

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-6489-N-01]

**Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees: The Universal Notice**

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

**ACTION:** Notice.

**SUMMARY:** This notice contains a preamble and the *Community Development Block Grant Disaster Recovery Universal Notice: Waivers and Alternative Requirements* (the “Universal Notice”). The Universal Notice describes the processes, procedures, timelines, waivers, and alternative requirements that U.S. Department of Housing and Urban Development (HUD) intends to implement with each allocation of Community Development Block Grant Disaster Recovery (CDBG–DR) funding after a qualifying presidential disaster declaration. Specifically, following the appropriation of CDBG–DR funds for qualifying disasters, HUD will publish an Allocation Announcement Notice in the **Federal Register** that incorporates, via cross-reference, the waivers and alternative requirements provided in the Universal Notice, as appropriate, along with any other new requirements imposed by the specific appropriation. This notice also describes the grant award process, pre-award certification submissions, criteria for Action Plan approval, and eligible disaster recovery activities to streamline post-disaster processes for future grantees. By publishing the Universal Notice, HUD intends to provide grantees and the public with increased transparency, consistency, and more timely access to CDBG–DR funds, helping to minimize program delays and accelerate recovery.

**DATES:** *Applicability Date:* January 13, 2025.

**FOR FURTHER INFORMATION CONTACT:**

Tennille Parker, Director, Office of Disaster Recovery (ODR), HUD, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202-708-3587 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications->

*relay-service-trs*. Email inquiries may be sent to [Disaster\\_Recovery@hud.gov](mailto:Disaster_Recovery@hud.gov).

**Table of Contents**

Preamble  
Community Development Block Grant  
Disaster Recovery Universal Notice:  
Waivers and Alternative Requirements  
(the “Universal Notice”)  
I. Phase One: The Action Plan  
I.A. CDBG–DR Action Plans Defined  
I.B. Admin Action Plan  
I.C. Action Plan  
II. Phase Two: Financial Certification and Oversight of Funds  
II.A. Certification of Adequate Financial Controls and Procurement Processes, and Procedures for Proper Grant Management  
II.B. Relying on Prior Financial Certification Submissions  
II.C. Obligation and Expenditure of Funds  
III. Phase Three: Implementation of Universal Notice Requirements  
III.A. Policies and Procedures—Universal Notice Requirements  
III.B. Grant Administration  
III.C. State Grantee Only Requirements  
III.D. Waivers and Alternative Requirements Related to Eligible Activities  
III.E. Ineligible Activities in CDBG–DR  
III.F. Performance Reviews  
III.G. Grantee Reporting Requirements in the Disaster Recovery Grant Reporting (DRGR) System  
IV. Assistance Listing Numbers  
V. Finding of No Significant Impact  
Appendix A. Certifications Waiver and Alternative Requirement for Admin Action Plan Submission  
Appendix B. Certifications Waiver and Alternative Requirement for Action Plan Submission  
Appendix C. Duplication of Benefits (DOB)  
Appendix D. Detailed Table of Contents to the Universal Notice

**SUPPLEMENTARY INFORMATION:**

**Preamble**

*Purpose and Policy Objectives*

HUD has developed this preamble and the Universal Notice, to assist States, local governments, Indian Tribes, CDBG–DR subrecipients, and the public in planning for the award of CDBG–DR funds. Because not all the requirements in the Universal Notice are appropriate or applicable to Indian Tribes, HUD will publish an Addendum to the Universal Notice at a later date to establish requirements that will apply when Indian Tribes receive a CDBG–DR grant directly from HUD. This process will allow HUD to ensure that the requirements imposed are fair and consistent with the Indian Community Development Block Grant (ICDBG) Program.

In December 2022, HUD published a Request for Information (RFI) for HUD’s Community Development Block Grant Disaster Recovery (CDBG–DR) Rules,

Waivers, and Alternative Requirements (FR–6336–N–01)<sup>1</sup> seeking public input to strengthen and improve CDBG–DR requirements. Based on the feedback received through the RFI,<sup>2</sup> HUD is establishing a revised process for CDBG–DR grants for qualifying disasters whereby HUD will incorporate applicable provisions of the Universal Notice, to the extent they are consistent with future appropriations acts, in a **Federal Register** notice that announces allocations of the appropriated CDBG–DR funds (the “Allocation Announcement Notice”). The Allocation Announcement Notice (AAN) will impose the waivers and alternative requirements of the Universal Notice for the subject CDBG–DR grants. The AAN will also add or modify requirements of the Universal Notice as necessary to comply with statutory provisions.

The Universal Notice has no legal effect on a CDBG–DR grant until funds are appropriated by Congress and the appropriation authorizes the HUD Secretary to waive or specify alternative requirements for the assistance, and the AAN that incorporates appropriate provisions of the Universal Notice is published by the Department and goes into effect. HUD will make the required findings in support of the waivers and alternative requirements incorporated into and made effective through AANs contemporaneously with the publication of each AAN. Because the Universal Notice has no legal effect on its own but rather requires authority provided by Congress through enacting special disaster appropriations and contemporaneous publication of an AAN by HUD, this is being published as a notice and is not a rulemaking.

The Universal Notice is designed to inform potential CDBG–DR grantees and other stakeholders about each phase of the CDBG–DR grant process, including but not limited to, pre-award grantee submissions; grantee steps and timelines; and Action Plan development, submittal, and implementation.

Through the Universal Notice, HUD seeks to:

- Outline a comprehensive and uniform set of waivers and alternative requirements that HUD intends to apply to govern future allocations of CDBG–DR funds, including all timelines, documentation, and other requirements

<sup>1</sup> View the request for information notice (FR–6336–N–01) here: <https://www.govinfo.gov/content/pkg/FR-2022-12-20/pdf/2022-27547.pdf>.

<sup>2</sup> View a summary of the comments received, and HUD’s responses here: [https://www.hud.gov/program\\_offices/comm\\_planning/cdbg-dr/universal\\_notice\\_grantees](https://www.hud.gov/program_offices/comm_planning/cdbg-dr/universal_notice_grantees).

for pre-award grantee submission to reduce the administrative burden for future CDBG–DR grantees and assigned HUD Community Planning and Development (CPD) staff member (e.g., CPD Representative, CPD Specialist, etc. . . .);

- Encourage intentional and early coordination between CDBG–DR grantees; other agencies/departments at the Federal, State, or local level; and other regional or local planning efforts to better align disaster recovery assistance and projects with the goals of regional redevelopment plans, resilience plans, long-term recovery plans, and State and local Hazard Mitigation Plans (HMP);

- Increase awareness of the availability of disaster recovery assistance and advance fair disaster recovery outcomes, including community engagement efforts and pre-disaster planning for targeted assistance to historically marginalized groups that can be adversely affected by disasters that often exacerbate inequalities for residents of underserved communities, members of protected classes under fair housing and civil rights laws, and vulnerable populations; and

- Improve long-term community resilience by fully integrating resilience planning and hazard mitigation activities into disaster recovery to reduce the impacts of a changing climate and future disasters, encourage green recovery efforts (focusing on healthier water and air, and effective debris and waste management), address environmental justice concerns associated with disaster recovery efforts, and address recovery needs for accessible, resilient, and affordable housing for low- and moderate-income persons.

### Management and Oversight

Prior to accessing CDBG–DR funding, grantees must demonstrate that they have the capacity to administer funds in a compliant manner as described by the Universal Notice. Consistent with 2 CFR 200.206(b) of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Requirements), HUD will evaluate each CDBG–DR grantee's capacity to effectively manage its funds through a review of its pre-award submissions as provided in section II. of the Universal Notice, which includes the grantee's submissions in response to the Financial Management and Grant Compliance Certification Requirements in section II.A.1. of the Universal Notice.

### Authority To Grant Waivers

CDBG–DR grants are generally subject to CDBG regulations outlined in 24 CFR part 570.<sup>3</sup> The appropriations acts (i.e., public laws) that provide CDBG–DR funds typically allow the Secretary to waive requirements 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 grantee of CDBG–DR funds. Generally, the appropriations acts specify that there are four types of requirements that the Secretary cannot waive under that authority, these include fair housing, nondiscrimination, labor standards, and the environment. However, HUD may also exercise its regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.<sup>4</sup>

The waivers and alternative requirements in the Universal Notice draw from HUD's knowledge of the needs of grantees, public feedback, and HUD's previously established waivers and alternative requirements and the determinations by the Secretary regarding good cause and consistency with the overall purposes of title I of the HCDA that supported the waivers and alternative requirements. Historically, HUD has established waivers and alternative requirements based on findings of good cause that they provided additional flexibility to grantees in program design and implementation, supported a full and swift recovery from the most devastating disasters, and streamlined administrative requirements that would otherwise increase the time it takes for disaster funds to reach those most in need.

Unless otherwise provided, HUD intends to make these same findings of good cause when the waivers and alternative requirements in the Universal Notice are incorporated into and made effective through later AANs. HUD will provide a statement regarding the Secretary's finding of good cause and consistency with the purpose of title I of the HCDA, or such other applicable standard, in each AAN. If HUD's findings of good cause differ on certain waivers or alternative requirements from the findings identified in this Universal Notice, HUD will include the updated findings in

<sup>3</sup> View 24 CFR part 570—Community Development Block Grants Regulations here: <https://www.ecfr.gov/current/title-24/subtitle-B/chapter-V/subchapter-C/part-570>.

<sup>4</sup> View HUD's policy concerning the procedures that govern the waiver of regulations and directives issued by HUD here: <https://www.govinfo.gov/content/pkg/FR-2024-08-06/pdf/2024-17034.pdf>.

support of those waivers and alternative requirements in the AAN. CDBG–DR activities will be governed by the regulations cited in the requirements of this notice, as incorporated in the applicable AAN, as may be amended.

Grantees who have received previous allocations of CDBG–DR funds must follow the requirements outlined in their applicable **Federal Register** notice(s). However, any CDBG–DR grantee may request waivers and alternative requirements to better align requirements across grants, as long as good cause is provided. In addition, the waivers and alternative requirements herein do not apply to funds provided under the annual State or Entitlement CDBG programs or those provided under any other component of the CDBG program, such as the Section 108 Loan Guarantee Program.

After Congress appropriates CDBG–DR funds and HUD announces the allocations, grantees may request that HUD grant additional waivers and alternative requirements to address specific needs related to their recovery activities. Waiver requests must be accompanied by supporting data and must be submitted to the assigned HUD CPD staff member and to the ODR mailbox at [Disaster\\_Recovery@hud.gov](mailto:Disaster_Recovery@hud.gov). HUD will aim to publish grantee-specific waivers and alternative requirements at least quarterly in the **Federal Register** or on HUD's website. Grantees may consult with their assigned HUD CPD staff member for anticipated **Federal Register** publication timelines ahead of any waiver request submittal.

### Overview of Grant Life Cycle

To begin expending CDBG–DR funds, the following expedited steps are necessary as broken out by each phase:

- (1) *Phase One: The Action Plan*
  - a. Grantee follows its citizen participation plan for disaster recovery (I.C.2.).
    - i. Grantee consults with stakeholders, including all required consultations (I.C.2.a.).
    - ii. Grantee publishes its Action Plan on its website for no less than 30 calendar days to solicit public comment (I.C.2.b.).
    - iii. Grantee responds to public comments and incorporates feedback into its Action Plan.
      - b. Grantee submits its Action Plan (including the SF–424, SF–424B and SF–424D, as applicable) within 90 calendar days from the applicability date of the AAN (I.C.3.).
      - c. Grantee requests and receives Disaster Recovery Grant Reporting (DRGR) system access (if the grantee

does not already have DRGR access) and may enter activities into the DRGR system before or after submission of the Action Plan to HUD.

d. HUD reviews the Action Plan (allotted 45 calendar days from date of receipt) and approves the Action Plan according to criteria identified in this notice (I.C.5.).

e. HUD sends an Action Plan approval letter to the grantee. If the Action Plan is not approved, HUD will notify the grantee of the deficiencies. The grantee must then resubmit the Action Plan within 45 calendar days of the written notification. HUD will respond to approve or disapprove the Action Plan within 30 calendar days of receiving the revisions or resubmission.

(2) *Phase Two: Financial Certification and Oversight of Funds.*

a. Within 135 calendar days of the applicability date of the AAN, the grantee submits documentation for the certification of financial controls and procurement processes, and adequate procedures for grant management (II.A.).

b. HUD will review the grantee's documentation for the certification of financial controls and procurement processes, and adequate procedures for grant management or any provided updates if the grantee is relying on a prior certification (allotted 45 calendar days from date of receipt).

c. The Secretary will certify to the proficiency of the grantee's financial controls and procurement processes, and adequate procedures for grant management in accordance with the requirements and HUD will send the grantee the grant agreement.

d. Grantee signs and returns the grant agreement to HUD.

e. HUD signs and returns a fully executed grant agreement to the grantee with a period of performance identified.

f. Grantee publishes the final HUD-approved Action Plan on its official disaster recovery website.

g. HUD establishes the grantee's line of credit.

h. Grantee enters the activities from its approved Action Plan into the DRGR system if it has not previously done so and submits its DRGR action plan to HUD (funds can be drawn from the line of credit only for activities that are in an approved DRGR Action Plan).

i. The grantee may draw down funds from the line of credit for an activity after the Responsible Entity (1)

completes an environmental review(s) pursuant to 24 CFR part 58 and receives from HUD or the State, as outlined in 24 CFR 58.18, an approved Request for Release of Funds (RROF) and certification (as applicable), or (2) adopts another Federal agency's environmental review and receives from HUD or the State an approved RROF and certification (as applicable).

(3) *Phase Three: Implementation of Universal Notice Requirements.*

a. Within one year from the applicability date of the AAN, the grantee must create and finalize policies and procedures for its housing programs. If the grantee is not funding housing programs, see section III.A. for more details.

b. Within eighteen months from the applicability date of the AAN, the grantee must create and finalize policies and procedures governing the rest of its CDBG-DR funded programs (e.g., economic revitalization, public service, infrastructure programs, etc.).

c. Within two years from the applicability date of the AAN, these policies and procedures will be subject to HUD review.

d. The grantee should begin to draw down funds from DRGR no later than 180 calendar days after HUD executes a grant agreement with the grantee (II.C.) or HUD approves the Action Plan and financial certification and oversight of funds, whichever is later. Additionally, all funds must be expended within six years of the date of obligation (III.F.1.).

HUD provides additional flexibility to streamline access to CDBG-DR funds, through the following options:

(1) Grantees may submit an Optional Action Plan for Program Administrative Costs ("Admin Action Plan") to access administrative funds prior to the grantee's submission of its Action Plan (I.B.).

(2) Previous grantees covered by the Universal Notice or other prior notices may rely on their previous financial certification submissions as described in section II.B.

There may be times when appropriations acts allow additional flexibilities for timing of financial certification and action plan submissions, signing of grant agreements, and the availability of administrative funds. HUD will adapt this grant life cycle to be in compliance with any additional flexibilities provided in the appropriations acts.

### **Community Development Block Grant Disaster Recovery Universal Notice: Waivers and Alternative Requirements (the "Universal Notice")**

The Universal Notice outlines the waivers and alternative requirements that grantees are required to demonstrate compliance with over the course of three phases of the grant life cycle which include: (1) Phase One: The Action Plan, (2) Phase Two: Financial Certification and Oversight of Funds, and (3) Phase Three: Implementation of Universal Notice Requirements. Any references to the "Universal Notice" or "this notice" in this document refer to sections I. through V. and the attached appendices.

CDBG-DR grantees that are subject to the Universal Notice, must comply with all waivers and alternative requirements, unless expressly made inapplicable (e.g., a State only waiver does not apply to local governments). Except as described in applicable waivers and alternative requirements, the statutory and regulatory provisions governing the CDBG program shall apply to grantees receiving a CDBG-DR allocation. Statutory provisions (title I of the HCDA) that apply to all grantees can be found at 42 U.S.C. 5301 *et seq.* and regulatory requirements, which differ for each type of grantee, are described in each of the paragraphs below.

Except as modified, the State CDBG program rules shall apply to State grantees receiving a CDBG-DR allocation. Applicable State CDBG program regulations are found at 24 CFR part 570, subpart I.

For insular areas (as defined under 42 U.S.C. 5302(a)(24)), HUD waives the provisions of 24 CFR 570, subpart F and imposes the following alternative requirement: Insular areas shall administer their CDBG-DR allocations in accordance with the regulatory and statutory provisions governing the State CDBG program, as modified by the Universal Notice.

Except as modified, statutory and regulatory provisions governing the Entitlement CDBG program shall apply to local government grantees (often referred to as units of local government in appropriations acts). Applicable Entitlement CDBG program regulations are found at 24 CFR 570, as described in § 570.1(a).

Each grantee shall administer its award in compliance with all applicable laws and regulations and shall be financially accountable for the use of all awarded funds. CDBG–DR grantees must comply with the recordkeeping requirements of 24 CFR 570.506 or 24 CFR 570.490, as amended by the Universal Notice waivers and alternative requirements. All grantees must follow all cross-cutting requirements, as applicable, for all CDBG–DR funded activities including but not limited to the environmental requirements outlined in the Universal Notice,<sup>5</sup> the Davis Bacon Act, Civil Rights Requirements, the Lead Safe Housing Rule, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (“URA”) and its implementing regulations.

All grantees must maintain records of performance in DRGR, as described elsewhere in the Universal Notice. Additionally, grantees must comply with the requirements in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200, as amended (Uniform Requirements).

Any references to “subrecipient” in this notice refer to the term as defined in 24 CFR 570.500(c). Subrecipients include, but are not limited to, nonprofit organizations, units of general local government, partner agencies, subgrantees, and Indian Tribes.

## I. Phase One: The Action Plan

### I.A. CDBG–DR Action Plans Defined

The action plan is a key mechanism for grantees to inform the public and HUD of the intended use of the funds within their community and how this plan connects to the community’s remaining unmet needs and mitigation needs associated with the qualifying disaster(s). It is important that grantees understand the difference between the two action plans associated with CDBG–DR funds.

- *Admin Action Plan (Optional Action Plan for Program Administrative Costs):* This is an optional submission that allows a grantee to access their funds for program administrative costs prior to the award of the full grant (e.g., to increase staffing and capacity to develop the required Action Plan). The Admin Action Plan has streamlined requirements, including no public

comment period or deadline for submission, and is sent to HUD for review (as described in the applicable AAN).

- *Action Plan:* The Action Plan is a required plan that a grantee must develop to have access to grant funds. The Action Plan must identify the use of all CDBG–DR funds—including criteria for eligibility and how the uses address long-term recovery needs, restoration of infrastructure and housing, economic revitalization, and mitigation in the most impacted and distressed (MID) areas. The Action Plan has a required 30-day public comment period, must be submitted within 90 days of a grantee’s AAN, and is sent to HUD for review (the submission process will be described in the applicable AAN). References to the “Action Plan” shall mean the Action Plan required by the Universal Notice and not the consolidated plan or action plan required by 24 CFR part 91.

### I.B. Admin Action Plan

Typically, CDBG–DR awards are all subject to a five percent administrative cap as specified by the appropriations acts and outlined in section III.B.3. of this notice. Recent appropriations acts have allowed the special treatment of administrative funds (as described in section III.B.3.a.) and allowed grantees to access funding for program administrative costs prior to the Secretary’s certification as described in section II.A. Note, the appropriations acts typically require that all CDBG–DR funds be used pursuant to an action plan. Grantees will follow the process described in this section, which includes the submission of the Admin Action Plan, to access funds for program administrative costs prior to the Secretary’s certification.

- *I.B.1. Developing the Admin Action Plan.* The grantee shall describe the use of all grant funds for administrative costs in the Admin Action Plan, including for any eligible pre-award program administrative costs the grantee plans to reimburse itself or its subrecipients as described in section III.B.14.a. The Admin Action Plan must include the criteria for eligibility of administrative activities and the amount to be budgeted for administrative activities. If a grantee submits the Admin Action Plan, the grantee must consider the need to cover program administrative costs over the life of the grant, which is six years from HUD’s signature on the initial grant agreement as described in section III.F.1. of this notice. Therefore, grantees are strongly encouraged to budget for these costs early in the grant lifecycle.

- *I.B.2. Submission and publication of the Admin Action Plan.* Normally, a grantee must publish any proposed action plan and substantial amendments to the plan for public comment. However, because the Admin Action Plan will only include program administrative costs, and to allow for a more streamlined process and timely awarding of grants, no public comment period is required.

Therefore, for Admin Action Plans and substantial amendments to these plans *only*, the provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 1003.604, 24 CFR 91.105(b) through (d), and 24 CFR 91.115(b) through (d), with respect to citizen participation requirements, are waived and replaced by the alternative requirements in this section.

Additionally, for Admin Action Plans only, grantees are not subject to the action plan requirements in section I.C.

- *I.B.3. Entering administrative activities into DRGR.* Grantees must publish the Admin Action Plan online when it is submitted to HUD (as described in the applicable AAN). The manner of publication of the Admin Action Plan must include prominent posting on the grantee’s official disaster recovery website and include any substantial amendments to the Admin Action Plan. When the grantee submits its Admin Action Plan or substantial amendment to the Admin Action Plan to HUD for approval, it must include the Standard Form 424 (SF-424). There is no due date for the Admin Action Plan as it is optional and may be submitted any time prior to the grantee’s Action Plan. HUD will review the Admin Action Plan or substantial amendment to the Admin Action Plan within 15 calendar days from the date of receipt and determine whether to approve the Admin Action Plan per the criteria identified here in section I.B. of the Universal Notice.

- *I.B.4. Applicability of the Admin Action Plan.* After HUD’s approval of the Admin Action Plan, the grantee enters the administrative activities from its approved Admin Action Plan (or substantial amendment to that plan) into the DRGR system, as described in section III.G. Grantees are required to populate their DRGR Action Plan since grant funds can only be drawn from the line of credit through projects and activities that are established in the DRGR system. This process will allow a grantee to access funds for program administrative costs while the grantee begins developing its Action Plan.

- *I.B.4. Applicability of the Admin Action Plan.* A grantee’s use of grant funds for program administrative costs before approval of the Action Plan must

<sup>5</sup> View HUD’s guidance on addressing Radon in the Environmental Review process published in CPD Notice 23–103 here: [https://www.hud.gov/sites/dfiles/CPD/documents/CPD\\_Notice\\_on\\_Addressing\\_Radon\\_in\\_the\\_Environmental\\_Review\\_Process.pdf](https://www.hud.gov/sites/dfiles/CPD/documents/CPD_Notice_on_Addressing_Radon_in_the_Environmental_Review_Process.pdf).

be consistent with the Admin Action Plan. Once the Action Plan is approved, the use of all grant funds must be consistent with the Action Plan. Upon HUD's approval of the Action Plan, the optional Admin Action Plan shall only be relevant to administrative costs charged to the grant *before* the date of approval of the Action Plan.

**I.B.5. Admin Action Plan certifications waiver and alternative requirement.** Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c), and (m)), sections 106(d)(2)(C) and (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) and (D)), and section 106 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the following alternative requirement. Each grantee choosing to submit an Admin Action Plan must also complete the certifications in Appendix A and submit them with the Admin Action Plan.

Additionally, HUD is waiving section 104(a)–(c) and (d)(1) of the HCDA (42 U.S.C. 5304), section 106(c)(1) and (d) of the HCDA (42 U.S.C. 5306), section 210 of the URA (42 U.S.C. 4630), section 305 of the URA (42 U.S.C. 4655), and regulations at 24 CFR 91.225(a)(2), (6), and (7), 91.225(b)(7), 91.325(a)(2), (6), and (7), 49 CFR 24.4(a), and 24 CFR 42.325 only to the extent necessary to allow grantees to receive a portion of their allocation for program administrative costs before submitting other statutorily required certifications.

#### *I.C. Action Plan*

Requirements for CDBG actions plans, located at 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(a)(1), 42 U.S.C. 5306(d)(2)(C)(iii), 42 U.S.C. 12705(a)(2), and 24 CFR 91.220 and 91.320, are waived for CDBG–DR grants. Instead, grantees must submit to HUD an action plan for disaster recovery which will describe programs and activities that conform to applicable requirements as specified in the Universal Notice and the applicable AAN. HUD will return all Action Plans that are substantially incomplete as described in section I.C.5. The Action Plan is substantially incomplete if the plan does not satisfy all the required elements identified in the Universal Notice and the applicable AAN. Grantees receiving an allocation are required to submit an Action Plan within 90 calendar days of the applicability date of the AAN, unless the grantee has requested, and HUD has approved an extension of the submission deadline. HUD will monitor the grantee's actions and use of funds

for consistency with the Action Plan, as well as meeting the performance and timeliness objectives therein.

**I.C.1. Developing the Action Plan.** The Action Plan must identify the use of all CDBG–DR funding, including eligibility criteria for accessing the funds and how the proposed uses will address long-term recovery needs. At a minimum, the Action Plan must cover the impacts of the qualifying disaster, restoration of housing, infrastructure, economic revitalization, and mitigation in the MID areas. The CDBG–DR allocations are based on the unmet needs of specific communities, which are the least likely to fully recover without additional assistance. Therefore, it is critical that the Action Plan demonstrates the following, as described in the referenced sections:

1. An unmet needs assessment (review section I.C.1.a.).
2. A mitigation needs assessment (review section I.C.1.b.).
3. A fair housing and civil rights data assessment (review section I.C.1.c.).
4. Connection between proposed programs and projects and unmet needs, mitigation needs, and fair housing and civil rights assessments (review section I.C.1.d.).
5. Set allocation and award caps (review section I.C.1.e.).
6. Establish funding criteria (review section I.C.1.f.).
7. Establish protocols for substantial amendments (review section I.C.1.g.).

As grantees develop their Action Plan, they must consult with various stakeholders, including the public (*i.e.*, citizen participation) and inform residents about their funding decisions prior to submitting the Action Plan to HUD for review. Grantees will receive specific instructions for Action Plan submittal in the applicable AAN. Note, the citizen participation requirements to develop the action plan are described in section I.C.2.

**I.C.1.a. Unmet needs assessment.** Each grantee must develop an unmet needs assessment to strategically inform the use of the grant funds. The unmet needs assessment will help a grantee evaluate community needs across its jurisdiction by assessing the remaining effects of the qualifying disaster as they relate to housing, infrastructure, and the economy. Note, HUD can assist grantees in obtaining FEMA data to support the development of the Action Plan and implementation of recovery programs.<sup>6</sup>

**I.C.1.a.(i). Unmet needs in the MID areas.** A grantee must describe the

unmet need in the MID areas (see section III.D.2.), as the allocations are based on the unmet needs of these specific communities, which are the least likely to fully recover without additional assistance. Grantees are required to use at least 80 percent of the CDBG–DR award to benefit the HUD-identified MID areas. Local government grantees whose HUD-identified MID areas include their entire jurisdiction, must use 100 percent of the CDBG–DR award to benefit the HUD-identified MID area. However, HUD encourages all grantees to consider using 100 percent of its award to benefit HUD-identified MID areas since the data from these areas were used to determine the amount of the award. If allowed, and the grantee does choose to spend a portion (*i.e.*, up to 20 percent) of its award outside of the HUD-identified MID area, it will determine and identify in the Action Plan where the grantee will use that amount (“grantee-identified MID areas”), and that portion of the allocation may only be used to address those areas that the grantee determines are most impacted and distressed, meaning the areas that have the greatest amount of damage and unmet need outside of the HUD-identified MID areas. Additionally, any grantee-identified MID areas must have received a presidential major disaster declaration identified by the disaster numbers listed in the applicable AAN. The grantee must use quantifiable and verifiable data in its analysis, and reference it in its Action Plan, to identify the grantee-identified MID areas and indicate how the proposed use of funds will prioritize the remaining unmet needs for low- and moderate-income (LMI) individuals and areas. The addition of a grantee-identified MID area after the submittal of the initial Action Plan would result in a substantial amendment to the grantee's Action Plan (see section I.C.1.g.).

**I.C.1.a.(ii). Unmet needs assessment requirements.** At a minimum, the unmet needs assessment must include the following, as they relate to the HUD-identified and grantee-identified MID areas, and cite the appropriate data sources:

1. Description of the effects of the qualifying disaster(s) and the greatest remaining recovery needs that have not been addressed by other sources of funds, including insurance proceeds, other Federal assistance, or any other funding source; and

2. Evaluation of the three core aspects of recovery—housing, infrastructure, and the economy (*e.g.*, estimated job losses), which considers the pre-disaster needs (*e.g.*, a lack of affordable housing)

<sup>6</sup> View more information about how to access this data on HUD's website here: [https://www.hud.gov/program\\_offices/comm\\_planning/cdbg-dr/data-sharing](https://www.hud.gov/program_offices/comm_planning/cdbg-dr/data-sharing).

that have been exacerbated by the disaster. The assessment of housing needs must address: (1) emergency shelters; (2) interim and permanent housing; (3) rental and owner-occupied single family and multifamily housing; (4) public housing (including HUD-assisted housing) and other types of affordable housing, including housing for vulnerable populations (including those who were unhoused prior to the disaster).

Disaster recovery needs evolve over time and grantees must amend the Action Plan, including the unmet needs assessment, as additional needs are identified, and/or additional resources become available. At a minimum, grantees must revisit and update the unmet needs assessment when reallocating funds from one program to another through a substantial amendment (as described in section I.C.1.g.).

**I.C.1.b. Mitigation needs assessment.** While the purpose of CDBG–DR funds is to recover from a Presidentially declared disaster, integrating hazard mitigation and resilience planning with recovery efforts will promote a more resilient long-term recovery. Mitigation solutions designed to be resilient only for threats and hazards related to a prior disaster can leave a community vulnerable to negative effects from future extreme events related to other threats or hazards. For purposes of grants subject to the Universal Notice, mitigation activities are defined as those activities that increase resilience and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

At a minimum, the mitigation needs assessment must include a risk-based assessment to identify current and future hazards (e.g., sea level rise, strong winds, tornados, storm surge, flooding, volcanic activity, earthquakes, extreme heat, drought, and wildfire risk, where appropriate). The assessment must describe how the hazards do or can impact the HUD-identified and grantee-identified MID areas and cite the appropriate data sources. Grantees must explain how the risk-based assessment will inform the use of the CDBG–DR funds and identify if other sources of funding are available to address its identified mitigation needs.

At a minimum, grantees must use the risks identified in the current FEMA-approved State or local HMP, Community Wildfire Protection Plan (CWPP), or other resilience or long-term recovery plans to inform the assessment. If a jurisdiction is currently updating an expired HMP, the grantee's agency

administering the CDBG–DR funds must consult with the agency administering the HMP update to identify the risks that will be included in the assessment.

A grantee may choose to simply cite the current FEMA-approved HMP, CWPP, or other resilience or long-term recovery plan to address the mitigation needs assessment, if there is a clear connection of programs and projects to the mitigation needs. If a grantee chooses this option, the grantee must make the HMP, CWPP, or other resilience or long-term recovery plan available on the grantee's official disaster recovery website and provide a direct link to the selected plan in the mitigation needs assessment section of the Action Plan.

Mitigation needs evolve over time and grantees must amend the mitigation needs assessment and Action Plan as conditions change, as additional mitigation needs are identified, and additional resources become available. At a minimum, grantees must revisit and update the mitigation needs assessment when reallocating funds from one program to another through a substantial amendment (as described in section I.C.1.g.).

#### *I.C.1.c. Fair Housing and Civil Rights Assessment*

**I.C.1.c.(i). Fair housing and civil rights laws and terminology defined.** The grantee must use its CDBG–DR funds in a manner that complies with its fair housing and nondiscrimination obligations,<sup>7</sup> which include:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*;
- Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act), 42 U.S.C. 3601–19;
- Section 504 and 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794;
- The Americans with Disabilities Act of 1990, 42 U.S.C. 12131 *et seq.*; and
- Section 109 of the HCDA, 42 U.S.C. 5309.

For purposes of the Universal Notice, HUD defines the following terms as they relate to the requirements set forth in the Universal Notice:

- **Protected Classes:** Race, color, national origin, religion, sex (including sexual orientation and gender identity), familial status, and disability.
- **Vulnerable Populations:** Groups or communities whose circumstances present barriers to obtaining or understanding information or accessing

resources which may include: (1) persons at risk of or experiencing homelessness; (2) older adults; (3) persons with disabilities (mental, physical, developmental); (4) survivors of domestic violence, dating violence, sexual assault, or stalking; (5) persons with alcohol or other substance-use disorder; (6) persons with HIV/AIDS and their families; or (7) public housing residents.

- **Underserved Communities:** Populations or geographic communities, often comprised of protected classes, sharing a particular characteristic that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. Underserved communities that were economically distressed before the disaster include, but are not limited to, those areas that were designated as a Promise Zone, Opportunity Zone, a Neighborhood Revitalization Strategy Area, a Tribal area, a Community Disaster Resilience Zone (CDRZ), or those areas that meet at least one of the distress criteria established for the designation of an investment area of a Community Development Financial Institution at 12 CFR 1805.201(b)(3)(ii)(D).

Grantees must take the following actions to comply with affirmatively furthering fair housing (AFFH):<sup>8</sup>

1. Submit a certification to AFFH in accordance with 24 CFR 91.225 or 325, as applicable and 24 CFR 5.150, *et seq.*;
2. Update any policies and procedures to remain in compliance with AFFH requirements, as amended by HUD and reflected in updated HUD guidance and rules; and
3. Use their CDBG–DR funds in a manner that affirmatively furthers fair housing.

**I.C.1.c.(ii). Fair housing and civil rights data collection.** Collecting fair housing and civil rights data will position the grantee to provide a fair and holistic recovery. At a minimum, the grantee must collect the following data in terms of number and percentage for each identified group, as defined above, and as they relate to the HUD-identified and grantee-identified MID areas and cite the appropriate data sources:

1. Populations with Limited English Proficiency (LEP) by language spoken;
2. Persons belonging to protected classes;

<sup>7</sup> Visit HUD's Office of Fair Housing and Equal Opportunity's website for more information about fair housing and civil rights obligations here: <https://www.hud.gov/fairhousing>.

<sup>8</sup> Visit HUD's Office of Fair Housing and Equal Opportunity's website for more information about requirements for affirmatively furthering fair housing here: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/affh](https://www.hud.gov/program_offices/fair_housing_equal_opp/affh).

3. Persons belonging to protected classes by housing tenure (*i.e.*, homeowner vs renter);

4. Persons belonging to vulnerable populations;

5. Persons belonging to historically distressed and underserved communities;

6. Indigenous populations and Tribal communities; and

7. Racially or ethnically concentrated areas of poverty (R/ECAPs).

Grantees are encouraged to consider housing tenure as it relates to these data sets when available.

I.C.1.d. *Connection of proposed programs and projects to unmet needs, mitigation needs, and fair housing and civil rights assessments.* The grantee must describe the connection between identified unmet needs, mitigation needs, fair housing and civil rights data, and the allocation of CDBG–DR resources within its Action Plan. At a minimum, the Action Plan must:

1. Provide a clear connection between a grantee's assessments and its proposed programs and projects in the MID areas (or outside in connection to the MID areas as described in section III.D.2.). Such description must demonstrate a reasonably proportionate allocation of resources relative to areas and categories (*i.e.*, housing, economic revitalization, and infrastructure) of greatest needs identified in the grantee's unmet needs and mitigation needs assessments or provide an acceptable justification for a disproportional allocation.

2. Describe how the grantee is incorporating hazard mitigation measures to reduce the impacts of future disasters and considering all hazard risks, as identified in its mitigation needs assessment.

3. Based on the fair housing and civil rights data collected, the grantee must:

- Describe how protected classes will benefit from CDBG–DR funds in proportion to their communities' needs.
- Assess the impact of its planned use of CDBG–DR funds on identified vulnerable populations and other identified historically underserved communities. If programs are aimed at these groups, the Action Plan should clearly define those populations.

4. Describe all reasonable efforts the grantee will take to minimize displacement of persons or entities, assist any persons or entities displaced, and ensure accessibility needs of displaced persons with disabilities.

I.C.1.e. *Allocation and award caps.* It is critical for grantees to demonstrate their planned use of funds through their Action Plan so the public can understand what types of assistance disaster survivors can apply for and

what limits there are on possible awards.

Therefore, grantees must create a high-level budget for the full amount of the CDBG–DR allocation so the public can understand how funds will be split among program administration (subject to the five percent cap, plus five percent of program income generated, as described in section III.B.3.), planning (subject to the 15 percent cap, as described in section III.B.4.), housing, infrastructure, and economic revitalization (*e.g.*, by program, subrecipient, grantee-administered activity, or other category).

Grantees are also encouraged to budget for any planned public service activities. The grantee's budget should also be consistent with the requirements to integrate hazard mitigation into all its programs and projects that involve construction, as described in section III.D.3. Finally, grantees must develop an executive summary describing the contents of the Action Plan and its proposed use of funds so that interested parties will be able to understand and comment on the Action Plan.

For each program it intends to fund, the grantee must include the following in its Action Plan:

1. Provide a description of the disaster recovery program to be funded;

2. Identify the CDBG–DR eligible activity and national objective, including only those allowed under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement;

3. Identify the responsible entity assuming the authority for the decision making and completion of the environmental review per 24 CFR 58.4. State grantees who exercise HUD's environmental review responsibilities must follow the requirements per 24 CFR 58.4(b)(2) and 24 CFR 58.18;

4. Identify which geographic areas (*i.e.*, HUD-identified and/or grantee-identified MID areas) that may benefit from CDBG–DR funds;

5. Explain how the grantee will identify and then reduce barriers that individuals face or may face to access assistance, including protected classes, vulnerable populations, and other historically underserved communities;

6. If the appropriations act that funded the grantee's award includes additional funds for mitigation, the grantee must also identify how the proposed use of CDBG–DR mitigation set-aside funds will meet the definition of mitigation activities (as described in section I.C.1.b.);

7. Describe (1) the maximum amount of assistance (*i.e.*, award cap) available to a beneficiary under each of the

grantee's disaster recovery programs and (2) the maximum income (*i.e.*, income cap) of any beneficiary receiving CDBG–DR assistance for direct-benefit activities. Each grantee must also indicate in its Action Plan that it will make exceptions to the maximum award amounts, when necessary, to comply with Federal accessibility standards or to reasonably accommodate a person with disabilities. If the maximum amount of assistance is unknown for a specific program or project when the grantee is submitting the initial Action Plan to HUD, the grantee must update the Action Plan through a substantial amendment (as described in section I.C.1.g.) once the information is known. The substantial amendment must be submitted and approved before awarding funds to applicants; and

8. Any other known eligibility criteria established by the grantee for assistance (*e.g.*, priority intake).

I.C.1.e.(i). *Prioritization for allocations less than \$20 million.* Section I.C.1.d. requires that the Action Plan demonstrates a reasonable proportionate allocation of resources relative to areas and categories (*i.e.*, housing, economic revitalization, and infrastructure) of greatest needs identified in the grantee's unmet needs and mitigation needs assessments or provide an acceptable justification to HUD for a disproportional allocation.

HUD recognizes that grantees receiving an allocation of less than \$20 million for a qualifying disaster(s) may most effectively advance recovery by more narrowly targeting these limited recovery and mitigation resources. HUD will consider the small size of the grant and HUD's allocation methodology as an acceptable justification for a grantee to propose a disproportional allocation when the grantee is allocating funds to address: (1) unmet affordable rental housing needs in a MID area caused by or exacerbated by the disaster(s) that incorporates mitigation, or (2) unmet infrastructure needs necessary to build affordable rental housing in a MID area that incorporates mitigation.

I.C.1.f. *Funding criteria.* The Action Plan must describe how the grantee will distribute its grant funds, which can include the following methodologies:

1. Direct implementation (through employees, contractors, or through subrecipients); or

2. A method of distribution to local governments and Indian Tribes (for States, as permitted by III.C.4.); or

3. A combination of a direct implementation model and a method of distribution model.

Because grantees must spend at least 80 percent of the CDBG–DR award to



benefit the HUD-identified MID area (see section III.D.2.), they should consider how they will meet this requirement when developing funding criteria. At a minimum, the grantee must establish the following criteria within its Action Plan so the public can clearly understand its funding criteria for funds sub-granted to eligible entities through a method of distribution or for applications that the grantee solicits for programs to be carried out directly:

1. All criteria used to allocate and award the funds, including the relative importance of each criterion and any priorities;
2. Establish the maximum grant size available;
3. Describe how the distribution and selection criteria will address disaster-related unmet needs or mitigation needs in a manner that does not have an unjustified discriminatory effect on nor a failure to benefit protected classes in proportion to their communities' needs, including in racially and ethnically concentrated areas of poverty; and
4. Describe the steps to be followed to encourage the participation of those belonging to protected classes. Such description must include an assessment of the following: (1) who may be expected to benefit, (2) the timing of who will be prioritized, and (3) the amount or proportion of benefits expected to be received.

If some required information is unknown when the grantee is submitting its initial Action Plan to HUD, the grantee must update the Action Plan through a substantial amendment once the information is known. Historically, appropriations acts require a grantee to submit a plan detailing the proposed use of all funds before HUD can obligate funding to the grantee. Without all the required information in the initial Action Plan, HUD may obligate only a portion of the grant funds until the substantial amendment providing the required information is submitted and approved by HUD.

**I.C.1.g. Protocols for substantial amendments.** In its Action Plan, each grantee must specify criteria for determining what changes in the grantee's Action Plan would constitute a substantial amendment to the Action Plan and thus require public comment. At a minimum, the following modifications will constitute a substantial amendment:

1. A change in program benefit or eligibility criteria (including the expansion of eligible beneficiaries (*e.g.*, establishing a new grantee-identified MID area));

2. The addition or deletion of an activity;

3. A proposed reduction in the overall benefit requirement (as described in section III.B.1.);

4. The allocation or reallocation of a reasonable monetary threshold specified by the grantee in its Action Plan; and

5. An update to the submitted initial Action Plan if the original submission was incomplete as allowed under section I.C.1.e. paragraph 7 and section I.C.1.f.

Once a grantee has set a reasonable monetary threshold in which a reallocation or allocation of funds would constitute a substantial amendment, grantees cannot disregard this threshold by submitting multiple nonsubstantial amendments back-to-back in order to avoid following a substantial amendment process (*e.g.*, submitting two budget reallocations within 30 days of each other that if taken together would require a substantial amendment).

**I.C.2. Citizen participation requirements.** To permit a more streamlined process and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 1003.604, 24 CFR 91.105(b) through (d), and 24 CFR 91.115(b) through (d), with respect to citizen participation requirements, are waived and replaced by the alternative requirements in this section. Under the streamlined requirements, the grantee may be required to hold a public hearing(s) on the proposed Action Plan and must provide a reasonable opportunity (*i.e.*, at least 30 calendar days) for public comment.

The grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in notices providing waivers and alternative requirements). Each local government receiving assistance from a State grantee must follow its citizen participation requirements at 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements). The grantee's records must demonstrate that it has notified affected residents through electronic mailings, press releases, statements by public officials, media advertisements, social media, public service announcements, and/or contacts with neighborhood organizations.

In addition to the requirements above, the streamlined citizen participation alternative requirements for CDBG-DR grants are as follows:

- Requirement for consultation during plan preparation (see section I.C.2.a.);
- Publication of the Action Plan and opportunity for public comment (see section I.C.2.b.);
- Consideration of public comments (see section I.C.2.c.).

**I.C.2.a. Consultation during Action Plan preparation.** All grantees must consult with States, Indian Tribes, local governments, Federal partners, nongovernmental organizations, the private sector, and other stakeholders and affected parties in the surrounding geographic area during Action Plan preparation to ensure consistency of the Action Plan with applicable regional development plans. This requirement also includes consulting with organizations that advocate on behalf of members of protected classes, vulnerable populations, and other underserved communities impacted by the disaster to help address requirements defined in section I.C.1.c. for the fair housing and civil rights data collection. A grantee must consult with other relevant government and local agencies, including State and local emergency management agencies that have primary responsibility for the administration of FEMA funds, agencies that manage local Continuum of Care,<sup>9</sup> Public Housing Agencies,<sup>10</sup> and HUD-approved housing counseling agencies,<sup>11</sup> as applicable. Grantees must coordinate with State Housing Finance Agencies to verify that all available funding sources and opportunities for leverage are noted in the Action Plan. Given the extensive coordination that is required to develop a grantee's Action Plan, HUD recommends that grantees give their partners a clear timeline on receiving feedback and create a consistent process for how feedback will be received from these stakeholders.

**I.C.2.b. Public comment period and minimum public hearing requirement.** Following the creation of the Action Plan or substantial amendment, the grantee must publish the proposed Action Plan or substantial amendment for public comment. The manner of publication must include prominent posting on the grantee's official disaster recovery website and must afford residents, affected local governments,

<sup>9</sup> Find your local Continuum of Care here: <https://www.hudexchange.info/grantees/>.

<sup>10</sup> Find your local Public Housing Agency on HUD's website here: [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/pha/contacts](https://www.hud.gov/program_offices/public_indian_housing/pha/contacts).

<sup>11</sup> Find a HUD-approved housing counseling agency on HUD's website here: [https://answers.hud.gov/housingcounseling/s/?language=en\\_US](https://answers.hud.gov/housingcounseling/s/?language=en_US).



and other interested parties a reasonable opportunity to review the Action Plan or substantial amendment (*i.e.*, at least 30 calendar days). Grantees shall identify and redress any potential barriers that may limit or prohibit protected classes, vulnerable populations, or other underserved communities and individuals affected by the disaster from providing public comment on the grantee's Action Plan or substantial amendments. For example, grantees should consider how to address barriers like lack of childcare and/or transportation that can limit certain populations or communities from participating in public hearings, providing comments, or other engagement events or techniques.

HUD anticipates that every community and every grantee will have some identified barriers to address. Based on the specific barriers the grantee identifies, particularly those that may limit or prohibit equitable participation, the grantee must describe the reasonable measures it will take to increase coordination, such as affirmative marketing, targeted outreach, and engagement with underserved communities and individuals, including protected classes such as persons with disabilities and persons with LEP.

HUD strongly encourages grantees to hold as many hearings or convenings as may be necessary to ensure they capture all citizen comments to inform the comprehensive development of their Action Plan. The minimum number of public hearings a grantee must convene on the Action Plan to obtain interested parties' views and to respond to comments and questions shall be determined by the amount of the grantee's CDBG-DR allocation: (1) CDBG-DR grantees with allocations under \$20 million are not required to hold a public hearing; (2) CDBG-DR grantees with allocations equal to or greater than \$20 million but less than \$100 million are required to hold at least one public hearing; (3) CDBG-DR grantees with allocations equal to or greater than \$100 million but less than \$500 million are required to hold at least two public hearings; and (4) CDBG-DR grantees with allocations equal to or greater than \$500 million shall convene at least three public hearings. These are only minimum hearing requirements and the form and structure of the hearings and convenings may vary to effectively solicit meaningful engagement and feedback. Grantees may find they need additional hearings to adequately capture and address all citizen questions, concerns, and comments.

If the grantee is required to hold multiple public hearings, and a grantee holds those hearings in-person, it must hold each hearing in a different location within the HUD-identified MID area. Specifically, the grantee should select locations that will promote a geographic balance and maximize accessibility for stakeholders to actively participate.

FIGURE ONE: MINIMUM PUBLIC HEARING REQUIREMENT BASED ON GRANT SIZE

CDBG-DR grant value	Minimum public hearing requirement
<\$20 Million .....	No public hearing requirement.
≥\$20 Million but < \$100 Million.	One (1) public hearing required.
≥\$100 Million but < \$500 Million.	Two (2) public hearings required.
≥\$500 Million .....	Three (3) public hearings required.

Grantees may convene public hearings virtually (alone, or in concert with an in-person hearing). All in-person hearings must be held within HUD-identified MID areas and in facilities that are physically accessible to persons with disabilities. When conducting a virtual hearing, the grantee must allow questions in real time, with answers coming directly from the grantee representatives to all attendees.

A grantee's citizen participation plan must specify that it will meet the requirements in the previous paragraph and the requirements in section III.B.8.a. of this notice on vital documents. Additionally, for both virtual and in-person hearings, the citizen participation plan must include how the grantee will complete the following: (1) hold hearings at times and locations convenient to potential and actual beneficiaries, (2) provide accommodations for persons with disabilities, and (3) to ensure effective communication for individuals with disabilities, including through the provision of auxiliary aids and services. See 24 CFR 8.6 for HUD's regulations about effective communication.

Grantees must also provide meaningful access for individuals with LEP at both in-person and virtual hearings. Meaningful access may include live translation of attendees' questions and comments. In the citizen participation plan, State and local government grantees shall identify how the needs of non-English-speaking residents will be met in the case of virtual and in-person public hearings where a significant number of non-English-speaking residents live in the MID areas. In addition, for both virtual

or in-person hearings, the grantee shall provide reasonable notification and access for residents in accordance with the grantee's certifications at section I.C.4., timely responses to all citizen questions and issues, and public access to all questions and responses.

I.C.2.c. *Consideration of public comments.* The grantee must provide a reasonable time frame (no less than 30 calendar days) and reasonable method(s) (including but not limited to electronic submission) for receiving comments on the Action Plan or substantial amendment. The grantee must consider all oral and written comments on the Action Plan or any substantial amendment. Any updates or changes made to the Action Plan in response to public comments should be clearly identified in the Action Plan. A summary of comments on the Action Plan or amendment, and the grantee's response to each, must be included with the Action Plan or substantial amendment. Grantee responses shall address the substance of the comment rather than merely acknowledge that the comment was received.

I.C.3. *Submission of the Action Plan.* The Action Plan (including the SF-424, SF-424B and SF-424D, as applicable) and the certifications included in Appendix B of the Universal Notice must be submitted to HUD for review and approval. Note, the submission process will be described in the applicable AAN. HUD will review each Action Plan within 45 calendar days from the date of receipt, as described in section I.C.5. By submitting the required standard forms, the grantee is providing assurances that it and its recipients will comply with statutory requirements, including, but not limited to Federal civil rights requirements.

I.C.4. *Action Plan certifications waiver and alternative requirement.* Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c) and (m)), sections 106(d)(2)(C) and (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) and (D)), section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the following alternative requirement. Each grantee receiving an allocation under an AAN must make all the certifications included in Appendix B of the Universal Notice.

I.C.5. *HUD Action Plan review process.* HUD may return an Action Plan or substantial amendment to an Action Plan if it is incomplete. HUD will work with grantees to resolve or provide additional information during the review period to avoid having to unnecessarily formally disapprove an

Action Plan or substantial amendments. There may be several issues related to the Action Plan or substantial amendments, as submitted, that can be fully resolved through discussion and revision during the review period, rather than through HUD's formal disapproval of the Action Plan or substantial amendment. Therefore, the Secretary has determined that good cause exists and is waiving 24 CFR 91.500 and providing the alternative requirement described below.

I.C.5.a. *General HUD review of an Action Plan.* HUD will review the Action Plan upon receipt. The Action Plan will be deemed approved 45 calendar days after HUD receives the plan, unless before that date HUD notifies the jurisdiction that the plan is being returned or disapproved (see definitions below). The grantee must publish the final HUD-approved Action Plan on its official disaster recovery website.

I.C.5.b. *Standard of review of an Action Plan.* HUD may disapprove or return an Action Plan or a portion of an Action Plan if it is inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12703), if it is substantially incomplete, or if the certifications under section I.C.4. of the Universal Notice are not satisfactory to the Secretary in accordance with 24 CFR 570.304 or 570.485(c), as applicable. The following are examples of an Action Plan that is substantially incomplete:

- An Action Plan that fails to satisfy a required element in the Universal Notice or applicable AAN (for example, an Action Plan that was developed without the required citizen participation or the required consultation); or
- An Action Plan that fails to describe how protected classes would benefit from CDBG-DR funds in proportion to their communities' needs.

I.C.5.c. *Written notice of return of an Action Plan.* HUD is establishing an alternative process that offers a grantee the option to voluntarily provide a revised Action Plan if HUD has identified sections of the Action Plan that are substantially incomplete. If HUD finds errors with the Action Plan submission, no later than day twenty in HUD's 45-day review, HUD may return the Action Plan to the grantee to resolve the identified errors. The review timeline will pause while the grantee is updating the Action Plan for resubmission to HUD. Once the grantee has resubmitted the Action Plan, the review timeline will resume. A grantee is not required to revise the Action Plan submission, but if they choose not to

after being notified of errors, the Secretary may disapprove the Action Plan as substantially incomplete if HUD determines the Action Plan does not meet the requirements of the Universal Notice and the applicable AAN.

I.C.5.d. *Written notice of disapproval of an Action Plan.* Within 15 calendar days after HUD notifies a grantee that it is disapproving its Action Plan (initial notice should occur via email), it must inform the jurisdiction in writing of the reasons for disapproval and actions that the jurisdiction could take to meet the criteria for approval.

I.C.5.e. *Revisions and resubmission of an Action Plan.* After the first notification of disapproval, the grantee must revise or resubmit an Action Plan within 45 calendar days. HUD must respond to approve or disapprove the Action Plan within 30 calendar days of receiving the revisions or resubmission.

I.C.6. *Amendments to the Action Plan.* The grantee must amend its Action Plan to update its needs assessments, modify or create new activities, or reprogram funds, as necessary. Each amendment must be published on the grantee's official website and describe the changes within the context of the entire Action Plan. A grantee's current version of its entire Action Plan must be accessible for viewing as a single document at any given point in time, rather than require the public or HUD to view and cross reference changes among multiple amendments.

I.C.6.a. *Substantial amendment.* In its Action Plan, each grantee must specify criteria outlined in section I.C.1.g. to clearly define what changes constitute a substantial amendment to the Action Plan. For all substantial amendments, the grantee must follow the same procedures required for the preparation and submission of an Action Plan for disaster recovery, with the exception of the public hearing requirements described in section I.C.2.b. and the consultation requirements described in section I.C.2.a., which are not required for substantial amendments. Every amendment to the Action Plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's website. A substantial amendment shall require a 30-day public comment period and must be posted on the grantee's website.

I.C.6.a.(i). *General HUD review of a substantial amendment to an Action Plan.* HUD will review a substantial amendment to an Action Plan upon receipt. The substantial amendment will be deemed approved 45 calendar days after HUD receives the amendment, unless before that date HUD has notified

the jurisdiction that the amendment is disapproved.

I.C.6.a.(ii). *Standard of review of a substantial amendment to an Action Plan.* HUD may disapprove a substantial amendment to an Action Plan if it is substantially incomplete. HUD must notify the grantee in writing that it is disapproving the substantial amendment and must include the reasons for disapproval and actions that the jurisdiction could take to meet the criteria for approval.

I.C.6.a.(iii). *Revisions and resubmission of a substantial amendment to an Action Plan.* After the first notification of disapproval, the grantee must revise or resubmit the substantial amendment to the Action Plan within 45 calendar days. HUD must respond to approve or disapprove the substantial amendment within 30 calendar days of receiving the revisions or resubmission.

I.C.6.b. *Nonsubstantial amendment.* The grantee must notify HUD, but is not required to seek public comment, when it makes any amendment to the Action Plan that is not substantial. HUD must be notified at least five business days before the amendment becomes effective. However, as mentioned above, every amendment to the Action Plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's website. The Department will acknowledge receipt of the notification of nonsubstantial amendments via email within five business days.

## II. Phase Two: Financial Certification and Oversight of Funds

### II.A. Certification of Adequate Financial Controls and Procurement Processes, and Procedures for Proper Grant Management

Appropriations acts typically require that the Secretary certify that the grantee has proficient financial controls and procurement processes and procedures in place to prevent any duplication of benefits (DOB) as defined by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, as amended ("the Stafford Act"), (42 U.S.C. 5155), to ensure timely expenditure of funds, to maintain a comprehensive website regarding all disaster recovery activities assisted with these funds, and to detect and prevent waste, fraud, and abuse of funds.

II.A.1. *Documentation requirements.* To enable the Secretary to make this certification, each grantee must submit to HUD the certification documentation listed below. This information must be submitted within 135 calendar days of

the applicability date of the AAN. Historically, grant agreements have not been executed until the Secretary has issued a certification for the grantee. For each of the items outlined in sections II.A.1.a. through II.A.1.g. below (collectively referred to as the “Financial Management and Grant Compliance Certification Requirements”), the grantee must certify to the accuracy of its submission when submitting the Financial Management and Grant Compliance Certification Checklist (the “Certification Checklist”). The Certification Checklist is a document that incorporates all of the Financial Management and Grant Compliance Certification Requirements. HUD will review the grantee’s certification documentation within 45 calendar days from the date of receipt.

II.A.1.a. *Proficient financial management controls.* A grantee has proficient financial management controls if the grantee’s agency administering this grant submits its most recent single audit and Annual Comprehensive Financial Report (ACFR), which in HUD’s determination indicates that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of CDBG, CDBG–DR, or Community Development Block Grant Mitigation (CDBG–MIT) funds. If the single audit or ACFR identified weaknesses or deficiencies, the grantee must provide documentation satisfactory to HUD showing how those weaknesses have been removed or are being addressed.

II.A.1.b. *Procedures for procurement.* Each grantee must provide HUD with its procurement processes for review, so HUD may evaluate the grantee’s processes to determine that they are based on principles of full and open competition. A grantee has adequate procurement processes if the grantee complies with the procurement requirements at section III.B.7., including:

(i) A State grantee has proficient procurement processes if HUD determines that its procurement processes reflect that it:

(1) adopted 2 CFR 200.318 through 200.327 for both its own procurement processes and for its subrecipients;

(2) follows its own State procurement policies and procedures based on full and open competition and establishes requirements for procurement processes for local governments and subrecipients based on full and open competition pursuant to 24 CFR 570.489(g), and the requirements for the State, its local governments, and subrecipients to evaluate the cost or price of the product

or service and comply with 2 CFR 570.489(l); or

(3) adopted 2 CFR 200.317, meaning that it will follow its own State procurement processes based on full and open competition, evaluate the cost or price of the product or service, and comply with 2 CFR 570.489(l), but impose 2 CFR 200.318 through 200.327 on its subrecipients.

Additionally, if the State agency designated as the administering agency chooses to provide funding to another State agency, the administering agency must specify in its procurement processes whether the agency implementing the CDBG–DR activity must follow either i.) the procurement processes that the administering agency is subject to, or ii.) the same processes to which other local governments and subrecipients are subject, or iii.) the procurement processes that the agency carrying out the activity normally follows.

(ii) A local government grantee has proficient procurement processes if the processes are consistent with the specific applicable procurement standards identified in 2 CFR 200.318 through 200.327, and 200.214. When the grantee provides a copy of its procurement processes, it must indicate the sections that incorporate these provisions.

II.A.1.c. *Policies and procedures to maintain a comprehensive disaster recovery website.* A grantee has adequate policies and procedures to maintain a comprehensive and accessible disaster recovery website if it submits policies and procedures indicating to HUD that the grantee will have a separate web page dedicated to its CDBG–DR funded activities including the information described at section III.B.8. The procedures must also indicate the frequency of website updates. At a minimum, grantees must update their official disaster recovery website quarterly.

II.A.1.d. *Procedures to detect and prevent fraud, waste, and abuse.* A grantee has adequate procedures to detect and prevent fraud, waste, and abuse if it submits procedures that indicate:

(i) how the grantee will verify the accuracy of information provided by applicants;

(ii) the criteria to be used to evaluate the capacity of potential subrecipients;

(iii) the frequency with which the grantee will monitor other agencies of the grantee that will administer CDBG–DR funds, and how it will monitor subrecipients, contractors, and other program participants, and why

monitoring is to be conducted, and which items are to be monitored;

(iv) if the grant size is \$100 million or more, the grantee has or will employ an internal auditor that provides both programmatic and financial oversight of grantee activities and has adopted policies that describe the auditor’s role in detecting and preventing fraud, waste, and abuse;

(v) (1) for States or grantees subject to the same requirements as States, a written standard of conduct and conflicts of interest policy that complies with the requirements of 24 CFR 570.489(g), (h), and (l) and subparagraph II.A.1.b.(i) *Procedures for procurement* of the Universal Notice, which policy includes the process for promptly identifying and addressing such conflicts;

(2) for local government grantees, a written standard of conduct and conflicts of interest policy that complies with 24 CFR 570.611 and 2 CFR 200.318, as applicable, which policy includes the process for promptly identifying and addressing such conflicts; and

(vi) how it will assist in investigating and taking action when fraud occurs within the grantee’s CDBG–DR activities and/or programs. Following a disaster, property owners and renters are frequently the targets of people fraudulently posing as government employees, creditors, mortgage servicers, insurance adjusters, and contractors. All grantees receiving CDBG–DR funds for the first time shall attend and require subrecipients to attend fraud related training provided by HUD Office of Inspector General (OIG), when offered, to assist in the proper management of CDBG–DR grant funds. Grantees must report to the appropriate HUD CPD staff member that it met this requirement and who attended the training. In accordance with 2 CFR 200.113, grantees and subrecipients of CDBG–DR must promptly inform in writing the OIG and HUD when it has credible evidence of violations of Federal criminal law involving fraud, bribery, or gratuities or a violation of the civil False Claims Act that could potentially affect the Federal award at <https://www.hudoig.gov/hotline/report-fraud> (a subrecipient of CDBG–DR must also inform the CDBG–DR grantee that awarded it funding). All other instances of fraud, waste, and abuse should be referred to the HUD OIG Fraud Hotline (phone: 1–800–347–3735 or email: [hotline@hudoig.gov](mailto:hotline@hudoig.gov)).

Grantees must address in their policies and procedures:

(1) how it will provide CDBG–DR beneficiaries with information that

raises awareness of possible fraudulent activity, how fraud can be avoided, and what local or State agencies to contact to take action and protect the grantee and beneficiary investment:

(2) how the grantee will make CDBG–DR beneficiaries aware of the risks of contractor fraud and other potentially fraudulent activity that can occur in communities recovering from a disaster; and

(3) the steps it will take to assist a CDBG–DR beneficiary if the beneficiary experiences contractor or other fraud. If the beneficiary is eligible for additional CDBG–DR assistance because the fraudulent activity results in the creation of additional unmet need, the procedures must also address what steps the grantee will follow to provide additional assistance.

*II.A.1.e. Policies and procedures to prevent DOB.* A grantee has adequate policies and procedures to prevent the DOB if the grantee submits and identifies a uniform process that reflects the requirements in Appendix C of the Universal Notice, including:

(i) determining all disaster assistance received by the grantee or applicant and all reasonably identifiable financial assistance available to the grantee or applicant, as applicable, before committing funds or awarding assistance;

(ii) determining a grantee's or an applicant's unmet need(s) for CDBG–DR assistance before committing funds or awarding assistance;

(iii) requiring beneficiaries to enter into a signed agreement to repay any duplicative assistance if they later receive assistance for the same purpose for which the CDBG–DR award was provided. The grantee must identify a method to monitor compliance with the agreement for a reasonable period (*i.e.*, a time period commensurate with risk) and must articulate this method in its policies and procedures, including the basis for the period during which the grantee will monitor compliance. This agreement must also include the following language: “Warning: Any person who knowingly makes a false claim or statement to HUD or causes another to do so may be subject to civil or criminal penalties under 18 U.S.C. 2, 287, 1001 and 31 U.S.C. 3729.”; and

(iv) verifying that CDBG–DR funds will not be used for activities reimbursable by, or for which funds are made available by, FEMA or the U.S. Army Corps of Engineers (USACE). Although the language may vary among appropriations acts, CDBG–DR funds may not be used for activities reimbursable by, or for which funds are made available by FEMA or the USACE.

Policies and procedures of the grantee submitted to support the certification must provide that before the award of assistance, the grantee will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of local, State, and Federal sources of funding to prevent a DOB.

Additionally, HUD can assist CDBG–DR grantees with access to the necessary data to support a DOB review.<sup>12</sup>

*II.A.1.f. Policies and procedures for timely expenditures of grant funds.* A grantee has adequate policies and procedures to determine timely expenditures if it submits policies and procedures that indicate the following to HUD:

(i) how it will track and document expenditures of the grantee and its subrecipients (both actual and projected reported in performance reports);

(ii) how it will ensure proper reporting, tracking, and expenditure of program income, including how it will ensure that program income is substantially disbursed before making additional withdrawals from the United States Treasury, except when carrying out the same activities through a revolving fund (see section III.B.12. and section III.B.13. for additional requirements);

(iii) how it will reprogram funds in a timely manner for activities that are stalled (*e.g.*, a project is more than six months behind schedule); and

(iv) how it will project expenditures of all CDBG–DR funds within the period provided for in section III.F.1.

*II.A.1.g. Capacity assessment and staffing analysis.* To enable HUD to assess risk as described in 2 CFR 200.206, the grantee must submit a capacity assessment and staffing analysis to HUD. The capacity assessment must describe the grantee's capacity to carry out the recovery and how it will address any capacity gaps. HUD will determine that the grantee has sufficient management capacity to adequately reduce risk if the grantee submits a capacity assessment and staffing analysis that meets the following requirements.

*II.A.1.g.(i). Capacity assessment.*

(1) Identify the lead agency responsible for implementation of the CDBG–DR award and indicate that the head of that agency will report directly to the chief executive officer of the jurisdiction.

(2) Conduct an assessment of its capacity to carry out CDBG–DR recovery efforts.

(3) Develop a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified.

(4) Include a list of any open monitoring and HUD OIG audit findings related to any CPD program and an update on the corrective actions undertaken to address each finding.

*II.A.1.g.(ii). Staffing analysis.*

(1) Submit an organizational chart of the department or division and provide a table that clearly indicates which personnel, or organizational unit will be responsible for each of the Financial Management and Grant Compliance Certification Requirements identified in section II.A.1.a. through f. along with staff contact information, if available.

(2) Submit documentation demonstrating that it has assessed staff capacity and identified positions for the purpose of: case management in proportion to the applicant pool; program managers who will be assigned responsibility for each primary recovery area (*e.g.*, housing, infrastructure, and economic revitalization); staff who have demonstrated experience in housing, infrastructure (as applicable), and economic revitalization (as applicable); staff responsible for procurement/contract management, regulations implementing Section 3 of the Housing and Urban Development Act of 1968, as amended (24 CFR 75) (Section 3), URA and its implementing regulations, section 104(d) of the HCDA and its implementing regulations, and CDBG acquisition and relocation requirements, fair housing compliance, and environmental compliance.

Additionally, demonstrate that the internal auditor, if applicable, and responsible audit staff report independently to the chief elected or executive officer or board of the governing body of any designated administering entity.

(3) Describe how it will provide training and technical assistance for any personnel that are not employed by the grantee at the time of Action Plan submission, and how it will fill gaps in knowledge or technical expertise required for successful and timely recovery. Grantees must also include how it will provide training and technical assistance to its subrecipients.

To fully complete the certification process, the grantee must have completed and submitted the certification documentation required in the applicable Certification Checklist. The grantee's documentation must demonstrate that the standards meet the

<sup>12</sup> View more information about how to access this data, visit HUD's website here: [https://www.hud.gov/program\\_offices/comm\\_planning/cdbg-dr/data-sharing](https://www.hud.gov/program_offices/comm_planning/cdbg-dr/data-sharing).

requirements in the Universal Notice and the Certification Checklist.

### *II.B. Relying on Prior Financial Certification Submissions*

This section applies to a grantee that has received CDBG–DR funds that are subject to the requirements of the Universal Notice or that received CDBG–DR funds under Public Laws 117–43, 117–180, and 117–328.

For five years after the execution of a grant agreement for an initial allocation of funds a grantee received subject to the Universal Notice, HUD will rely on the grantee's prior submissions provided in response to the Financial Management and Grant Compliance Certification Requirements for any subsequent allocation of funds that is also subject to the Universal Notice. HUD will continue to monitor the grantee's submissions and updates to policies and procedures during the normal course of business.<sup>13</sup>

For grantees that have received CDBG–DR funds under Public Laws 117–43, 117–180, and 117–328, HUD may rely on a grantee's prior submissions provided in response to the Financial Management and Grant Compliance Certification Requirements for five years after the execution of a grant agreement for an initial allocation of funds under those Public Laws.

If it has been more than five years since the executed grant agreement for the original CDBG–DR grant under the Universal Notice or under Public Laws 117–43, 117–180, and 117–328, grantees must update and resubmit the documentation required by section II.A.1. with the completed Certification Checklist. However, the Secretary may require any CDBG–DR grantee to update and resubmit the documentation required by section II.A.1., if there is good cause to require it.

### *II.C. Obligation and Expenditure of Funds*

Once HUD approves the Action Plan and makes the required certification of financial controls and procurement processes, and adequate procedures for proper grant management HUD will then sign a grant agreement obligating funds to the grantee. In addition, HUD will establish the line of credit, and the grantee will receive DRGR system access (if it does not already have DRGR system access). The grantee will follow the DRGR Action Plan process to draw funds (see section III.G.).

The grantee must meet the applicable environmental requirements before the use or commitment of funds for each activity. After the responsible entity (1) completes an environmental review(s) pursuant to 24 CFR part 58 and receives from HUD or the State, as outlined in 24 CFR 58.18, an approved RROF and certification (as applicable), or (2) adopts another Federal agency's environmental review and receives from HUD or the State, an approved RROF and certification (as applicable), the grantee may draw down funds from the line of credit for an activity. The disbursement of CDBG–DR funds must begin no later than 180 calendar days after HUD (1) executes a grant agreement with the grantee, or (2) approves the Action Plan and financial certification and oversight of funds, whichever is later. Failure to draw funds within this timeframe may result in HUD's review of the grantee's certification of its financial controls, procurement processes, and capacity, and may result in the imposition of any corrective actions deemed appropriate by HUD pursuant to 24 CFR 570.495, 24 CFR 570.910, or 24 CFR 1003.

## **III. Phase Three: Implementation of Universal Notice Requirements**

### *III.A. Policies and Procedures—Universal Notice Requirements*

*III.A.1. Development of program-specific policies and procedures.* Grantees must develop program-specific policies and procedures governing the use of funds. The Universal Notice requires each grantee to prioritize policies and procedures for its programs that address its unmet housing recovery needs. Grantees must create and finalize policies and procedures for their housing programs no later than one year from the applicability date of the AAN. Not later than eighteen months from the applicability date of the AAN, grantees must create and finalize policies and procedures governing the rest of its CDBG–DR funded programs (e.g., economic revitalization, infrastructure, public service activities, and any other eligible activities the grantee will fund) that shall be subject to HUD review. If a grantee has determined that it does not have unmet housing needs in the MID areas, the grantee must create policies and procedures for its other programs and activities no later than one year from the applicability date of the AAN.

*III.A.2. Required policies and procedures for all CDBG–DR funded programs.* This section outlines the specific requirements that grantees must adhere to when developing their policies and procedures. Grantees must

ensure their procedures comply with several key requirements, such as fair housing and civil rights compliance and minimizing displacement. Additionally, there are program-specific requirements that grantees must meet depending on the type of program (e.g., housing programs). Beyond the requirements described below, each grantee's program-specific policies and procedures must adhere to the overarching policies and procedures they certified to (refer to *Phase Two: Financial Certification and Oversight of Funds* of the Universal Notice) including the requirement to build procedures to detect and prevent fraud, waste, and abuse; and any requirements set forth in this notice or the regulations on other cross-cutting requirements (e.g., environmental reviews, Davis Bacon Act, Section 3, Lead Safe Housing, etc.). Additionally, the grantee's program-specific policies and procedures must align with the information in the Action Plan (including the grantee's proposed allocations), as amended and approved by HUD.

*III.A.2.a. Fair housing and civil rights policies and procedures.* Each program-specific policy and procedure must address the following requirements on fair housing and civil rights:

(i) a description of how the grantee's use of their CDBG–DR funds is consistent with their obligation to AFFH. For example, grantees may undertake a variety of actions consistent with the requirements to AFFH such as: (1) overcoming prior disinvestment in housing, infrastructure, and public services for protected class groups in the MID areas, especially where such groups are highly concentrated; (2) enhancing (a) the accessibility of disaster preparedness, resilience, or recovery services, including the accessibility of evacuation services and shelters for individuals with disabilities in the MID areas; (b) the provision of critical disaster-related information in accessible formats; and/or (c) the availability of integrated, accessible housing and supportive services; or (3) using CDBG–DR funds to mitigate environmental concerns and increase resilience among protected class groups to protect against the effects of extreme weather events and other natural hazards in the MID areas. Note, grantees must update these policies and procedures to remain in compliance with AFFH requirements as HUD may update its guidance and rules;

(ii) a description of how their proposed allocations to projects and activities, selection criteria, and other actions can be expected to reduce

<sup>13</sup> View the Community Planning and Development's Monitoring Handbook for more information on HUD monitoring here: [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/cpd/6509.2](https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2).

barriers for individuals, vulnerable populations, protected classes, and other underserved communities (as applicable);

(iii) a description of how each program will enhance for individuals with disabilities in the MID areas (1) the accessibility of disaster preparedness, resilience, or recovery services, including the accessibility of evacuation services and shelters; (2) the provision of critical disaster-related information in accessible formats; and/or (3) the availability of integrated, accessible housing and supportive services;

(iv) identification of the proximity of natural and environmental hazards (e.g., industrial corridors, sewage treatment facilities, waterways, EPA superfund sites, brownfields, etc.) to affected populations in the MID area, including members of protected classes, vulnerable populations, and other underserved communities; and a description of how each program will mitigate these specific environmental concerns and increase resilience among these populations in the MID area to protect against current and future hazard risks.

*III.A.2.b. Minimizing displacement and relocation policies and procedures.* Each program-specific policy and procedure must address the following requirements on minimizing displacement and relocation assistance, as appropriate:

(i) a description of how the grantee plans to minimize displacement of persons or entities, and assist any persons or entities displaced, and ensure accessibility needs of displaced persons with disabilities. Grantees must seek to minimize displacement or the adverse impacts from displacement, consistent with the requirements of section III.B.15.a. of the Universal Notice, Section 104(d) of the HCDA (42 U.S.C. 5304(d)) and implementing regulations at 24 CFR part 42, and 24 CFR 570.488 or 24 CFR 570.606, as applicable;

(ii) grantees must amend an existing Residential Anti-displacement and Relocation Assistance Plan (RARAP) or create a new RARAP specific to CDBG-DR. Grantees must meet the requirements in section III.B.15.a., related to the RARAP prior to implementing any activity with CDBG-DR grant funds, such as buyouts and other disaster recovery activities; and

(iii) grantees must also describe how they will provide relocation assistance to persons or entities displaced under the URA and its implementing regulations at 49 CFR part 24, and under an optional relocation policy under 24 CFR 570.606(d), when applicable.

Grantees must also plan and budget for such relocation activities. The description will outline methods for identifying the needs of the potentially displaced persons including site visits, interviews, and orientations. It will also cover budget development variables like housing market conditions, acquisition costs, relocation payments, and professional services costs. Planning and budgeting must precede any action that will cause displacement and/or temporary relocation (including programmatic optional relocation) and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations.

Finally, not all eligible activities will trigger displacement (e.g., planning). In such cases, the grantee should include in its policies and procedures an explanation that minimizing displacement is not applicable because displacement will not occur.

*III.A.2.c. Mitigation policies and procedures.* Each program-specific policy and procedure must address the following requirements on mitigation and resilience:

(i) how mitigation measures and strategies to reduce natural hazard risks will be integrated into the construction, reconstruction, or rehabilitation of residential or non-residential buildings;

(ii) how CDBG-DR investments will be designed and constructed to withstand chronic stresses and extreme events related to a changing climate by identifying and implementing resilience performance measures in DRGR.

*III.A.2.d. Timeliness policies and procedures.* As part of the development of a grantee's program-specific policies and procedures, each grantee must also develop projected expenditures and outcomes. The projections must be based on each quarter's expected performance—beginning with the first quarter funds are available to the grantee and continuing each quarter until all funds are expended. The grantee must include in its policies and procedures how it will monitor its expenditures and outcomes against the projections. The grantee must upload these projections into DRGR and then post this information on its public website as required by section III.B.8.

*III.A.3. Required policies and procedures for housing programs.*

In addition to the requirements in III.A.2., all policies and procedures related to housing activities must also address the following requirements:

(i) a description of the process the grantee will use to provide exceptions to the maximum amount of assistance on

a case-by-case basis. At a minimum, the grantee's policies and procedures must communicate how it will analyze the circumstances under which an exception is needed and how it will demonstrate that the amount of assistance is necessary and reasonable;

(ii) a description of how its program will align and build upon any funding received from HUD's Rapid Unsheltered Survivor Housing (RUSH) program, as applicable;

(iii) a description of the building standards and codes to be used by construction contractors performing work in the jurisdiction and the mechanisms to be used by the grantee to assist beneficiaries in responding to contractor fraud, poor quality work, and associated issues. Grantee policies and procedures must require a warranty period post-construction with a formal notification to beneficiaries on a periodic basis (e.g., one year and one month before expiration date of the warranty);

(iv) a description of the grantee's affordability standards, including "affordable rents," the enforcement mechanisms, and applicable timeframes, that will apply to the new construction of affordable rental housing of five or more units, as required in section III.D.5.d;

(v) a description of how the grantee will use social media platforms to alert its residents when its applications for housing activities are open and when it is holding public hearings on CDBG-DR plans or projects;

(vi) a description of the grantee's process for accepting alternative methods for documenting ownership. Grantees may include the following documentation as acceptable: deed, title, mortgage documentation, tax receipts or bills, home insurance, home purchase contracts, will or affidavit or heirship naming them as heir, receipts of major repairs completed prior to the disaster, court documents, letter from a manufactured housing community owner or public official, self-certification, or utility bills; and

(vii) a description of the basic DOB framework for housing activities. Grantee policies and procedures must follow the process outlined in Appendix C in the Universal Notice and include how the grantee will carry out the following steps for each beneficiary: (1) assess applicant's total need; (2) identify total assistance; (3) exclude non-duplicative amounts; (4) exclude funds for a different purpose; (5) exclude funds for the same purpose, different allowable use; (6) identify a final DOB amount (if any) and calculate the CDBG-DR award; and (7) reassess

unmet need when necessary. Grantees must include the requirement to have beneficiaries sign an agreement to repay any assistance later received for the same purpose as the CDBG-DR funds (e.g., a subrogation agreement) and include any other required steps listed in Appendix C.

A grantee that will be coordinating with a HUD-approved Housing Counseling Agency<sup>14</sup> would include what information and services it will make available to both renters and homeowners.

**III.A.4. Required policies and procedures for infrastructure programs.** In addition to the requirements in section III.A.2., all policies and procedures related to infrastructure activities must also address the following requirements:

(i) how the grantee will address the construction or rehabilitation of disaster-related systems (e.g., storm water management systems) or other disaster-related community-based mitigation systems (e.g., using FEMA's community lifelines). State grantees carrying out infrastructure activities must work with local governments and Indian Tribes in the MID areas to identify the unmet needs and associated costs of disaster-related infrastructure improvements;

(ii) how the grantee will plan for the long-term operation and maintenance of infrastructure and public facility projects funded by CDBG-DR, as maintenance and repair of public facilities and improvements is generally ineligible. Grantees must plan for the long-term sustainability of these projects, including who will pay these costs and who will operate and maintain the projects once they are complete;

(iii) the extent to which CDBG-DR funded infrastructure activities will achieve objectives outlined in regionally or locally established plans and policies that are designed to reduce future risk to the jurisdiction;

(iv) how the grantee will align infrastructure investments with other planned Federal, State, or local capital improvements and infrastructure development efforts, and will work to foster the potential for additional infrastructure funding from multiple sources, including State and local capital improvement projects and private investment;

(v) how the grantee will prioritize infrastructure within historically

underserved communities that lacked adequate investments in housing, transportation, water, and wastewater infrastructure prior to the disaster; and

(vi) a description of the basic DOB framework for infrastructure activities. Grantee policies and procedures must follow the process outlined in Appendix C in the Universal Notice and include how the grantee will carry out the following steps for each entity (e.g., local government) assisted: (1) assess applicant's total need; (2) identify total assistance; (3) exclude non-duplicative amounts; (4) exclude funds for a different purpose; (5) exclude funds for the same purpose, different allowable use; (6) identify a final DOB amount (if any) and calculate the CDBG-DR award; and (7) reassess unmet need when necessary. In its policies and procedures, the grantee must include how it will identify whether any local or State funds are available for these types of activities. And if local or State funds were previously designated or planned for the activity, but are no longer available, the grantee must describe how it will document that the local government recipient does not have funds set aside for the activity in any capital improvement plan (or similar document showing planned use of funds). The grantee must include any other required steps listed in Appendix C.

**III.A.5. Required policies and procedures for economic revitalization programs.** In addition to the requirements in section III.A.2., all policies and procedures related to economic revitalization activities must also address the following requirements:

(i) a description of how the grantee will prioritize underserved communities that have been impacted by the disaster and that were economically distressed before the disaster, as described in section III.D.7.a. While HUD defines the minimum standard for underserved communities in section I.C.1.c., grantees must describe how they will further define areas that are considered underserved communities;

(ii) a description of how the grantee will use social media platforms to alert its residents when its applications for economic development activities are open and when it is holding public hearings on CDBG-DR plans or projects; and

(iii) a description of the basic DOB framework for economic revitalization activities. Grantee policies and procedures must follow the process outlined in Appendix C in the Universal Notice and include how the grantee will carry out the following steps for each business assisted: (1) assess applicant's

total need; (2) identify total assistance; (3) exclude non-duplicative amounts; (4) exclude funds for a different purpose; (5) exclude funds for the same purpose, different allowable use; (6) identify a final DOB amount (if any) and calculate the CDBG-DR award; and (7) reassess unmet need when necessary. Grantees must include the requirement to have entities sign an agreement to repay any assistance later received for the same purpose as the CDBG-DR funds (e.g., a subrogation agreement) and include any other required steps listed in Appendix C.

**III.A.6. Consultation and website requirements for program implementation policies.** To promote effective program design and public transparency, grantees must comply with the consultation and disaster recovery website requirements for program implementation policies as described in this section. Note, grantees are not expected to release all program policies and procedures at once and can develop and publish program-specific policies and procedures in phases, as programs are ready to launch. However, grantees must comply with the timelines identified in section III.A.1. of the Universal Notice for creating and finalizing program-specific policies and procedures. The grantee must also update its citizen participation plan (see section I.C.2.) to describe how it will comply with the requirements of sections III.A.6.a. and III.A.6.b.

**III.A.6.a. Consultation with citizen advisory groups.** Grantees are required to gather feedback and recommendations on key program decisions from its citizen advisory group at least annually. A citizen advisory group is a body composed of individuals from a community who volunteer or are appointed to provide input, advice, and recommendations on various issues and policies affecting their community. These groups typically serve as a bridge between the general public and decision-makers, offering insights, perspectives, and expertise to help inform and shape decisions that impact the community's well-being and development. A citizen advisory group will look different in each community because each community is unique. Generally, the individuals who volunteer or are appointed should represent the demographics of the community it is supporting. For example, a citizen advisory group in a community that is predominantly renters should include individuals who are renters. A citizen advisory group in a community that has a large share of a specific racial or ethnic minority group should include

<sup>14</sup> View additional information to locate a HUD-approved Housing Counseling Agency here: <https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?weblistaction=summary>.



members of that specific racial or ethnic minority group. Each grantee can determine the cadence of meetings and how the group will provide feedback to the grantee. As an example, a citizen advisory group may review program-specific policies and procedures to determine if programs are adequately reaching and assisting intended beneficiaries and are achieving intended program outcomes. The grantee must describe the process it will follow for the citizen advisory group in its citizen participation plan.

**III.A.6.b. Publication of program-specific policies and procedures.** Grantees must prominently post final program-specific policies and procedures on their official disaster recovery website within the timeline identified in section III.A.1. of the Universal Notice. In addition, these program-specific policies and procedures must be available to the public on the website before the grantee formally begins accepting applications for that program. Grantees must also comply with the general website requirements of section III.B.8. of the Universal Notice.

**III.A.7. HUD program-specific policies and procedures review process.** Within two years from the applicability date of the AAN, HUD will review the grantee's program-specific policies and procedures, either onsite or through remote monitoring, for compliance with the requirements in section III. If a grantee's program-specific policies and procedures are not in compliance with the requirements of the Universal Notice, HUD may undertake corrective and remedial actions as described in section III.F.2.a. HUD will continue to monitor the grantee's program-specific policies and procedures during the normal course of business (*i.e.*, CPD's Monitoring Handbook and applicable CPD Notice Implementing Risk Analyses for CPD programs).

### III.B. Grant Administration

**III.B.1. Overall benefit.** Consistent with the HCDA, 24 CFR 570.484 and 24 CFR 570.200(a)(3), the Universal Notice requires grantees to comply with the overall benefit requirement that 70 percent of funds be used for activities that benefit LMI persons. For purposes of a CDBG-DR grant, HUD is establishing an alternative requirement that the overall benefit test shall apply only to the grant of CDBG-DR funds described in the AAN and related program income.

A grantee may request a waiver of the overall benefit requirement to reduce the LMI benefit requirement below 70 percent of the total grant. To request a

waiver, the grantee must submit a substantial amendment, and provide a justification that, at a minimum: (a) identifies the planned activities that meet the needs of its LMI population; (b) describes proposed activities and programs 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; (d) demonstrates that 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 non-LMI persons; and (e) demonstrates a compelling need for HUD to lower the percentage of the grant that must benefit LMI persons.

**III.B.1.a. Use of the "upper quartile" or "exception criteria."** The LMA benefit requirement is modified when communities have few, if any, areas within their jurisdiction that have 51 percent or more LMI residents. In such a community, activities must serve an area that contains a percentage of LMI residents that is within the upper quartile of all census-block groups within its jurisdiction in terms of the degree of concentration of LMI residents. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee, accordingly. The "exception criteria" (*i.e.*, upper quartile) applies to CDBG-DR funded activities in entitlement communities covered by such criteria, including entitlement communities that receive disaster recovery funds from a State. Each year, HUD publishes the most recent data here: <https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees/>.

**III.B.1.b. Clarification of the use of "uncapped" income limits.** The Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105-276) enacted a provision that directs the Department to grant exceptions to at least 10 jurisdictions that are currently "capped" under HUD's low and moderate-income limits. Under this exception, several CDBG entitlement grantees may use "uncapped" income limits that reflect 80 percent of the actual median income for the area. Each year, HUD publishes guidance on its website identifying which grantees may use uncapped limits: <https://www.huduser.gov/portal/datasets/cdbg-income-limits.html>.

Accordingly, HUD clarifies that the annual uncapped income limits published by HUD apply to CDBG-DR funded activities in jurisdictions covered by the uncapped limits, including jurisdictions that receive disaster recovery funds from a State CDBG-DR grantee.

**III.B.2. Use of the urgent need national objective.** Because HUD provides CDBG-DR funds only to grantees with documented disaster-related impacts and each grantee is limited to spending funds only for the benefit of areas that received a Presidential disaster declaration, the Secretary finds good cause to waive the urgent need national objective criteria in section 104(b)(3) of the HCDA (42 U.S.C. 5304(b)(3)) and to establish the following alternative requirement for any CDBG-DR grantee using the urgent need national objective for a period of 36 months after the applicability date of the grantee's AAN.

Pursuant to this alternative requirement, grantees that use the urgent need national objective must address the following three criteria in their Action Plan: (i) describe in the unmet needs assessment why specific needs have a particular urgency, including how the existing conditions pose a serious and immediate threat to the health or welfare of the community; (ii) identify each program or activity that will use the urgent need national objective—either through its initial submission or through a substantial amendment to the Action Plan submitted by the grantee within 36 months of the applicability date of the grantee's initial AAN; and (iii) document how each program and/or activity funded under the urgent need national objective responds to the urgency, type, scale, and location of the disaster-related impact as described in the grantee's unmet needs assessment.

This alternative urgent need national objective is in effect for a period of 36 months following the applicability date of the grantee's initial AAN. After 36 months, the grantee will be required to follow the criteria established in section 104(b)(3) of the HCDA (42 U.S.C. 5304(b)(3)) and its implementing regulations in 24 CFR part 570 when using the urgent need national objective for any new programs and/or activities added to an action plan.

**III.B.3. Administration cap.** Historically, the appropriations acts authorize up to five percent of the grant (plus five percent of program income generated by the grant) to be used for administrative costs (*i.e.*, program administrative costs) by the grantee or its subrecipients. The Secretary does not

have the authority to waive or specify an alternative requirement to increase the grant administration cap. Thus, the total of all costs classified as administrative for a CDBG–DR grant must be less than or equal to the five percent cap (plus five percent of program income generated by the grant). The cap for administrative costs is subject to the combined technical assistance and administrative cap for State grantees as discussed in section III.C.1. For example, administrative activities include the grantee’s overall grant management, internal auditor activities, and DRGR recordkeeping.<sup>15</sup>

**III.B.3.a. Use of funds for administrative costs across multiple grants.** The appropriations acts may authorize special treatment of grant administrative funds. Grantees receiving funds under the Universal Notice, and that have received CDBG–DR or CDBG–MIT grants in the past or in any future acts, may use eligible administrative funds (up to five percent of each grant award plus up to five percent of program income generated by the grant) appropriated by these acts for the cost of administering any CDBG–DR or CDBG–MIT grant without regard to the particular disaster appropriation from which such funds originated. If the grantee chooses to exercise this authority, the grantee must (i) have appropriate financial controls to comply with the requirement that the amount of grant administration expenditures for each CDBG–DR or CDBG–MIT grant will not exceed five percent of the total grant award for each grant (plus five percent of program income generated by the grant); (ii) review and modify its financial management policies and procedures regarding the tracking and accounting of administration costs, as necessary; and (iii) address the adoption of this treatment of administrative costs in the applicable portions of its Financial Management and Grant Compliance submissions as referenced in section II.A. Grantees are reminded that all uses of funds for program administrative activities must qualify as an eligible administration cost.

**III.B.4. Planning cap.** Both State and local government grantees are limited to spending a maximum of 15 percent of their total grant amount on planning costs. Planning costs subject to the 15 percent cap are those defined in 42 U.S.C. 5305(a)(12) and more broadly in 24 CFR 570.205. For example, planning

activities can include grantees conducting feasibility studies, marketing studies, local mitigation plans, and long-term disaster recovery plans.<sup>16</sup>

**III.B.5. Public service cap.** Both State and local government grantees are limited to spending a maximum of 15 percent of their total grant amount on public services. Public service costs subject to the 15 percent cap are those defined in 42 U.S.C. 5305(a)(8) and more broadly in 24 CFR 570.201(e). For example, public service activities can include mental health services and counseling, and legal services for disaster impacted individuals. The Universal Notice identifies specific activities in III.D. that are exempt from this cap with the waiver and alternate requirements established for each activity.

**III.B.6. Consolidated Plan.** The requirements for consistency with the consolidated plan in Section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225(a)(5), and 24 CFR 91.325(a)(5)) are temporarily waived because the effects of a major disaster alter a grantee’s priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e) is also waived, to the extent that it would require HUD to annually review grantee performance under the consistency criteria. These waivers apply only for 24 months after the applicability date of the grantee’s AAN. If the grantee is not scheduled to submit a new three-to five-year consolidated plan within the next two years, the grantee must update its existing three-to five-year consolidated plan to reflect disaster-related needs no later than 24 months after the applicability date of the grantee’s AAN.

**III.B.7. Procurement.** To have a proficient procurement process, the grantee must submit the policies and procedures to HUD as required by section II.A.1.b.; and post the required documentation to the official website as described in section III.B.8. below. Additionally, the grantee must include the following alternative requirements in this section in its submitted procurement policies and procedures, as appropriate.

**III.B.7.a. Procurement alternative requirements.** HUD is establishing an additional alternative requirement for

all procurement actions to provide goods and services, as follows:

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

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

3. The grantee (or procuring entity) may contract for administrative support, in compliance with 2 CFR 200.459, but may not delegate or contract to any other party any inherently governmental responsibilities related to oversight of the grant, including policy development, fair housing and civil rights compliance, and financial management.

**III.B.7.b. Procurement when using CDBG–DR as non-Federal match.** When using CDBG–DR grant funds as the non-Federal match as explained in section III.D.6.d., grantees can adopt the procurement policies and procedures that satisfy the other Federal agency’s requirements to promote consistency and seamlessly leverage their funding, so long as they meet other cross-cutting requirements that apply to the CDBG–DR funds (e.g., Section 3 requirements, Davis Bacon Act, etc.). Grantees must identify which procurement policies and procedures will apply and keep any decision document in its files. For example, CDBG–DR grants to local governments are subject to the same procurement requirements that apply to procurements by local governments using FEMA Public Assistance (PA) funds. State CDBG–DR grantees (and other CDBG–DR grantees subject to State CDBG rules under a waiver and alternative requirement) should consider including a provision in their procurement requirements that adopts FEMA procurement requirements for activities that will be used to satisfy the non-Federal match. This will eliminate confusion about which procurement rules apply.

Additionally, when CDBG–DR funds are used as the non-Federal match in another Federal program, grantees are not required to comply with the alternative requirements in section III.B.7.a. above.

**III.B.8. Public disaster recovery website.** The grantee must maintain a public website that permits individuals and entities awaiting assistance and the general public to see how all grant funds

<sup>15</sup> View HUD’s guidance on allocating costs between program administrative costs, activity delivery costs, and planning costs for CDBG–DR Grantees published in CPD Notice 23–06 here: <https://www.hud.gov/sites/dfiles/OA/images/2023-06cpdn.pdf>.

<sup>16</sup> View HUD’s guidance on allocating costs between program administrative costs, activity delivery costs, and planning costs for CDBG–DR Grantees published in CPD Notice 23–06 here: <https://www.hud.gov/sites/dfiles/OA/images/2023-06cpdn.pdf>.

are used and administered. The public website must be accessible to persons with disabilities and individuals with LEP in compliance with Section 504, Title II of the ADA,<sup>17</sup> Title VI, and Executive Order 13166.

III.B.8.a. *Publication and accessibility of required documents.* The website must include copies of all relevant procurement documents and, except as noted in the next paragraph, all grantee administrative contracts, details of ongoing procurement processes, and action plans and amendments. To meet this requirement, each grantee must make the following items available on its website: the Admin Action Plan (if applicable) and the Action Plan (including all amendments); each performance report (as created using the DRGR system); citizen participation plan; procurement policies and procedures; program-specific policies and procedures including a projection of expenditures and outcomes (III.A.6.b.); all contracts, as defined in 2 CFR 200.22, that will be paid with CDBG–DR funds (including, but not limited to, subrecipients' contracts); and a summary including the description and status of services or goods currently being procured by the grantee or the subrecipient (e.g., phase of the procurement, requirements for proposals, etc.). Contracts and procurement actions that do not exceed the micro-purchase threshold, as defined in 2 CFR 200.1, are not required to be posted to a grantee's website.

The grantee must make the required documents available on the grantee's website in a form accessible to persons with disabilities and those with LEP.<sup>18</sup> Grantees must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons, members of protected classes, vulnerable populations, and individuals from other underserved communities, and address any possible digital inequities and related barriers. In their citizen participation plan, State and local government grantees shall describe their procedures for assessing their language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require that the grantee take reasonable steps to provide language assistance to ensure meaningful access to participation by

non-English-speaking residents of the grantee's jurisdiction.

III.B.9. *Application status.* The grantee must provide multiple methods of communication, such as websites, dashboards, social media, toll-free numbers, TTY and relay services, email address, fax number, or other means to provide applicants for recovery assistance with timely information to determine the status of their application and when the application period begins. While grantees must identify multiple methods, one of the methods identified must be to include this information on the grantee's disaster recovery website. This must include specific information on application status, including what quarter the grantee projects it will open application intake for each program, and then on a monthly basis, the grantee must include information on which specific applications are under review, any other relevant status update determined by the grantee, and which applications are approved/disapproved. Grantees must use unique application number identifiers to ensure personally identifiable information (PII) is protected. Grantees must also describe how they will use social media in their policies and procedures to announce when applications are open as required by sections III.A.3. and III.A.5. HUD strongly encourages grantees to consider how their application process can be inclusive of persons who are home-bound or unable to move freely.

III.B.10. *Environmental requirements.*

III.B.10.a. *Process for environmental release of funds when a State carries out activities directly.* For CDBG–DR grants, HUD allows State grantees to carry out activities directly and to distribute funds to subrecipients. Per 24 CFR 58.4(b)(1), when a State carries out activities directly (including through subrecipients that are not local governments), the State must submit the RROF and Certification to HUD for approval.

III.B.10.b. *Responsibilities of States assuming HUD environmental responsibilities.* When a State grantee distributes funds to subrecipients that have Responsible Entity authority under 24 CFR part 58 (i.e., units of general local government), the State must exercise HUD's responsibilities in accordance with 24 CFR 58.18. In its policies and procedures, a State must designate the agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in 24 CFR part 58, subpart H. The designated State agency must develop a monitoring and enforcement program for post-review actions on environmental reviews and

monitor compliance with any environmental conditions included in the award.

III.B.10.c. *Adoption of another Federal agency's environmental review.* Recipients of CDBG–DR funds that supplement other Federal assistance may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, so long as the actions covered by the existing environmental review, approval, or permit and the actions proposed for the CDBG–DR supplemental funds are substantially the same. Such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit.

Projects originally funded by another agency that are later supplemented with CDBG–DR do not have to supplement the other agency's environmental review with any HUD environmental requirements that differ from the originating agency (e.g., Federal Flood Risk Management Standard (FFRMS) floodplain and elevation, noise, etc.). However, if the activity is modified so the other agency's environmental review no longer covers the activity, the grantee is required to reevaluate and supplement the other agency's environmental review to comply with all applicable HUD environmental regulations in 24 CFR part 58. The grantee's environmental review obligations are considered complete when adopting another agency's environmental review as outlined in this section. To be adequate:

1. The grantee must obtain a completed electronic or paper copy of the Federal agency's review and retain a copy of the full file in its environmental review record.

2. The grantee must review the scope of work completed by the Federal agency's review and verify that the scope of work is substantially the same with a memo to file in its environmental review record.

3. The grantee must notify HUD on the RROF (HUD-Form 7015.15) (or the State, if the State is acting as HUD under 24 CFR 58.18) that another agency review is being used. The grantee must include the name of the other Federal agency, the name of the project, and the date of the project's review as prepared by the other Federal agency.

When permitted by the applicable appropriations acts, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary or a State may, upon receipt of a RROF and Certification, immediately approve the release of funds for an activity or project assisted with CDBG–DR funds if the recipient

<sup>17</sup> Note: the technical standards of Section 508 provide a practical benchmark when seeking to comply with nondiscrimination and effective communication obligations under Section 504 and the ADA.

<sup>18</sup> View HUD's guidance on LEP for more information on vital documents here: [https://www.lep.gov/guidance/HUD\\_guidance\\_Jan07.pdf](https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf).

has adopted an environmental review, approval, or permit under this section, or if the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA).

III.B.10.d. *Historic preservation reviews.* The responsible entity must comply with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108). Early coordination under section 106 is important to the recovery process and required by 24 CFR 58.5(a).

III.B.10.e. *Tiered environmental reviews.* Tiering, as described at 40 CFR 1508.1(o), 40 CFR 1501.11, and 24 CFR 58.15, is a means of making the environmental review process more efficient by allowing parties to “eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided” (40 CFR 1501.11(b)). Tiering is appropriate when a responsible entity is evaluating a single-family housing program with similar activities within a defined local geographic area and timeframe (*e.g.*, rehabilitating single-family homes within a city district or county over the course of one to five years) but where the specific sites and activities are not yet known. Public notice and the RROF are processed at a broad level, eliminating the need for publication at the site-specific level. However, funds cannot be spent or committed on a specific site or activity until both the broad level and the site-specific review have been completed and approved.

III.B.10.f. *FFRMS floodplain and elevation.* HUD published the FFRMS Final Rule on April 23, 2024, the rule became effective on May 23, 2024, and the compliance date for CDBG–DR funds was on June 24, 2024.<sup>19</sup> CDBG–DR grantees must update their construction standards and any related policies and procedures to comply with the requirements outlined in the FFRMS final rule. While this section in the notice summarizes the new rule, grantees should reference the new requirements in Part 55 to ensure compliance.

The floodplain area is determined by the FFRMS based on available data in the project area and whether the project scope contains a Critical Action (as defined in 24 CFR 55.2(b)(3)). Residential buildings (as defined in 44

CFR 59.1) and nonresidential buildings (as defined in 44 CFR 59.1) that are located in the floodplain and receive assistance for new construction, reconstruction, rehabilitation of substantial damage, or rehabilitation that results in substantial improvement, must be elevated to those floodplain standards. HUD requires grantees to follow a three-tiered data standard to determine the FFRMS floodplain, as follows:

- *Non-critical Actions:* (1) use the climate-informed science approach (CISA), if available and actionable and formally adopted by HUD; (2) if CISA is not available, then use the 0.2-percent-annual-chance-floodplain (500-year floodplain), determined by FEMA; or (3) if neither of these options are available, then use the freeboard value approach (FVA) by adding two feet to the base flood elevation (BFE).

- *Critical Actions:* (1) use the CISA, if available and actionable and formally adopted by HUD; (2) if CISA is not available, then use the 500-year floodplain or the FVA by adding three feet to the BFE, whichever results in the larger floodplain and higher elevation; or (3) if the 500-year floodplain is not available, then use the FVA by adding three feet to the BFE.

For residential buildings undergoing new construction or substantial improvement located in the FFRMS floodplain, the lowest floor (or FEMA-approved equivalent) must be designed using the elevation of the FFRMS floodplain as the baseline standard for elevation (except where higher elevations are required by Tribal, State, or locally adopted code or standards, in which case those higher elevations apply). Residential buildings (including multi-family) that have no dwelling units below the FFRMS floodplain that are not critical actions, and nonresidential buildings, undergoing new construction or substantial improvement shall be designed, either with the lowest floor (including basement) elevated to or above the elevation of the FFRMS floodplain or with the structure floodproofed at least up to the elevation of the FFRMS floodplain (using floodproofing standards as outlined in FEMA regulations found in 44 CFR 60.3(c)(3)(ii) and (c)(4)(i), or successor standard.

In addition to the requirements described in the FFRMS final rule, grantees must comply with (1) all applicable environmental review requirements found in 24 CFR part 55; and (2) all applicable State, local, and Tribal codes and standards for floodplain management, including

elevation, setbacks, and cumulative substantial damage requirements. Grantees should note that structures that are elevated must meet Federal accessibility standards.

III.B.11. *Flood insurance requirements.* Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, before providing assistance. Grantees are encouraged to work with State insurance regulators and industry to assess availability and affordability of insurance.

III.B.11.a. *Flood insurance purchase requirements.* When grantees use CDBG–DR funds to rehabilitate or reconstruct existing residential buildings in a Special Flood Hazard Area (SFHA), the grantee must comply with applicable Federal, State, local, and Tribal laws and regulations related to both flood insurance and floodplain management. SFHA is defined by FEMA as the area that will be inundated by the flood event having a one-percent chance of being equaled or exceeded in any given year. The one-percent annual chance flood is also referred to as the base flood or 100-year flood. The grantee must comply with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) which mandates the purchase of flood insurance protection for any property receiving HUD assistance for acquisition or construction (including rehabilitation) within a Special Flood Hazard Area and with 24 CFR 58.6(a)(2), which requires that flood insurance under the National Flood Insurance Program be obtained. Therefore, a HUD-assisted homeowner for a property located in a Special Flood Hazard Area must obtain and maintain flood insurance in the amount and duration prescribed by FEMA’s National Flood Insurance Program.

III.B.11.b. *Federal assistance to owners remaining in a floodplain.*

III.B.11.b.(i) *Prohibition on flood disaster assistance for failure to obtain and maintain flood insurance.* Grantees must comply with section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which prohibits flood disaster assistance in certain circumstances. No Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for “repair, replacement, or restoration” for damage to any personal, residential, or commercial property if that person at any time has received Federal flood

<sup>19</sup> Visit HUD’s Office of Environment and Energy’s website for additional information on FFRMS here: [https://www.hud.gov/program\\_offices/comm\\_planning/environment\\_energy/ffrms](https://www.hud.gov/program_offices/comm_planning/environment_energy/ffrms).

disaster assistance that was (1) conditioned on the person first having obtained flood insurance under applicable Federal law, and (2) the person has subsequently failed to obtain and maintain flood insurance as required on such property.

The grantee must implement a process to verify and monitor for compliance with section 582 and the requirement to obtain and maintain flood insurance.

III.B.11.b.(ii) *Prohibition on flood disaster assistance for households above 120 percent of AMI for failure to obtain flood insurance.* When a homeowner located in the floodplain allows their flood insurance policy to lapse, it is assumed that the homeowner is unable to afford insurance and/or is accepting responsibility for future flood damage to the home. Higher income homeowners who reside in a floodplain, but who failed to secure or decided to not maintain their flood insurance, should not be assisted at the expense of lower income households. To ensure that adequate recovery resources are available to assist lower income homeowners who reside in a floodplain but who are unlikely to be able to afford flood insurance, the Secretary finds good cause to establish an alternative requirement.

The alternative requirement to 42 U.S.C. 5305(a)(4) is as follows: Grantees receiving CDBG-DR funds are prohibited from providing CDBG-DR assistance for the rehabilitation/reconstruction of a house, if (1) the combined household income is greater than either 120 percent of AMI or the national median, (2) the property was located in a SFHA at the time of the disaster, and (3) the property owner did not obtain or maintain flood insurance on the damaged property, even when the property owner was not required to obtain and maintain such insurance.

III.B.11.b.(iii) *Responsibility to inform property owners to obtain and maintain flood insurance.* Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) is a statutory requirement that property owners receiving disaster assistance that triggers the flood insurance purchase requirement have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance and to maintain such written notification in the documents evidencing the transfer of the property, and that the transferring owner may be liable if he or she fails to do so. A grantee or subrecipient receiving CDBG-DR funds must notify property owners of their responsibilities under section 582.

III.B.12. *Program income.* For State or local government grantees, HUD is waiving all applicable program income rules at 42 U.S.C. 5304(j), 24 CFR 570.489(e) and (f), 24 CFR 570.500, 24 CFR 570.504, and 24 CFR 570.509(a)(4) and providing the alternative requirement described below.<sup>20</sup> Program income earned by Indian Tribes that are subrecipients of State or local government grantees will be subject to the program income requirements for subrecipients of those grantees.

III.B.12.a. *Definition of program income.* “Program income” is defined as gross income generated from the use of CDBG-DR funds, except as provided in III.B.12.b. below, and received by State or local government grantees, including subrecipients. When program income is generated by an activity that is only partially assisted with CDBG-DR funds, the income shall be prorated to reflect the percentage of CDBG-DR funds used (e.g., a single loan supported by CDBG-DR funds and other funds, or a single parcel of land purchased with CDBG-DR funds and other funds). If CDBG funds are used with CDBG-DR funds on an activity, any income earned on the CDBG portion would not be subject to the waiver and alternative requirement in the Universal Notice.

Program income includes, but is not limited to, the following:

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

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

(iii) Gross income from the use or rental of real or personal property acquired by State or unit of general local government grantees, including subrecipients, with CDBG-DR funds less costs incidental to generation of the income.

(iv) Gross income from the use or rental of real property owned by State or local government grantees, including subrecipient, that was constructed or improved with CDBG-DR funds, less costs incidental to generation of the income.

(v) Payments of principal and interest on loans made using CDBG-DR funds, including interest paid by borrowers on loans made from a revolving fund, as defined in section III.B.13.

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

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

(viii) Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund, as defined in section III.B.13.

(ix) Interest earned on lump sum drawdowns for financing of property rehabilitation activities as described in 24 CFR 570.513;

(x) Funds collected through special assessments made against non-residential properties and properties owned and occupied by non-LMI households, where the special assessments are used to recover all or part of the CDBG-DR portion of a public improvement.

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

(xii) Any income received by State or local government grantees related to the CDBG-DR grant after closeout, including income received by subrecipients after closeout (see section II.D.12.e.).

III.B.12.b. *Program income—does not include.* Program income does not include the following:

(i) The total amount of funds that is less than \$35,000 received over the life of the grant and retained by State or local government grantees, including subrecipients. Once a grantee, including subrecipients, meets or exceeds the \$35,000 threshold, only funds over the threshold are considered program income and are subject to the requirements of the Universal Notice.

(ii) Amounts generated by activities eligible under section 105(a)(15) of the HCDA (42 U.S.C. 5305(a)(15) and carried out by an entity under the authority of section 105(a)(15) of the HCDA.

(iii) Income (except for interest described in 24 CFR 570.513) earned on grant advances from the U.S. Treasury; this income must be remitted to HUD for transmittal to the U.S. Treasury.

III.B.12.c. *Recording program income.* For State or local government grantees, including their subrecipients, the receipt and expenditure of program income shall be recorded using both DRGR and internal financial records as part of the financial transactions of the CDBG-DR grant.

III.B.12.d. *Retention of program income.* State grantees may permit local governments that receive or will receive program income to retain the program income but are not required to do so.

<sup>20</sup> View HUD's instructions and templates on how to handle CDBG-DR program income here: [https://www.hud.gov/program\\_offices/comm\\_planning/cdbg-dr/program\\_income](https://www.hud.gov/program_offices/comm_planning/cdbg-dr/program_income).

Additionally, State or local government grantees may permit subrecipients that receive or will receive program income to retain the program income but are not required to do so. In all cases, program income retained by local governments or subrecipients is treated as additional CDBG-DR funds subject to the requirements of the Universal Notice.

The written agreement between the grantee and the subrecipient, shall specify whether program income received is to be returned to the grantee or retained by the subrecipient. When program income is to be retained by the subrecipient, the agreement shall specify the activities that will be undertaken with program income and that all provisions of the written agreement shall apply to the specified activities. When the subrecipient retains program income, transfers of grant funds by the grantee to the subrecipient shall be adjusted according to the disbursement principles described in section III.B.12.e. Any program income on hand when the agreement expires, or received after the agreement's expiration, shall be paid to the grantee.

III.B.12.e. *Program income—use, close out, and transfer.* Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional CDBG-DR funds subject to the requirements of the Universal Notice and must be used in accordance with the grantee's Action Plan for disaster recovery. Grantees must substantially disburse program income before making additional withdrawals from the United States Treasury, except as provided in section III.B.13. State grantees may meet this requirement by carrying out activities directly or by distributing program income to local governments in accordance with the State's approved method of distribution, as provided in section I.C.1.f. Local government grantees may meet this requirement by carrying out activities directly as provided in section I.C.1.f.

Any income received by State or local government grantees related to the CDBG-DR grant after closeout, including income received by subrecipients after closeout, shall be treated as program income and shall be subject to the requirements of the Universal Notice, unless transferred to an annual CDBG program. If transferred to an annual CDBG program, the following rules apply:

(1) Program income received by State or local government grantees before or after closeout, including program income received by subrecipients, may

be transferred by the State or local government grantees to the annual CDBG program before or after closeout of the grant that generated the program income. In all cases, the grantee must first seek and then receive HUD's approval;

(2) Any program income transferred will not be subject to the waivers and alternative requirements of the Universal Notice. Rather, those funds will be subject to the applicable regular CDBG program rules. Any other transfer of program income not specifically addressed in the Universal Notice may be carried out if the grantee first seeks and then receives HUD's approval; and

(3) CDBG-DR grantees must continue to report annually in DRGR on any program income received following closeout of the grant.

III.B.13. *Revolving funds.* State or local government grantees may establish revolving funds to carry out specific, identified activities. State grantees may also establish a revolving fund to distribute funds to a local government, including subrecipients, to carry out specific identified activities. A revolving fund, for these purposes, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities must generate payments used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be used or disbursed for nonrevolving fund activities. A revolving fund established by a CDBG-DR grantee shall not be directly funded or capitalized with CDBG-DR grant funds. Given that funds in a revolving loan fund, including interest earned on funds held in the revolving loan fund as well as interest paid by borrowers on loans made from the fund, are considered program income, grantees may transfer revolving loan funds before or after closeout, pursuant to section III.B.12.e.

III.B.14. *Reimbursement of disaster recovery expenses.* A grantee may not charge such pre-award or pre-application costs to grants if the grantee cannot meet all requirements at 24 CFR part 58. Pre-award costs are defined in 2 CFR 200.458 and are allowed in instances in which the CDBG-DR grantee anticipated an allocation and incurred an eligible cost prior to the award. For all pre-award costs, compliance with 24 CFR part 58 must

be completed before the start of the activity. Pre-application costs are costs incurred by an applicant to CDBG-DR funded programs on or after the incident date of the qualifying disaster but before the time of application to a grantee or subrecipient (this may be before or after the grantee signs its CDBG-DR grant agreement). For all pre-application costs, compliance with 24 CFR part 58 must be completed prior to the commitment of funds (*i.e.*, prior to the grantee or subrecipient committing to reimburse the qualifying entity for costs incurred). Under CDBG-DR appropriations acts and HUD's environmental regulations in 24 CFR part 58, the CDBG-DR "recipient" (as defined in 24 CFR 58.2(a)(5), which differs from the definition in 2 CFR part 200) is the responsible entity that assumes the responsibility for completing environmental reviews under all applicable Federal laws and authorities. The responsible entity assumes all legal liability for the application, compliance, and enforcement of these requirements.

Grantees are also required to consult with the State Historic Preservation Officer, Fish and Wildlife Service, and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) when designing a reimbursement program.

III.B.14.a. *Reimbursement of pre-award costs by a grantee or subrecipient.* The provisions at 24 CFR 570.200(h)(1)(i), (v), and (vi) are waived; however, the rest of the provisions at 24 CFR 570.200(h) will continue to apply to State and local governments to permit grantees to incur pre-award costs. Additionally, HUD is establishing the following alternative requirement: the provisions at 24 CFR 570.489(b) are applied to all CDBG-DR grantees to permit States and local governments to allow subrecipients to incur costs before the establishment of a formal grant relationship between the grantee and the subrecipient. Grantees may reimburse themselves or their subrecipients for otherwise allowable costs incurred on or after the incident date of the qualifying disaster, if the environmental review and all other cross-cutting requirements are met before the underlying activity (*e.g.*, rehabilitation of a government building) begins. As an alternative requirement, grantees must include any pre-award activities in their Action Plan, including eligible activities that were funded with short-term subsidized loans (*e.g.*, bridge

loans) that the grantee intends to reimburse or otherwise charge to the grant, consistent with applicable program requirements.

III.B.14.b. *Reimbursement of pre-application costs of homeowners, renters, businesses, and other qualifying entities.* Grantees are permitted to charge to grants the pre-application costs of homeowners, renters, businesses, and other qualifying entities for otherwise allowable costs incurred on or after the incident date of the qualifying disaster as identified in a grantees' applicable AAN. In addition to the terms described in the remainder of the Universal Notice, grantees may only charge costs to the grant that meet the following requirements:

- Grantees may only charge the costs incurred for disaster relief payments (see section III.D.5.h.) and rehabilitation, demolition, and reconstruction of single family, multifamily, and nonresidential buildings, including commercial properties, owned by private individuals and entities, before the owner or renter applies to a CDBG-DR grantee, recipient, or subrecipient for CDBG-DR assistance;

- For rehabilitation and reconstruction costs, grantees may only charge costs for activities completed within the same footprint of the damaged structure, sidewalk, driveway, parking lot, or other developed area;

- As required by 24 CFR 200.403(g), costs must be adequately documented; and

- Grantees must complete a DOB check before providing assistance pursuant to Appendix C.

Grantees are required to ensure that all costs charged to a CDBG-DR grant are necessary expenses related to authorized recovery purposes. Grantees may charge to CDBG-DR grants the eligible pre-application costs of individuals and private entities related to single family, multifamily, and nonresidential buildings, only if: (1) the person or private entity incurred the expenses within two years after the applicability date of the grantee's *initial* AAN for that disaster; and (2) the person or entity incurs the cost before the date on which the person or entity applies for CDBG-DR assistance. Exempt activities as defined at 24 CFR 58.34, but not including 24 CFR 58.34(a)(12), and categorical exclusions as defined at 24 CFR 58.35(b) are not subject to the time limit on pre-application costs outlined above. Actions that convert or potentially convert to exempt under 24 CFR 58.34(a)(12) remain subject to the reimbursement requirements provided herein. If a grantee cannot meet all

requirements at 24 CFR part 58, the pre-application costs cannot be reimbursed with CDBG-DR.

Grantees must comply with the necessary and reasonable cost principles for State, local, and Indian Tribal governments (described at 2 CFR 200.403). Grantees must incorporate into their policies and procedures the basis for determining that the assistance provided is necessary and reasonable.

III.B.15. *URA, Section 104(d), and related CDBG program requirements.*

Certain activities and projects undertaken with CDBG-DR funds are subject to the URA (49 CFR part 24), section 104(d) of the HCDA (42 U.S.C. 5304(d)), and CDBG program requirements related to displacement, relocation, acquisition, and replacement of housing (24 CFR 570.606), except as modified by these waivers and alternative requirements:

1. Process for updating existing RARAP or establishing a CDBG-DR specific RARAP (review section III.B.15.a.).

2. Optional relocation assistance policies (review section III.B.15.b.).

3. Relocation assistance requirements under Section 104(d) (review section III.B.15.c.).

4. One-for-one replacement waiver process (review section III.B.15.d.).

5. Lump-sum relocation assistance to displaced residential tenants (review section III.B.15.e.).

6. Voluntary acquisition—homebuyer primary residence purchase (review section III.B.15.f.).

7. Applicability of Section 414 of the Stafford Act for projects that begin one year after the applicable presidential disaster (review section III.B.15.g.).

The implementing regulations for the URA are at 49 CFR part 24. The regulations implementing section 104(d) are at 24 CFR part 42. The regulations for applicable CDBG program requirements are at 24 CFR 570.488 and 24 CFR 570.606. HUD is waiving and/or providing alternative requirements in this section for the purpose of providing enough flexibility while preserving minimum standards of tenant and property owner protections, and promoting the stable supply of decent, safe, and sanitary affordable housing.

III.B.15.a. *Section 104(d) RARAP.*

CDBG-DR grantees must certify that they have in effect and are following a RARAP as required by section 104(d)(1) and (2) of the HCDA and 24 CFR 42.325 and covered under section III.A.2.b. In addition to the requirements in 24 CFR 42.325 and 24 CFR 570.488 or 24 CFR 570.606(c), as applicable, HUD is specifying the following alternative requirements:

Grantees who are following an existing RARAP for CDBG purposes must either: (1) amend their existing RARAP; or (2) create a separate RARAP for CDBG-DR purposes, to reflect the requirements listed in this section and applicable waivers and alternative requirements.

Grantees who do not have an existing RARAP in place because they do not manage CDBG programs must create a separate RARAP for CDBG-DR purposes.

As each grantee establishes and supports feasible and cost-effective recovery efforts to make communities more resilient against future disasters, the RARAP must describe how the grantee plans to minimize displacement of families and individuals from their homes and neighborhoods as a result of any CDBG-DR assisted activities, potentially through non-displacing disaster recovery activities (e.g., housing rehabilitation programs). Across disaster recovery activities—such as buyouts and other eligible acquisition activities, where minimizing displacement is not reasonable, feasible, or cost-efficient or would not help prevent future or repetitive loss—the grantee must describe how it plans to minimize the adverse impacts of displacement.

The description shall focus on proposed disaster recovery activities that may directly or indirectly result in displacement and the assistance that would be required for those displaced. This description must also focus on relocation assistance under the URA and its implementing regulations at 49 CFR part 24, section 104(d) and its implementing regulations at 24 CFR part 42, 24 CFR 570.488, and/or 24 CFR 570.606, and relocation assistance pursuant to this section of the Universal Notice, as well as any other assistance being made available to displaced persons. The RARAP must include a description of how the grantee will plan CDBG-DR programs or projects in such a manner that recognizes the substantial challenges experienced by displaced individuals, families, businesses, farms, and nonprofit organizations and develop solutions to minimize displacement or the adverse impacts of displacement especially among vulnerable populations. Any solutions to minimize permanent displacement, such as the implementation of temporary relocations or construction in phases, are strongly encouraged. The description must be scoped to the complexity and nature of the anticipated displacing activities, including the evaluation of the grantee's available resources to carry out timely and orderly relocations in compliance



with all applicable relocation requirements.

Grantees must include in their RARAP, their plans to replace, on a one-for-one basis, all occupied and vacant occupiable low-income dwelling units that are demolished or converted with CDBG–DR funds to another use according to 24 CFR 42.325(b) and 24 CFR 49.375, unless a waiver is pursued by the grantee and granted by HUD, as described in III.B.15.d.

The RARAP, including section 104(d) one-for-one housing replacement plans and protocols (if not waived), must be included in the grantee’s program-specific policies and procedures as required in III.A.2.b.(ii).

III.B.15.b. *Optional relocation.* The regulations at 24 CFR 570.606(d) are waived to the extent that they require optional relocation policies to be established at the grantee level. Unlike the regular CDBG program, States may carry out disaster recovery activities directly or through subrecipients, but 24 CFR 570.606(d) does not account for this distinction. This waiver makes clear that grantees receiving CDBG–DR funds may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. The written policy must: be available to the public, describe the relocation assistance that the grantee or subrecipient (as applicable) has elected to provide, and provide for equal relocation assistance within each class of displaced persons according to 24 CFR 570.606(d). This waiver is intended to provide States with maximum flexibility in developing optional relocation policies for CDBG–DR funds.

III.B.15.c. *Section 104(d) relocation assistance.* The relocation assistance requirements at section 104(d)(2)(A)(iii) and 104(d)(2)(B) of the HCDA and 24 CFR 42.350, are waived. This waiver limits the types and amount of relocation assistance a section 104(d) displaced person, as defined under 24 CFR 42.305, is eligible to receive. The relocation assistance will now align with the types and amounts provided under the URA and implementing regulations at 49 CFR part 24. This waiver does not impact a person’s eligibility as a displaced person under section 104(d), rather it limits the amounts and types of relocation assistance under section 104(d) to the amounts and types of assistance for displaced persons under the URA, as amended. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (e.g., buyouts and relocation). Both FEMA and CDBG–DR funds are subject to the

requirements of the URA; however, only CDBG–DR funds are subject to section 104(d), while FEMA funds are not. This limited waiver of the section 104(d) relocation assistance requirements ensures uniform and equitable treatment of individuals eligible to receive benefits under section 104(d) by establishing that all forms of relocation assistance provided to those individuals must comply with URA requirements.

III.B.15.d. *One-for-one replacement requirement.* All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than lower-income dwelling units in connection with a CDBG–DR assisted activity must be replaced with comparable lower-income dwelling units in compliance with 24 CFR 42.375. CDBG–DR grantees must follow the requirements at 24 CFR 42.375 and HUD will follow up the publication of the Universal Notice with guidance on how to meet these requirements in communities impacted by a disaster.

A grantee may request a waiver of section 104(d) one-for-one replacement requirement and its regulations at section 104(d)(2)(A)(i) and (ii) and 104(d)(3) of the HCDA and 24 CFR 42.375. To request a waiver, a grantee must submit a good cause justification that includes a data-driven analysis that indicates that there is an adequate supply of vacant lower-income dwelling units in standard condition that will be available to meet the housing needs of LMI owners and tenants in the MID areas or surrounding communities in alignment with the requirement to affirmatively further fair housing.

III.B.15.e. *Lump sum rental assistance payments for residential tenants.* The requirements of 42 U.S.C. 3537(c) are waived to the extent necessary to permit a grantee to make lump-sum relocation rental assistance payments to displaced residential tenants. Waiving this requirement allows grantees to provide lump sum rental assistance payments to displaced residential tenants, thereby reducing grantees’ administrative burden of disbursing installment payments, in addition to accelerating the availability of the rental assistance, to displaced disaster survivors.

III.B.15.f. *Voluntary acquisition—homebuyer primary residence purchase.* Grantees may implement disaster recovery program activities that provide financial assistance to eligible homebuyers to purchase and occupy residential properties as their primary residence. Such purchases are generally considered voluntary acquisitions under the URA and subject to the URA regulatory requirements at 49 CFR 24.101(b)(2). For CDBG–DR, 49 CFR

24.101(b)(2), as it may be amended, is waived to the extent that it applies to a homebuyer, who does not have the power of eminent domain, and uses CDBG–DR funds in connection with the voluntary purchase and occupancy of a home the homebuyer intends to make their primary residence. This waiver is necessary to reduce burdensome administrative requirements for homebuyers following a disaster. Tenants displaced by these voluntary acquisitions may be eligible for relocation assistance.

III.B.15.g. *Waiver of Section 414 of the Stafford Act.* Section 414 of the Stafford Act (42 U.S.C. 5181) provides that “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 . . . shall be denied such eligibility as a result of [their] being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.” Accordingly, homeowner occupants and tenants displaced from their homes as a result of the identified disasters who would have otherwise not have been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA. Section 414 of the Stafford Act and its implementing regulation at 49 CFR 24.403(d)(1) are waived to the extent that they would apply to real property acquisition, rehabilitation, or demolition of real property undertaken by a grantee or subrecipient for a CDBG–DR funded project commencing more than one year after the date of the latest applicable Presidentially declared disaster, provided that the project was not planned, approved, or otherwise underway before the disaster.

For purposes of this waiver, a CDBG–DR funded project shall be determined to have commenced on the earliest of: (1) the date of an approved RROF and certification; (2) the date of completion of the site-specific review when a program utilizes tiering; or (3) the date of sign-off by the approving official when a project converts to exempt under 24 CFR 58.34(a)(12).

This waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects

commencing more than one year after the date of the Presidentially declared disaster considering most of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence. Notwithstanding the flexibility provided by this waiver, grantees are encouraged to carefully assess housing needs and provide programmatic relocation assistance or other benefits to eligible homeowner occupants and tenants displaced by the disaster that may not have returned to their dwellings or found another place of permanent residence one year after the disaster.

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 or relocated temporarily by other HUD-funded programs or projects. Such persons' eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

III.B.16. *DOB*. CDBG-DR grants are one of multiple Federal sources that assist disaster recovery. These Federal funding sources are often made available for the same purposes to grantees and disaster survivors. For this reason, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-5207) (Stafford Act) and CDBG-DR appropriations acts require HUD and its grantees to coordinate with other Federal agencies that provide disaster assistance to prevent the DOB. The Stafford Act's prohibition on DOB aims to ensure that Federal assistance serves only to "supplement insurance and other forms of disaster assistance" (42 U.S.C. 5170).

CDBG-DR grantees must prevent DOB when carrying out eligible activities. A duplication occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for the same recovery purpose, and the total assistance received for that purpose is more than the total need. Total assistance can include cash awards; insurance proceeds; grants and loans, including awards under local, State, or Federal programs; and assistance from private or nonprofit charity organizations. The amount of the DOB is the amount received in excess of the total need for the same purpose. When total need for eligible activities is more than total assistance for the same purpose, the difference between these amounts is an "unmet need." Grantees must limit their assistance to unmet needs for eligible activities to prevent a DOB. Additionally, when reimbursement is

permitted, unmet needs can include amounts needed for reimbursement. Grantees must follow the detailed DOB requirements listed in Appendix C.

III.B.17. *Citizen complaints*. The grantee will provide a timely written response to every citizen complaint. The grantee response must be provided within 15 calendar days of the receipt of the complaint, or the grantee must document why additional time for the response was required. Complaints regarding fraud, waste, or abuse of government funds should be forwarded to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: [hotline@hudoig.gov](mailto:hotline@hudoig.gov)).

### III.C. State Grantee Only Requirements

III.C.1. *Combined technical assistance and administrative cap (state grantees only)*. The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii), and 24 CFR 570.489(a)(2) shall not apply to the extent that they cap administration and technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding \$100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed five percent of the grant, plus five percent of program income generated by the grant.

III.C.2. *Planning-only activities (state grantees only)*. The State CDBG Program requires that, for planning-only grants, local government grant recipients must document that the use of funds meets a national objective. In the CDBG Entitlement Program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). HUD notes that almost all effective recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. To assist State grantees, HUD is waiving the requirements at 24 CFR 570.483(b)(5) and (c)(3), which limit the circumstances under which the planning activity can meet a low- and moderate-income or slum-and-bligh national objective. Instead, as an alternative requirement, 24 CFR 570.208(d)(4) applies to States when funding disaster recovery, planning-only grants, or when directly administering planning activities that

guide disaster recovery. In addition, 42 U.S.C. 5305(a)(12) is waived to the extent necessary so the types of planning activities that States may fund or undertake are expanded to be consistent with those of CDBG Entitlement grantees identified at 24 CFR 570.205.

III.C.3. *Direct grant administration and means of carrying out eligible activities (state grantees only)*. Requirements at 42 U.S.C. 5306(d) are waived to allow a State to use its disaster recovery grant allocation directly to carry out State-administered activities eligible under the Universal Notice, rather than distribute all funds to local governments. Pursuant to this waiver and alternative requirement, the standard at 24 CFR 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the State carries out directly. Activities eligible under the Universal Notice may be carried out by a State, subject to State law and consistent with the requirement of 24 CFR 570.200(f), through its employees, through procured contracts, or through assistance provided under agreements with subrecipients. State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489(g), (h) and (l), and subparagraph II.A.1.d. of the Universal Notice relating to conflicts of interest, and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

A State grantee may also carry out activities in Tribal areas. A State must coordinate with the Indian Tribe with jurisdiction over the Tribal area when providing CDBG-DR assistance to beneficiaries in tribal areas. State grantees carrying out projects in Tribal areas, either directly or through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients, must obtain the consent of and coordinate with the Indian Tribe with jurisdiction over the Tribal area to carry out or to fund CDBG-DR projects in the Tribal area.

III.C.4. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties (state grantees only)*. 42 U.S.C. 5302(a)(7) (definition of "nonentitlement area") and related provisions of 24 CFR part 570, including 24 CFR 570.480, are waived to permit State grantees to distribute CDBG-DR funds to CDBG metropolitan cities and urban counties and Indian Tribes. When a State distributes funds through a method of distribution or by other means, the requirements applying to

State grantees may apply to the grant funds unless otherwise amended by the Universal Notice, or by subrecipient agreements.

III.C.5. *Use of subrecipients (state grantees only)*. Section III.C.3. provides a waiver and alternative requirement that a State may carry out activities directly, including through assistance provided under agreements with subrecipients. Therefore, when States carry out activities directly through subrecipients, the following alternative requirements apply: the State is subject to the definition of subrecipients at 24 CFR 570.500(c) and must adhere to the requirements for agreements with subrecipients at 24 CFR 570.503. Additionally, 24 CFR 570.503(b)(4) is modified to require the subrecipient to comply with applicable uniform requirements, as described in 24 CFR 570.502, except that the subrecipient shall follow procurement requirements imposed by the State in accordance with section II.A.1.(b) of the Universal Notice. When 24 CFR 570.503 applies, notwithstanding 24 CFR 570.503(b)(5)(i), local governments that are subrecipients are defined as recipients under 24 CFR part 58 and are therefore responsible entities that assume environmental review responsibilities. Grantees are reminded that they are responsible for providing on-going oversight and monitoring of subrecipients and are ultimately responsible for subrecipient compliance with all CDBG-DR requirements as stated in 24 CFR 58.18.

III.C.6. *Recordkeeping (state grantees only)*. When a State carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: a State grantee shall establish and maintain such records as may be necessary to facilitate review and audit by HUD and HUD OIG of the State's administration of CDBG-DR funds, under 24 CFR 570.493 and reviews and audits by the State as described in section III.C.8. below. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: (a) enable HUD to make the applicable determinations described at 24 CFR 570.493; (b) make compliance determinations for activities carried out directly by the State; and (c) show how activities funded are consistent with the descriptions of activities proposed for funding in the Action Plan and/or DRGR system.

III.C.7. *Change of use of real property (state grantees only)*. This alternative requirement conforms the change of use

of real property rule to the waiver allowing a State to carry out activities directly. For purposes of these grants, all references to "unit of general local government" in 24 CFR 570.489(j), shall be read as "state, local governments, or Indian tribes (either as subrecipients or through a method of distribution), or other state subrecipient."

III.C.8. *Responsibility for review and handling of noncompliance (state grantees only)*. This change is in conformance with the waiver allowing a State to carry out activities directly. 24 CFR 570.492 is waived, and the following alternative requirement applies for any State receiving a direct award: the State shall make reviews and audits, including on-site reviews of any local governments or Indian Tribes (either as subrecipients or through a method of distribution), designated public agencies, and other subrecipients, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCDA (42 U.S.C. 5304(e)(2), as amended, and as modified by the Universal Notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any subrecipients, designated public agencies, or local governments.

III.C.9. *Consultation (state grantees only)*. Currently, the HCDA and regulations require a State grantee to consult with affected local governments in nonentitlement areas of the State in determining the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b)(2), and 24 CFR 91.110, and imposing an alternative requirement that States consult with all disaster-affected local governments (including any CDBG-entitlement grantees), Indian Tribes, and any public housing authorities in determining the use of funds. This approach ensures that a State grantee will assess the recovery needs of all areas affected by the disaster. Requirements related to consultation for all CDBG-DR grantees are described in detail in sections I.C.2.a. and III.A.6. of the Universal Notice.

#### III.D. *Waivers and Alternative Requirements Related to Eligible Activities*

This section provides an overview of the waivers and alternative requirements HUD has established for CDBG-DR grant funds as it relates to

eligible activities listed at 24 CFR 570.201 and section 105(a) of the HCDA. Projects funded with CDBG-DR must be classified as an eligible activity either through the program regulations cited in the previous sentence or through a waiver and alternative requirement issued in the Universal Notice or applicable AAN.

III.D.1. *Connection to the disaster*. CDBG-DR funds are provided for necessary expenses for activities authorized under title I of the HCDA related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation of risk associated with activities carried out for these purposes, in the "most impacted and distressed" (MID) areas (identified by HUD or the grantee) resulting from a major disaster. All CDBG-DR funded activities must address an impact of the disaster for which funding was allocated (*i.e.*, tie-back to the disaster). Accordingly, each activity must: (1) address a direct or indirect impact from the disaster in a MID area; (2) be a CDBG-eligible activity (or be eligible under a waiver or alternative requirement); and (3) meet a national objective. This is true for all activities except for mitigation activities funded by an additional mitigation set-aside in the appropriations acts that do not require a connection to the qualifying major disaster as described below in section III.D.1.a. Requirements for the use of these mitigation set aside funds are covered in section III.D.4.

III.D.1.a. *Documenting a connection to the disaster*. Grantees must maintain records that document how each funded activity addresses a direct or indirect impact from the disaster. Grantees may do this by linking activities to a disaster recovery need that is described in the unmet needs assessment in the Action Plan (requirements for the assessment are addressed in section I.C.1.a.). Sufficient documentation of physical loss must include damage or rebuilding estimates, insurance loss reports, images, or similar information that documents damage caused by the disaster. Sufficient documentation for non-physical disaster-related impacts must clearly show how the activity addresses the disaster impact (*e.g.*, for economic development activities, data about job loss or businesses closing after the disaster or data showing how pre-disaster economic stressors were aggravated by the disaster; or for housing activities, a post-disaster housing analysis that describes the activities that are necessary to address the post-disaster housing needs).

III.D.2. *MID areas*. Funds must be used for costs related to unmet needs in

the MID areas resulting from qualifying disasters. HUD allocates funds using the best available data that covers the eligible affected areas and identifies MID areas. The HUD-identified MID areas and the minimum dollar amount that must be spent to benefit those areas will be identified for each grantee in the applicable AAN. Grantees can request that an additional area(s) be classified as a HUD-identified MID area by contacting their assigned HUD staff member. To be eligible, the area(s) must have received a presidential major disaster declaration identified by the disaster numbers listed in the applicable AAN. Grantees must submit the request with a data-driven analysis that illustrates the basis for designating the additional area(s) as most impacted and distressed as a result of the qualifying disaster. An additional area(s) being classified as a HUD-identified MID area would only result in a substantial amendment to the grantees' Action Plan, if it was not already included as a grantee-identified MID area (see section I.C.1.g.).

Grantees may use up to five percent of the total grant award for grant administration and up to 15 percent of the total grant award for planning costs. Therefore, HUD will include 80 percent of a grantee's expenditures for grant administration in its determination that 80 percent of the total award has benefited the HUD-identified MID area. Expenditures for planning activities may also be counted towards the HUD-identified MID area requirement, only if the grantee describes in its Action Plan how those planning activities benefit those areas.

HUD may identify an entire jurisdiction or a ZIP code as a MID area. If HUD designates a ZIP code as a MID area for the purposes of allocating funds, the grantee may expand program operations to the whole county(ies), borough(s), parish(es), municipio/municipios, or equivalent jurisdictions that overlap with the HUD designated ZIP code. A grantee must indicate the decision to expand eligibility in its action plan.

Grantee expenditures for eligible unmet needs outside of the HUD-identified or grantee-identified MID areas are allowable, provided that the grantee can demonstrate how the expenditure of CDBG-DR funds outside of the MID areas will address unmet needs identified within the HUD-identified or grantee-identified MID area (e.g., upstream water retention projects to reduce downstream flooding in the HUD-identified MID area).

**III.D.3. Mitigation measures.** Additionally, HUD is adopting the

following alternative requirement to section 105(a) of the HCDA (42 U.S.C. 5305(a)): Grantees may carry out the activities described in section 105(a) of the HCDA, as modified by waivers and alternative requirements, to the extent that the activities comply with the following:

Grantees must incorporate mitigation measures when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential buildings with CDBG-DR funds as part of activities eligible under 42 U.S.C. 5305(a) (including activities authorized by waiver and alternative requirement). To meet this alternative requirement, grantees must demonstrate that they have incorporated mitigation measures into CDBG-DR activities as a construction standard to create communities that are more resilient to the impacts of recurring natural disasters and the impacts of a changing climate. When determining which mitigation measures to incorporate, grantees should design and construct structures to withstand existing and future climate impacts expected to occur over the life of the project. For all mitigation measures adopted, grantees must report resilience performance measures available in DRGR. For example, when building or reconstructing homes in a floodplain, a grantee must follow HUD's elevation requirements and will report the number of structures to be elevated as a performance measure in DRGR.

**III.D.4. Mitigation activities—CDBG-DR mitigation set-aside.** Unlike recovery activities where grantees must demonstrate that their activities "tie-back" to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated, activities funded by additional mitigation funds do not require such a "tie-back" to the specific qualified disaster that has served as the basis for the grantee's allocation. Instead, grantees must demonstrate that activities funded by the additional mitigation funds will (1) meet the definition of mitigation activities; (2) address the current and future risks as identified in the grantee's mitigation needs assessment in the MID areas; (3) be CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective. For purposes of grants subject to the Universal Notice, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship,

by lessening the impact of future disasters. Grantees must report activities as a "MIT" activity type in DRGR so that HUD and the public can determine that the grantee has fulfilled the requirement for the additional mitigation funds.

Grantees may also meet the requirement of the additional mitigation funds by including eligible recovery activities that both address the impacts of the disaster (i.e., have "tie-back" to the specific qualified disaster) and incorporate mitigation measures. In section III.D.3., grantees are instructed to incorporate mitigation measures when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential buildings. If grantees wish to count those activities towards the grantee's additional mitigation funds, grantees must: (1) document how those activities and the incorporated mitigation measures will meet the definition of mitigation, as provided above; and (2) report those activities as a "MIT" activity type in DRGR so they are easily tracked.

**III.D.4.a. Alignment with mitigation plans.** Grantees must ensure that activities funded with the CDBG-DR mitigation set-aside identified in their Action Plan will align with existing hazard mitigation plans submitted to the Federal Emergency Management Agency (FEMA) under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) or other State, local, or Tribal hazard mitigation or long-term recovery plans.

**III.D.5. Housing activities and standards.** Grantees may use CDBG-DR funds for activities that may include, but are not limited to, new construction, reconstruction, and rehabilitation of single-family or multifamily housing, homeownership assistance, buyouts, and rental assistance. The broadening of eligible CDBG-DR activities related to housing under the HCDA is necessary following major disasters in which housing, including large numbers of affordable housing units, have been damaged or destroyed. Note, CDBG-DR does not have a requirement of "proof of ownership" when grantees are carrying out housing recovery programs. Any decisions about requiring applicants to submit proof of ownership is up to the grantee and its chosen program design. However, grantees may choose to obtain documentation to protect the CDBG-DR investment. In doing so, grantees must include in their program-specific policies and procedures alternative methods for documenting ownership. While grantees have flexibility on what type of documentation they will require to

prove ownership, HUD strongly recommends that grantees consider the following documentation options in their required policies and procedures: deed, title, mortgage documentation, tax receipts or bills, home insurance, home purchase contracts, will or affidavit or heirship naming them as heir, receipts of major repairs completed prior to the disaster, court documents, letter from a manufactured housing community owner or public official, self-certification, or utility bills.

As grantees consider different eligible housing activities, States and local governments are encouraged to adopt the latest edition or editions of the International Residential Code (IRC) for single family new construction and International Building Code (IBC) for multi-family construction, and respective subcodes (e.g., plumbing, electrical, fire). HUD encourages grantees to adopt the recent edition or editions of the International Existing Building Code (IEBC) when using CDBG-DR funds for rehabilitation. If a grantee chooses to adopt these codes, HUD encourages the adoption without the removal of any provisions. Grantees can find required building and energy standards in section III.D.5.b.(i).

The following waivers and alternative requirements will assist grantees in addressing the full range of unmet housing needs arising from a disaster.

III.D.5.a. *New housing construction waiver.* 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) are waived to the extent necessary to permit new housing construction, subject to the following alternative requirement. When a CDBG-DR grantee funds a new housing construction activity, 24 CFR 570.202 shall apply and shall be read to extend to new construction in addition to rehabilitation assistance. Private individuals and entities must remain compliant with Federal accessibility requirements as well as with the applicable site selection requirements of 24 CFR 1.4(b)(3) and 8.4(b)(5).

III.D.5.b. *Standards for new construction, reconstruction, and rehabilitation.* HUD is adopting an alternative requirement to require grantees to adhere to the applicable standards in III.D.5.b.(i), through III.D.5.b.(ii) when carrying out activities to construct, reconstruct, or rehabilitate residential buildings. For purposes of the Universal Notice, the terms “substantial damage” and “substantial improvement” shall be as defined in 44 CFR 59.1.

III.D.5.b.(i). *Standards for new construction and reconstruction of residential buildings.* Grantees must meet at least one Green and Resilient

Building Standard and at least one minimum energy efficiency standard, as defined in this subparagraph, for: (i) all new construction and reconstruction (i.e., demolishing a housing unit and rebuilding it on the same lot in substantially the same manner) of residential buildings and (ii) all rehabilitation activities of substantially damaged residential buildings, including changes to structural elements such as flooring systems, columns, or load-bearing interior or exterior walls. As described in 44 CFR 59.1, substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(1) The Green and Resilient Building Standard requires that all construction covered by the paragraph above also meet an industry-recognized standard or rating system that has achieved certification under:

- (i) Enterprise Green Communities;
- (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development);
- (iii) ICC-700 National Green Building Standard (NGBS) Green or NGBS Green+ Resilience;
- (iv) International Living Future Institute, Living Building Challenge;
- (v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label);
- (vi) Earth Advantage New Homes;
- (vii) IBHS FORTIFIED Home (Roof, Silver, Gold); IBHS FORTIFIED Commercial (Roof, Silver, Gold); IBHS FORTIFIED Multifamily (Roof, Silver, Gold);<sup>21</sup>
- (viii) NFPA 1140, Standard for Wildland Fire Protection;
- (ix) 2024 Wildland Urban Interface (WUI) Code;<sup>22</sup>
- (x) NFPA Firewise USA;<sup>23</sup> or
- (xi) Any other equivalent comprehensive green and/or resilient building standard acceptable to HUD.

(2) The minimum energy efficiency standard, as defined by the IECC as referenced by the building code, requires that all construction covered by the paragraph above achieve

certification under one of the following programs:

- (i) EPA ENERGY STAR® V 3.2 or ENERGY STAR® NextGen certification or ENERGY STAR (Certified Homes or Multifamily High-Rise High Performance);
- (ii) DOE Zero Energy Ready Home;
- (iii) EarthCraft House, EarthCraft Multifamily;
- (iv) Passive House Institute Passive Building or EnerPHit certification from the Passive House Institute US (PHIUS), International Passive House Association;
- (v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House or Whole Building label);
- (vi) Earth Advantage New Homes; or
- (vii) Any other equivalent energy efficiency standard acceptable to HUD.

Grantees must identify, in each project file, which of these (1) Green and Resilient Building Standards and (2) minimum energy standard will be used for any building subject to this paragraph. However, grantees are not required to use the same standards for each project or building (i.e., grantees may allow the use of any of the specified standards either at the discretion of the grantee or the builder-developer as long as it is documented in the project file).

III.D.5.b.(ii). *Standards for rehabilitation of non-substantially damaged residential buildings.* For rehabilitation other than the rehabilitation of substantially damaged residential buildings, grantees must follow the HUD CPD Green Building Retrofit Checklist guidelines as posted and updated on HUD’s website.<sup>24</sup>

Grantees must apply these guidelines to the extent applicable for the rehabilitation work undertaken, for example, the use of mold resistant products when replacing surfaces such as drywall. Products and appliances replaced as part of the rehabilitation work, must be ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products or appliances.

III.D.5.c. *Broadband infrastructure or technology to support housing.* Any substantial rehabilitation, as defined by 24 CFR 5.100, reconstruction, or new construction of a building with five or more rental units must include installation of broadband infrastructure or technology, except where the grantee documents that: (i) the location of the new construction or substantial

<sup>21</sup> View Institute for Business and Home Safety (IBHS) FORTIFIED programs here: <https://fortifiedhome.org/fortified-multifamily/> or <https://fortifiedhome.org/about/>.

<sup>22</sup> View 2021 Wildland Urban Interface (WUI) code here: <https://planningforhazards.com/wildland-urban-interface-code-wui-code>.

<sup>23</sup> View NFPA Firewise USA here: <https://www.nfpa.org/education-and-research/wildfire/firewise-usa>.

<sup>24</sup> View HUD’s CPD Green Building Retrofit Checklist here: <https://www.hud.gov/sites/dfiles/CPD/documents/CPD-Green-Building-Retrofit-Checklist.pdf>.

rehabilitation makes installation of broadband infeasible; (ii) the cost of installing broadband would result in a fundamental alteration in the nature of its program or activity, or in an undue financial burden; or (iii) the structure of the housing to be substantially rehabilitated makes installation of broadband infeasible.

III.D.5.d. *Periods of affordability for new construction of affordable rental housing.* To meet the low- and moderate-income housing national objective, rental housing assisted with CDBG–DR funds must be rented to LMI households at affordable rents. Because the waiver and alternative requirement in III.D.5.a. authorizes the use of grant funds for new housing construction, HUD is imposing the following alternative requirement to modify the low- and moderate-income housing national objective criteria in 24 CFR 570.208(a)(3) and 570.483(b)(3) for activities involving the new construction of affordable rental housing of five or more units. For activities that will construct five or more units, in addition to other applicable criteria in 24 CFR 570.208(a)(3) and 570.483(b)(3), a grantee must define in its program-specific policies and procedures the affordability standards, including “affordable rents,” the enforcement mechanisms, and applicable timeframes, that will apply to the new construction of affordable rental housing. The minimum timeframe and other related requirements acceptable for compliance with this alternative requirement are the HOME Investment Partnerships Program (HOME) requirements. Specifically, the affordability requirements must last for 20 years and must:

(i) Apply without regard to the term of any loan or mortgage, repayment of the CDBG–DR investment, or the transfer of ownership;

(ii) Must be imposed by a deed restriction, a covenant running with the land, an agreement restricting the use of the property, or other mechanisms approved by HUD and must give the grantee or recipient the right to require specific performance (except that the grantee may provide that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure); and

(iii) Must be recorded in accordance with State recordation laws.

III.D.5.e. *Homeownership assistance.* 42 U.S.C. 5305(a)(24) is waived and replaced with the following alternative requirement. Provision of direct assistance to facilitate and expand homeownership among persons at or

below 120 percent of area median income (except that such assistance shall not be considered a public service for purposes of 42 U.S.C. 5305(a)(8)) by using such assistance to:

(i) subsidize interest rates and mortgage principal amounts for homebuyers with incomes at or below 120 percent of area median income;

(ii) finance the acquisition of housing by homebuyers with incomes at or below 120 percent of area median income that is occupied by the homebuyers;

(iii) acquire guarantees for mortgage financing obtained by homebuyers with incomes at or below 120 percent of area median income from private lenders, meaning that if a private lender selected by the homebuyer offers a guarantee of the mortgage financing, the grantee may purchase the guarantee to ensure repayment in case of default by the homebuyer. This subparagraph allows the purchase of mortgage insurance by the household but not the direct issuance of mortgage insurance by the grantee;

(iv) provide up to 100 percent of any down payment required from homebuyers with incomes at or below 120 percent of area median income; or

(v) pay reasonable closing costs (normally associated with the purchase of a home) incurred by homebuyers with incomes at or below 120 percent of area median income.

While homeownership assistance, as described above, may be provided to households with incomes at or below 120 percent of the area median income, HUD will only consider those funds used for households with incomes at or below 80 percent of the area median income to qualify as meeting the LMI person benefit national objective.

III.D.5.f. *Interim mortgage assistance.* 42 U.S.C. 5305(a)(8), 24 CFR 570.201(e), 24 CFR 570.207(b)(4), and 24 CFR 1003.207(b)(4) are modified to allow grantees to extend interim mortgage assistance (IMA) to qualified individuals from three months to up to 20 months. IMA must be used in conjunction with a buyout program, or the rehabilitation or reconstruction of single-family housing, during which mortgage payments may be due but the home is not habitable. A grantee using this alternative requirement must document, in its policies and procedures, how it will determine that the amount of assistance to be provided is necessary and reasonable. This public services activity shall be exempt from the cap on public service expenditures found in section 105(a)(8) of the HCDA (42 U.S.C. 5305(a)(8)), as amended.

III.D.5.g. *Rental assistance.* 42 U.S.C. 5305(a)(8), 24 CFR 570.201(e), 24 CFR 570.207(b)(4), and 24 CFR

1003.207(b)(4) are modified to allow grantees to provide rental assistance (e.g., rent, security deposits, and utility deposits) and utility payments for up to 24 months. This rental assistance can only be used in conjunction with the development of affordable rental housing or other forms of housing assistance, such as rehabilitation, reconstruction, new construction of affordable housing, and homeownership assistance, for persons displaced by the qualifying disaster.

This public service activity shall be exempt from the cap on public service expenditures found in section 105(a)(8) of the HCDA (42 U.S.C. 5305(a)(8)), as amended. If, despite concerted efforts to permanently rehouse survivors, a grantee identifies the need for continued rental assistance, a grantee may submit a request to HUD to extend the 24-month limit on rental assistance. Such a request should include a justification for the continued need for rental assistance and how the extension will enable the grantee to stabilize persons or households in permanent housing. HUD may provide this extension administratively upon a determination that good cause for such an extension exists. A homeowner receiving any form of interim mortgage assistance is not eligible for CDBG–DR rental assistance or utility payments for the same period.

Grantees must determine that the rental assistance and utility payments are needed because the household moved from their primary residence due to rehabilitation or reconstruction to repair damage from a qualified disaster or because the household is experiencing or is at risk of experiencing homelessness and the assistance is part of a homelessness prevention or rapid rehousing program or activity. While this waiver and alternative requirement will allow these grantees to provide rental assistance and utility payments to households impacted by a qualifying major disaster, this does not relieve grantees of the duty to comply with other applicable requirements relating to the temporary relocation or permanent displacement of persons. If a person meets the definition of a “displaced person” under the URA, (42 U.S.C. 4601 *et seq.*) or section 104(d) of the HCDA (42 U.S.C. 5304(d)) (“section 104(d)”) and their implementing regulations, grantees must provide the displaced person with any relocation assistance to which they are entitled under law, including but not limited to assistance authorized under the URA or section 104(d) and

their implementing regulations, as those requirements may be modified by applicable current or future waivers and alternative requirements.

III.D.5.h. *Disaster relief assistance for LMI persons.* HUD is providing an alternative requirement to extend the period that grantees can make disaster relief payments on behalf of individuals and families impacted by a disaster event. Normally, CDBG funds may not be used for income payments, which are not included among eligible activities in section 105(a) of the HCDA for States, and which are expressly prohibited by 24 CFR 570.207(b)(4) in the Entitlement CDBG regulations. The phrase “income payments” means a series of subsistence type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes disaster relief payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

Because disasters qualifying for CDBG–DR awards represent the worst levels of destruction and hardship, those recovering often struggle to maintain employment, make rent or mortgage payments, access or pay for food, clothing, and basic utilities, and access many other essential items and services while also trying to fully recover from the disaster months and years after the event. To allow grantees to help individuals and families address these challenges, HUD is waiving 42 U.S.C. 5305(a) only to the extent necessary to establish the following alternative requirement:

CDBG–DR funds may be used to provide disaster relief assistance for low- and moderate-income persons only for items such as food, clothing, housing (rent or mortgage), utilities or medical care related to the qualifying disaster for a period of up to six consecutive months. To be eligible, the beneficiary must use all Federal assistance for losses suffered as a result of the major disaster that qualified for CDBG–DR assistance. Disaster relief payments must be made to the provider of such items or services on behalf of an individual or family, and not directly to an individual or family in the form of income payments, debit cards, or similar direct income payments.

Grantees must maintain documentation, at least at a programmatic level, describing how the grantee determined the amount of assistance for the disaster relief payment was necessary and reasonable, proof of the DOB analysis as outlined in Appendix C, how the payment meets a

national objective, and that the payments are in accordance with the grantee’s approved Action Plan and published program design(s). This public service activity shall be subject to the cap on public service expenditures found in section 105(a)(8) of the HCDA (42 U.S.C. 5305(a)(8)), as amended. A homeowner receiving any form of IMA as described in section III.D.5.f., is not eligible for CDBG–DR disaster relief assistance to cover their mortgage or utilities for the same period and anyone receiving rental assistance is not eligible for CDBG–DR disaster relief assistance to cover their rent or utilities for the same period.

III.D.5.i. *Buyouts.* CDBG–DR grantees may carry out property acquisition for a variety of purposes, but buyouts are a type of acquisition for the specific purpose of reducing the risk of property damage. HUD has determined that creating a new activity and alternative requirement for buyouts is necessary for consistency with the application of other Federal resources commonly used for this type of activity. Therefore, HUD is waiving 42 U.S.C. 5305(a) and establishing an alternative requirement only to the extent necessary to create a new eligible activity for voluntary buyouts. The term “buyouts” for CDBG–DR purposes means the voluntary acquisition of properties located in a floodway, FFRMS floodplain, or other Disaster Risk Reduction Area that is intended to reduce risk from future hazards. Requiring buyouts to be voluntary acquisitions will focus the buyout activities on areas where relocation plans are community driven. Grantees may designate a Disaster Risk Reduction Area, as defined below.

Grantees carrying out buyout activities must establish an open space management plan or equivalent, if one has not already been established, before implementation. The open space management plan or equivalent must establish full transparency about the planned use of acquired properties post-buyout, or the process by which the planned use will be determined and enforced.

Buyout activities are subject to all requirements that apply to acquisition activities generally including but not limited to, the URA (42 U.S.C. 4601 *et seq.*) and its implementing regulations at 49 CFR part 24, subpart B, unless waived or modified by alternative requirements. Only acquisitions that meet the definition of a “buyout” are subject to the post-acquisition land use restrictions imposed by the alternative requirement (III.D.5.i.(i). below). The key factor in determining whether the acquisition is a buyout is whether the

intent of the purchase is to reduce the risk of property damage from future flooding or other hazards in a floodway, FFRMS floodplain, or a Disaster Risk Reduction Area. A grantee that will acquire property for purposes of a buyout in a Disaster Risk Reduction Area must establish criteria in its policies and procedures to designate an area as a Disaster Risk Reduction Area for the buyout, pursuant to the following requirements:

(1) the area has been impacted by the hazard that has been caused or exacerbated by the disaster for which the grantee received its CDBG–DR allocation or address the current and future risks as identified in the grantee’s mitigation needs assessment;

(2) the hazard identified must be a predictable environmental threat to the safety and well-being of program beneficiaries, including members of protected classes, vulnerable populations, and underserved communities, as evidenced by the best available data (*e.g.*, FEMA Repetitive Loss Data, EPA’s Environmental Justice Screening and Mapping Tool, National Risk Index, etc.) and science (such as engineering and structural solutions propounded by FEMA, USACE, other Federal agencies, etc.); and

(3) the area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

III.D.5.i.(i). *Buyout requirements:*

1. Property to be acquired or accepted must be located within a floodway, FFRMS floodplain, or Disaster Risk Reduction Area.

2. Any property acquired or accepted must be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, floodplain and wetlands management practices, or other disaster-risk reduction practices.

3. No new structure will be erected on property acquired or accepted under the buyout program other than:

(a) a public facility that is open on all sides and functionally related to a designated open space (*e.g.*, a park, campground, or outdoor recreation area);

(b) a restroom; or

(c) a flood control structure, provided that:

(i) the structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream; and

(ii) the local floodplain manager approves the structure, in writing, before commencement of construction of the structure.



4. After the purchase of a buyout property with CDBG–DR funds, the owner of the buyout property (including subsequent owners) is prohibited from making any applications to any Federal entity in perpetuity for additional disaster assistance for any purpose related to the property acquired through the CDBG–DR funded buyout, unless the assistance is for an allowed use as described in paragraph (2) above. The entity acquiring the property may lease or sell it to adjacent property owners or other parties for compatible uses that comply with buyout requirements in return for a maintenance agreement.

5. A deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses that comply with buyout requirements in perpetuity.

6. Grantees must choose from one of two valuation methods (pre-disaster value or post-disaster value) for a buyout program (or a single buyout activity). The grantee must apply its valuation method for all buyouts carried out under the program. However, a grantee may provide exceptions to its established valuation method on a case-by-case basis (e.g., if the grantee determines the post-disaster value of a property is higher than the pre-disaster value). The grantee must describe the process for such exceptions and how it will analyze the circumstances to permit an exception in its buyout policies and procedures. Each grantee must adopt policies and procedures on how it will demonstrate that the amount of assistance for a buyout is necessary and reasonable.

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

8. Any State grantee implementing a buyout program or activity must consult with local or Tribal governments within the areas in which buyouts will occur.

9. All buyouts must be voluntary. Grantees are prohibited from using eminent domain to buyout properties. However, a grantee may request and HUD may approve a waiver of this limitation, if good cause for such a waiver exists.

III.D.5.i.(ii). *National objectives for buyouts.* Activities that assist LMI persons and meet the criteria for the national objectives will be considered to benefit LMI persons, unless there is substantial evidence to the contrary, and will count towards the calculation of a grantee’s overall LMI benefit requirement as described in section III.B.1. The grantee shall appropriately ensure that activities that meet the criteria for any of the national objectives

below do not benefit moderate-income persons to the exclusion of low-income persons.

When undertaking buyout activities, to demonstrate that a buyout meets the low- and moderate-income housing (LMH) national objective, grantees must meet all requirements of the HCDA, and the applicable regulatory criteria described below. 42 U.S.C. 5305(c)(3) provides that any assisted activity that involves the acquisition of property to provide housing shall be considered to benefit LMI persons only to the extent such housing will, upon completion, be occupied by such persons. In addition, 24 CFR 570.483(b)(3), 24 CFR 570.208(a)(3), and 24 CFR 1003.208(c) apply the LMH national objective to an eligible activity carried out for the purpose of providing or improving permanent residential buildings that, upon completion, will be occupied by LMI households.

A buyout program that merely pays homeowners to leave their existing homes does not guarantee that those homeowners will occupy a new residential building. Therefore, acquisition-only buyout programs cannot satisfy the LMH national objective criteria.

To meet a national objective that benefits a LMI person, buyout programs may be structured in one of the following ways:

1. The buyout activity combines the acquisition of properties with another direct benefit—LMI housing activity, such as down payment assistance—that results in occupancy and otherwise meets the applicable LMH national objective criteria;

2. The activity meets the low- and moderate-income area (LMA) benefit criteria and documents that the acquired properties will have a use that benefits all the residents in a particular area that is primarily residential, where at least 51 percent of the residents are LMI persons. Grantees covered by the “exception criteria” as described in section III.B.10.a. of the Universal Notice may apply it to these activities. To satisfy LMA criteria, grantees must define the service area based on the end use of the buyout properties; or

3. The program meets the criteria for the low- and moderate-income limited clientele (LMC) national objective by restricting buyout program eligibility exclusively to LMI persons and benefiting LMI sellers by acquiring their properties for more than current fair market value (in accordance with the valuation requirements in section III.D.5.i.(i)(6)).

III.D.5.j. *Safe housing incentives.* The limitation on eligible activities in

section 42 U.S.C. 5305(a) is waived and HUD is establishing the following alternative requirement to establish safe housing incentives as an eligible activity. A “safe housing incentive” is defined as any incentive provided to encourage households to relocate to suitable housing in a lower risk area or in an area promoted by the community’s comprehensive recovery plan. Displaced persons must receive any relocation assistance to which they are entitled under other legal authorities, such as the URA, section 104(d) of the HCDA, the respective implementing regulations, or the requirements described in the Universal Notice. The grantee may offer safe housing incentives in addition to the relocation assistance that is legally required. Grantees will want to consider how these efforts to incentivize households to relocate outside disaster prone areas tie-back to their strategies to minimize displacement across all their disaster recovery activities as required in section III.A.2.b.

Grantees must maintain documentation, at least at a programmatic level, describing how the grantee determined the amount of assistance for the incentive was necessary and reasonable, how the incentive meets a national objective, and that the incentives are in accordance with the grantee’s approved Action Plan and published program design(s). A grantee may require the safe housing incentive to be used for a particular purpose by the household receiving the assistance. However, this waiver does not permit a compensation program meaning that funds may not be provided to a beneficiary to compensate the beneficiary for an estimated or actual amount of loss from the declared disaster. Grantees are prohibited from offering housing incentives to a homeowner as an incentive to induce the homeowner to sell a second home, consistent with the prohibition and definition of second home in section III.D.5.l.

III.D.5.j.(i). *National objectives for safe housing incentives.* The following alternative requirement establishes the new LMI national objective criteria for low- and moderate-income safe housing incentive (LMHI) which applies when safe housing incentive activities benefit LMI households. HUD has determined that providing CDBG–DR grantees with an additional method to demonstrate how safe housing incentive activities benefit LMI households will ensure that grantees and HUD can account for and assess the benefit that CDBG–DR assistance for these activities has on LMI households.

The LMHI national objective may be used when a grantee uses CDBG–DR funds to carry out a safe housing incentive activity that benefits one or more LMI persons. To meet a LMHI national objective, the incentive must be structured in one of the following ways:

1. Be tied to the voluntary acquisition of housing (including buyouts) owned by a qualifying LMI household and made to induce a move outside of the affected floodplain or disaster risk reduction area to a lower-risk area or structure; or
2. Be for the purpose of providing or improving residential buildings that, upon completion, will be occupied by a qualifying LMI household and will be in a lower risk area; or
3. Be for the purpose of providing rent, security deposits, and utility deposits for a qualifying LMI tenant-occupant household, including those displaced, to live in a lower risk area.

Alternatively, safe housing incentives may also meet the urgent need national objective when incentive activities are designed to meet the criteria outlined in section III.B.2. of the Universal Notice.

III.D.5.k. *Redevelopment of acquired properties.* Although properties acquired through a buyout program cannot be redeveloped, grantees may redevelop other acquired properties. For non-buyout acquisitions, HUD has not previously permitted the grantee to base acquisition cost on pre-disaster fair market value. The acquisition cost must comply with applicable cost principles and with the acquisition requirements at 49 CFR part 24, subpart B, as revised by the Universal Notice waivers and alternative requirements. In addition to the purchase price, grantees may opt to provide optional relocation assistance, as allowable under Section 104 and 105 of the HCDA (42 U.S.C. 5304 and 42 U.S.C. 5305) and 24 CFR 570.606(d), and as expanded in section III.B.15.b., to the owner of a property that will be redeveloped if: i.) the property is purchased by the grantee or subrecipient through voluntary acquisition; and ii.) the owner's need for additional assistance is documented. Any optional relocation assistance must provide equal relocation assistance within each class of displaced persons, including but not limited to providing reasonable accommodation exceptions to persons with disabilities. See 24 CFR 570.606(d) for more information on optional relocation assistance. In addition, tenants displaced by these voluntary acquisitions may be eligible for URA relocation assistance. In carrying out acquisition activities, grantees must ensure they are in compliance with the long-term

redevelopment plans of the community in which the acquisition and redevelopment is to occur. Grantees are also reminded that the acquisition of second homes at post-disaster fair market value is not prohibited, as long as the home is being redeveloped through an eligible activity and will meet a national objective.

III.D.5.l. *Alternative requirement for housing rehabilitation and buyout—assistance for second homes.* HUD is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a)(4) as follows: properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance or safe housing incentives. This prohibition does not apply to acquisitions that meet the definition of a buyout (when that buyout is at post-disaster fair market value), however, as indicated in section III.D.5.j. above, no safe housing incentives can be provided for second homes. A second home is defined for purposes of the Universal Notice as a home that is not the primary residence of the owner, a tenant, or any occupant at the time of the disaster or at the time of application for CDBG–DR assistance. Grantees can verify a primary residence using a variety of documentation including, but not limited to, voter registration cards, tax returns, homestead exemptions, driver's licenses, and rental agreements. Additionally, acquisition or buyouts of second homes at post-disaster fair market value is not prohibited, as described in section III.D.5.k.

III.D.6. *Infrastructure activities and standards.* As grantees consider different eligible infrastructure activities including public facilities, States and local governments are encouraged to adopt the recent edition or editions of IBC for public facility construction, particularly when using the CDBG–DR funds as the non-Federal match in FEMA PA projects.

HUD requires grantees to adhere to the applicable standards and requirements in this section, sections III.B.10.f. and III.D.6.e., which apply only to those eligible activities described in those paragraphs.

All newly constructed infrastructure that is assisted with CDBG–DR funds must be designed and constructed to withstand extreme weather events and the impacts of a changing climate. To satisfy this requirement, the grantee must identify and implement resilience performance measures as described in section III.D.3.

For purposes of this requirement, an infrastructure activity includes any activity or group of activities (including

acquisition or site or other improvements), whether carried out on public or private land, that assists the development of the physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from renewable, nuclear, and hydro sources; electricity transmission; broadband; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; schools, hospitals, and housing shelters; and other sectors as may be determined by the Federal Permitting Improvement Steering Council (Permitting Council). For purposes of this requirement, an activity that falls within this definition is an infrastructure activity regardless of whether it is carried out under sections 105(a)(2), 105(a)(4), 105(a)(14), or another section of the HCDA (42 U.S.C. 5305(a)(2), 5305(a)(4), 5305(a)(14)), or pursuant to a waiver or alternative requirement established by HUD. Required policies and procedures related to infrastructure activities are found in section III.A.4. of the Universal Notice.

III.D.6.a. *Privately owned shelters.* Section 105(a)(2) of the HCDA allows CDBG funds to be used for acquiring, constructing, reconstructing, rehabilitating, or installing public improvements or facilities. Typically, eligible facilities are limited to those that are: (i) publicly owned or traditionally provided by the government, or (ii) owned by a non-profit organization, and (iii) open to the general public. However, restricting ownership to these categories can limit disaster survivors' access to shelters, especially when public shelters are at capacity. To address this challenge and increase the supply of emergency shelters, the Department finds good cause to waive the ownership requirements outlined in Section 105(a)(2) of the HCDA and 24 CFR 570.200(b). This waiver allows assistance to be provided to qualified privately owned facilities used as shelters. Under this waiver and alternative requirement, grantees must fund facilities that would be consistent with the purpose of title I of the HCDA and are prohibited from assisting casinos, sports arenas, or concert venues.

III.D.6.b. *Assistance to buildings for the general conduct of government when using CDBG–DR funds as the non-Federal match.* The prohibition on

assisting buildings for the general conduct of government at 42 U.S.C. 5305(a)(2) and associated regulations at 24 CFR 570.207(a) are waived for non-Federal match. This waiver allows grantees to use CDBG-DR funds as the non-Federal match on any other Federal program providing funds for the construction, reconstruction, and rehabilitation of public improvements or facilities for the general conduct of government. This waiver is subject to the following alternative requirements: grantees are prohibited from using CDBG-DR funds for buildings that do not provide services all year around and for buildings that are used exclusively as emergency operations centers.

III.D.6.c. *FAST-41 project requirements.* The Permitting Council administers Title 41 of the Fixing America's Surface Transportation Act, referred to as "FAST-41," which establishes a new governance structure, set of procedures, and funding authorities to improve and make transparent the Federal review and permitting process for FAST-41 covered infrastructure projects on the Federal Infrastructure Permitting Dashboard. A FAST-41 covered project must first be in one of the following sectors: (1) Renewable energy production, (2) Conventional energy production, (3) Electricity transmission, (4) Surface transportation, (5) Aviation, (6) Ports and waterways, (7) Water resource projects, (8) Broadband, (9) Pipelines, (10) Manufacturing, (11) Mining, (12) Carbon capture, (13) Semiconductors, (14) Artificial intelligence and machine learning, (15) High-performance computing and advanced computer hardware and software, (16) Quantum information science and technology, (17) Data storage and data management, (18) Cybersecurity, and/or (19) any additional infrastructure sectors established by Permitting Council.

In addition, a FAST-41 project must meet one of the following four criteria, as amended: (1) Objective Criteria: A project must be subject to the NEPA; be likely to require a total investment of more than \$200,000,000; and not qualify for an abbreviated authorization or environmental review process under any applicable law. (2) Discretionary Criteria: A project must be subject to NEPA; and the project is of a size and complexity that make it, in the opinion of the Permitting Council, likely to benefit from enhanced oversight and coordination, including (but not limited to) a project likely to require authorization from or environmental review involving more than two Federal agencies or the preparation of an environmental impact statement (EIS)

under NEPA. (3) Tribal Sponsored Criteria: A project must be subject to NEPA; sponsored by an Indian Tribe, an Alaska Native Corporation, a Native Hawaiian, the Department of Hawaiian Homelands, or the Office of Hawaiian Affairs; and located on land owned or under jurisdiction of the entity that sponsors the activity. (4) Carbon Capture Sector: A project that includes any facility, technology, or system that captures, utilizes, or sequesters carbon dioxide emissions, including projects for direct air capture, and carbon dioxide pipelines; is covered by a programmatic plan or environmental review developed for the primary purpose of facilitating development of carbon dioxide pipelines; and is not subject to NEPA requirements.

Any project with the potential for FAST-41 eligibility will require the grantee to notify HUD and coordinate efforts to submit a FAST-41 Initiation Notice (FIN) to the Permitting Council Executive Director and the appropriate facilitating agencies. Within 14 calendar days of the FIN receipt, the Permitting Council Executive Director will determine the eligibility and if the FAST-41 process will be required for the project.

III.D.6.d. *CDBG-DR funds as non-Federal match.* As provided by the HCDA, CDBG-DR funds may be used to satisfy a match requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity (e.g., programs or activities administered by FEMA, USACE, United States Department of Agriculture (USDA), and the Federal Highway Administration (FHWA)). By law, (codified in the HCDA as a note to section 105(a)) only \$250,000 or less of CDBG-DR funds may be used for the non-Federal cost-share of any project funded by USACE. Appropriations acts prohibit the use of CDBG-DR funds for any activity reimbursable by, or for which funds are also made available by FEMA or USACE.

In response to a disaster, FEMA may implement, and grantees may elect to follow, alternative procedures for FEMA's PA Program, as authorized pursuant to Section 428 of the Stafford Act (42 U.S.C. 5189(f)). Like other projects, grantees may use CDBG-DR funds as a matching requirement, share, or contribution for Section 428 PA Projects. For all activities funding the non-Federal match, grantees must document that CDBG-DR funds have been used for the actual costs incurred for the assisted project and for costs that are eligible, meet a national objective,

and meet other applicable CDBG-DR requirements.

III.D.6.d.(i). *Alternative requirement when using CDBG-DR funds as the non-Federal match in a FEMA-funded project (building codes and standards).* Currently, CDBG-DR grantees using FEMA and CDBG-DR funds on the same activity have encountered challenges in certain circumstances in reconciling CDBG-DR building standards with those established by FEMA. FEMA funded projects generally commence well in advance of the availability of CDBG-DR funds and when CDBG-DR funds are used as match for a FEMA project that is underway, the alignment of HUD's building standards may not be feasible. For these reasons, the Secretary finds good cause to establish an alternative requirement to allow grantees to use FEMA-approved building codes instead of the requirements in section III.D.5.b.(i), when CDBG-DR funds are used as the non-Federal match for FEMA assistance.

III.D.6.e. *Flood control structure requirements.* Grantees that use CDBG-DR funds to assist flood control structures (i.e., dams and levees) are prohibited from using CDBG-DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed before the disaster event, without obtaining pre-approval from HUD and any Federal agencies that HUD determines are necessary based on their involvement or potential involvement with the levee or dam. In addition, a grantee must comply with the requirements outlined above in section III.D.6.c. if the project meets one of the following four criteria for FAST-41 projects, as amended. Grantees that use CDBG-DR funds for levees and dams are required to: (1) register and maintain entries regarding such structures with the USACE National Levee Database or National Inventory of Dams; (2) ensure that the structure is admitted in the USACE's PL 84-99 Rehabilitation Program (Levee Rehabilitation and Inspection Program); (3) ensure the structure is accredited under the FEMA National Flood Insurance Program (NFIP); (4) enter the exact location of the structure and the area served and protected by the structure into the DRGR system; and (5) maintain file documentation demonstrating that the grantee has conducted a risk assessment before funding the flood control structure and documentation that the investment includes risk reduction measures.

III.D.6.f. *LMI benefit for infrastructure activities.* CDBG-DR funds represent a significant opportunity for grantees to carry out strategic, high-impact, and

innovative infrastructure activities to recover from the applicable disaster, mitigate disaster risks, and reduce future losses. Infrastructure activities assist in the development of physical assets that are designed to provide or support services to the general public. These infrastructure activities often offer unique benefits for the general public and underserved communities following a disaster due to the activities' scale and intersection with other key recovery and mitigation outcomes. For example, an infrastructure activity located alongside an underserved community that repairs damaged roadways connected to the community may facilitate the redevelopment of housing and expedite economic recovery by making the underserved community accessible and more attractive to local businesses.

The far-reaching nature of infrastructure activities' service areas presents challenges for meeting the low- and moderate-income area benefit (LMA) national objective criteria at 24 CFR 570.208(a)(1) and 24 CFR 570.483(b)(1). Large infrastructure activities with a broad service area may benefit a large population of LMI persons, but because the area that benefits is so large the LMI population may be less than 51 percent. When this is the case, a grantee may not pursue the implementation of those innovative infrastructure activities that would otherwise have positive, compounding effects on underserved communities and LMI persons in the MID areas because the activity would not meet the standard LMA national objective criteria. Since grantees' infrastructure needs and investments may represent a significant portion of their total CDBG-DR allocations, grantees may not be able to meet the 70 percent overall benefit requirement if their infrastructure activities can only meet the urgent need national objective.

Based on these reasons, HUD is waiving 24 CFR 570.484 and 24 CFR 570.200(a)(3) only to the extent necessary to add this alternative requirement: CDBG-DR grantees funding infrastructure projects may count funds expended for infrastructure activities towards benefitting LMI persons and meeting the overall benefit requirement by multiplying the total cost (including CDBG-DR and non-CDBG-DR costs) of the infrastructure activity by the percent of LMI persons in the service area, except that the amount counted shall not exceed the amount of CDBG-DR funds provided.

As an example, if the total cost of an infrastructure activity is \$1,000,000, and the percent of LMI persons in the

activity's service area is 40 percent, then \$400,000 would count towards benefiting LMI persons when calculating a grantee's overall benefit (assuming this projects is only funded with CDBG-DR). Generally, grantees should not pursue this alternative requirement if doing so comes at the expense of pursuing an infrastructure project that can meet the original LMA national objective criteria and thus be counted towards the overall benefit requirement.

**III.D.6.g. Assistance to private utilities.** A CDBG-DR grantee may assist utilities as part of a disaster-related eligible activity under section 105(a) of the HCDA of 1974 (42 U.S.C. 5305(a)). While it is possible that not every CDBG-DR assisted utility will serve predominantly LMI populations, HUD recognizes that LMI populations would benefit especially from the increased resilience and recovery of private utilities. HUD also recognizes that privately-owned, for-profit utilities have a means of obtaining private investment or otherwise recapturing costs from ratepayers. Accordingly, HUD is adding alternative requirements that include basic safeguards that HUD has determined are necessary to ensure that costs comply with the certification to give maximum feasible priority to activities that benefit LMI persons and that costs are necessary and reasonable and do not duplicate other financial assistance.

HUD is imposing the following alternative requirements: A grantee may assist private for-profit, non-profit, or publicly owned utilities as part of disaster-related activities that are eligible under section 105(a) of the HCDA, or otherwise made eligible through a waiver or alternative requirement, provided that the grantee complies with the following:

(1) The funded activity must comply with applicable CDBG-DR requirements, including the requirements that the assisted activity will meet a national objective, the activity will address an unmet recovery need or a risk identified in the grantee's mitigation needs assessment, and if the assistance is provided to a for-profit entity for an economic development project under section 105(a)(17), the grantee must first comply with any applicable underwriting requirements.

(2) Each grantee must carry out the grant consistent with the grantee's certification that: "With respect to activities expected to be assisted with CDBG-DR funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-

income families." To fortify compliance with the existing certification, if the grantee carries out activities that assist privately-owned, for-profit utilities, the grantee must prioritize assistance to for-profit utilities that will benefit areas where at least 51 percent of the residents are LMI persons and demonstrate how assisting the private, for-profit utility will benefit those areas.

(3) The grantee must determine that the costs of the activity to assist a utility are necessary and reasonable and that they do not duplicate other financial assistance. To fortify these requirements and achieve a targeted use of funds and to safeguard against the potential over-subsidization when assistance is used to carry out activities that benefit private, for-profit utilities, the grantee must document that the level of assistance provided to a private, for-profit utility addresses only the actual identified needs of the utility.

(4) The grantee must establish policies and procedures to ensure that the CDBG-DR funds that assist private, for-profit utilities reflect the actual identified financing needs of the assisted businesses by establishing a mix of financing terms (loan, forgivable loan, and/or grant) for each assisted private, for-profit utility, based on the business's financial capacity, in order to ensure that assistance is based on actual identified need.

**III.D.7. Economic revitalization and Section 3 activities and standards.** CDBG-DR funds may be used for CDBG-DR eligible activities related to economic revitalization. The attraction, retention, and return of businesses and jobs to a disaster-impacted area is critical to long-term recovery. Accordingly, for CDBG-DR purposes, economic revitalization may include any CDBG-DR eligible activity that demonstrably restores and improves the local economy through job creation and retention or by expanding access to goods and services. The most common CDBG-DR eligible activities to support economic revitalization are outlined in 24 CFR 570.203 and 570.204 and sections 105(a)(14), (15), and (17) of the HCDA (42 U.S.C. 5305(a)(14), (15), and (17)).

**III.D.7.a. Economic revitalization assistance.** Climate-related natural hazards, extreme events, and natural disasters disproportionately affect LMI persons who belong to underserved communities because they are less able to prepare for, respond to, and recover from the impacts of extreme events and natural hazards, or are members of communities that have experienced significant disinvestment and historic discrimination. Therefore, HUD is

imposing the following alternative requirement: When funding activities outlined in 24 CFR 570.203 and 570.204 and sections 105(a)(14), (15), and (17) of the HCDA (42 U.S.C. 5305(a)(14), (15), and (17)), HUD is instituting an alternative requirement in addition to the other requirements in these provisions to require grantees to prioritize assistance to disaster-impacted businesses that serve underserved communities and spur economic opportunity for underserved communities that were economically distressed before the disaster. Grantees undertaking an economic revitalization activity must maintain supporting documentation to demonstrate how the grantee prioritized underserved communities. In section I.C.1.c., HUD describes the minimum standard for underserved communities. Grantees may further define areas that are considered “underserved communities” either in the Action Plan or program-specific policies and procedures.

III.D.7.b. *National objective documentation for activities that support economic revitalization.* 24 CFR 570.208(a)(4)(i) and (ii), 24 CFR 570.483(b)(4)(i) and (ii), 24 CFR 570.506(b)(5) and (6), and 24 CFR 1003.208(d) are waived to allow grantees to meet the LMI jobs national objective criteria by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a two-person family. This method offers an optional alternative to the standard CDBG–DR requirement—in which grantees must review the annual wages or salary of a job in comparison to the person’s total household income and size (*i.e.*, the number of persons). This optional method streamlines the documentation process by allowing the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

III.D.7.c. *Public benefit for activities that support economic revitalization.* When applicable, the public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for the aggregate of all economic development activities. Economic development activities support economic revitalization. Currently, public benefit standards limit the amount of assistance per job retained or created, or the amount of assistance per LMI person to whom goods or services are provided by the activity. These

dollar thresholds can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

HUD waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), and 24 CFR 1003.302(c) for all economic development activities. Paragraph (g) of 24 CFR 570.482 and paragraph (c) and (d) under 570.209 are also waived to the extent these provisions are related to public benefit. However, grantees that choose to take advantage of this optional waiver in lieu of complying with public benefit standards under the existing regulatory requirements shall be subject to the following condition: grantees shall collect and maintain documentation in the project file on the creation and retention of total jobs; the number of jobs within appropriate salary ranges, as determined by the grantee; the average amount of assistance provided per job, by activity or program; and the types of jobs. Additionally, grantees shall report the total number of jobs created and retained and the applicable national objective in the DRGR system.

III.D.7.d. *Section 3 worker eligibility and documentation requirements.* Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) applies to CDBG–DR activities that are Section 3 projects, as defined at 24 CFR 75.3(a)(2). The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.<sup>25</sup> All direct recipients of CDBG–DR funding must report Section 3 information through the DRGR system.

III.D.7.e. *Business relocation assistance.* Current requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base

after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, 24 CFR 570.482(h), and 24 CFR 1003.209, are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another State or to another labor market area within the same State to continue business.

III.D.7.f. *Underwriting.* Notwithstanding section 105(e)(1) of the HCDA (U.S.C. 5305(e)(1)), no CDBG–DR funds may be provided to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA (U.S.C. 5305(a)(17)) unless such project has been evaluated and selected in accordance with guidelines developed by HUD pursuant to section 105(e)(2) of the HCDA (U.S.C. 5305(e)(2)) for evaluating and selecting economic development projects. Grantees and their subrecipients are required to comply with the underwriting guidelines in Appendix A of 24 CFR part 570<sup>26</sup> if they are using grant funds to provide assistance to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA (U.S.C. 5305(a)(17)).

III.D.7.g. *Limitation on use of funds for eminent domain.* CDBG–DR funds may not be used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use, or a waiver has been provided. For purposes of this paragraph, public use does not include economic development that primarily benefits private entities or CDBG–DR funded buyouts. The following is a public use for the purposes of eminent domain: any use of funds for (1) mass transit, railroad, airport, seaport, or highway projects; (2) utility projects that benefit or serve the general public, including energy related, communication-related, water related, and wastewater-related infrastructure; (3) other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government; and (4) projects for the removal of an immediate threat to public health and safety, including the removal of a brownfield as defined in the Small Business Liability

<sup>25</sup> View HUD’s guidance published in CPD Notice 2021–09, “Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, final rule requirements for CDBG, CDBG–CV, CDBG–DR, CDBG–MIT, NSP, Section 108, and RHP projects,” as amended here <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-09cpdn.pdf>.

<sup>26</sup> View the underwriting guidelines are found at Appendix A of 24 CFR part 570 here: [https://www.ecfr.gov/current/title-24/part-570/appendix-Appendix A to Part 570](https://www.ecfr.gov/current/title-24/part-570/appendix-Appendix%20A%20to%20Part%20570).

Relief and Brownfields Revitalization Act (Pub. L. 107–118). HUD has also determined that the development of housing for LMI persons is a public use for the purposes of eminent domain.

### III.E. Ineligible Activities in CDBG–DR

Any activity that is not authorized under Section 105(a) of the HCDA (24 U.S.C. 5305(a)) is ineligible to be assisted with CDBG–DR funds, unless explicitly allowed by waiver and alternative requirement in the Universal Notice. Additionally, the uses described below are explicitly prohibited:

1. CDBG–DR funds cannot be used as compensation to beneficiaries (see section III.E.1.).

2. CDBG–DR funds cannot be used to force homeowners to pay off their remaining mortgage (see section III.E.2.).

III.E.1. *Prohibition on compensation.* Grantees may not use CDBG–DR funds to provide compensation to beneficiaries meaning that funds may not be provided to a beneficiary based on the estimated amount of loss from the declared disaster. However, grantees may reimburse disaster-impacted beneficiaries based on the pre-application costs incurred by the beneficiary for completing an activity that is eligible for reimbursement. Reimbursement of beneficiaries for eligible activity costs are subject to the requirements established in section III.B.14.a.

III.E.2. *Prohibition on forced mortgage payoff.* A forced mortgage payoff occurs when homeowners with an outstanding mortgage balance are required, under the terms of their loan agreement, to repay the balance of the mortgage loan before using assistance to rehabilitate or reconstruct their homes. CDBG–DR funds, however, shall not be used for a forced mortgage payoff. The ineligibility of a forced mortgage payoff with CDBG–DR funds does not affect HUD’s longstanding guidance that when other non-CDBG disaster assistance is taken by lenders for a forced mortgage payoff, those funds are not considered to be available to the homeowner and do not constitute a DOB for the purpose of housing rehabilitation or reconstruction.

### III.F. Performance Reviews

Under 42 U.S.C. 5304(e), the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner (*i.e.*, meeting its expenditure deadline), whether the grantee’s activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCDA and

other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

III.F.1. *Timely distribution and expenditure of funds.* HUD waives the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution and expenditure of funds and establishes an alternative requirement providing that each grantee must expend 100 percent of its allocation within six years of the date HUD signs the grant agreement. HUD may extend the period of performance administratively, if good cause for such an extension is provided by the grantee and approved by HUD.<sup>27</sup> When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee on appropriate programmatic purposes will be recaptured by HUD.

III.F.2. *Review of continuing capacity.* Upon a determination by HUD that the grantee has not carried out its CDBG–DR activities and certifications in accordance with the requirements in the Universal Notice, HUD will undertake a further review to determine if the grantee has the continuing capacity to carry out its activities in a timely manner. In making this determination, HUD will consider the nature and extent of the recipient’s performance deficiencies, the actions taken by the recipient to address the deficiencies, and the success or likely success of such actions. HUD may then apply the following corrective and remedial actions as appropriate:

III.F.2.a. *Corrective and remedial actions.* To effectively administer the CDBG–DR program in a manner that facilitates recovery, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for States in accordance with the authorities for CDBG Entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or 24 CFR part 570, subpart I. In response to a deficiency, HUD may issue a warning letter followed by a recommended corrective action that may include a management plan which assigns responsibility for further

administration of the grant to specific entities or persons. Failure to comply with a corrective action may result in the termination, reduction, or limitation of payments to grantees receiving CDBG–DR funds.

III.F.2.b. *Additional criteria and specific conditions to mitigate risk.* To ensure effective grantee implementation of the financial controls, procurement processes, and other procedures that are the subject of the certification by the Secretary, HUD has and may continue to establish specific criteria and conditions for each grant award as provided for at 2 CFR 200.206 and 200.208, respectively, to mitigate the risk of the grant. The Secretary shall specify any such criteria and the resulting conditions in the grant conditions governing the award. These criteria may include, but need not be limited to, a consideration of the internal control framework established by the grantee to ensure compliant implementation of its financial controls, procurement processes and payment of funds to eligible entities, as well as the grantee’s risk management strategy for information technology systems established to implement CDBG–DR funded programs. Additionally, the Secretary may amend the grant conditions to mitigate risk of a grant award at any point at which the Secretary determines a condition to be required to protect the Federal financial interest or to advance recovery.

### III.G. Grantee Reporting Requirements in the Disaster Recovery Grant Reporting (DRGR) System

The DRGR System is used to support HUDs oversight of grantees throughout the lifecycle of the grant through grantee submission of the public action plan, DRGR Action Plan, grantee reporting requirements, and drawing grant funds.

III.G.1. *Submitting the DRGR Action Plan.* The DRGR Action Plan is populated after the submission of both the optional Admin Action Plan and the required Action Plan (the submission process will be described in the applicable AAN). Both the Admin Action Plan and Action Plan are defined in section I.A. The DRGR Action Plan is the process a grantee undergoes to set up its detailed projects and activities within the DRGR system for HUD to track progress and compliance throughout the grant lifecycle and to facilitate the draw of CDBG–DR funds.

III.G.2. *Grantee reporting requirements in DRGR.* HUD waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), 24 CFR 91.520, and annual status and evaluation reports

<sup>27</sup> View HUD’s Policy Bulletin provides additional guidance for grantees that request an extension to the period of performance here: <https://www.hud.gov/sites/dfiles/CPD/documents/Policy-Bulletin-Periods-of-Performance-2023-09-14-Final.pdf>.



that are due each fiscal year under 24 CFR 1003.506(a). Alternatively, HUD establishes an alternative requirement that grantees enter information in the DRGR system on a quarterly basis, which is referred to as a performance report within the DRGR system (commonly referred to as the quarterly performance report (QPR)). Performance reports must be submitted on a quarterly basis until all funds have been expended and the grantee has reported on accomplishments and submitted all required materials for closeout. Once a grant is closed, grantees will shift to annual reporting as described in section III.B.12.e.(3).

III.G.2.a. *Maintain grantee records within DRGR.* The information in the DRGR system must contain sufficient detail to permit HUD's review of grantee performance and to enable remote review of grantee data to allow HUD to assess compliance and risk. Grantees must use the DRGR system to:

i. Enter projects into the DRGR Action Plan at a level of detail sufficient to allow HUD to determine grantee compliance: (1) appropriate activity type, (2) national objective, and (3) responsible entity;

ii. Document grantee's oversight of its disaster recovery projects through project level reporting (e.g., summary information on grantees' monitoring visits and reports, audits, technical assistance);

iii. For direct benefit activities only, enter summary data on completed applications for assistance and the number of beneficiaries assisted for each activity each quarter in total and for the following subcategories: (1) persons with disabilities, (2) age, (3) familial status, (4) LEP persons, (5) LMI persons, (6) race, and (7) ethnicity; and

iv. If applicable, track program income receipts, disbursements, revolving loan funds, and leveraged funds.

III.G.2.b. *Timeline for submitting grantee's initial performance report.* The grantee's first performance report is due 30 calendar days after the first full calendar quarter after HUD signs the grant agreement.

III.G.2.c. *Quarterly submission of performance report in DRGR.* Grantees must submit a performance report through the DRGR system no later than 30 calendar days following the end of each calendar quarter. To submit a performance report, the DRGR Action Plan must be in "Reviewed and Approved" status in the DRGR system. Therefore, a grantee must submit any amendments (substantial or nonsubstantial) to the DRGR Action Plan at least 45 calendar days prior to

the performance report deadline (i.e., QPR deadline). For all activities, the address of each CDBG-DR assisted property must be recorded in the performance report. Once the grantee submits the performance report into DRGR, they should email their assigned HUD CPD staff member to confirm submission. HUD will review the submitted performance report with the HUD Performance Report Review Guide.

III.G.2.c.(i). *Reviewed and approved performance report.* Once the assigned HUD CPD staff member approves the performance report, the grantee must publish a version of the performance report that omits PII on the grantee's official disaster recovery website within three calendar days of HUD's approval.

III.G.2.c.(ii). *Rejected performance report.* If the grantee's assigned HUD CPD staff member identifies errors or gaps through the HUD Performance Report Review Guide, HUD may reject the performance review and indicate the areas that need to be corrected. The grantee must make the revisions within 30 calendar days and resubmit the performance review in DRGR. If the assigned HUD CPD staff member finds the updated performance review to be satisfactory, the grantee must publish a version of the performance review that omits PII reported in the performance review, as approved by HUD, within three calendar days of HUD approval. If a satisfactory performance report is not submitted in 30 calendar days, HUD may block access to CDBG-DR funds until a satisfactory performance report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory performance report.

III.G.3. *Using DRGR to draw grant funds.* After the grantee's DRGR Action Plan is approved, the grantee can create and approve vouchers, also called drawdowns in DRGR at the activity level. DRGR is directly linked to the Line of Credit Control System (LOCCS), a Federal web-based system administered by the U.S. Treasury that allows grantees to request and receive funds obligated by HUD under a grant agreement as permitted by 2 CFR part 200, subpart E.

#### IV. Assistance Listing Numbers

The Assistance Listing Numbers (formerly known as the Catalog of Federal Domestic Assistance (CFDA) numbers) for the disaster recovery grants under the Universal Notice are as follows: 14.218; 14.228.

#### V. 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 online on HUD's CDBG-DR website at [https://www.hud.gov/program\\_offices/comm\\_planning/cdbg-dr](https://www.hud.gov/program_offices/comm_planning/cdbg-dr) and 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). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

**Adrienne R. Todman,**

*Deputy Secretary Performing the Duties of the Secretary of HUD.*

#### Appendix A. Certifications Waiver and Alternative Requirement for Admin Action Plan Submission

Each grantee choosing to submit an Admin Action Plan must complete the certifications listed within this appendix and submit it with the Admin Action Plan.

Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c), and (m)), sections 106(d)(2)(C) and (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) and (D)), and section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the alternative requirement in section I.B.5.

Additionally, HUD is waiving section 104(a)-(c) and (d)(1) of the HCDA (42 U.S.C. 5304), section 106(c)(1) and (d) of the HCDA (42 U.S.C. 5306), section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended ("the Uniform Act") (42 U.S.C. 4630), section 305 of the Uniform Act (42 U.S.C. 4655), and regulations at 24 CFR 91.225(a)(2), (6), and (7), 91.225(b)(7), 91.325(a)(2), (6), and (7), 49 CFR 24.4(a), and 24 CFR 42.325 only to the extent necessary to allow grantees to receive a portion of their allocation for program administrative costs before submitting other statutorily required certifications. Each grantee receiving an allocation under an AAN must make the following certifications with its Admin Action Plan:



a. Compliance with Anti-discrimination Laws—The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations.

b. Affirmatively Further Fair Housing: The grantee certifies that it will affirmatively further fair housing.

c. Anti-Lobbying: The grantee certifies its compliance with the restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

d. Authority of Grantee: The grantee certifies that the Admin Action Plan for disaster recovery is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG–DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations as modified by waivers and alternative requirements.

e. Consistency with the Action Plan: The grantee certifies that activities to be undertaken with CDBG–DR funds are consistent with its Admin Action Plan.

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

g. Use of Funds: The grantee certifies that it is complying with each of the following criteria:

(1) Purpose of the Funds. Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the most impacted and distressed areas for which the President declared a major disaster pursuant to the Stafford Act (42 U.S.C. 5121 *et seq.*).

(2) Maximum Feasibility Priority. With respect to activities expected to be assisted with CDBG–DR funds, the Admin Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

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

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

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

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

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

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

i. Grant Timeliness: The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and that the grantee has reviewed the requirements applicable to the use of grant funds.

j. Environmental Requirements: The grantee certifies that it will comply with environmental requirements at 24 CFR part 55 (as applicable) and 24 CFR part 58.

k. Compliance with Laws: The grantee certifies that it will comply with the provisions of title I of the HCDA and with other applicable laws.

### Appendix B. Certifications Waiver and Alternative Requirement for Action Plan Submission.

Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c) and (m)), sections 106(d)(2)(C) and (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) and (D)), and section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.225 and 91.325 are waived and replaced with the following alternative. Each grantee receiving an allocation under an AAN must make the following certifications with its action plan:

a. Compliance with Anti-discrimination Laws—The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations.

b. Affirmatively Further Fair Housing—The grantee certifies it will affirmatively further fair housing.

c. Uniform Relocation Act and Residential Anti-displacement and Relocation Plan—The grantee certifies that it:

(1) will comply with the acquisition and relocation requirements of the Uniform Act,

and implementing regulations at 49 CFR part 24, as such requirements may be modified by waivers or alternative requirements;

(2) has in effect and is following a RARAP in connection with any activity assisted with CDBG–DR grant funds that fulfills the requirements of Section 104(d), 24 CFR part 42, and 24 CFR part 570, as amended by waivers and alternative requirements.

d. Anti-Lobbying—The grantee certifies its compliance with the restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

e. Authority of Grantee—The grantee certifies that the Action Plan for disaster recovery is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG–DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations as modified by waivers and alternative requirements.

f. Consistency with the Action Plan—The grantee certifies that activities to be undertaken with CDBG–DR funds are consistent with its action plan.

g. Section 3—The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 75.

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

i. Consultation with Local Governments (STATE ONLY)—State grantee certifies that it has consulted with all disaster-affected local governments (including any CDBG entitlement grantees), Indian Tribes, and any local public housing authorities in determining the use of funds, including the method of distribution of funding, or activities carried out directly by the State.

j. Use of Funds—The grantee certifies that it is complying with each of the following criteria:

(1) Purpose of the funding. Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the most impacted and distressed areas for which the President declared a major disaster pursuant to the Stafford Act (42 U.S.C. 5121 *et seq.*).

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

(3) Overall benefit. The aggregate use of CDBG–DR funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent

(or another percentage permitted by HUD in a waiver) of the grant amount is expended for activities that benefit such persons.

(4) **Special Assessment.** The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG–DR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

k. **Excessive Force**—The grantee certifies that it has adopted and is enforcing the following policies, and, in addition, State grantees must certify that they will require local governments that receive their grant funds to certify that they have adopted and are enforcing:

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

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

l. **Grant Timeliness**—The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner and that the grantee has reviewed the requirements applicable to the use of grant funds.

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

n. **Environmental Requirements**—The grantee certifies that it will comply with environmental requirements at 24 CFR part 55 (as applicable) and 24 CFR part 58.

o. **Compliance with Laws**—The grantee certifies that it will comply with the provisions of title I of the HCDA and with other applicable laws.

p. **Order of Assistance**—The grantee certifies that it will comply with the statutory order of assistance listed in Appendix C paragraph 9 and will verify if FEMA or USACE funds are available for an activity, or the costs are reimbursable by FEMA or USACE before awarding CDBG–DR assistance for the costs of carrying out the same activity.

### Appendix C. Duplication of Benefits (DOB)

#### Appendix C Outline

1. *Introduction.*
2. *The Stafford Act.*
3. *CDBG–DR Appropriations Acts and Federal Register Notices.*

4. *Basic DOB calculation framework.*
  - 4.a. *Assess applicant's total need.*
  - 4.b. *Identify total assistance.*
  - 4.c. *Exclude non-duplicative amounts.*
    - 4.c.(i). *Funds for a different purpose.*
    - 4.c.(ii). *Funds for the same purpose, different allowable use.*
  - 4.d. *Identify DOB amount and calculate the CDBG–DR award.*
  - 4.e. *Reassess unmet need when necessary.*
5. *Necessary and reasonable requirements.*
6. *Special considerations.*
7. *Subsidized loans.*
8. *Exceptions when subsidized loans are not a duplication.*
  - 8.a. *Short-term subsidized loans for pre-award costs incurred by grantees or subrecipients that are later reimbursed with CDBG–DR.*
  - 8.b. *Declined or cancelled subsidized loans.*
9. *Order of assistance.*
10. *Multiple disasters.*
11. *DOB recordkeeping.*
12. *Agreement to repay.*
13. *Collecting a duplication.*
  - 13.a. *Not in the best interest of the Federal government to collect.*

### Appendix C. Duplication of Benefits (DOB)

1. **Introduction.** CDBG–DR grants are one of multiple Federal sources which assist disaster recovery. These sources of Federal assistance often can be used for the same purposes by grantees and disaster survivors. For this reason, the Stafford Act (42 U.S.C. 5121–5207) and CDBG–DR appropriations acts require HUD and its grantees to coordinate with other Federal agencies that provide disaster assistance to prevent the DOB. The Stafford Act's prohibition on DOB aims to ensure that Federal assistance serves only to “supplement insurance and other forms of disaster assistance” (42 U.S.C. 5170).

CDBG–DR grantees must prevent DOB when carrying out eligible activities. A duplication occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for the same recovery purpose, and the total assistance received for that purpose is more than the total need. The amount of the DOB is the amount received in excess of the total need for the same purpose. When the total need for eligible activities is more than total assistance for the same purpose, the difference between these amounts is an “unmet need.” Grantees must limit the awarding of CDBG–DR assistance to unmet needs for eligible activities to prevent a DOB. Because the Universal Notice permits reimbursement, as described in section III.B.14., unmet needs can include amounts needed for reimbursement.

2. **The Stafford Act.** The Stafford Act is the primary legal authority establishing the framework for the Federal government to provide disaster and emergency assistance.

Section 312 of the Stafford Act directs Federal agencies that provide disaster assistance to assure that people, businesses, or other entities do not receive financial assistance that duplicates any part of their disaster loss covered by insurance or another source (42 U.S.C. 5155(a)). Section 312 also

makes recipients of Federal disaster assistance liable for repayment of the amount of Federal disaster assistance that duplicates benefits available for the same purpose from another source (42 U.S.C. 5155(c)).

The Stafford Act also provides that when assistance covers only a part of the recipient's disaster needs, additional assistance to cover needs not met by other sources will not cause a DOB (42 U.S.C. 5155(b)(3)). Therefore, CDBG–DR assistance may only pay for eligible activities to address unmet needs. This section advises grantees on the calculation of unmet needs through a DOB analysis.

3. **CDBG–DR Appropriations Acts and Federal Register Notices.** CDBG–DR funds are made available for “necessary expenses” by appropriations acts that contain statutory requirements on the use of the grant funds. Grantees are subject to the requirements of the appropriations acts, the applicable AAN, and the Universal Notice.

4. **Basic DOB calculation framework.** The Stafford Act requires a fact specific inquiry into assistance received by each applicant. The Universal Notice refers to the subject of a DOB review as an “applicant” or “CDBG–DR applicant” and uses the term “applicant” to include individuals, businesses, households, or other entities that apply to the grantee or a subrecipient for CDBG–DR assistance, as well as entities that use CDBG–DR assistance for an activity without submitting an application (e.g., the department or agency of the grantee administering the grant, other State or local departments or agencies, or local governments).

A grantee is prohibited from making a blanket determination that CDBG–DR assistance under one of its programs or activities does not duplicate another category or source of assistance. The grantee must conduct an individualized review (i.e., a DOB analysis) for each applicant to determine that the amount of assistance will not cause a DOB by exceeding the unmet needs of that applicant. A review specific to each applicant is necessary because assistance available to each applicant varies widely based on individual insurance coverage, eligibility for various sources of assistance, and other factors.

This section establishes the primary considerations that must be part of a DOB analysis when providing CDBG–DR assistance, and a framework for analyzing need and avoiding DOB when calculating awards. CDBG–DR grantees have discretion to develop policies and procedures that tailor their DOB analyses to their own programs and activities so long as the grantee's policies and procedures are consistent with the requirements of the Universal Notice. If the grantee modifies its DOB procedures after the Secretary certifies that the grantee's DOB procedures are adequate, the grantee's modified procedures must meet the standards identified here in Appendix C. and section II.A.1.e. of the Universal Notice.

4.a. **Assess applicant's total need.** A grantee must determine an applicant's total need. A grantee's DOB analysis must reflect the applicant's current need (i.e., total need) at the time the grantee is conducting the DOB

analysis and calculating the amount of CDBG-DR assistance the applicant is eligible to receive. However, if the grantee's Action Plan permits CDBG-DR assistance to reimburse costs of CDBG-DR eligible activities undertaken by the applicant before submitting an application, the total need also includes these costs. Generally, total need is calculated without regard to the grantee's program-specific caps on the amount of assistance.

For rehabilitation, reconstruction, or new construction activities, the need can be reasonably documented using construction cost estimates.

For recovery programs of the grantee that do not entail physical rebuilding, such as special economic development activities to provide an affected business with working capital, the total need will be determined by the requirements or parameters of the program or activity. For special economic development activities, total need should be guided by standard underwriting guidelines (when required by section III.D.7.f.). CDBG-DR grantees and subrecipients must comply with the underwriting guidelines in Appendix A of 24 CFR part 570 when assisting a for-profit entity as part of a special economic development project.

The grantee's assessment of total need must consider in-kind donations of materials or services that are known to the grantee at the time it conducts an applicant's DOB analysis and makes the CDBG-DR award. In-kind donations are non-cash contributions, such as donations of professional services, use of construction equipment, or contributions of building materials. In-kind donations are not "financial assistance" that creates a DOB under the Stafford Act, but they can reduce the applicant's total need by reducing projected CDBG-DR activity costs. When applicable, grantees must determine the value of any in-kind donations that would reduce the CDBG-DR activity costs and adjust the applicant's total need accordingly.

**4.b. Identify total assistance.** To calculate DOB, grantees are required to identify "total assistance." For the Universal Notice, total assistance includes all reasonably identifiable financial assistance available to an applicant.

Total assistance includes resources such as cash awards, insurance proceeds, grants, and subsidized loans received by or available to each CDBG-DR applicant, including awards under local, State, or Federal programs, and from private or nonprofit charity organizations. At a minimum, the grantee's efforts to identify total assistance must include a review to determine whether the applicant received FEMA, SBA, insurance, and any other major forms of assistance (e.g., State disaster assistance programs) generally available to applicants.

Total assistance does not include personal assets such as money in a checking or savings account (excluding insurance proceeds or disaster assistance deposited into the applicant's account), retirement accounts, credit cards and lines of credit, in-kind donations (although these non-cash contributions can reduce the total need when known to the grantee), and private loans.

For the Universal Notice, a private loan is a loan that is not provided by or guaranteed by a governmental entity, and that requires the CDBG-DR applicant (the borrower) to repay the full amount of the loan (principal and interest) under typical commercial lending terms, e.g., the loan is not forgivable. For DOB analyses, private loans are not financial assistance and need not be considered in the DOB calculation, regardless of whether the borrower is a person or entity.

By contrast, subsidized loans are considered financial assistance unless an exception applies (see paragraph 8.a. or 8.b.).

Total assistance includes available assistance. Assistance is available if an applicant: (1) would have received it by acting in a reasonable manner, or in other words, by taking the same practical steps toward funding recovery as would disaster survivors faced with the same situation but not eligible to receive CDBG-DR assistance; (2) has received the assistance and has legal control over it, or (3) anticipates receiving assistance that has been awarded and accepted, but has not received it yet. For example, if a local government seeks CDBG-DR assistance to fund part of a project that also has been awarded FEMA Hazard Mitigation Grant Program (HMGP) assistance, the entire HMGP award must be included in the calculation of total assistance even if FEMA obligates the first award increment for the project, but subsequent increments remain unfunded until certain project milestones are met.

Applicants for CDBG-DR assistance are expected to seek insurance or other assistance to which they are legally entitled under existing policies and contracts, and to behave reasonably when negotiating payments to which they may be entitled. For example, it may be reasonable for an applicant to elect to receive an immediate lump sum insurance settlement based on the estimated cost of rehabilitation instead of waiting for a longer period of time for the insurance company to calculate reimbursement based on actual replacement costs, even if the reimbursement based on actual costs would exceed the lump sum insurance settlement.

HUD generally considers assistance to be available if it is awarded to the applicant but is administered by another party instead of being directly deposited with the applicant. For example, if an entity administering homeowner rehabilitation assistance pays a contractor directly to complete the rehabilitation, the assistance is still considered available to the applicant.

By contrast, funds that are not available to an applicant must be excluded from the DOB analysis when identifying total assistance. For example, insurance or rehabilitation assistance received by a previous owner of a disaster damaged housing unit is not available to a current owner that acquired the unit by sale or transfer (including a current owner that inherited the unit as a result of the death of the previous owner) unless the current owner is a co-recipient of that assistance.

Funds are not available to an applicant if the applicant does not have legal control of the funds when they are received. For

example, if a homeowner's mortgage requires insurance proceeds to be applied to reduce the unpaid mortgage principal, then the lender/mortgage holder (not the homeowner) has legal control over those funds. The homeowner is legally obligated to use insurance proceeds for the purpose of reducing the unpaid mortgage principal and does not have a choice in using them for any other purpose, such as to rehabilitate the house. Under these circumstances, insurance proceeds do not reduce CDBG-DR rehabilitation assistance eligibility.

Alternatively, if a lender requires use of insurance for rehabilitation, or a disaster-affected homeowner chooses to apply insurance proceeds received for damage to the building to reduce an unpaid mortgage principal, these insurance proceeds are considered available assistance to the applicant and may reduce the amount of CDBG-DR funds the grantee can provide for rehabilitation.

**4.c. Exclude non-duplicative amounts.** Once a grantee has determined the total need and the total assistance, the grantee then determines if it must exclude non-duplicative amounts of financial assistance (known as "exclusions") from the applicant's total assistance to calculate the DOB amount. Grantees must exclude amounts that are: (1) provided for a different purpose than the CDBG-DR assistance; or (2) provided for the same purpose as the CDBG-DR assistance, but for a different, allowable use (cost). The "purpose" of the assistance is the purpose for which the funds were provided by the entity that offered the financial assistance. Below, each of these categories is explained in greater detail.

**4.c.(i). Funds for a different purpose.** Any assistance provided for a different purpose than the CDBG-DR assistance (i.e., the CDBG-DR eligible activity) or a general, non-specific purpose (e.g., "disaster relief/recovery") must be excluded from the total assistance when calculating the DOB amount.

Insurance proceeds for damage or destruction of a building are funds for the same purpose as CDBG-DR assistance to rehabilitate or reconstruct that building. On the other hand, grantees may exclude, as non-duplicative, insurance proceeds provided for a different purpose (e.g., insurance proceeds for loss of contents and personal property, or insurance proceeds for loss of buildings (such as a detached garage) that the grantee has determined it will not assist with CDBG-DR funds). However, a grantee may treat all insurance proceeds as duplicative assistance if it is impractical to identify the portion of insurance proceeds that are for a different purpose than the CDBG-DR assistance.

Similarly, CDBG-DR assistance paid to a homeowner as a housing incentive for the purpose of inducing the homeowner to sell the home to the grantee (e.g., in conjunction with a buyout) are for a different purpose than funds provided for interim housing (e.g., temporary assistance for rental housing during a period when a household is unable to reside in its home). In such a case, interim housing assistance may be excluded from the final DOB calculation as non-duplicative of funds paid for the housing incentive.

4.c.(ii). *Funds for the same purpose, different allowable use.* Assistance provided for the same purpose as the CDBG-DR assistance (*i.e.*, the CDBG-DR eligible activity) must be excluded when calculating the DOB amount if the applicant can document that the actual specific use of the assistance was allowable and for a different use (cost) than the CDBG-DR assistance. For example, an applicant uses financial assistance provided for housing rehabilitation to replace the roof and the CDBG-DR assistance is used to rehabilitate the house's interior. The financial assistance to replace the roof can be excluded from the DOB analyses as funds for a "different allowable use" even though the CDBG-DR assistance is provided for the same purpose (rehabilitation).

When excluding this type of non-duplicative assistance, grantees must identify and document the purpose of the assistance for which the funds were provided and how the funds were used by the applicant. Grantees are advised to consult with HUD to determine what documentation is appropriate in this circumstance. As a starting point, grantees should consider whether the source of the assistance requires beneficiaries to maintain documentation of how the assistance was used.

Whether the use of the non-CDBG-DR assistance is an allowable use depends on the rules imposed by the source that provided the assistance. For example, assume that a CDBG-DR grantee is administering a homeowner rehabilitation program and an applicant to the program can document that he/she previously received and used FEMA funds for interim housing costs (*i.e.*, rent). If the grantee can document that FEMA permitted the applicant to use its assistance for the general purpose of meeting any housing need, the CDBG-DR grantee can exclude the FEMA assistance used for interim housing (*e.g.*, a different allowable use) as non-duplicative of the CDBG-DR assistance for rehabilitation.

If, on the other hand, the grantee has documentation that FEMA limited the use of FEMA funds to housing rehabilitation, then the full amount of the FEMA assistance must be considered for the specific purpose of housing rehabilitation and cannot be excluded if the applicant used those funds for interim housing. If interim housing is not an allowable use, the amount of the FEMA housing rehabilitation assistance used for interim housing is considered a DOB. If the grantee thinks the actual use of the FEMA assistance may be allowable, the CDBG-DR grantee should contact FEMA for clarification.

Assistance provided for the purpose of housing rehabilitation are funds for the same purpose as CDBG-DR rehabilitation assistance. However, the grantee can exclude assistance used for different costs of the rehabilitation, which are a different allowable use (rehabilitation costs not assisted with CDBG-DR).

Assistance provided for temporary or minor rehabilitation are funds for the same purpose as CDBG-DR rehabilitation assistance but may or may not constitute a DOB. If the assistance is used for minor or

temporary rehabilitation to enable the applicant to live in their home instead of moving to temporary housing until rehabilitation can be completed, the grantee can undertake the remaining work necessary to complete rehabilitation. Further, the grantee's assessment of total need at the time of application may include the costs of replacing temporary materials with permanent construction and of completing mold remediation by removing drywall installed with other assistance. These types of costs to modify partially completed rehabilitation that the grantee determines are necessary to comply with the requirements of CDBG-DR assistance do not duplicate other assistance used for the partial rehabilitation.

Grantees are encouraged to contact HUD for further guidance in cases when it is unclear whether non-CDBG-DR assistance for the same general purpose can be excluded from the DOB calculation because it was used for a different allowable use.

4.d. *Identify DOB amount and calculate the CDBG-DR award.* The total DOB amount (*i.e.*, the duplicative assistance) is calculated by subtracting the exclusions from the applicant's total assistance. Therefore, to calculate the maximum CDBG-DR award amount, the grantee must: (1) identify total need; (2) identify total assistance; (3) subtract exclusions from total assistance to determine the DOB amount; and (4) subtract the DOB amount from the applicant's total need to determine the maximum CDBG-DR award amount, which is normally equivalent to the applicant's unmet need.

Note, there are several considerations that may change the maximum CDBG-DR award amount.

First, the grantee is required to impose an award cap that limits the amount of assistance an applicant is eligible to receive, this may reduce the potential CDBG-DR assistance available to the applicant.

Second, the grantee may increase the amount of an award if the applicant agrees to repay duplicative assistance it receives in the future (unless prohibited by a statutory order of assistance, as in the requirement to use FEMA or USACE assistance before CDBG-DR assistance discussed in section III.D. and here in Appendix C paragraph 9). Section 312(b) of the Stafford Act permits a grantee to provide CDBG-DR assistance to an applicant who is or may be entitled to receive assistance that would be duplicative if: (1) the applicant has not received the other assistance at the time the CDBG-DR grantee makes its award; and (2) the applicant agrees to repay the CDBG-DR grantee for any duplicative assistance once it is received. The agreement to repay from future funds may enable a faster recovery in cases when other sources of assistance are delayed (*e.g.*, due to insurance litigation). HUD requires all grantees to enter into agreements with applicants before the applicant receives CDBG-DR assistance.

Third, the applicant's CDBG-DR award may increase if a reassessment shows that the applicant has additional unmet need.

4.e. *Reassess unmet need when necessary.* Long-term disaster recovery is a process, and applicants' recovery needs can change over time. An applicant's total need is calculated

based on need estimates at a point in time and often represents the applicant's need at the time the DOB analysis is conducted by the grantee. As a result, a subsequent change in an applicant's circumstances can affect the applicant's total need and lead to additional unmet need or needs that were not met by CDBG-DR and other sources of assistance. Oftentimes, additional unmet need does not become apparent until after CDBG-DR assistance has been provided. Examples may include: a subsequent disaster that causes further damage to a partially rehabilitated home or business; an increase in the cost of construction materials; vandalism; contractor fraud; or theft of materials. Unmet need may also change if other resources become available to pay for costs of the activity (such as FEMA or USACE) and reduce the need for CDBG-DR assistance.

To the extent that the applicant's total need was not fully met or was exacerbated by factors beyond the control of the applicant, the grantee may provide additional CDBG-DR funds to meet the increased unmet need.

Grantees must be able to identify and document additional unmet needs, for example, by completing a professional inspection to verify the revised estimate of costs to rehabilitate or reconstruct damaged property.

5. *Necessary and reasonable requirements.* The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in subpart E of 2 CFR part 200 (the Cost Principles) applicable to all CDBG-DR grantees and their subrecipients require that costs are necessary and reasonable. The Cost Principles are made applicable to States by 24 CFR 570.489(p) and to local governments through 24 CFR 570.502. State grantees are also subject to 24 CFR 570.489(d), which requires that States shall have fiscal and administrative requirements to ensure that grant funds are used "for reasonable and necessary costs of operating programs."

Under the Cost Principles, a cost assigned to a grant "is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost" (2 CFR 200.404).

Grantees must consider factors described at 2 CFR 200.404(a) through (e) when determining which types and amounts of cost items are necessary and reasonable. Based on these factors, HUD generally presumes that if a cost has been paid by another source, charging it to the Federal award violates the necessary and reasonable standard unless grant requirements permit reimbursement.

6. *Special considerations.* The potential for DOB arises most frequently under homeowner rehabilitation programs but is not limited solely to that type of activity. The following examples do not form an exhaustive list of all CDBG-DR funded programs or activities. They are included to illustrate instances when duplicative assistance can occur when assisting other recovery activities:

a. Assistance to businesses. Many grantees carry out economic revitalization programs that provide working capital assistance to

businesses. Generally, working capital assistance is calculated after assessing a business's ability to use its current assets to pay its current liabilities. The grantee's DOB analysis must consider total assistance, which includes all sources of financial assistance available to the applicant to pay a portion of liabilities that will become due. For example, a downtown business alliance might award business recovery grants from its funds to cover some of the same liabilities. Even if the downtown business alliance does not call its assistance "working capital" assistance, the amount the business received from the downtown business alliance to pay the same costs as the CDBG-DR funds is a DOB. Therefore, a grantee's basis for calculating CDBG-DR economic development assistance and the purposes for which the applicant can use the assistance should be clearly identified so that grantees can prevent a DOB. As discussed above, assets such as cash and cash equivalents (excluding deposits of insurance proceeds or other disaster assistance), inventories, short-term investments and securities, accounts receivable, and other assets of the business are not financial assistance, although those assets may be relevant to underwriting.

b. Assistance for infrastructure. State grantees may assist State or local government entities by providing funding to restore infrastructure (public facilities and improvements) after a disaster. CDBG-DR funds used directly by State and local governments for public facilities and improvements, or other purposes are also subject to the DOB requirements of the Stafford Act. For example, a wastewater treatment facility owned by a local government may need to be rehabilitated. In this instance, total assistance, for a DOB analysis, would not only include any other Federal assistance available to rehabilitate the facility, but it must also include any local funds that are available for this activity. And if local funds were previously designated or planned for the activity, but are no longer available, the grantee should document that the local government recipient does not have funds set aside for the activity in any capital improvement plan (or similar document showing planned use of funds).

c. Payments made under the Uniform Act. A displaced person (as defined under 49 CFR 24.2(a)) is eligible for rental assistance payments under the Uniform Act. Relocation payments made under the URA, as well as under CDBG's optional relocation assistance provisions of 24 CFR 570.606(d), are subject to DOB requirements in the Universal Notice, as well as DOB requirements under the URA that prohibit payments for the same "purpose and effect" as another payment to a displaced person (49 CFR 24.3). To comply with CDBG-DR DOB requirements, before issuance of rental assistance payments required by the URA, grantees must complete a DOB analysis. For example, a CDBG-DR grantee must check FEMA assistance data to determine that FEMA did not provide rental assistance payments during the same time period (under the Uniform Act or as part of a FEMA Individual Assistance Award). Please note that while CDBG-DR funds cannot duplicate other assistance for the

same purpose, advisory services and the provision of notices required under the Uniform Act are not subject to this analysis because they are not financial assistance to the person, and therefore must be provided in accordance with the Uniform Act.

7. *Subsidized Loans*. For the Universal Notice, subsidized loans (including forgivable loans) are loans other than private loans. Subsidized loans are assistance that must be included in the DOB analysis, unless an exception applies. Paragraph 8 discusses these exceptions and related requirements for the treatment of subsidized loans in a DOB analysis. The full amount of a subsidized loan available to the applicant for the same purpose as CDBG-DR assistance is assistance that must be included in the DOB calculation unless one of the exceptions in paragraph 8 applies. A subsidized loan is available when it is accepted, meaning that the borrower has signed a note or other loan document that allows the lender to advance loan proceeds. Both SBA and FEMA provide subsidized loans for disaster recovery. Note that the statutory order of assistance provision pertaining to assistance from FEMA and USACE applies to grants and subsidized loans made by these agencies. Subsidized loans may also be available from other sources.

Subsidized loans are financial assistance and therefore can duplicate financial assistance provided from another source unless an exception in paragraph 8 applies.

8. *Exceptions when subsidized loans are not a duplication*. When an exception described in 8.a. or 8.b. applies, documentation required by those paragraphs must be maintained by the grantee.<sup>28</sup> Without this documentation, any approved but undisbursed portion of a subsidized loan must be included in the grantee's calculation of the total assistance amount unless another exception applies.

8.a. *Short-term subsidized loans for pre-award costs incurred by grantees or subrecipients that are later reimbursed with CDBG-DR*. CDBG-DR funds may be used to reimburse pre-award costs of the grantee or subrecipient for eligible activities on or after the date of the disaster. If the grantee or subrecipient obtained a subsidized short-term loan (e.g., bridge loans) to pay for eligible costs before CDBG-DR funds became available (e.g., a low-interest loan from a local tax increment financing fund), the reimbursement of the costs paid by the loan does not create a duplication.

8.b. *Declined or cancelled subsidized loans*. The amount of a subsidized loan that is declined or cancelled is not a DOB. To exclude declined or cancelled loan amounts from the DOB calculation, the grantee must document that all or a portion of the subsidized loan is cancelled or declined.

(1) *Declined SBA Loans*: Declined loan amounts are loan amounts that were approved or offered by a lender in response to a loan application, but were turned down

by the applicant, meaning the applicant never signed loan documents to receive the loan proceeds.

CDBG-DR grantees shall not treat declined subsidized loans, including declined SBA loans, as a DOB (but are not prohibited from considering declined subsidized loans for other reasons, such as underwriting). A grantee is only required to document declined loans if information available to the grantee (e.g., the data the grantee receives from FEMA, SBA, or other sources) indicates that the applicant received an offer for subsidized loan assistance, and the grantee is unable to determine from that available information that the applicant declined the loan. If the grantee is aware that the applicant received an offer of loan assistance and cannot ascertain from available data that the applicant declined the loan, the grantee must obtain a written certification from the applicant that the applicant did not accept the subsidized loan by signing loan documents and did not receive the loan.

(2) *Cancelled Loans*: Cancelled loans are loans (or portions of loans) that were initially accepted, but for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the applicant.

The cancelled loan amount is the amount that is no longer available. The loan cancellation may be due to default of the borrower, agreement by both parties to cancel the undisbursed portion of the loan, or expiration of the term for which the loan was available for disbursement. The following documentation is sufficient to demonstrate that any undisbursed portion of an accepted subsidized loan is cancelled and no longer available: (a) a written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or (b) a legally binding agreement between the CDBG-DR grantee (or local government, Indian Tribe, or subrecipient administering the CDBG-DR assistance) and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts. For cancelled SBA loans, the grantee must notify the SBA that the applicant has agreed to not take any actions to reinstate the cancelled loan or draw any additional undisbursed loan amounts.

9. *Order of assistance*. CDBG-DR appropriations acts generally include a statutory order of assistance for Federal agencies. Although the language may vary among appropriations, the statutory order of assistance typically provides that CDBG-DR funds may not be used for activities reimbursable by or for which funds are made available by FEMA or USACE. This means that grantees must verify whether FEMA or USACE funds are available for an activity (i.e., the application period is open) or the costs are reimbursable by FEMA or USACE (i.e., the grantee may receive FEMA or USACE assistance to reimburse the costs of the activity) before awarding CDBG-DR assistance for costs of carrying out the same activity. If FEMA or USACE are accepting applications for the activity, the applicant

<sup>28</sup> View HUD's closeout instructions for CDBG Programs, as may be amended, for additional guidance related to recordkeeping requirements published in CPD-22-14 here: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2022-14cpdn.pdf>.

must seek assistance from those sources before receiving CDBG–DR assistance. If the applicant's costs for the activity will be reimbursed by FEMA or USACE, the grantee cannot provide the CDBG–DR assistance for those costs. In the event that FEMA or USACE assistance is awarded after CDBG–DR to pay the same costs, it is the CDBG–DR grantee's responsibility to recapture CDBG–DR assistance that duplicates assistance from FEMA or USACE.

Under the Stafford Act, a Federal agency that provides duplicative assistance must collect that assistance. For CDBG–DR grants, the grantee is required to collect duplicative assistance it provides. A grantee that does not collect duplicative CDBG–DR assistance that it provides may resolve this noncompliance by reimbursing its program account with non-Federal funds in the amount of the duplication and reprogramming the use of the funds in accordance with applicable requirements to avoid other corrective or remedial actions.

FEMA regulations at 44 CFR 206.191 set forth a delivery sequence that establishes which source of assistance is duplicative for certain programs. CDBG–DR assistance is not listed in FEMA's sequence, but as a practical matter, CDBG–DR assistance duplicates other sources received before CDBG–DR assistance for the same purpose and portion of need. As such, any CDBG–DR assistance that duplicates another source must be collected by the grantee. The mandatory agreement to repay (discussed in paragraph 12 below) can be used to prevent duplication by assistance that is available, but not yet received. If the duplicative assistance is received after CDBG–DR, the agreement will give the grantee the ability to collect the DOB.

10. *Multiple disasters.* When multiple disasters occur in the same location, and the applicant has not recovered from the first disaster at the time of a second disaster, the assistance provided in response to the second disaster may duplicate assistance for the same purpose and need as assistance provided after the first disaster. HUD recognizes that in this scenario, DOB calculations can be complicated. Damage from a second disaster, for example, may destroy work funded and completed in response to the first disaster. The second disaster may also damage or destroy receipts and other documentation of how applicants expended assistance provided after the first disaster.

Therefore, HUD is adopting the following policy that is applicable to circumstances when two disasters occur in the same area, and the applicant has not fully recovered from the first disaster before the second disaster occurs:

Applicants are not required to maintain documentation related to the use of public disaster assistance (Federal, State, and local) beyond the period required by the agency that provided the assistance. If documentation cannot be provided, the grantee may accept a self-certification regarding how the applicant used the other agency's assistance, provided that the applicant is advised of the criminal and civil penalties that apply in cases of false claims and fraud, and the grantee determines that

the applicant's total need is consistent with data the grantee has about the nature of damage caused by the disasters (*e.g.*, flood inundation levels). For example, a second disaster strikes three years after an agency provided assistance in response to the first disaster, and that agency required applicants to maintain documentation for two years, the grantee may accept a self-certification regarding how the applicant used the other agency's assistance. Additionally, if a second disaster strikes and destroys an applicant's paperwork, the grantee may make a determination to accept a self-certification regarding how the applicant used the other assistance.

11. *DOB recordkeeping.* The grantee must document compliance with DOB requirements. Policies and procedures for DOB must be specific for each program funded by the CDBG–DR grantee and should be commensurate with risk. Grantees should be especially careful to sufficiently document the DOB analysis for activities they are carrying out directly. Insufficient documentation on DOB can lead to findings, which can be difficult to resolve if records are missing, inadequate, or inaccurate to demonstrate compliance with DOB requirements.

When documenting its DOB analysis, grantees cannot rely on self-certification from the applicant alone for proof of other sources of funds for the same purpose (unless authorized by the Universal Notice, see paragraph 10 above). Any self-certification by an applicant must be based on supporting evidence that will be kept available for inspection by HUD and oversight agency such as HUD Office of Inspector General (HUD OIG). For example, if an applicant self-certifies that other sources of funds were received and expended for a different purpose than the CDBG–DR funds, grantees must substantiate this assertion with an additional source of information (*e.g.*, physical inspections, credit card statements, work estimates, contractor invoices, flood inundation records, or receipts). For these reasons, HUD recommends that as soon as possible after a disaster, grantees advise the public and potential applicants to retain all receipts that document expenditures for recovery needs. Grantees should consult their assigned HUD CPD staff member with questions about the sufficiency of documentation.

12. *Agreement to repay.* The Stafford Act requires grantees to ensure that applicants agree to repay all duplicative assistance to the agency providing that Federal assistance. As described in this section, each applicant must also enter into an agreement with the CDBG–DR grantee to repay any assistance later received for the same purpose for which the CDBG–DR funds were provided. This agreement can be in the form of a subrogation agreement or similar document and must be signed by every applicant before the grantee disburses any CDBG–DR assistance to the applicant.

In its policies and procedures, the grantee must establish a method to monitor each applicant's compliance with the agreement for a reasonable period after project completion (*i.e.*, a time period commensurate

with risk). Additionally, section II.A.1. of the Universal Notice requires a grantee's agreement to also include the following language: "Warning: Any person who knowingly makes a false claim or statement to HUD or causes another to do so may be subject to civil or criminal penalties under 18 U.S.C. 2, 287, 1001 and 31 U.S.C. 3729."

13. *Collecting a DOB.* If a potential DOB is discovered after CDBG–DR assistance has been provided, the grantee must reassess the applicant's need at that time (see 4.e. above). If additional need is not demonstrated, CDBG–DR funds shall be recaptured to the extent they are in excess of the remaining need and duplicate other assistance received by the applicant for the same purpose. However, this determination may depend on what sources of assistance were last received by the applicant.

If a grantee fails to recapture funds from an applicant, HUD may impose corrective actions pursuant to 24 CFR 570.495, 24 CFR 570.910, and **Federal Register** notices, as applicable. However, as described above in paragraph 9, a grantee that does not collect duplicative CDBG–DR assistance that it provides may resolve this noncompliance by reimbursing its program account with non-Federal funds in the amount of the duplication and reprogramming the use of the funds in accordance with applicable requirements to avoid other corrective or remedial actions.

HUD reminds grantees that the Stafford Act states that "A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source." A grantee's failure to collect a DOB does not remove an applicant's potential liability to the United States.

13.a. *Not in the best interest of the Federal government to collect.* Section 312(c) of the Stafford Act states that "the agency which provided the duplicative assistance shall collect it from the recipient . . . when the head of such agency considers it to be in the best interest of the Federal government" 42 U.S.C. 5155(c). There are extraordinary situations where the Secretary may determine that collecting a DOB is not in the best interest of the Federal government. For grants subject to the Universal Notice, HUD is establishing these specific circumstances as situations when collection is not necessary. HUD's secretary has determined that it is not in the best interest of the Federal government to collect a DOB in the following circumstances:

(1). The duplicative assistance was received by low- and moderate-income beneficiaries that, after the receipt of the CDBG–DR assistance, are:

- i. Deceased;
- ii. Subject to a foreclosure action on a property rehabilitated, constructed, or reconstructed with CDBG–DR funds; or
- iii. A debtor in a bankruptcy proceeding or who recently exited a bankruptcy proceeding (or similar proceeding for insolvent debtors under State law, such as an assignment for the benefit of creditors).

Additionally, the grantee may refer to any relevant guidance or the debt collection

procedures in place for the State or local government. HUD is available to provide guidance to grantees in establishing or revising the grantee's DOB policies and procedures.

## Appendix D. Detailed Table of Contents to the Universal Notice

### Preamble

#### Community Development Block Grant Disaster Recovery Universal Notice: Waivers and Alternative Requirements (The "Universal Notice")

- I. Phase One: The Action Plan.
- I.A. CDBG–DR Action Plans Defined.
- I.B. Admin Action Plan.
- I.B.1. *Developing the Admin Action Plan.*
- I.B.2. *Submission and publication of the Admin Action Plan.*
- I.B.3. *Entering administrative activities into DRGR.*
- I.B.4. *Applicability of the Admin Action Plan.*
- I.B.5. *Admin Action Plan certifications waiver and alternative requirement.*
- I.C. Action Plan.
- I.C.1. *Developing the Action Plan.*
- I.C.1.a. *Unmet needs assessment.*
- I.C.1.a.(i). *Unmet needs in the MID areas.*
- I.C.1.a.(ii). *Unmet needs requirements.*
- I.C.1.b. *Mitigation needs assessment.*
- I.C.1.c. *Fair housing and civil rights assessment.*
- I.C.1.c.(i). *Fair housing and civil rights laws and terminology defined.*
- I.C.1.c.(ii). *Fair housing and civil rights data collection.*
- I.C.1.d. *Connection of proposed programs and projects to unmet needs, mitigation needs, and fair housing and civil rights assessments.*
- I.C.1.e. *Allocation and award caps.*
- I.C.1.e.(i). *Prioritization for allocations less than \$20 million.*
- I.C.1.f. *Funding criteria.*
- I.C.1.g. *Protocols for substantial amendments.*
- I.C.2. *Citizen participation requirements.*
- I.C.2.a. *Consultation during Action Plan preparation.*
- I.C.2.b. *Public comment period and minimum public hearing requirement.*
- I.C.2.c. *Consideration of public comments.*
- I.C.3. *Submission of the Action Plan.*
- I.C.4. *Action Plan certifications waiver and alternative requirement.*
- I.C.5. *HUD Action Plan review process.*
- I.C.5.a. *General HUD review of an Action Plan.*
- I.C.5.b. *Standard of review of an Action Plan.*
- I.C.5.c. *Written notice of return of an Action Plan.*
- I.C.5.d. *Written notice of disapproval of an Action Plan.*
- I.C.5.e. *Revisions and resubmission of an Action Plan.*
- I.C.6. *Amendments to the Action Plan.*
- I.C.6.a. *Substantial amendment.*
- I.C.6.a.(i). *General HUD review of a substantial amendment to an Action Plan.*
- I.C.6.a.(ii). *Standard of review of a substantial amendment to an Action Plan.*
- I.C.6.a.(iii). *Revisions and resubmission of a substantial amendment to an Action Plan.*
- I.C.6.b. *Nonsubstantial amendment.*
- II. Phase Two: Financial Certification and Oversight of Funds.
- II.A. Certification of Adequate Financial Controls and Procurement Processes, and Procedures for Proper Grant Management.
- II.A.1. *Documentation requirements.*
- II.A.1.a. *Proficient financial management controls.*
- II.A.1.b. *Procedures for procurement.*
- II.A.1.c. *Policies and procedures to maintain a comprehensive disaster recovery website.*
- II.A.1.d. *Procedures to detect and prevent fraud, waste, and abuse.*
- II.A.1.e. *Policies and procedures to prevent DOB.*
- II.A.1.f. *Policies and procedures for timely expenditures of grant funds.*
- II.A.1.g. *Capacity assessment and staffing analysis.*
- II.A.1.g.(i). *Capacity assessment.*
- II.A.1.g.(ii). *Staffing analysis.*
- II.B. *Relying on Prior Financial Certification Submissions.*
- II.C. *Obligation and Expenditure of Funds.*
- III. Phase Three: Implementation of Universal Notice Requirements.
- III.A. *Policies and Procedures—Universal Notice Requirements.*
- III.A.1. *Development of program-specific policies and procedures.*
- III.A.2. *Required policies and procedures for all CDBG–DR funded programs.*
- III.A.2.a. *Fair housing and civil rights policies and procedures.*
- III.A.2.b. *Minimizing displacement and relocation policies and procedures.*
- III.A.2.c. *Mitigation policies and procedures.*
- III.A.2.d. *Timeliness policies and procedures.*
- III.A.3. *Required policies and procedures for housing programs.*
- III.A.4. *Required policies and procedures for infrastructure programs.*
- III.A.5. *Required policies and procedures for economic revitalization programs.*
- III.A.6. *Consultation and website requirements for program implementation policies.*
- III.A.6.a. *Consultation with citizen advisory groups.*
- III.A.6.b. *Publication of program-specific policies and procedures.*
- III.A.7. *HUD program-specific policies and procedures review process.*
- III.B. *Grant Administration*
- III.B.1. *Overall benefit.*
- III.B.1.a. *Use of the "upper quartile" or "exception criteria."*
- III.B.1.b. *Clarification of the use of "uncapped" income limits.*
- III.B.2. *Use of the urgent need national objective.*
- III.B.3. *Grant administration cap.*
- III.B.3.a. *Use of funds for administrative costs across multiple grants.*
- III.B.4. *Planning cap.*
- III.B.5. *Public service cap.*
- III.B.6. *Consolidated Plan.*
- III.B.7. *Procurement.*
- III.B.8. *Public disaster recovery website.*
- III.B.8.a. *Publication and accessibility of documents.*
- III.B.9. *Application status.*
- III.B.10. *Environmental requirements.*
- II.B.10.a. *Process for environmental release of funds when a State carries out activities directly.*
- III.B.10.b. *Responsibilities of States assuming HUD environmental responsibilities.*
- III.B.10.c. *Adoption of another agency's environmental review under the Stafford Act.*
- III.B.10.d. *Historic preservation reviews.*
- III.B.10.e. *Tiered environmental reviews.*
- III.B.10.f. *FFRMS floodplain and elevation.*
- III.B.11. *Flood insurance requirements.*
- III.B.11.a. *Flood insurance purchase requirements.*
- III.B.11.b. *Federal assistance to owners remaining in a floodplain.*
- III.B.11.b.(i). *Prohibition on flood disaster assistance for failure to obtain and maintain flood insurance.*
- III.B.11.b.(ii). *Prohibition on flood disaster assistance for households above 120 percent of AMI for failure to obtain flood insurance.*
- III.B.11.b.(iii). *Responsibility to inform property owners to obtain and maintain flood insurance.*
- III.B.12. *Program income.*
- III.B.12.a. *Definition of program income.*
- III.B.12.b. *Program income—does not include.*
- III.B.12.c. *Recording program income.*
- III.B.12.d. *Retention of program income.*
- III.B.12.e. *Program income—use, close out, and transfer.*
- III.B.13. *Revolving funds.*
- III.B.14. *Reimbursement of disaster recovery expenses.*
- III.B.14.a. *Reimbursement of pre-award costs by a grantee or subrecipient.*
- III.B.14.b. *Reimbursement of pre-application costs of homeowners, renters, businesses, and other qualifying entities.*
- III.B.15. *URA, Section 104(d), and related CDBG program requirements.*
- III.B.15.a. *Section 104(d) RARAP.*
- III.B.15.b. *Optional relocation.*
- III.B.15.c. *Section 104(d) relocation assistance.*
- III.B.15.d. *One-for-one replacement requirement.*
- III.B.15.e. *Lump sum rental assistance payments for residential tenants.*
- III.B.15.f. *Voluntary acquisition—homebuyer primary residence purchase.*
- III.B.15.g. *Waiver of Section 414 of the Stafford Act.*
- III.B.16. *DOB.*
- III.B.17. *Citizen complaints.*
- III.C. *State Grantee Only Requirements.*
- III.C.1. *Combined technical assistance and administrative cap (state grantees only).*
- III.C.2. *Planning-only activities (state grantees only).*
- III.C.3. *Direct grant administration and means of carrying out eligible activities (state grantees only).*
- III.C.4. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties (state grantees only).*



- III.C.5. *Use of subrecipients (state grantees only).*
- III.C.6. *Recordkeeping (state grantees only).*
- III.C.7. *Change of use of real property (state grantees only).*
- III.C.8. *Responsibility for review and handling of noncompliance (state grantees only).*
- III.C.9. *Consultation (state grantees only).*
- III.D. Waivers and Alternative Requirements Related to Eligible Activities.
- III.D.1. *Connection to the disaster.*
- III.D.1.a. *Documenting a connection to the disaster.*
- III.D.2. *MID areas.*
- III.D.3. *Mitigation measures.*
- III.D.4. *Mitigation activities—CDBG–DR mitigation set-aside.*
- III.D.4.a. *Alignment with mitigation plans.*
- III.D.5. *Housing activities and standards.*
- III.D.5.a. *New housing construction waiver.*
- III.D.5.b. *Standards for new construction, reconstruction, and rehabilitation.*
- III.D.5.b.(i). *Standards for new construction and reconstruction of residential buildings.*
- III.D.5.b.(ii). *Standards for rehabilitation of non-substantially damaged residential buildings.*
- III.D.5.c. *Broadband infrastructure or technology to support housing.*
- III.D.5.d. *Periods of affordability for new construction of affordable rental housing.*
- III.D.5.e. *Homeownership assistance.*
- III.D.5.f. *Interim mortgage assistance.*
- III.D.5.g. *Rental assistance.*
- III.D.5.h. *Disaster relief assistance for LMI persons.*
- III.D.5.i. *Buyouts.*
- III.D.5.i.(i). *Buyout requirements:*
- III.D.5.i.(ii). *National objectives for buyouts.*
- III.D.5.j. *Safe housing incentives.*
- III.D.5.j.(i). *National objectives for safe housing incentives.*
- III.D.5.k. *Redevelopment of acquired properties.*
- III.D.5.l. *Alternative requirement for housing rehabilitation and buyout—assistance for second homes.*
- III.D.6. *Infrastructure activities and standards.*
- III.D.6.a. *Privately owned shelters.*
- III.D.6.b. *Assistance to buildings for the general conduct of government when using CDBG–DR funds as the non-Federal match.*
- III.D.6.c. *FAST–41 projects requirements.*
- III.D.6.d. *CDBG–DR funds as non-Federal match.*
- III.D.6.d.(i). *Alternative requirement when using CDBG–DR funds as the non-Federal match in a FEMA-funded project (building codes and standards).*
- III.D.6.e. *Flood control structure requirements.*
- III.D.6.f. *LMI benefit for infrastructure activities.*
- III.D.6.g. *Assistance to private utilities.*
- III.D.7. *Economic revitalization and Section 3 activities and standards.*
- III.D.7.a. *Economic revitalization assistance.*
- III.D.7.b. *National objective documentation for activities that support economic revitalization.*
- III.D.7.c. *Public benefit for activities that support economic revitalization.*
- III.D.7.d. *Section 3 worker eligibility and documentation requirements.*
- III.D.7.e. *Business relocation assistance.*
- III.D.7.f. *Underwriting.*
- III.D.7.g. *Limitation on use of funds for eminent domain.*
- III.E. *Ineligible Activities in CDBG–DR.*
- III.E.1. *Prohibition on compensation.*
- III.E.2. *Prohibition on forced mortgage payoff.*
- III.F. *Performance Reviews.*
- III.F.1. *Timely distribution and expenditure of funds.*
- III.F.2. *Review of continuing capacity.*
- III.F.2.a. *Corrective and remedial actions.*
- III.F.2.b. *Additional criteria and specific conditions to mitigate risk.*
- III.G. *Grantee Reporting Requirements in the Disaster Recovery Grant Reporting (DRGR) System.*
- III.G.1. *Submitting the DRGR Action Plan.*
- III.G.2. *Grantee reporting requirements in DRGR.*
- III.G.2.a. *Maintain grantee records within DRGR.*
- III.G.2.b. *Timeline for submitting grantee’s initial performance report.*
- III.G.2.c. *Quarterly submission of performance report in DRGR.*
- III.G.2.c.(i). *Reviewed and approved performance report.*
- III.G.2.c.(ii). *Rejected performance report.*
- III.G.3. *Using DRGR to draw grant funds.*
- IV. *Assistance Listing Numbers.*
- V. *Finding of No Significant Impact.*
- Appendix A. *Certifications Waiver and Alternative Requirement for Admin Action Plan Submission.*
- Appendix B. *Certifications Waiver and Alternative Requirement for Action Plan Submission.*
- Appendix C. *Duplication of Benefits (DOB).*

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