach an updated version to the DRGR system each quarter as part of their QPR submissions. Updated summaries must also be posted quarterly on each grantee's website.

24. *Timely distribution of funds.* The provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with alternative requirements under this notice. Each grantee must expend 100 percent of its allocation of CDBG-DR funds on eligible activities within 6 years of HUD's execution of the grant agreement.

25. *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 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.26 of section VI of this notice.

26. *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. This may include the termination, reduction or limitation of payments to State grantees receiving funds under this notice.

27. *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.

28. *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) is waived to the extent necessary to allow: (1) homeownership assistance for households with up to 120 percent of the area median income; and (2) down payment assistance for up to 100 percent of the down payment (42 U.S.C.

5305(a)(24)(D)). While homeownership assistance may be provided to households with up to 120 percent of the area median income, only those funds used to serve 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) 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.

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, under construction, 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 1 percent annual (or 100-year) 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 1 percent annual floodplain elevation. Residential structures with no dwelling units and no residents below two feet above the 1 percent annual floodplain, 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 the 1 percent annual floodplain.

All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 0.2 percent annual floodplain (or 500-year) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 0.2 percent annual floodplain flood elevation or three feet above the 1 percent annual floodplain. If the 0.2 percent annual floodplain or elevation is unavailable for Critical Actions, and the structure is in the 1 percent annual floodplain, then the structure must be elevated or floodproofed at least three feet above the 1 percent annual floodplain level. 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.

f. Broadband infrastructure in housing. Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, 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 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://disastersafety.org/fortified/fortified-home/>.

29. Primary Consideration of Unmet Housing Needs. Grantees must propose an allocation of CDBG-DR funds that gives primary consideration to addressing unmet housing

needs. Grantees may also allocate funds for infrastructure or economic revitalization, but in doing so grantees must identify how any remaining unmet housing needs will be addressed or how the economic revitalization or infrastructure activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas.

30. Addressing Unmet Public Housing Needs. The grantee must identify 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 is dedicated to addressing the unmet needs of damaged public housing (e.g., FEMA, insurance, and funds available from 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. Grantees are reminded that public housing is eligible for FEMA Public Assistance and must ensure that there is no duplication of benefits when using CDBG-DR funds to assist public housing. Information on the PHAs impacted by the disaster is available on the Department's website.

31. Addressing Unmet Affordable Rental Housing Needs. As part of the requirement to give primary consideration to unmet housing needs, the grantee must identify how it will address the rehabilitation, reconstruction, replacement, and new construction of rental housing that is affordable to low or moderate income households in the most impacted and distressed areas and identify funding to specifically address the unmet needs identified in its action plan pursuant to paragraph A.2.a.3 of section VI of this notice. In order 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 period that the rental housing is affordable must be reasonably related to the amount of CDBG-DR funding used for the rental housing. The grantee should impose the minimum period of affordability through recorded use restrictions or other mechanisms to ensure that rental housing remains affordable for a stated 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 a minimum period of affordability. Grantees may adopt the HOME program standards at 24 CFR 92.252(a), (c), (e), and (f) to comply with this requirement.

32. 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. If the grantee requires the incentives to be used for a particular purpose by the household receiving the assistance, then the eligible use for that activity will be that required use, not an incentive.

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.

33. *Limitation on emergency grant payments—interim mortgage assistance.* 42 U.S.C. 5305(a)(8) is modified 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 the rehabilitation or reconstruction of single-family housing, during which mortgage payments may be due but the home is uninhabitable. The time required for a household to complete the rebuilding process may often extend beyond 3 months, during which mortgage payments may be due but the home is inhabitable. Thus, this interim assistance will be critical for many households facing financial hardship during this period. Grantees may use interim housing rehabilitation payments to expedite recovery assistance to homeowners, but must establish performance milestones for the rehabilitation that are to be met by the homeowner in order to receive such 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.

34. *Rental assistance to displaced homeowners.* The requirement of 42 U.S.C. 5305(a)(8) are modified to authorize grantees to extend rental assistance payments on behalf of qualified homeowners for up to 24 months. After a disaster, many homeowners encounter unanticipated delays and scarcity of available construction and/or elevation contractors in their area. While undergoing rehabilitation of their homes, most of these homeowners are forced to pay not only a mortgage, but a rental payment as well since their homes are not inhabitable. In other cases, homeowners who have paid off their mortgages must accommodate this additional rental expense into their budgets. In order to provide temporary financial assistance to these families, many of whom are low- or moderate-income households, HUD is modifying the requirements at 42 USC 5305(a)(8) to the extent necessary to allow grantees to provide up to 24 months of homeowner rental assistance to eligible applicants within the grantee's single-family rehabilitation/reconstruction programs. In the case of rehabilitation programs in which the homeowner is responsible for construction oversight, the grantee must establish performance milestones for the rehabilitation that are to be met by the homeowner in order to receive such 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. Homeowners receiving interim mortgage assistance are not eligible for rental assistance.

35. *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.

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 the applicable prior notices. The key factor in determining whether the acquisition is a buyout is whether the intent of the purchase is to reduce risk from future flooding or to reduce the risk from the hazard that lead to the property’s Disaster Risk Reduction Area designation. 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 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 recipient 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 UGLGs.

7. When undertaking buyout activities, in order 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 under this chapter 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) and entitlement CDBG regulations at 24 CFR 570.208(a)(3) 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 in 24 CFR part 570 (e.g., if the structure contains more than two dwelling units, at least 51 percent of the units must be occupied by low- and moderate-income households;

(b) The program meets the low- and moderate income area benefit criteria 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.

c. Redevelopment of acquired properties.

1. Properties purchased through a buyout program may not typically be redeveloped, with a few exceptions. (see subparagraph a.2 above).

2. 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 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.

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

36. *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) as follows: properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance, residential incentives, or to participate in a CDBG-DR buyout program (as defined by this notice). “Second homes” are defined in Internal Revenue Service (IRS) Publication 936 (Mortgage Interest Deductions).

37. *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 for 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 also 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. Future 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 to a person who has failed to meet this requirement and must implement a process to check and monitor for compliance.

2. 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, 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, Public Buildings)

38. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow grantees to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible. HUD believes this waiver is consistent with the overall purposes of the HCD Act, and is necessary for many grantees to adequately address critical infrastructure needs created by the disaster.

39. *Elevation of Nonresidential Structures.* Nonresidential structures 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 the 1 percent annual floodplain. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 0.2 percent annual floodplain (or 500-year floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 0.2 percent annual floodplain flood elevation or three feet above the 1 percent annual floodplain. If the 0.2 percent annual floodplain or elevation is unavailable for Critical Actions, and the structure is in the 1 percent annual floodplain, then the structure must be elevated or floodproofed at least three feet above the 1 percent annual floodplain level. 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.

40. *Use of CDBG as Match.* Additionally, as provided by the HCD Act, funds may be used to meet a matching, share, or contribution requirement for any other Federal program when used to carry out an eligible CDBG-DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers (USACE). By law, 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.

D. Economic Revitalization.

41. *National Objective Documentation for Economic Revitalization Activities.* 24 CFR 570.483(b)(4)(i) is 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.

42. *Public benefit for certain Economic Revitalization activities.* The public benefit provisions set standards for individual economic revitalization activities (such as a single loan to a business) and for economic revitalization 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)(1), (f)(2), (f)(3), (f)(4)(i), (f)(5), and (f)(6) for economic revitalization activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-

term, and infrastructure projects). However, grantees shall report and maintain documentation 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. Paragraph (g) of 24 CFR 570.482 is also waived to the extent these provisions are related to public benefit.

43. 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. 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:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3/spears

44. 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, and 24 CFR 570.482 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.

45. *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.

46. *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.

47. *Certifications waiver and alternative requirement.* 24 CFR 91.325 is waived. Each State 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 (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each UGLG 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. The grantee certifies that it has consulted with affected UGLGs 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.) but prior to September 29, 2016.

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).

j. The grantee certifies that the grant will be conducted and administered in conformity with the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations, and that it will

affirmatively further fair housing, which means that it will take meaningful actions to further the goals identified in an AFH conducted in accordance with the requirements of 24 CFR 5.150 through 5.180, and that it will take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

k. The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, States receiving a direct award must certify that they will require UGLGs 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.

l. 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 and requirements of the Appropriations Act applicable to funds allocated by this notice, and certifies to the accuracy of its certification documentation referenced at A.1.a. under section VI and its risk analysis document referenced at A.1.b. under section VI.

m. 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 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.

n. 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.

o. The grantee certifies that it will comply with environmental requirements at 24 CFR Part 58.

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

VII. Duration of Funding

The Appropriations Act directs that these funds be available until expended. 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: 14.218; 14.228.

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: November 15, 2016

Nani A. Coloretti,
Deputy Secretary

Appendix A—Allocation of CDBG–DR Funds to Most Impacted and Distressed Areas due to 2016 Federally Declared Disasters thru September 29, 2016

This section describes the methods behind HUD’s allocation of \$500 million in the 2016 CDBG–DR Funds. Section 145(a) of Division C of the Continuing Appropriations Act, P.L. 114-223, enacted on September 29, 2016, appropriates \$500 million through the Community Development Block Grant (CDBG) 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 2016 and occurring prior to September 29, 2016.

This section requires that funds be awarded directly to the State or unit of general local government at the discretion of the Secretary. The key underlying metric used in the allocation process is the unmet need that remains to be addressed from qualifying disasters. Although funds may be used to address infrastructure and economic revitalization needs in addition to housing, this allocation only uses unmet needs related to housing to determine the most impacted and distressed areas that are eligible for grants and then to determine the amount of funding to be made available to each grantee. HUD only uses unmet housing needs for two reasons: (1) there is very limited data on infrastructure and economic revitalization unmet needs for the largest of the eligible disasters, and (2) the total funding provided through this allocation is limited relative to need.

Methods for estimating unmet housing needs. 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 September 28, 2016.

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. 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, where:

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
- 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.

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 real property FEMA inspected damage of \$8,000 or flooding over 1 foot.

Furthermore, a homeowner is determined to have unmet needs if they reported damage and no insurance to cover that damage.

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
- 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 of \$20,000 or less. Units that are occupied by a tenant with income less than \$20,000 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 2011 to 2013 disasters. 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, SBA, and Insurance was calculated at \$27,455 for major damage (low); \$45,688 for major damage (high); and \$59,493 for severe damage.

Most Impacted and Distressed Designation. President Obama signed the Continuing Resolution into law on September 29, 2016 and 33 disasters had received major declarations in calendar year 2016 by that date. To meet the statutory requirement that the funds be targeted to “the most impacted or distressed areas,” this allocation:

- (1) Limits 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. Only 11 of 33 disasters that were declared in 2016 have an IHP designation.
- (2) Limits the allocations to data from counties with high levels of damage. 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 the 2016 events, the serious unmet housing needs break at the county level occurs at \$25 million.
- (3) Among disasters with data meeting the first two thresholds, HUD limits the allocation to jurisdictions that have substantially higher unmet needs than other jurisdictions. Louisiana, Texas, and West Virginia have far greater unmet needs than other jurisdictions affected by major disasters declared since January 1, 2016.