



**BILLING CODE 4210-67**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-6039-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 provides guidance on issues arising from Community Development Block Grant disaster recovery (CDBG-DR) funds. Specifically, this notice allocates additional funds for 2015 and 2016 disasters; establishes an allocation framework for disasters that occur in 2017 and later; provides waivers for previously funded National Disaster Resilience Competition grants and for grantees that received certain CDBG-DR funding; provides a waiver for Rebuild By Design activities; and establishes an alternative requirement that creates new national objective criteria for grantees undertaking CDBG-DR buyouts and housing incentives.

**DATES:** This notice will apply on: **[INSERT DATE FIVE DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

**FOR FURTHER INFORMATION CONTACT:** Stan Gimont, 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 Mr. Gimont 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.

## **SUPPLEMENTARY INFORMATION:**

### **Table of Contents**

- I. 2015 and 2016 Allocations
  - A. Background
  - B. Use of Funds
  - C. Grant Amendment Process
  - D. Applicable Rules, Statutes, Waivers, and Alternative Requirements
  - E. Duration of Funding
- II. Waivers and Alternative Requirements for CDBG-DR Funds Appropriated by Pub.
  - L. 114-223, 114-254 and 115-31 (Applicable only to the State of Louisiana)
- III. Allocation Framework for Disasters in 2017 or Later
  - A. Background
  - B. Use of Funds
- IV. Pub. L. 113-2 Waivers and Alternative Requirements
  - A. Background
  - B. Applicable Rules, Statutes, Waivers, and Alternative Requirements
- V. New LMI National Objective Criteria for Buyouts and Housing Incentives  
(Applicable to Multiple Appropriations)
- VI. Catalog of Federal Domestic Assistance
- VII. Finding of No Significant Impact
- Appendix A: Allocation Methodology

## I. 2015 and 2016 Allocations

### A. Background

Since December 2015, four different public laws have been enacted that have provided CDBG-DR appropriations to address major declared disasters that occurred in 2015, 2016, 2017, and later. Table 1 lists these various public laws, the related **Federal Register** notices that govern the funds, grantees that have received allocations, and amounts provided to those grantees.

**Table 1 – FY 2016 and 2017 CDBG-DR Appropriations and Allocations**

Appropriation Act	Public Law 114-113	Public Law 114-223	Public Law 114-254	Public Law 115-31	
Date of Enactment	December 18, 2015	September 29, 2016	December 10, 2016	May 5, 2017	
Date of Applicable Federal Register Notice	June 17, 2016	November 21, 2016	January 18, 2017		
Federal Register Notice Reference Number	81 FR 39687	81 FR 83254	82 FR 5591		
CDBG-DR Available	\$299,000,000	\$500,000,000	\$1,805,976,000	\$400,000,000	
<b>2015 Disaster Grantees</b>					<b>Totals</b>
Lexington County SC	\$16,332,000			\$5,038,000	\$21,370,000
Columbia SC	\$19,989,000			\$6,166,000	\$26,155,000
Richland County, SC	\$23,516,000			\$7,254,000	\$30,770,000
State of South Carolina	\$96,827,000			\$29,871,000	\$126,698,000
Houston, TX	\$66,560,000			\$20,532,000	\$87,092,000
San Marcos, TX	\$25,080,000			\$8,714,000	\$33,794,000
State of Texas	\$50,696,000			\$23,872,000	\$74,568,000
<b>2016 Disaster Grantees</b>					
State of Louisiana		\$437,800,000	\$1,219,172,000	\$51,435,000	\$1,708,407,000
State of West Virginia		\$17,000,000	\$87,280,000	\$45,595,000	\$149,875,000
State of Texas		\$45,200,000	\$177,064,000	\$16,631,000	\$238,895,000
State of North Carolina			\$198,553,000	\$37,976,000	\$236,529,000
State of South Carolina			\$65,305,000	\$29,781,000	\$95,086,000
State of Florida			\$58,602,000	\$59,335,000	\$117,937,000
<b>Total</b>	\$299,000,000	\$500,000,000	\$1,805,976,000	\$342,200,000	

\* The allocation amounts for Pub. L. 115-31 column include amounts announced by the Department on May 18, 2017.

Each of the public laws identified above provides CDBG-DR funds for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (HCDA) 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

qualifying major disaster declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (Stafford Act) (42 U.S.C. 5121 et seq.).

CDBG-DR grants under each appropriation are governed by one or more **Federal Register** notices that contain the requirements, applicable waivers, and alternative requirements that apply to the use of the funds. Congress requires that HUD publish waivers and alternative requirements in the Federal Register.

This **Federal Register** notice sets out the requirements, waivers, and alternative requirements that govern the funds appropriated under Pub. L. 115-31. Throughout this notice, references to **Federal Register** notices will be to the date the notices were published as noted in Table 1.

Under Pub. L. 115-31, Congress appropriated \$400 million in CDBG-DR funding to address remaining unmet needs (as defined by HUD) arising from qualifying major disasters that occurred in 2015 and 2016, and for qualifying major disasters that occur in 2017 or later, until the funds are fully allocated. Congress required that HUD, in distributing the \$400 million, use the allocation methodologies identified in June 17, 2016, and January 18, 2017, **Federal Register** notices for disasters occurring in 2015 and 2016, respectively.

Table 1, under the column labeled Pub. L. 115-31, reflects the allocation of funds appropriated by that act for qualifying disasters in 2015 and 2016 (inclusive of the amounts announced on May 18, 2017). In HUD's June 17, 2016, **Federal Register** notice, HUD described the allocation and applicable waivers and alternative requirements, relevant statutory and regulatory requirements, grant award process, criteria for Action Plan approval, and eligible disaster recovery activities for the qualifying 2015 disasters. Grantees receiving an allocation of

funds under this **Federal Register** notice for qualifying 2015 disasters are subject to the authority and conditions of Pub. L. 114-113 and the requirements, waivers, and alternative requirements provided in the June 17, 2016, notice.

In HUD's November 21, 2016, and January 18, 2017, **Federal Register** notices, HUD described the allocation and applicable waivers and alternative requirements, relevant statutory and regulatory requirements, grant award process, criteria for Action Plan approval, and eligible disaster recovery activities for the qualifying 2016 disasters. Grantees receiving allocations of funds under these **Federal Register** notices for qualifying 2016 disasters are subject to the authority and conditions of Pub. L. 114-223 and 114-254 and the requirements, waivers and alternative requirements provided in the November 21, 2016, and January 18, 2017, **Federal Register** notices.

HUD is allocating the funds for the 2015 and 2016 disasters based on updated data HUD received from the Federal Emergency Management Agency (FEMA), and the Small Business Administration (SBA). HUD's allocations match the difference between HUD's 100 percent estimate of the serious unmet needs for repair in most impacted counties after taking into consideration other resources, including insurance, FEMA, SBA and the amounts previously allocated. HUD's methodology for allocation as specified in the June 17, 2016, and January 18, 2017, notices does not include additional funds for resilience activities. Detailed explanations of HUD's allocation methodologies for qualifying disasters from 2015 and 2016, are provided at Appendix A in the June 17, 2016 notice and Appendix A of the January 18, 2017 notice, respectively.

**Table 2 – Qualifying 2015 and 2016 Disasters and “Most Impacted and Distressed” areas**

<b>FEMA Disaster No.</b>	<b>Grantee</b>	<b>Minimum amount that must be expended for recovery in the HUD-identified “most impacted and distressed” areas</b>
<b>2015 Disasters</b>		
4241	Lexington County (Urban County), SC	Lexington County Urban County Jurisdiction (\$5,038,000)
4241	Columbia, SC	Columbia (\$6,166,000)
4241	Richland County, SC	Richland County Urban County Jurisdiction (\$7,254,000)
4241	State of South Carolina	Charleston, Dorchester, Florence, Georgetown and Clarendon Counties* (\$23,896,800)
4223, 4245	Houston, TX	City of Houston (\$20,532,000)
4223, 4245	San Marcos, TX	City of San Marcos (\$8,714,000)
4223, 4245, 4272	State of Texas	Harris, Hays, Hidalgo, and Travis Counties (\$12,511,200)
<b>2016 Disasters</b>		
4263, 4277	State of Louisiana	East Baton Rouge, Livingston, Ascension, Tangipahoa, Ouachita, Lafayette, Lafayette, Vermilion, Acadia, Washington, and St. Tammany Parishes (\$41,148,000)
4273	State of West Virginia	Kanawha, Greenbrier, Clay, and Nicholas Counties** (\$36,476,000)
4266, 4269, 4272	State of Texas	Harris, Newton, Montgomery, Fort Bend, and Brazoria Counties (\$13,304,800)
4285	State of North Carolina	Robeson, Cumberland, Edgecombe, and Wayne Counties (\$30,380,800)
4286	State of South Carolina	Marion and Horry Counties (\$23,824,800)
4280, 4283	State of Florida	St. Johns County (\$47,468,000)

\*Based on data presented by the grantee, HUD has approved the addition of Clarendon County to the 2015 South Carolina “most impacted and distressed” areas.

\*\*Based on data presented by the grantee, HUD has approved the addition of Clay and Nicholas Counties to the 2016 West Virginia “most impacted and distressed” areas.

Use of funds for all grantees is limited to unmet recovery needs from the major disasters identified in Table 2. Table 2 shows the HUD-identified “most impacted and distressed” areas impacted by the identified disasters. At least 80 percent of the total funds provided to each grantee under this notice must address unmet needs within the HUD-identified “most impacted and distressed” areas, as identified in Table 2. Grantees may spend the remaining 20 percent in the HUD-identified areas or areas the grantee determines to be “most impacted and distressed.”

### **B. Use of Funds**

Pub. L. 115-31 requires funds to be used only for specific disaster recovery related purposes. This allocation provides funds to 2015 and 2016 CDBG-DR grantees for authorized disaster recovery efforts. Grantees allocated funds under this notice for 2015 and 2016 disasters must submit a substantial Action Plan Amendment as outlined below.

### **C. Grant Amendment Process**

To receive funds allocated by this notice, 2015 and 2016 grantees (listed in Table 1) must submit a substantial Action Plan Amendment to their approved Action Plan and meet the following requirements:

- Grantee must consult with affected citizens, stakeholders, local governments and public housing authorities to determine updates to its needs assessment;
- Grantee must amend its Action Plan to update its needs assessment, modify or create new activities, or reprogram funds. 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) a revised budget allocation table that reflects the entirety of all funds;

- Grantee must publish a substantial amendment to its previously approved Action Plan for Disaster Recovery prominently (see section VI.A.4.a of the November 21, 2016, notice and section VI.A.3.a of the June 17, 2016, notice) on the grantee's official Web site for no less than 14 calendar days. The manner of publication must include prominent posting on the grantee's official Web site and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the amendment's contents and provide feedback;
- Grantee must respond to public comment and submit its substantial Action Plan Amendment to HUD no later than 90 days after the effective date of this notice;
- HUD will review the substantial Action Plan Amendment within 45 days from date of receipt and determine whether to approve the Amendment per criteria identified in this notice and all applicable prior notices;
- HUD will send an Action Plan Amendment approval letter, revised grant conditions (may not be applicable to all grantees), and an amended unsigned grant agreement to the grantee. If the substantial Amendment is not approved, a letter will be sent identifying its deficiencies; the grantee must then re-submit the Amendment within 45 days of the notification letter;
- Grantee must ensure that the HUD approved substantial Action Plan Amendment (and



original Action Plan) is posted prominently on its official Web Site;

- Grantee must enter the activities from its published Action Plan Amendment into the Disaster Recovery Grant Reporting (DRGR) system and submit the updated DRGR Action Plan to HUD within the system;
- Grantee must sign and return the grant agreement to HUD;
- HUD will sign the grant agreement and revise the grantee's line of credit amount;
- 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 adopts another Federal agency's environmental review where authorized under provisions incorporated by reference in Pub. L. 115-31, and, as applicable, receives a response from HUD or the state that approves the grantee's Request for Release of Funds and certification;
- Grantee must amend its published Action Plan to include its projection of expenditures and outcomes within 90 days of the Action Plan Amendment approval.

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

Awards under this notice will be subject to the waivers and alternative requirements provided in the notices governing the award of CDBG-DR funds for 2015 and 2016 disasters, as identified in Table 1. These 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. Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Waivers and alternative requirements are effective five days after they

are published in the **Federal Register**.

### **E. Duration of Funding**

Pub. L. 115-31 provides that these funds will remain available until expended. However, consistent with 31 U.S.C. 1555 and OMB Circular A-11, 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, any remaining balance will be made unavailable for obligation or expenditure. Consistent with the June 17, 2016, November 21, 2016, and January 18, 2017 notices, 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. Grantees must expend 100 percent of their allocation of CDBG-DR funds on eligible activities within 6 years of HUD's execution of the grant agreement.

## **II. Waivers and Alternative Requirements for CDBG-DR Funds Appropriated by Pub. L. 114-223, 114-254 and 115-31 (Applicable only to the State of Louisiana)**

This section of the notice provides a waiver for the state of Louisiana, which has received CDBG-DR allocations pursuant to Pub. L. 114-223, 114-254 and 115-31. The state of Louisiana was allocated \$1,656,972,000 in CDBG-DR funds under Pub. L. 114-223 and 114-254 and HUD has approved the state's use of these CDBG-DR funds for three main recovery programs: housing (86 percent), economic development (4 percent), and infrastructure (6 percent). These programs were developed to address the most urgent and significant unmet needs of those areas impacted by the eligible 2016 disasters. This notice allocates \$51,435,000 to

Louisiana pursuant to Pub. L. 115-31, bringing the total amount allocated to the state for 2016 disasters to \$1,708,407,000.

*1. Waiver of the 70 percent overall benefit requirement (State of Louisiana only).*

The overall benefit requirement set by the HCDA requires that 70 percent of the aggregate of the grantee's CDBG program's funds be used to support activities benefitting low- and moderate-income persons. It can be difficult for grantees working in disaster recovery to meet the overall benefit test, because disasters do not always affect low- and moderate-income areas and, therefore, this requirement can in some cases limit grantees' ability to assist the most damaged areas.

The November 21, 2016, notice maintained the 70 percent overall benefit requirement for all grantees receiving funds under these public laws, but provided the state of Louisiana and all other grantees with additional flexibility to request a lower overall benefit requirement. Specifically, that notice allows a grantee to request to further reduce its overall benefit requirement if it submitted 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 (LMI) persons' disaster-related needs have been sufficiently met and that the needs of non-LMI persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them.

The state of Louisiana submitted a request to establish a lower overall benefit requirement based on the above criteria. In its request, the state contends that out of the 57,600 households that suffered major or severe damage during the flooding in 2016, only 44 percent were low-and and moderate-income (LMI) persons. The State's request notes that due to the persistent flooding that occurs in these communities, offering assistance to all households in the areas affected by the storm, and not just LMI households, will help the impacted neighborhoods with critical rebuilding needs.

Accordingly, the state will target its CDBG-DR funds to households with major or severe damage that did not have flood insurance at the time of the storms (36,510 households). The state indicates that 53 percent of those households qualify as LMI, and that 65 percent of the funds for the state's homeowner program will benefit those LMI households. The state also estimates that 100 percent of its housing rental funds will benefit LMI households, and 50 percent of the funds allocated for infrastructure and economic development activities will also meet the LMI national objective. The state designed its program so that those in greatest need are provided with the greatest level of assistance, by covering 100 percent of unmet needs for households earning less than 120 percent of area median income (AMI) and covering 50 percent of unmet needs for households above 120 percent of AMI. This approach prioritizes the unmet needs of LMI households and encourages higher income households to leverage personal or private funds.

To enable the state to undertake the activities it has deemed most critical for its recovery, and to ensure that LMI households are sufficiently served and/or assisted, HUD is granting a waiver and alternative requirement to reduce the overall benefit requirement from 70 percent to not less than 55 percent of the state's allocation of CDBG-DR funds. This means that the state

must use at least 55 percent of its CDBG-DR allocations under Pub. L. 114-223, 114-254 and 115-31 to benefit LMI households (or not less than \$939,623,850.00).

Based on the analysis submitted by the state, the Secretary finds a compelling need for this reduction due to the circumstances outlined in the state's request. In particular, HUD notes that the areas most damaged by the storms have limited LMI populations; that all of the state's recovery programs will have some component that will specifically benefit LMI households; that the persistent nature of flooding has led the state to focus on the importance of rebuilding communities in a holistic manner; and that the state will prioritize the unmet needs of LMI households in its homeowner recovery programs. HUD does not see evidence that reduction to the 50 percent level sought by the state is necessary given its approved program design and early data with respect to its applicant pools. HUD, however, does advise the state to maintain its current program design and targeting strategy to ensure that projected LMI benefit levels are achieved and the state continues to demonstrate that low- and moderate-income persons' disaster-related needs have been sufficiently met.

This is a limited waiver modifying 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to reduce the low- and moderate-income overall benefit requirement that the state of Louisiana must meet when carrying out activities identified in its approved action from 70 percent to not less than 55 percent of the state's allocations of CDBG-DR funds under Pub. L. 114-223, 114-254 and 115-31.

*2. Waiver of Section 414 of the Stafford Act, 42 USC § 5181 (State of Louisiana only).*

The state of Louisiana has requested a waiver of section 414 of the Stafford Act, as amended, for rehabilitation or reconstruction activities. This notice grants the State's request and specifies

alternative requirements.

Section 414 of the Stafford Act (42 USC § 5181) provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) [42 U.S.C. 4601 et seq.] ["URA"] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA] ". Accordingly, tenants displaced from their homes as a result of the identified disaster and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition, of real property for a federally assisted project or program may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA.

Section 414 of the Stafford Act (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to the CDBG-DR funded rehabilitation and reconstruction activities undertaken by the state of Louisiana, or its subrecipients, for its grants under Pub. L. 114-223, Pub. L. 114-254 and Pub. L. 115-31; provided that the activities were not planned, approved, or otherwise underway prior to the disaster.

The Department has surveyed other federal agencies' interpretation and implementation of Section 414 and found varying views and strategies for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. Under the CDBG-DR supplemental appropriations, the Secretary has the authority 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 the use by the recipient of these

funds. The Department, in special cases, has previously granted a waiver and provided alternative requirements of Section 414 to CDBG-DR grantees, including the Gulf States impacted by disasters in 2005 and 2008 (see 72 FR 48804) and the 2011 floods in the city of Minot, North Dakota (see 79 FR 60490).

The severe floods of 2016 damaged Louisiana's affordable rental housing stock. According to the State, approximately 28,470 rental units were damaged by the floods, resulting in lower vacancies, increased rental rates and further exacerbating the housing cost burden among low- and moderate-income renters. Many of the damaged rental housing units have since been vacated by tenants who have found permanent housing elsewhere.

The state of Louisiana's CDBG-DR Action Plan for recovery from the 2016 floods identifies this rental housing need and contains several programs geared toward the repair and increase of the affordable rental housing stock by using CDBG-DR funds to reconstruct or rehabilitate rental units that were damaged by the floods and to create new rental housing by providing funding for multi-family developments.

Existing CDBG-DR funding is only sufficient to bring less than six percent of disaster-impacted rental units into decent, safe, and sanitary condition. With a potential pool of 1,500 units eligible for rehabilitation or reconstruction, a strict interpretation of Section 414 of the Stafford Act and 49 CFR 24.403(d)(1) would pose a significant administrative burden and add delays to achieving overall program goals within the timeframe set forth by the applicable notices governing the use of the CDBG-DR funds. Additionally, the State has demonstrated that replacement housing payments for persons initially displaced by the disaster will reduce funds available for improving long-term housing affordability and sustainability.

The State has identified a relatively small population of households currently in need of continued temporary housing assistance of some form related to the flooding events, and the State's CDBG-DR Action Plan attempts to address this need by funding programs designed to assist the needs of persons who are homeless or at risk of becoming homeless due to the 2016 floods.

The Department's basis for this waiver and alternative requirements are unique to the State of Louisiana as documented in its request to the Department. The Department has considered the State's request and determined that good cause exists for a waiver and alternative requirements and that such waiver and alternative requirements are not inconsistent with the overall purposes of title I of the HCD Act.

1. The State's proposal maximizes its ability to increase the overall supply of affordable rental units. Such units will have affordability requirements for low-income persons.
2. The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with a strict interpretation of Stafford Act Section 414 requirements on the potential pool of 1,500 units eligible for rehabilitation or reconstruction.
3. This waiver does not apply to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced by other HUD-funded disaster recovery programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted.

Due to the specific circumstances of Louisiana's recovery process, the Department is



providing a waiver of Section 414 of the Stafford Act and its implementing regulation at 49 CFR 24.403(d)(1), and establishing alternative requirements. For rehabilitation or reconstruction activities in support of bringing damaged rental units back into productive use, the State must adhere to the alternative requirements specified in this notice.

For tenants that have vacated housing units damaged by the 2016 floods, the State of Louisiana must:

1. Establish a publicly available re-housing plan for its rental housing programs that includes, at minimum, the following:
  - a. A rental registry containing information concerning the availability of all of the units assisted through its rental housing programs so that displaced low- and moderate-income households and other interested households may apply to live in these units;
  - b. Contact information and a description of any eligibility and applicable application process, including any deadlines;
  - c. Information on market rate rental units for non-LMI households displaced by the disaster;
  - d. A description of services to be made available, including, at minimum, outreach efforts to eligible persons and housing counseling providing information about available housing resources.

2. Establish and implement operating procedures to ensure that a good faith effort is made to contact each former residential tenants to inform them of the availability of their previous unit and other available units rehabilitated under the program.
3. Offer low- and moderate-income former tenants preferred status in the residential application process for the unit from which they were displaced and for other rental units repaired or created with CDBG-DR funds.

The State's request for waiver and alternative requirements indicates that landlords participating in the rental repair programs will be required to keep the restored units affordable for 5 to 20 years after initial occupancy. The State's policies and procedures governing each rental repair program must detail any imposed affordability requirements for that program.

This waiver has no effect on URA eligibility for relocation assistance and payments for existing tenant occupants of dwelling units who may be displaced or relocated temporarily as a direct result of a CDBG-DR activity.

### **III. Allocation Framework for Disasters in 2017 or Later**

#### **A. Background**

After addressing remaining unmet need for 2015 and 2016 disasters, \$57,800,000 in CDBG-DR funding remains available to be allocated for major disasters occurring in 2017 or later. Pub. L. 115-31 specifies that the funds allocated for disasters in 2017 or later are subject to the same authority and conditions as those applicable to CDBG-DR funds appropriated by Pub. L. 114- 223 and, therefore, these funds are also subject to the requirements of the November 21, 2016 notice, except the major disaster may occur in calendar year 2017 or later until such funds

are fully allocated.

For 2017 and later disasters, HUD will use the methodology specified in Appendix A to the January 18, 2017 notice for determining if a disaster meets the minimum qualifications for funding using the limits established by that notice. For disasters that meet the minimum qualification, HUD will allocate the lesser of 100 percent of serious unmet needs as defined in the January 18, 2017 notice or remaining funds available from Pub. L. 115-31.

HUD will not evaluate a disaster for qualification to receive CDBG-DR funds until:

- (i) The major disaster has been declared eligible for FEMA's Public Assistance (PA) Program and Individual and Households (IHP) Program;
- (ii) FEMA has approved Individual Assistance applications totaling at least \$13 million in IHP financial assistance for the declared disaster in a single county; and
- (iii) four months have passed since the disaster declaration that made IHP available, or the IHP registration period is closed, whichever comes first.

These criteria do not assure CDBG-DR eligibility, but they will lead HUD to acquire the data necessary to determine eligibility, and if eligible, calculate a formula allocation. HUD will allocate funds to 2017 disasters using the best available data at that time.

## **B. Use of Funds**

Grantees receiving an allocation of funds for 2017 and later disasters pursuant to a subsequent notice are subject to the requirements of the November 21, 2016 notice, as amended, which require that prior to the obligation of CDBG-DR funds, a grantee shall submit a plan to HUD for approval 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 (HCDA) or allowed by a waiver or alternative requirement; 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 of the November 21, 2016 notice, as amended.

Pursuant to the November 21, 2016 notice, each grantee receiving an allocation of funds for 2017 or later disasters in a subsequent notice is also required 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.

Grantees receiving an allocation of funds for 2017 or later disasters pursuant to a subsequent notice will be subject to the grant process provided for in section V of the November 21, 2016 notice.

#### **IV. Pub. L. 113-2 Waivers and Alternative Requirements**

##### **A. Background**

This section of the notice authorizes waivers and alternative requirements for certain grantees that received an allocation of funds appropriated under Pub. L. 113-2, which ultimately made available \$15.2 billion in CDBG-DR funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization

due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The full amount of the appropriation has been allocated as follows: \$13 billion in response to Hurricane Sandy, \$514 million in response to disasters occurring in 2011 or 2012, \$655 million in response to 2013 disasters, and \$1 billion for the National Disaster Resilience Competition (NDRC).

This section of the notice specifies waivers and alternative requirements and modifies requirements for grantees that received awards under the NDRC (CDBG–NDR grantees), described in the **Federal Register** notice published by the Department on June 7, 2016 (81 FR 36557). The requirements of the June 7, 2016 notice continue to apply to these grantees, except as modified by this notice.<sup>1</sup>

This section of the notice also provides a waiver of the low- and moderate-income overall benefit requirement for the City of Moore, OK, and the State of New York, which have each received a CDBG-DR award pursuant to Pub. L. 113-2. This section of the notice also modifies the process for the publication of the expenditure extensions approved by the Department under Pub. L. 113-2. This section of the notice additionally authorizes grantees receiving an allocation of CDBG-DR funds for Rebuild by Design projects to exclude expenditures of that allocation from the calculation of the grantee’s overall low- and moderate-income benefit.

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

Pub. L. 113-2 authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with

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<sup>1</sup> Links to the June 7, 2016 notice, the text of Pub. Law 113-2, and additional guidance prepared by the Department for CDBG–DR grants, are available on the HUD Exchange Web site: <https://www.hudexchange.info/programs/cdbg-dr/resilient-recovery/>

HUD's obligation 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 HCDA. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

For the waivers and alternative requirements described in this section of notice, the Secretary has determined that good cause exists and that the waivers and alternative requirements are not inconsistent with the overall purposes of title I of the HCDA. Grantees under Pub. L. 113-2 may request waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of Pub. L. 113-2, waivers must be published in the **Federal Register** no later than 5 days before the effective date of such waiver.

*1. Urgent need national objective certification requirements for CDBG-NDR grantees.*

The June 7, 2016 notice provided CDBG-NDR grantees with a waiver and alternative requirement to the certification requirements for the documentation of the urgent need national objective at 24 CFR 570.208(c) and 570.483(d), waiving the certification requirements until 24 months after the date the Department obligates funds to a grantee, and alternatively requiring each CDBG-NDR grantee to document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the grantee. Elsewhere, this notice describes the extension of the expenditure deadline that the Department is authorized to provide to all CDBG-NDR grantees, allowing them to expend funds until September 30, 2022. For CDBG-NDR grantees funding activities that will satisfy the urgent

need national objective, an extension of the existing alternative requirement to the standard urgent need certification requirement is also required, to ensure that the CDBG-NDR project can meet the urgent need national objective on a timeframe that coincides with an extended expenditure deadline.

Each CDBG–NDR grantee was required to document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact. For activities that meet the urgent need national objective, grantees were required to reference in their Action Plan the type, scale, and location of the disaster-related impacts that each project, program, and/or activity will address. Without an extension of the prior waiver and alternative requirement to the certification requirements for documentation of the urgent need national objective, HUD’s extension of the 24-month expenditure deadline could penalize grantees whose successful applications relied on the availability of the alternative urgent need national objective criteria.

Grantees documented urgent needs in their initial applications, and the grantees will expend funds to meet these urgent needs throughout the grant period. Therefore, section 3.V.A.1.d. of the June 7, 2016 notice is modified to add the following alternative requirement for CDBG-NDR grantees: “Notwithstanding the two year limitation on the use of the urgent need national objective referenced in paragraph one of this section, for activities designed to respond to disaster-related impacts that pose a serious and immediate threat to the health or welfare of the community, and which were adequately documented within the grantee’s initial Action Plan, the grantee may continue to use the alternative certification of the urgent need national objective until the end of the extended expenditure deadline approved by the Department, provided that the

grantee updates the needs assessment of its Action Plan as new or more detailed/accurate disaster-related impacts are known.”

As a reminder, Action Plans must be amended, as necessary, to ensure that an updated needs assessment is included for each project, program, or CDBG-eligible activity undertaken with CDBG–NDR funds. This alternative requirement does not contemplate new projects or activities that were not documented as meeting an urgent need within a grantee’s initial Action Plan. Amendments to a CDBG-NDR Action Plan that describe additional projects or activities will trigger the substantial amendment requirements described in paragraph V.A.1.g.(i) in the June 7, 2016 notice and new projects or activities intended to meet the urgent need national objective may require a separate waiver from HUD to permit use of the alternative urgent need certification.

*2. Revision of substantial amendment requirements for CDBG-NDR grantees.* The June 7, 2016 notice specified the changes to an Action Plan that would constitute a substantial amendment, and described the process required for CDBG-NDR grantees to make a substantial amendment to an approved Action Plan. The June 7, 2016 notice indicated that HUD would review the proposed change(s) against the rating factors and threshold criteria and consider whether the revised Action Plan, inclusive of the proposed change, would continue to score in the fundable range for the NDRC. The June 7, 2016 notice also stated that HUD would only approve a substantial amendment if the revised score remains within the fundable range of CDBG-NDR scores. However, all NDR awards funded scaled and scoped versions of proposals in NDR applications, because the Department could not fully fund all the proposed activities described in applications that scored within the initial fundable range. Accordingly, determining



whether a change to a grantee's Action Plan would fall within the initial fundable range of CDBG-NDR scores is not an accurate method of determining whether a revised project would still be fundable. To address this and to further clarify the criteria and process for amendments to CDBG-NDR Action Plans, the Department is amending the third paragraph of section 3.I.B. of the June 7, 2016 notice by replacing it in its entirety with the following:

“A grantee may amend the Action Plan, but must receive prior HUD approval for substantial amendments to the plan. Before making any substantial amendment to the Action Plan, a grantee must follow the same citizen participation requirements required by the NOFA for the preparation and submission of an NDRC application, FR-5800-N-29A2 (NOFA). Additional information about citizen participation requirements can be found in section 3.V.A.3 below.”

Additionally, the Department is also amending section 3.V.A.1. of the June 7, 2016 notice by replacing it with the following:

“1. *Application for CDBG-NDR Waiver and Alternative Requirement.* The requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), and 24 CFR 91.220 and 91.320 are waived for funds provided under the NOFA. Instead, HUD required each grantee to submit an application for CDBG-NDR, and the Applicant's Phase 1 and Phase 2 submissions for this competition together constitute an Action Plan required under Pub. L. 113-2. HUD notes that 24 CFR 570.304 and 24 CFR 570.485, to the extent they govern annual formula CDBG grant approvals, do not apply to National Disaster Resilience Competition (NDRC) allocations, but the standard of review of certifications

continues to apply to grantee certifications. HUD will monitor the grantee's activities and use of funds for consistency with its approved Action Plan and all other requirements, including performance and timeliness. Per the Appropriations Act, and in addition to the requirements at 24 CFR 91.500, the Secretary may disapprove a substantial amendment to an Action Plan (application) if it is determined that the amended application does not satisfy all the required elements included in this notice at 3.V.A.1.g.(i). However, in reviewing substantial amendments, HUD will not penalize grantees for scaling and scoping decisions made by HUD as part of the NDRC award selection process.”

The Appropriations Act, as used in the June 7, 2016 notice, refers to Pub. L. 113-2.

Additionally, the Department is also amending section 3.V.A.1.g. of the June 7, 2016 notice by replacing it in its entirety with the following:

“(g) *Action Plan Amendments, Submission to HUD, Treatment of Leverage, Partners, and BCA.* A grantee is encouraged to work with its HUD representative before making any amendments to its Action Plan to determine whether the amendment would constitute a substantial amendment and to ensure that the proposed change complies with all applicable requirements.

(i) *Substantial Amendments.* The following modifications constitute a substantial amendment requiring HUD approval: any change to the funded portions of the application that HUD determines, based generally on the guidelines of the NOFA (as adjusted for HUD's scaling and scoping of the award), would present a significant change to the grantee's capacity to carry out the grant (including loss of a partner without addressing lost capacity through replacement or contingency plan identified in the

application); any change to the funded portions of the application that HUD determines, based generally on the guidelines of the NOFA (as adjusted for HUD's scaling and scoping of the award), would undermine the grantee's soundness of approach (including the benefit cost analysis); any change to the Most Impacted and Distressed target area(s) (a revised area must meet Most Impacted and Distressed threshold requirements in the NOFA, including Appendix G to the NOFA); any change in program benefit, beneficiaries, or eligibility criteria, and the allocation or reallocation of more than 10 percent of the grant award; any change to the leverage that was pledged and approved in the grantee's grant agreement; or the addition or deletion of an eligible activity.

Amendments that do not fall within the definition of substantial amendment are referred to as 'nonsubstantial amendments.' A grantee must notify HUD at least 10 business days before a nonsubstantial amendment becomes effective.

For substantial amendments, grantees must complete the citizen participation requirements of this notice, at section 3.V.A.3, before HUD can approve the amendment. In addition to reviewing Action Plans against the criteria at 24 CFR 91.500, HUD will review and approve a substantial amendment to an Action Plan if the amendment results in an Action Plan that HUD determines: (i) can be reasonably carried out by the grantee and that the grantee has addressed any loss in capacity due to dissolved partners that are not replaced; (ii) may differ from the previously approved Action Plan but does not significantly deviate from the scope and objectives of the previously approved Action Plan or the purpose of the NDRC; (iii) satisfies all of the required elements identified in the NOFA (as adjusted for HUD's scaling and scoping of the award), this amended

section 3.V.A.1.g. and elsewhere in the June 7, 2016 notice, including Tie-back requirements, and does not fund activities identified in section III.C.2. of the NOFA as ineligible; (iv) demonstrates (through an updated BCA, if requested) that the benefits to the grantee's community and to the United States continue to justify the costs of the award; and (v) does not differ in the amount of leverage identified in the grantee's grant agreement (substitution of leverage sources is permitted).

To allow HUD to make this determination, a grantee must submit adequate documentation that demonstrates the following: capacity of the grantee and partners to implement the funded activities, any changes to partners who will assist in the amended activity, scope and beneficiaries of the funded activities, the direct and supporting leverage committed by the grantee, and an updated BCA (if requested). Grantees are encouraged to work with their HUD representatives before making any amendment to an Action Plan. As indicated in the NOFA, if a grantee makes or proposes to make a substantial amendment to its project, HUD reserves the right to disapprove the amendment or amend the grantee's award and reduce the grant amount or recapture the grant, as necessary.

(ii) *Information for Substantial and Nonsubstantial Amendments.* If the grantee proposes to amend its Action Plan, each proposed amendment must be highlighted, or otherwise identified, within the context of the approved Action Plan and be submitted to HUD. All amendments must comply with provisions of this notice, including Tie-back requirements. Grantees may not amend an Action Plan to include funding for ineligible activities identified in section III.C.2 of the NOFA. The beginning of every proposed

amendment must include a section that identifies exactly what content is being added, deleted, or changed, and whether the grantee believes that the proposed amendment would result in a significant change to the grantee's capacity or soundness of approach. This section must also include a chart or table that clearly illustrates where funds are coming from and to where they are moving. The amendment must include a revised budget allocation table that reflects the entirety of all funds, as amended. A grantee's most recent version of its approved NDR application and its DRGR Action Plan must be accessible for viewing as a single document, at any given point in time, rather than requiring the public or HUD to view and cross-reference changes among multiple amendments. Requirements for the full expenditure of CDBG-NDR funds by a date established by HUD will continue to be enforced under any amendment to the Action Plan. 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 a proposed amendment via email or letter within 5 business days of receipt. HUD may seek additional information from the grantee to determine whether a proposed amendment is a substantial amendment.

(iii) *Amendments that may affect the BCA previously accepted by HUD.* If requested by HUD, a grantee must submit an update to its BCA to support a request for a substantial amendment.

(iv) *Leverage Accepted by HUD.* Grantees are required to show, through quarterly reports, evidence that firmly committed leverage resources in the amount required by the grant terms and conditions have been received and used for the intended purposes. A

grantee may not propose an amendment to reduce the amount of leverage pledged and identified in the grant agreement. Sources of leverage funds, however, may be substituted after grant award with HUD approval, if the dollar amount of leverage is equal to or greater than the total amount of leverage required by the grant terms and conditions. Substitution of a leverage source in the same amount committed and identified in the grant terms and conditions is a nonsubstantial amendment. Section 3.V.A.2.e describes additional DRGR leverage reporting requirements.

(v) *Partners Accepted by HUD*. The NOFA permitted a grantee to identify a partner in its application that the grantee would be otherwise required by program requirements to competitively procure. A grantee is not required to secure the services of any partner by competitive procurement if the partner is duly documented and identified in the initial approved Action Plan for the CDBG-NDR grant. The Department has granted permission for single source procurement of these partners, pursuant to 2 CFR 200.320(f)(3) (cited in the NOFA as 24 CFR 85.36(d)(4)(i)(C), which has since been superseded by the Uniform Requirements) and advised state grantees that have not adopted the local government procurement requirements in 2 CFR part 200 to review state requirements associated with single source procurement and to follow all applicable procurement requirements. In many cases, this will entail the grantee undertaking a cost analysis prior to making payments to such a partner, and the grantee will be responsible for ensuring compliance with requirements that all CDBG–NDR costs be necessary and reasonable (for local government grantees, see 2 CFR 200.323, for state governments that have not adopted 2 CFR 200.323, see state procurement requirements applicable to single

source procurements). If a partner dissolves the partnership after award and before activities are complete, a grantee should make its best effort to replace the partner with a similarly skilled partner, if the grantee's approved CDBG-NDR application was rated and ranked based on the capacity of the dissolved partner. If the grantee is not able to replace the lost capacity of a partner by following a contingency plan included in its approved CDBG-NDR application, the grantee must complete a substantial amendment to its Action Plan that addresses the lost capacity. If a grantee proposes to add a partner that would otherwise have to be procured as a contractor after the award or if the partner was identified in the approved CDBG-NDR application but was found by HUD to lack sufficient documentation, then that selection of that partner would not be covered by the single-source permission above and would be subject to procurement requirements under 2 CFR part 200 or state law, as applicable. Additionally, as required by Appendix D to the NOFA, the grantee shall execute a written subrecipient agreement, developer agreement, contract, or other agreement, as applicable, with each partner regarding the use of the CDBG-NDR funds, before disbursing any CDBG-NDR funds to the partner. The written agreement must conform with all CDBG-NDR requirements and shall require the partner to comply with all applicable CDBG-NDR requirements, including those found in Disaster Relief Appropriations Act, 2013 (Pub. L. 113- 2), title I of the HCDA (42 U.S.C. 5302 et seq.), the CDBG program regulations at 24 CFR part 570, this amended June 7, 2016 notice, and any other applicable **Federal Register** notices, and commitments made in the grantee's Phase 1 and Phase 2 approved CDBG-NDR applications."

Additionally, the Department is also amending the first paragraph of section 3.V.A.3.a. of the June 7, 2016 notice by replacing it in its entirety with the following:

*“a. Publication of the Action Plan, Access to Information, and Substantial Amendments:* At all times, the grantee must maintain a public website that contains the latest versions of its Action Plan, including the DRGR Action Plan and the version as submitted to HUD for the competition and including the following portions: Executive summary; Factor narratives; Eligibility; national objective; overall benefit; and schedule responses, threshold requirements documentation, and all exhibits (A–G) (but of the attachments, only Attachments D and F must be published); and opportunity for public comment, hearing, and substantial amendment criteria. Before the grantee submits a proposed substantial amendment, the grantee must publish the proposed submission, including a section that identifies exactly what content is being added, deleted, or changed, and whether the grantee believes that the proposed amendment would result in a significant change to the grantee’s capacity or soundness of approach; a chart or table that clearly illustrates where funds are coming from and to where they are moving; and a revised budget allocation table that reflects the entirety of all funds, as amended.”

*3. Projection of Expenditures and Outcomes.* The June 7, 2016 notice specified the time frames for grantees to report and update the projection of expenditures and performance outcomes for CDBG-NDR grants. As grantees have refined and finalized outcomes for each CDBG-NDR grant, the Department has determined that further clarification of the time frames for initially reporting and updating grantee projections of expenditures and outcomes is required. Accordingly, Section 3.II.B(9) of the June 7, 2016 notice is amended by replacing it in its



entirety with the following:

“(9) *Continuing responsibility related to certification.* After materials necessary to support the Secretary’s certification are submitted and the grant agreement is signed, grantees have continuing responsibilities for maintaining the certification. HUD may request an update to the grantee’s certification submission each time the grantee submits a substantial Action Plan Amendment, or if HUD has reason to believe the grantee has made material changes to grantee’s support for its certifications.

Grantees must submit to the Department for approval an update to the program schedule (projection of expenditures) and milestones (outcomes) included in the approved CDBG-NDR application response to the Phase 2 Factor 3 Soundness of Approach rating factor. The projections must be based on each quarter’s expected performance – beginning the quarter that funds are available to the grantee and continuing each quarter until all funds are expended. Each grantee must also include these projected expenditures and outcomes in the initial activity set-up in DRGR. Within 90 days of HUD’s approval of the initial DRGR Action Plan, the projections entered into DRGR (as contained in the DRGR Action Plan) must be amended to reflect any subsequent changes, updates, or revision of the projections. Any subsequent changes, updates, or revision of the projections must receive written approval from HUD. Amending Action Plans solely to accommodate changes to the timeline for projected expenditures does not fall within the definition of substantial amendment and is not subject to citizen participation requirements.

Guidance on the preparation of projections is available on HUD’s website under the

headings Office of Community Planning and Development, Disaster Recovery Assistance (<https://www.hudexchange.info/resource/3685/cdbg-dr-grantee-projections-of-expenditures-and-outcomes/>). The projections will enable HUD, the public, and the grantee to track proposed versus actual performance. HUD will make the DRGR Action Plan and performance reports available on the DRGR public website (<https://drgr.hud.gov/public/>).

Additionally, following execution of a grant agreement, the DRGR Action Plan that reflects the components funded through the CDBG-NDR grant must be posted on the grantee's website.

Additional information on the DRGR reporting system requirements can be found in section 3.V.A.2. below.

Grantees are also required to ensure all agreements (with subrecipients, recipients, and contractors) clearly state the period of performance or the date of completion. In addition, grantees must enter expected completion dates for each activity in the DRGR system. When target dates are not met, grantees are required to explain why in the activity narrative in the system.

Other reporting, procedural, and monitoring requirements are discussed under "Grant Administration" in section 3.V.A. of this amended June 7, 2016 notice. The Department will institute risk analysis and on-site monitoring of grantee management as well as collaborate with the HUD Office of Inspector General to plan and implement oversight of these funds."

In addition to the above changes, HUD is modifying the last paragraph of section 3.IV of

the June 7, 2106 notice, by replacing it in its entirety with the following:

- “Grantee amends its published Action Plan (the DRGR Action Plan) to include any updates to its projection of expenditures and outcomes within 90 days of HUD’s approval of the initial DRGR Action Plan.”

4. *Waiver of Limitation on Planning Costs (State of New Jersey only)*. The Department is modifying the alternative requirement in the June 7, 2016 notice which imposes a 20 percent limit on planning and administrative costs, and is imposing an alternative requirement for the state of New Jersey to accommodate activities to be funded under the state’s approved CDBG-NDR Action Plan. The June 7, 2016 notice waived section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) for states and provided an alternative requirement that limits CDBG-NDR grantees to using no more than 20 percent of the total grant amount on a combination of planning and general administrative costs (see paragraph V.A.10.b.(1) of the June 7, 2016 notice). The state submitted a Phase 2 application to HUD for the NDRC on October 27, 2015, describing an array of recovery and resilience activities that included both infrastructure and planning activities. In January 2016, the Department made a CDBG-NDR award of \$15 million to the state for two proposed planning-only projects, a Regional Resiliency Planning (RRP) Grant Program and a best practices toolkit. As part of its RRP Grant Program, the state proposed to invest CDBG-NDR funds in a program evaluation that investigates the efficacy of its grant program and facilitates replication of the program in other communities. Because the entirety of the state’s CDBG-NDR award is for the purpose of planning-only activities, HUD is modifying the limitation described in the June 7, 2016 notice for the state of New Jersey only, and imposing the following alternative requirement:

“To ensure that the state of New Jersey can devote the full amount of CDBG-NDR grant funds to both of its approved planning-only projects, the Department is waiving section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) to remove the limitation on planning expenses for this grant, thereby permitting the state to expend 100 percent of its CDBG-NDR grant on planning and administration expenses. Additionally, to ensure that the state devotes a minimum amount of its funds to local level planning activities as described in its approved CDBG-NDR Action Plan, the Department is requiring that at least 80 percent of the \$10 million provided for the RRP in the state’s Action Plan (\$8 million) be expended on local planning grants.

As a reminder, the state must continue to limit its general administrative costs for the CDBG-NDR grant to 5 percent of its total grant award, as provided in Pub. L. 113-2 and the June 7, 2016 notice. The state must also adhere to the program funding amounts in the state’s grant agreement terms and conditions, as amended.”

*5. Waiver of Limitation on Planning Costs (State of Connecticut only).* The Department is modifying the alternative requirement in the June 7, 2016 notice which imposes a 20 percent limit on planning and administrative costs, and is imposing an alternative requirement for the state of Connecticut to accommodate activities to be funded under the state’s approved CDBG-NDR Action Plan. The June 7, 2016 notice waived section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) for states and provides an alternative requirement that limits CDBG-NDR grantees to using no more than 20 percent of the total grant amount on a combination of planning and general administrative costs (see paragraph V.A.10.b.(1) of the June 7, 2016 notice). The state submitted a Phase 2 application to HUD for

the NDRC on October 27, 2015, describing an array of recovery and resilience activities that included both infrastructure and planning activities. In January 2016, the Department made a CDBG-NDR award of \$54,277,359 to the state for infrastructure and the following planning activities: Bridgeport South End Design Guidelines (\$330,000), Bridgeport South End District Energy Feasibility (\$350,000), Connecticut Connections Coastal Resilience Plan (\$8,203,323), and the State Agencies Fostering Resilience (SAFR) program (\$3,500,000), which includes both administration and planning expenses.

The sum of planning projects funded under this award is \$12,383,323, or 22.8 percent of the total grant award amount, and the maximum allowable amount that can be used for general administrative expenses is 5 percent of the grant total or \$2,713,868. In order to allow the state to fully fund its selected projects and properly administer its grant award, HUD is modifying the limitation described in the June 7, 2016 notice for the state of Connecticut, and imposing the following alternative requirement:

“The Department is waiving section 106(d) of the HCDA (42 U.S.C. 5306(d)) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) to increase the limitation on planning and general administration expenses for this grant to 27.8 percent or \$15,097,191.

As a reminder, the state of Connecticut must continue to limit its general administrative costs for the CDBG-NDR grant to 5 percent of its total grant award, as provided in the Appropriations Act and the June 7, 2016 notice. The state must also adhere to the program funding amounts in the state’s grant agreement terms and conditions, as amended.” The Appropriations Act referenced in the amended June 7, 2016 notice is Pub. L. 113-2.

6. *Waiver for Eligible Activity (Commonwealth of Virginia only)*. The Department awarded the Commonwealth of Virginia CDBG-NDR funds to develop a Coastal Resilience Lab and Accelerator Center (the Center) that supports new business initiatives aimed at addressing flood risk. Many of the Center's components, however, are not otherwise CDBG-eligible activities. Accordingly, the Commonwealth requested and the Department is granting a waiver and establishing an alternative requirement to create a CDBG-eligible activity that comprises all the components proposed for the Center.

The Commonwealth's approved Action Plan states that the Center will "serve as the nexus for technological and organizational innovation around community revitalization, water management, resilience measurement," and will "focus on generating economic growth by assisting entrepreneurs skilled at identifying problems, matching them with potential solutions, working with companies to create product, and moving product quickly to market." To this end, the Commonwealth will use its CDBG-NDR grant to fund specific components of the project including the design plan for the operations of the Center, training, office space, and capital investment for emerging businesses focused on regional resilience solutions, targeted workforce development and support, public outreach, and sharing best practices.

In rare instances when necessary to achieve recovery goals, HUD has previously granted waivers and alternative requirements to allow a grantee to treat a large complex project as a single eligible activity with multiple components that contribute to long-term recovery. HUD's approval of the Commonwealth's application through the NDRC is intended to support the creation of a new regional industry cluster to serve as a model for other communities that want to support businesses in this field.

HUD has determined that many of the proposed project components in the Commonwealth's application, including the development of a public facility, support for small businesses through training and capital, supporting workforce development, public engagement, and knowledge dissemination are already eligible CDBG activities. Therefore, to streamline implementation of the Center and its programs and allow the Commonwealth to proceed with valuable project components that are not eligible CDBG activities, HUD is waiving section 105(a) (42 U.S.C. 5305(a)) and establishing an alternative requirement only to the extent necessary to create a new eligible activity for the Commonwealth's CDBG-NDR grant, referred to as the Center, comprised of the activities outlined in the Commonwealth's approved Action Plan for its CDBG-NDR grant. However, HUD reminds grantees that the following provision in the June 7, 2016 notice remains in effect: "When CDBG-NDR grantees provide funds to for-profit businesses, such funds may only be provided to a small business, as defined by the SBA under 13 CFR part 121. CDBG-NDR funds may not be used to directly assist a privately-owned utility for any purpose."

*7. Waiver and alternative requirement for low- and moderate-income area benefit activities (State of California only).* The Department awarded the State of California CDBG-NDR funds to develop a Community and Watershed Resilience Program in response to the 2013 Rim Fire that was the third largest wildfire in California's history. The program will finance the development of a biomass facility and wood products campus in Tuolumne county as well as a forest and watershed health component focused on forest restoration efforts, rangeland improvements, and biomass removal and thinning throughout the region. The program also includes the establishment of a community resilience center that will offer business incubator

and job training services, while also serving as an emergency evacuation center for the broader community.

The state's approved CDBG-NDR application noted that the most impacted and distressed area with remaining unmet disaster recovery needs to be served by the project encompasses the non-entitlement jurisdictions of Tuolumne, Mariposa and Calaveras counties, where 38 percent of the residents are low- and moderate-income (LMI). The state's application indicated that if CDBG-NDR funds were awarded for the program, the state would require a waiver that would permit activities carried out in areas with an LMI percentage of not less than 38 percent to qualify under the low- and moderate-income area benefit national objective.

Subsequent to the award and in response to HUD's scoping and scaling of the project, the state submitted a revised request to the Department, seeking a waiver and alternative requirement that would allow the state to apply exception criteria that recognizes that few, if any communities within the service area have 51 percent or more low- and moderate-income residents, per the requirements of 42 U.S.C. 5305(c)(2)(A), allowing the state to use a 38 percent LMI threshold to qualify activities under the LMI area benefit national objective. In its request, the state contends that the very nature of the initiatives financed with CDBG-NDR funds means that communities beyond the identified service area will also realize benefits, through reduced risks associated with wildfires, improved watersheds and new economic opportunities arising from efforts to commercialize the area's biomass.

Based on the state's request and the fact that the approved project has a combined LMI population that is not greater than 38 percent of the area, HUD is granting a limited waiver modifying 42 U.S.C. 5305(c)(2)(A)(i), to the extent necessary to permit the state to use a



percentage of not less than 38 percent to qualify activities under the low- and moderate-income area benefit national objective.

8. *Waiver of the 50 percent overall benefit requirement (City of Moore, OK only).* The primary objective of the HCDA 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 the grantee’s CDBG program’s funds be used to support activities benefitting low- and moderate-income persons. This target can be difficult for many CDBG–DR grantees to reach as a disaster impacts entire communities—regardless of income. Further, it may limit grantees’ ability to provide assistance to the most damaged areas of need. Therefore, as described by the December 16, 2013 **Federal Register** notice (78 FR 76154), the city of Moore, Oklahoma, in addition to the other grantees under Pub. L. 113-2 received a waiver and alternative requirement reducing the amount of the city’s CDBG-DR funds that must be used for activities that benefit LMI persons to 50 percent. Additional flexibility was provided in the March 5, 2013 **Federal Register** notice (78 FR 14329). It allowed a grantee to request to further reduce its overall benefit requirement if it submitted 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 50 percent requirement; and (d) demonstrates 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. Upon HUD's review of the justification, the request can be granted only if the Secretary finds a compelling need to reduce the overall benefit below 50 percent.

In response to the above, the city of Moore submitted a justification addressing the required criteria. The EF-5 tornado that struck Moore in 2013 also destroyed several affordable housing developments in the city which have not been replaced. The city council adopted a plan in March of 2013 that included infrastructure projects in support of a new affordable housing development project that will bring much needed LMI affordable units to the city. In order to carry out these activities the city acquired land in a closed mobile home park which will allow it to replace a portion of the LMI affordable rental housing destroyed by the EF-5 tornado. Demolition of the remaining structures and asbestos abatement has been completed and a Planned Unit Development (PUD) design for the site has been adopted. The SW 17th/ Janeway Master Redevelopment plan will be a mixed use, mixed income urban village which will be built at an overall cost of \$36 - \$40 million. This redevelopment will include the use of \$13.5 million in CDBG-DR grant funds and provides for 170 affordable LMI units and 30 market rate units. The city council approved the master plan and PUD in October 2016, and staff are currently developing a Request for Proposals to solicit development bids. After the completion of the SW 17th/ Janeway development, the city expects that the percent of LMI residents in the block group which contains the development will rise to 57.2 percent, well above the 51 percent required to classify a project under the low/mod area benefit (LMA) national objective.

Through its Infrastructure Recovery and Implementation Plan (IRIP), designed in 2014, the city identified several flood control and drainage projects that will support the development

of SW 17th/ Janeway and its affordable housing units, and thus will directly benefit the LMI residents that return to the area. Currently, there are three infrastructure projects associated with the Round Rock development that will not meet the area benefit test that requires at least 51 percent of the residents in the area are LMI using the most current HUD FY 2016 data. The three projects include the Little River Sewer Interceptor project, the S. Telephone Road Improvements project, and the Little River Channel and Greenway project totaling over \$7.6 million in CDBG-DR investments. While these projects will directly benefit the new housing development, they will also benefit other block groups within the city. Without this waiver, the city could carry out these activities under the national objective of Urgent Need, but because of the large number of CDBG-DR funds dedicated to these activities, the city would then not be able to meet its 50 percent LMI overall benefit requirement. Hence, the city cannot carry out these infrastructure activities without a waiver.

To enable the city to undertake these infrastructure activities it has deemed most critical for its recovery, and to ensure that LMI residents are adequately served and/or assisted, HUD is granting a limited waiver and alternative requirement to reduce the overall benefit from 50 percent to not less than 42 percent. Based on the city's justification, the Secretary has found a compelling need for this reduction due to the circumstances outlined in Moore's request. In particular, HUD notes that these projects will all directly serve the new housing development that will provide 170 units of affordable LMI housing, prioritizing the needs of those LMI residents because these three projects will ensure that the redevelopment site is no longer in a FEMA floodway, will repair and replace sewage lines that will service the development, and install traffic control lights and widen an intersection to handle the increased density the

development will bring. The city has identified these infrastructure projects as a top priority to ensure the success of the SW 17th/ Janeway redevelopment and this waiver will allow LMI persons to live there safely. This is a limited waiver modifying 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to reduce the low- and moderate-income overall benefit requirement that the city must meet when carrying out activities with funds appropriated under Pub. L. 113-2 from 50 percent to not less than 42 percent.

*9. Waiver of the 50 percent overall benefit requirement (New York State, only).* As described in the March 5, 2013 notice, the state of New York and all other grantees under Pub. L. 113-2 received a waiver and alternative requirement requiring that at least 50 percent of CDBG-DR grant funds must be used for activities that benefit low- and moderate-income persons.

The state of New York has submitted a justification to HUD to reduce the overall benefit requirement for funds provided under Pub. L. 113-2. HUD has allocated \$4,416,882,000 in CDBG-DR funds to the state pursuant to Pub. L. 113-2, including \$185 million for projects identified by HUD through the Rebuild by Design competition. The state's CDBG-DR grant is administered by the Governor's Office of Storm Recovery (GOSR).

GOSR's approved action plan allocates its CDBG-DR grant to four main recovery programs: housing (58 percent), economic development (3 percent), community reconstruction (18 percent) and infrastructure (21 percent). These programs were developed by GOSR to address the most urgent and significant unmet needs of those areas impacted by the storms that are eligible under Pub. L. 113-2 - Hurricanes Sandy and Irene. In its request, GOSR contends that it has engaged in extensive and continued outreach to all persons and businesses impacted

by the storms to inform the state's citizens of the availability of recovery programs and how to apply, and that all eligible applicants will receive assistance. Significantly, GOSR's analysis of the geographic areas most impacted by the storms demonstrates that the storms did not damage areas with significant LMI populations. Because HUD requires grantees receiving funds under Pub. L. 113-2 to spend at least 80 percent of each grant in the HUD identified most impacted counties, it is very difficult for the state to meet both this requirement and the requirement that at least 50 percent of the expended funds benefit LMI populations.

GOSR has submitted an extensive data analysis to illustrate that the demographics of the communities most impacted by the storms are generally not comprised of LMI block groups. GOSR's data illustrates that, outside of the five counties that comprise New York City, the storms impacted communities in which only about 20 percent of the population resides in LMI block groups. GOSR has reported that while there are 3.96 million people living in the state's most impacted counties (Nassau, Westchester, Suffolk, and Rockland), only 34 percent of those residents are LMI persons and only 25 percent of the block groups are considered LMI.

The state uses this data to illustrate its difficulty in meeting the LMI area benefit national objective, particularly as it relates to infrastructure. Many of the state's infrastructure projects are large in scale and have widespread positive impacts for persons of all income levels, including LMI persons, but it is nearly impossible for those projects to meet the LMI area benefit criteria. For example, one of the state's largest investments, the \$101 million Bay Park Wastewater Treatment Plant project, benefits a service area that includes more than 370 block groups. Even though this project benefits many thousands of LMI residents within these block groups (approximately 135,000 LMI persons), there are not enough LMI persons to meet the 51 percent

test for an LMI area benefit activity.

Given these challenges, the state has proposed allocating additional funds to initiatives that further address unmet needs of LMI persons, including the reallocation of \$50,000,000 of Community Reconstruction (CR) funds to projects within the city of New York that will meet the applicable LMI area benefit criteria.

To enable the state to undertake the activities it has deemed most critical for its recovery, and to ensure that LMI households are adequately served and/or assisted, HUD is granting a waiver and alternative requirement to reduce the overall benefit requirement for the state's grant from 50 percent to not less than 35 percent of the state's allocation of CDBG-DR funds, excluding the \$185 million allocated by HUD for Rebuild by Design projects and, consistent with existing program requirements and subject to the requirements in paragraph 10, below. This means that the state must use at least 35 percent of its CDBG-DR allocation (excluding RBD) under Pub. L. 113-2 to benefit LMI persons.

Based on the analysis submitted by the state, the Secretary has found a compelling need for this reduction due to the particular circumstances outlined in the state's request. In particular, HUD notes that the areas most damaged by the storms have limited LMI populations; that the infrastructure projects being undertaken by the state will nonetheless directly serve large populations of LMI persons; that the state has done significant outreach to communities in the most impacted counties and will serve all eligible applicants that have applied for assistance; and that the state will reallocate at least \$50,000,000 of Community Reconstruction funds to increase the number of LMI persons served. This is a limited waiver modifying 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to reduce

the low- and moderate-income overall benefit requirement that the state must meet when carrying out activities identified in its approved action with funds appropriated under Pub. L. 113-2 from 50 percent to not less than 35 percent.

*10. Rebuild By Design Exception to Overall Benefit Requirement.* In the October 16, 2014, **Federal Register** notice (79 FR 62182), HUD allocated \$930,000,000 of CDBG-DR funds made available under Pub. L. 113-2, for the implementation of six proposals selected through the HUD-sponsored Rebuild by Design (RBD) competition. The RBD allocation was included as part of the larger allocation of CDBG-DR funds under Pub. L. 113-2 for long term recovery from Hurricane Sandy. Four grantees received an RBD allocation as part of their CDBG-DR grant for Hurricane Sandy recovery: the state of New York, the city of New York, the state of Connecticut, and the state of New Jersey.

The proposals selected through the Rebuild by Design Competition were identified prior to the development and approval of action plans for grantees receiving an allocation of CDBG-DR funds under Pub. L. 113-2. The October 16, 2014, notice notes that the individual proposals were selected to address the structural and environmental vulnerabilities that Hurricane Sandy exposed in communities throughout the region and to provide fundable solutions to better protect residents from future disasters. The notice also requires that projects funded with the RBD allocation reflect the proposals selected through the Rebuild by Design Competition to the greatest extent practicable and appropriate.

The RBD proposals were selected by HUD and the RBD allocation was included as part of each grantee's overall CDBG-DR allocation for Hurricane Sandy recovery, however, HUD recognizes that as the location and scope of an RBD project is further refined, the RBD portion

of a grantee's overall CDBG-DR allocation may prevent certain grantees from meeting the requirement of the March 5, 2013, notice that at least 50 percent of each grantee's overall allocation of CDBG-DR funds be expended to meet the LMI national objective. Accordingly, the Secretary has found a compelling need for this waiver based on the facts presented above. In particular, HUD's selection of RBD projects within defined geographic areas may limit the ability of grantees to meet an LMI national objective within that defined area. This is a limited waiver and alternative requirement to modify 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3) only to the extent necessary to allow the four grantees receiving an allocation of CDBG-DR funds specifically for RBD projects, to either include or exclude the expenditure of its RBD allocation in the calculation of the grant's overall LMI benefit. If a grantee chooses to exclude the expenditures of its RBD allocation from its overall benefit calculation, it is required to notify HUD and the public through a non-substantial amendment to its approved action plan.

11. *Publication of Approved Expenditure Extension Requests.* Pursuant to the requirements of section 904(c) under title IX of Pub. L. 113-2, CDBG-DR and CDBG-NDR funds must be expended within 24 months following obligation, unless an extension is provided. The Office of Management and Budget (OMB) granted the Department a waiver of the statute's two-year expenditure timeline, recognizing that certain disaster recovery activities satisfy the OMB criteria for activities that are long-term by design where it is impracticable to expend funds within the 24-month period and achieve program missions. HUD may grant extensions for activities that satisfy the OMB criteria. The **Federal Register** notice published by the Department on May 11, 2015 (80 FR 26942) and the June 7, 2016 notice established the process



and requirements for extension of the deadline for the expenditure of funds under Pub. L. 113-2, including the requirement that HUD publish its approval of the extension of grantee expenditure deadlines in the **Federal Register**. In order to provide the public with more timely information about the expenditure deadlines for funds provided under Pub. L. 113-2, the Department is amending both the May 11, 2015 notice and the June 7, 2016 notice, respectively, to provide for the publication of expenditure deadline extensions on the Department's web site.

Accordingly, the last bullet of Section VI of the May 11, 2015 notice is amended to read:

- “If approved, HUD will publish the extension approval on its web site at: <https://www.hudexchange.info/programs/cdbg-dr/>. HUD will consolidate grantee extension approvals for publication. Therefore, extension approval is effective as of the date of the extension approval letter, rather than as of the date the approval is published on the HUD web site.”

The first paragraph Section II.A.2 of the June 7, 2016 notice is also amended to read:

“For any portion of funds that the grantee believes will not be expended by the deadline and that it desires to retain, the NOFA required the Grantee to submit a letter to HUD justifying why it is necessary to extend the deadline for a specific portion of the funds. Appendix E of the NOFA also required Applicants to submit extension requests with the application if the Applicant submitted a schedule that indicated time needed for completion of the proposal exceeds 24 months. Some Applicants submitted extension requests to HUD within their applications and such extensions were considered within the application review process. If granted, any extensions will be published on the HUD web site at: <https://www.hudexchange.info/programs/cdbg-dr/>. Under the NOFA, grantees

that did not submit an extension request with their Applications are eligible to request an extension prior to the expiration of the twenty-four month deadline for the expenditure of obligated funds. As required by Appendix E of the NOFA, the extension request must justify the need for the extension, detail the compelling legal, policy or operational challenges necessitating the extension, and identify the date when funds covered by the extension will be expended. The Grantee must justify how, under the proposed schedule, the Project will proceed in a timely manner. For example, large and complex infrastructure Projects are likely to require more than 24 months to complete. An extension request for such a Project should justify the new timeline for any proposed extension by comparing it to completion deadlines for other similarly sized Projects.”

**V. New LMI National Objective Criteria for Buyouts and Housing Incentives (Applicable to Multiple Appropriations)**

Historically, various **Federal Register** notices published by HUD have authorized CDBG-DR grantees to carry out “buyouts,” which have been generally limited to the acquisition of properties located in a floodway or floodplain or Disaster Risk Reduction Area for pre-or post-flood value for the purpose of reducing risk from future disasters. These notices also generally prohibit redevelopment of property acquired through buyouts. Certain previous CDBG-DR **Federal Register** notices also waive 42 U.S.C. 5305(a) and associated regulations to allow grantees to offer housing incentives to resettle beneficiaries who were in disaster-affected communities. As described in those notices, housing incentives are usually offered to encourage households to relocate to a suitable housing development or to an area promoted by the

community's comprehensive recovery plan, and may be in addition to acquisition or buyout awards.

In this notice, HUD is establishing an alternative requirement to clarify the criteria under which buyout activities and housing incentives can meet an LMI national objective. Grantees authorized to use housing incentives as described above, must continue to comply with the other eligibility requirements of applicable **Federal Register** notices governing those incentives – specifically, the requirement that grantees “providing housing incentives must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. In addition, the incentives must be in accordance with the grantee's approved Action Plan and published program design(s). Note that this waiver does not permit a compensation program. Additionally, a grantee may require the incentive to be used for a particular purpose by the household receiving the assistance.”

The CDBG regulations limit activities that meet the LMI national objective to only the activities meeting the four established criteria in 24 CFR 570.208(a)(1) through (4) and 570.483(b)(1) through (4). Prior **Federal Register** notices have advised grantees of the criteria under which a buyout activity can meet a LMI housing (LMH) national objective (80 FR 72102). Notwithstanding that guidance, however, HUD has determined that providing CDBG-DR grantees with an additional method to demonstrate how buyouts and housing incentives can assist LMI households, beyond those described in the previous notices, will ensure that grantees and HUD can account for and assess the benefit that CDBG-DR assistance may have on LMI households when buyouts and housing incentives are used in long term recovery. Given the primary objective of the HCDA to assist low- and moderate income persons, the Secretary has

determined that there is good cause to establish an alternative requirement under which CDBG-DR grantees are authorized to qualify the assistance provided to LMI persons through buyout and housing incentive programs, due to the benefits received by the individuals that receive buyout and housing incentive awards that allow them to move from areas that are likely to be affected by future disasters.

In addition to the existing criteria at 24 CFR 570.208(a)(1)-(4) and 570.483(b)(1)-(4), HUD is establishing an alternative requirement to include two new LMI national objective criteria for buyouts (LMB) and housing incentives (LMHI) that benefit LMI households that use CDBG-DR funding provided by Pub. L. 113-2, 114-113, 114-223, 114-254 and 115-31.

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

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

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

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

purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.

2) Activities that meet the above criteria will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary.

Any activities that meet the newly established national objective criteria described above will count towards the calculation of a CDBG-DR grantee's overall LMI benefit to comply with the primary objective described in 24 CFR 570.200(a)(3) and 24 CFR 570.484(b).

Grantees receiving an allocation of CDBG-DR funds pursuant to the following appropriations acts must specifically request a waiver and alternative requirement from HUD in order apply the new national objective criteria established in this section of the notice: Pub. L. 109-148, 109-234, and 110-116 (Katrina, Rita, and Wilma); Pub. L. 110-252 and 110-328 (2008 Disasters), Pub. L. 111-112 (2010 disasters), and Pub. L. 112-55 (2011 disasters).

## **VI. 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; and 14.269.

## **VII. 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: July 31, 2017.

**Janet Golrick,**

*Acting Deputy Secretary.*