



This document is scheduled to be published in the Federal Register on 04/16/2012 and available online at <http://federalregister.gov/a/2012-09094>, and on FDsys.gov

Billing Code 4210-67p
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5628-N-01]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant (CDBG) Disaster Recovery Grantees under the Department of Housing and Urban Development Appropriations Act, 2012

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

ACTION: Notice.

SUMMARY: This Notice advises the public of the allocation of CDBG disaster recovery funds for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster in 2011 under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). As described in the SUPPLEMENTARY INFORMATION section of this Notice, HUD is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements upon the request of a grantee. Therefore, this Notice describes applicable waivers and alternative requirements, as well as the application process, eligibility requirements, and relevant statutory provisions for grants provided under this Notice.

DATES: Effective Date: **[Insert date 5 days from date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Scott Davis, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by

calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Davis at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

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I. Allocations

Section 239 of the Department of Housing and Urban Development Appropriations Act, 2012 (Pub. L. 112-55, approved November 18, 2011) (Appropriations Act) makes available up to \$400 million, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) in 2011. The law provides that grants shall be awarded directly to a State or unit of general local government at the discretion of the Secretary.

To comply with statutory direction that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD computes allocations based on data that are generally available and that cover all the eligible affected areas. Within states receiving an allocation in this Notice, the Department identified the “most impacted and distressed areas” as those counties that have more than \$10 million in estimated unmet severe housing and business needs. If a CDBG entitlement jurisdiction accounts for \$6 million or more of funds allocated within a state, it receives a direct award (due to its extraordinarily high level of localized unmet need, one non-entitlement jurisdiction (the city of Minot, ND) also receives a direct award under this Notice). Each local jurisdiction receiving a direct award lies within a county that meets the “most impacted and distressed” criterion.

To ensure that funds are dedicated to the most impacted and distressed areas, 80 percent of the combined total of all the funds awarded within a state (this includes funds awarded directly to a State as well as those funds awarded directly to local governments) must be spent in the “most impacted and distressed” counties (*i.e.*, those identified by HUD as having more than \$10 million in estimated unmet severe housing and business needs). Since a local government receiving a direct grant allocation must spend the entirety of its grant within its jurisdiction, HUD has identified the remaining amount of each grant awarded directly to a State that must be expended within its “most impacted” counties in order to reach the 80 percent threshold (see Table 1). A more detailed explanation of HUD’s allocation methodology is provided as Appendix A within this Notice.

The principle behind the 80 percent rule is that each State received their allocation based on the estimated unmet needs in the most impacted counties (*i.e.*, those counties with more than \$10 million in severe unmet housing and business needs) and thus HUD is requiring that each

State direct these limited resources toward those most impacted counties. Nonetheless, HUD recognizes that there may be circumstances where data regarding damage estimates are subsequently revised, highly localized damage may occur outside of the most impacted counties, or overall recovery would otherwise benefit from expenditures outside of those most impacted counties. As a result, HUD is permitting States to spend the portion of its award in excess of the 80 percent threshold to address recovery needs outside of its “most impacted” counties. However, these funds must still be spent within counties that received a Presidential disaster declaration in 2011.

Based on a review of the impacts from Presidentially-declared disasters occurring in 2011, and estimates of unmet need, HUD is making the following allocations:

TABLE 1—ALLOCATIONS UNDER PUB. L. 112-55

Disaster No.	State	Grantee	Allocation	Minimum amount that must be expended in the “most impacted” counties identified
4020, 4031	New York	State of New York	\$71,654,116	(\$53,011,323) Schoharie, Tioga, Broome, Greene, and/or Orange
4020, 4031	New York	Orange County, NY	\$11,422,029	All funds must be spent within jurisdiction
4031	New York	Town of Union, NY	\$10,137,818	All funds must be spent within jurisdiction
1981	North Dakota	State of North Dakota	\$11,782,684	(\$0) Ward
1981	North Dakota	City of Minot, ND	\$67,575,964	All funds must be spent within jurisdiction
1971	Alabama	State of Alabama	\$24,697,966	(\$13,584,750) Tuscaloosa, Marion, Jefferson and/or DeKalb
1971	Alabama	City of Tuscaloosa	\$16,634,702	All funds must be spent within jurisdiction
1971	Alabama	Jefferson County	\$7,847,084	All funds must be spent within jurisdiction
1971	Alabama	City of Birmingham	\$6,386,326	All funds must be spent within jurisdiction

1980, 4012	Missouri	State of Missouri	\$8,719,059	(\$0) Jasper
1980	Missouri	City of Joplin, MO	\$45,266,709	All funds must be spent within jurisdiction
4025, 4030	Pennsylvania	State of Pennsylvania	\$27,142,501	(\$17,283,073) Bradford, Dauphin, Columbia, Wyoming, and/or Luzerne
4025, 4030	Pennsylvania	Luzerne County, PA	\$15,738,806	All funds must be spent within jurisdiction
4030	Pennsylvania	Dauphin County, PA	\$6,415,833	All funds must be spent within jurisdiction
4029	Texas	State of Texas	\$31,319,686	(\$25,055,749) Bastrop
1995, 4001, 4022	Vermont	State of Vermont	\$21,660,211	(\$17,328,169) Washington and/or Windsor
4021	New Jersey	State of New Jersey	\$15,598,506	(\$12,478,805) Passaic
TOTAL			\$400,000,000	

As stated by the Appropriations Act, funds provided in today’s Notice shall not adversely affect the amount of any non-disaster formula assistance received by a State or unit of general local government under the Community Development Fund. Unless noted otherwise, the term “grantee” refers to any grantee—whether State, city, or county—receiving a direct award under this Notice.

II. Use of Funds

The Appropriations Act requires funds to be used only for specific disaster-related purposes. The law also requires that prior to the obligation of funds a grantee shall submit a plan detailing the proposed use of all funds, including criteria for eligibility and how the use of these funds will address long-term recovery. Thus, in an Action Plan for Disaster Recovery, grantees must describe uses and activities that are: (1) authorized under title I of the Housing and Community Development Act of 1974 (HCD Act) or allowed by this Notice, and (2) a response to a disaster-related impact. To help meet these requirements, the Department expects each grantee to conduct an assessment of community impacts and unmet needs to guide the

development and prioritization of planned recovery activities. Allocations of funding in each grantee's Action Plan should reflect the findings of that grantee's needs assessment. For more guidance on the needs assessment and the creation of the Action Plan, see paragraph 1 under section VI of this Notice: "Applicable Rules, Statutes, Waivers, and Alternative Requirements."

Additionally, as provided for in the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program. Funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency (FEMA), the U.S. Army Corps of Engineers (USACE), or the Small Business Administration (SBA).

III. Prevention of Fraud, Abuse, and Duplication of Benefits

To prevent fraud, abuse of funds, mismanagement, and duplication of benefits under the Appropriations Act, this Notice includes specific reporting, written procedures, monitoring, and internal audit requirements applicable to each grantee. Departmental guidance to assist in preventing a duplication of benefits is provided at 76 FR 71060 (published November 16, 2011) and in paragraph 26 in this Notice. Other reporting, procedural, and monitoring requirements are discussed in paragraphs 1 and 14, under section VI of this Notice: "Applicable Rules, Statutes, Waivers, and Alternative Requirements." In addition, the Department will institute risk analysis and on-site monitoring of grantee management as well as collaborate with the HUD Office of Inspector General to plan and implement oversight of these funds.

IV. Authority to Grant Waivers

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

guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead-based paint), upon: (1) a request by the grantee explaining why such a waiver is required to facilitate the use of such funds or guarantees, and (2) a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the HCD Act. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

V. Overview of Grant Process

To begin expenditure of CDBG disaster recovery funds, the following expedited steps are necessary:

- Grantee adopts citizen participation plan for disaster recovery in accordance with the requirements of this Notice;
- Grantee publishes its Action Plan for Disaster Recovery on the grantee's official web site for no less than 7 calendar days to solicit public comment;
- Grantee responds to public comment and submits its Action Plan (which includes Standard Form 424 (SF-424) and certifications) to HUD no later than 90 days after the date of this Notice;
- HUD expedites review (allotted 45 days from date of receipt; however, completion of review is anticipated much sooner);
- HUD accepts the Action Plan and sends a cover letter, grant conditions, and signed grant agreement to the grantee;
- Grantee signs and returns the fully executed grant agreement;
- Grantee ensures that the final HUD-accepted Action Plan posted on its official website;

- HUD establishes the grantee's line of credit;
- Grantee requests and receives Disaster Recovery Grant Reporting (DRGR) system access (if the grantee does not already have it);
- If it has not already done so, grantee enters the activities from its published Action Plan into DRGR and submits it to HUD. (Funds can be drawn from the line of credit only for activities that are established in DRGR.)
- After the Responsible entity completes applicable environmental review(s) pursuant to 24 CFR part 58 and, as applicable, receives from HUD or the State an approved Request for Release of Funds and certification, the grantee may draw down funds from the line of credit.
- The grantee must begin to draw down funds no later than 180 days after the date of this Notice.

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

The Secretary finds that the waivers and alternative requirements, as described in this Notice, are necessary to facilitate the use of these funds for the statutory purposes, and are not inconsistent with the overall purpose of the HCD Act or the Cranston-Gonzalez National Affordable Housing Act, as amended. Under the requirements of the Appropriations Act and the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), regulatory waivers must be justified and published in the **Federal Register**.

This section of the Notice describes applicable waivers and alternative requirements granted in response to requests from grantees. The following requirements provide additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation. As a result, they apply only to the CDBG disaster recovery funds

appropriated in the Appropriations Act, and not to funds provided under the annual formula State or Entitlement CDBG programs, or those provided under any other component of the CDBG program, such as the Neighborhood Stabilization Program.

Grantees may request additional waivers from the Department as needed to address specific needs related to their recovery activities. The Department will respond to requests for waivers after working with the grantee to tailor its program(s) to best meet its needs. Except where noted, waivers and alternative requirements apply to all grantees under this Notice.

Except as described in this Notice, statutory and regulatory provisions governing the State CDBG program shall apply to any State receiving an allocation under this Notice. Statutory and regulatory provisions governing the Entitlement CDBG program shall apply to any unit of general local government receiving a direct allocation in this Notice. Applicable statutory provisions can be found at 42 U.S.C. 5301 *et seq.* Applicable State and entitlement regulations can be found at 24 CFR part 570.

1. *Action Plan for Disaster Recovery waiver and alternative requirement.* The traditional requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR 91.220, and 24 CFR 91.320 are waived for these disaster recovery grants. Instead, grantee must submit to HUD an Action Plan for Disaster Recovery. This streamlined plan will allow grantees to more quickly and effectively implement disaster recovery programs while conforming with statutory requirements. During the course of the grant, HUD will monitor the grantee's actions and use of funds for consistency with the plan, as well as meeting the performance and timeliness objectives therein.

A. Action Plan. The Action Plan must identify the proposed use of all funds, including criteria for eligibility, and how the uses address long-term recovery needs. Due to the need to

develop and submit an acceptable Action Plan in a timely manner, a grantee's Action Plan may program or budget a portion of funds toward a particular use with only a broad or general description of that use. However, HUD will not consider an Action Plan substantially complete unless at least 50 percent of grant funds are articulated at the level of detail described in paragraphs (B) or (C) of this subsection, as applicable. Funds dedicated for uses not described in accordance with paragraphs (B) or (C) of this subsection will be restricted on the grantee's line of credit until the grantee submits, and HUD accepts, an Action Plan amendment programming the use of those funds at the necessary level of detail as described in paragraphs (B) or (C) of this subsection. Once the Action Plan amendment is accepted, and the Responsible entity completes an environmental review and obtains HUD approval of a Request for Release of Funds, as applicable, HUD will unblock the restricted funds and the grantee may begin to draw them down immediately. The grantee must program 100 percent of its grant funds at the necessary level of detail within 9 months of the date of this Notice.

The Action Plan must contain:

(1) an impact and unmet needs assessment. Development of a needs assessment to understand the type and location of community needs will enable grantees to target limited resources to areas with the greatest need. Grantees receiving an award under today's Notice must conduct a needs assessment to inform the allocation of CDBG disaster recovery resources. CDBG-DR funds may be used to conduct the needs assessment. At a minimum, the needs assessment must evaluate three core aspects of recovery—housing (interim and permanent, owner and rental, single family and multifamily, affordable and market rate), infrastructure, and the economy (*e.g.*, estimated job losses or tax revenue loss due to the disaster). The assessment must also take into account the various forms of assistance available to, or likely to be available

to, affected communities (*e.g.*, projected FEMA funds) and individuals (*e.g.*, estimated insurance) to ensure CDBG disaster recovery funds meet needs that are not likely to be addressed by other sources of funds. The assessment must use the best available data and cite data sources.

Impacts should be described geographically by type at the lowest level practicable (*e.g.*, county level or lower if available). Grantees should use the most recent available data (*e.g.*, from FEMA and SBA) and estimate the portion of need likely to be addressed by insurance proceeds, other federal assistance, or any other funding source (thus producing an estimate of unmet need).

Disaster recovery needs evolve over time as the full impact of a disaster is realized and costs of damages transition from estimated to actual. Remaining recovery needs also evolve over time as they are met by dedicated resources. As a result, the needs assessment and Action Plan may be considered as a living document, which grantees may need to periodically update over time.

(2) a description of how the grantee will promote (a) sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management, and (b) how it will coordinate with other local and regional planning efforts;

(3) a description of how the grantee will leverage CDBG disaster recovery funds with funding provided by other federal, state, local, private, and non-profit sources to generate a more effective and comprehensive recovery. Examples of other federal sources are those provided by HUD, FEMA (specifically the Public Assistance Program, Individual Assistance Program, and Hazard Mitigation Grant Program), the Small Business Administration, Economic Development Administration, U.S. Army Corps of Engineers, and the U.S. Department of Agriculture. The

grantee should seek to maximize the number of activities and the degree to which CDBG funds are leveraged. Leveraged funds shall be identified for each activity, as applicable, in the DRGR system;

(4) a description of how the grantee will encourage construction methods that emphasize high quality, durability, energy efficiency, sustainability, and mold resistance, including how it will support adoption and enforcement of modern building codes and mitigation of hazard risk, where appropriate;

(5) a description of how the grantee will encourage the provision of adequate, flood-resistant housing for all income groups, including a description of the activities it plans to undertake to address: (a) transitional housing needs of homeless individuals and families (including subpopulations), (b) prevention of low-income individuals and families with children (especially those with incomes below 30 percent of the area median) from becoming homeless, and (c) the special needs of persons who are not homeless but require supportive housing (e.g., elderly, persons with disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents, as identified in 24 CFR 91.315 (e) or 91.215(e) as applicable); grantees should consider how planning decisions may affect racial, ethnic, and low-income concentrations. They should also consider ways to promote the availability of affordable housing in low-poverty, non-minority areas where appropriate and in response to disaster related impacts;

(6) a description of how the grantee plans to minimize displacement of persons or entities, and assist any persons or entities displaced;

(7) a description of how the grantee will handle program income, and the purpose(s) for which it may be used;

(8) a description of monitoring standards and procedures that are sufficient to ensure program requirements, including nonduplication of benefits, are met and that provide for continual quality assurance and investigation. Grantees must also have an internal audit function with responsible audit staff reporting independently to the chief officer or board of the governing body of any designated administering entity;

(9) a description of the steps the grantee will take to prevent fraud, abuse, and mismanagement of funds (including potential conflicts of interest and duplication of benefits). All such steps taken shall be identified quarterly in its performance report to HUD;

(10) a description of how the grantee will provide for increasing the capacity of grant recipients, subrecipients, subgrantees, and any other entity responsible for administering activities under this grant;

(11) a description of the connection between identified unmet needs and the allocation of CDBG disaster recovery resources by the grantee; and

(12) a performance schedule. The Action Plan must include a performance schedule for carrying out programs and/or activities. The schedule should include projected performance (in terms of both expenditures and outcome measures) for the following activity types (at a minimum): (1) housing, (2) infrastructure, (3) economic development, (4) planning and administration, and (5) other (if applicable). The Action Plan should also include a projected expenditure schedule for the entirety of the grant amount as a whole. Grantees may revise the performance schedule as needed via an Action Plan amendment to reflect any changes in programs or activities.

B. Funds awarded to a State. A State's Action Plan shall describe the method of distribution of funds to units of local government and/or descriptions of specific programs or activities the State will carry out directly. The description must include:

- (1) how the needs assessment informed allocation determinations;
- (2) the threshold factors and grant size limits that are to be applied;
- (3) the projected uses for the CDBG disaster recovery funds, by responsible entity, activity, and geographic area, when the State carries out an activity directly;
- (4) for each proposed program and/or activity carried out directly, its respective CDBG activity eligibility category (or categories) as well as national objective(s).
- (5) how the method of distribution to local governments or programs/activities carried out directly will result in long-term recovery from specific impacts of the disaster.
- (6) when funds are allocated to units of local government, all criteria used to distribute funds to local governments including the relative importance of each criterion; and
- (7) when applications are solicited for programs carried out directly, all criteria used to select applications for funding, including the relative importance of each criterion.

C. Funds awarded directly to a unit of general local government. The unit of local government shall describe specific programs and/or activities it will carry out. The Action Plan must describe:

- (1) how the needs assessment informed allocation determinations;
- (2) the threshold factors and grant size limits that are to be applied;
- (3) the projected uses for the CDBG disaster recovery funds, by responsible entity, activity, and geographic area;

(4) how the projected uses of the funds will meet CDBG eligibility criteria and a national objective;

(5) how the projected uses of funds will result in long-term recovery from specific impacts of the disaster; and

(6) all criteria used to select applications, including the relative importance of each criterion.

D. Clarification of disaster-related activities. All CDBG disaster recovery activities must clearly address an impact of the disaster for which funding was appropriated. Given the standard CDBG requirements, this means each activity must: (1) be CDBG eligible (or receive a waiver), (2) meet a national objective, and (3) address a direct or indirect impact from the disaster in a Presidentially-declared county. A disaster-related impact can be addressed through any eligible CDBG activity.

(1) Housing. Typical housing activities include new construction and rehabilitation of single family or multifamily units. Most often, grantees use CDBG disaster recovery funds to rehabilitate damaged homes and rental units. However, grantees may also fund new construction or rehabilitate units *not* damaged by the disaster if the activity clearly addresses a disaster-related impact. This impact can be demonstrated by the disaster's overall effect on the quality, quantity, and affordability of the housing stock and the resulting inability of that stock to meet post-disaster needs and population demands. The standard CDBG rehabilitation and reconstruction rules apply.

(2) Infrastructure. Typical infrastructure activities include the repair, replacement, or relocation of damaged public facilities.

(3) Economic Revitalization. Economic revitalization is not limited to activities that are “special economic development” activities under the HCD Act, or to activities that create or retain jobs. For CDBG disaster recovery purposes, economic revitalization can include any activity that demonstrably restores and improves some aspect of the local economy; the activity may address job losses, or negative impacts to tax revenues or businesses. Examples of eligible activities include providing loans and grants to businesses, funding job training, making improvements to commercial/retail districts, and financing other efforts that attract/retain workers in devastated communities. All economic revitalization activities must address an economic impact(s) caused by the disaster (*e.g.*, loss of jobs, loss of public revenue). Through its needs assessment and Action Plan, the grantee should clearly identify the economic loss or need resulting from the disaster, and how the proposed activities will address that loss/need.

(4) Preparedness and Mitigation. The Appropriations Act states that funds shall be used for recovering from a Presidentially-declared major disaster. As such, all activities must respond to the impacts of the declared disaster. HUD strongly encourages grantees to incorporate preparedness and mitigation measures into rebuilding activities, which helps to ensure that communities recover to be safer and stronger than prior to the disaster. Incorporation of these measures also reduces costs in recovering from future disasters. However, given the limited funding available and the language in the Appropriations Act, CDBG disaster recovery funds may not be used for activities that are solely designed to prepare for and/or mitigate the effects of a future disaster without any tie to rebuilding from the previous disaster.

(5) Tie to the Disaster. Grantees must document in each project file how that activity is tied to the disaster for which it is receiving CDBG assistance.

In regard to physical losses, damage or rebuilding estimates are often the most effective tool for demonstrating the connection to the disaster. For economic or other non-physical losses, post-disaster analyses or assessments may best document the relationship between the loss and the disaster.

Note that grantees are not limited in their recovery to returning to pre-disaster conditions. Rather, grantees are encouraged to undertake activities in such a way that not only addresses the disaster-related impacts, but leaves communities better positioned to meet the needs of their post-disaster populations and prospects for growth.

E. Use of funds for other disasters not covered by the Appropriations Act. CDBG disaster recovery funds awarded under this Notice may not be used to address an impact or need originating from a disaster not occurring in 2011. However, if a need that arose from a previous disaster was exacerbated by a 2011 disaster, funds under this Notice may be used. In addition, if an impact or need originating from a 2011 disaster is subsequently exacerbated by a future disaster, funds under this Notice may also be used.

F. Use of the urgent need national objective. The traditional certification requirements for the documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), are waived for the grants under this Notice. In the context of disaster recovery, these standard requirements may prove burdensome and redundant. Since the Department only provides CDBG disaster recovery awards to grantees with documented disaster-related impacts (as supported by data provided by FEMA, SBA, and other sources), and each grantee is limited to spending funds only in counties with a Presidential disaster declaration of recent origin respective to each appropriation, the following streamlined alternative requirement recognizes the inherent urgency in addressing the serious threat to community welfare following a major disaster.

Grantees need not issue formal certification statements in order to qualify an activity as meeting the urgent need national objective. Instead, each grantee receiving a direct award under this Notice must document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the grantee. This waiver and alternative requirement allows grantees to more effectively and quickly implement disaster recovery programs. Grantees may reference in their Action Plan the type, scale, and location of the disaster-related impacts that each program and/or activity is addressing.

Grantees should identify these disaster-related impacts in their Action Plan needs assessment. The needs assessment should be updated as new or more detailed/accurate disaster-related impacts are known. Understanding that major disasters present unique challenges and that recovery can take years, it is not necessary for an activity to begin within 18 months of the disaster in order to use the urgent need national objective.

Grantees should still be mindful to use the “low- and moderate income person benefit” national objective for all activities that qualify under such criteria. At least 50 percent of the entire CDBG disaster recovery grant award must be used for activities that benefit low- and moderate-income persons.

G. Clarity of Action Plan. All grantees must include sufficient information so that citizens, units of general local government (where applicable), and other eligible subgrantees, subrecipients, or applicants will be able to understand and comment on the Action Plan and, if applicable, be able to prepare responsive applications to the grantee. The Action Plan must include a single chart or table that illustrates, at the most practical level, how all funds are budgeted (*e.g.*, by program, subgrantee, grantee-administered activity, or other category). An amount generally not to exceed ten percent of the total grant amount may be budgeted as a

separate activity for the contingency of cost overruns and unanticipated unmet needs. Once a grantee expends 80 percent of its grant amount, it should program any remaining funds budgeted for contingency into an eligible activity in order to fully expend all funds by addressing unmet needs and close out the grant.

In the case of Action Plan amendments, each amendment should constitute the entirety of the Action Plan, as amended. The beginning of every Action Plan amendment must include a section that identifies exactly what content is being added, deleted, or changed. This section must also include a chart or table that clearly illustrates where funds are coming from and where they are moving to. The Action Plan must include a revised budget allocation table that reflects the entirety of all funds, as amended. A grantee's most recent version of its entire Action Plan should be able to be accessed and viewed as a single document at any given point in time, rather than the public having to view and cross-reference changes among multiple amendments.

H. Review of Action Plan; obligation and expenditure of funds. The Action Plan must be submitted to HUD (including Standard Form 424 (SF-424) and certifications) within 90 days of the date of this Notice. HUD will expedite its review of each Action Plan—taking no more than 45 days from the date of receipt. Once HUD accepts the Action Plan, it will then issue a grant agreement obligating all funds to the grantee. In addition, HUD will establish the line of credit and the grantee will receive DRGR access (if it does not have access already). The grantee must also enter its Action Plan activities into the DRGR system in order to draw funds against them. It may enter these activities into DRGR before or after submission of the Action Plan to HUD.

All funds programmed or budgeted at a generalized level will be restricted from access on the grantee's line of credit. Once the generalized uses are described in an amended Action

Plan at the necessary level of detail, they will be released by HUD and made available for use. After the Responsible Entity completes environmental review(s) pursuant to 24 CFR part 58 (as applicable) and receives from HUD or the State an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for an activity. The disbursement of grant funds must begin no later than 180 days after the date of this Notice.

I. Amending the Action Plan. Even after all funds have been programmed or budgeted in a grantee's Action Plan at the necessary level of detail, the grantee may continue to subsequently amend its plan as needed. As needs often change throughout the long-term recovery process, grantees may find it necessary to amend its Action Plan to update its needs assessment, modify activities, create new ones, or to re-program funds.

2. *Citizen participation waiver and alternative requirement.* To permit a more streamlined process, and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 91.105(b) and (c), and 24 CFR 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at a state, entitlement, or local government level, but do require providing a reasonable opportunity (at least 7 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for a grant administered under this Notice are:

A. Before the grantee adopts the Action Plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment (including the information required in this Notice for an Action Plan for Disaster Recovery). The manner of publication

must include prominent posting on the grantee's official website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of disaster recovery should be navigable by citizens from the grantee (or administering agency) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

Despite the expedited process, grantees are still responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency. Each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction. This issue may be particularly applicable to States receiving an award under this Notice. Unlike grantees in the regular State CDBG program, State grantees under today's Notice may make grants throughout the state, including to entitlement communities. For assistance in ensuring that this information is available to LEP populations, recipients should consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* published on January 22, 2007, in the **Federal Register** (72 FR 2732).

Subsequent to publication of the Action Plan, the grantee must provide a reasonable time frame and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. In its Action Plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: a change in program benefit or eligibility criteria; the allocation or re-allocation of more than \$1 million; or

the addition or deletion of an activity. The grantee may substantially amend the Action Plan if it follows the same procedures required in this Notice for the preparation and submission of an Action Plan for Disaster Recovery. Prior to submission of a substantial amendment, the grantee is encouraged to work with its HUD representative to ensure the proposed change is consistent with this Notice, and all applicable regulations and Federal law.

B. The grantee must notify HUD, but is not required to undertake public comment, when it makes any plan amendment that is not substantial. However, every amendment to the Action Plan (substantial and non-substantial) must be numbered sequentially and posted on the grantee's website. The Department will acknowledge receipt of the notification of non-substantial amendments via email within 5 business days.

C. The grantee must consider all comments, received orally or in writing, on the Action Plan or any substantial amendment. A summary of these comments or views, and the grantee's response to each must be submitted to HUD with the Action Plan or substantial amendment.

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

E. The grantee will provide a timely written response to every citizen complaint. The response will be provided within 15 working days of the receipt of the complaint, if practicable.

3. *Direct grant administration and means of carrying out eligible activities—applicable to State grantees only.* Requirements at 42 U.S.C. 5306 are waived to the extent necessary to allow a State to use its disaster recovery grant allocation directly to carry out State-administered activities eligible under this Notice, rather than distribute all funds to units of local government. In using statutory language similar to that used for prior CDBG supplemental appropriations, the Department believes Congress is signaling its intent that the States under this appropriation also be able to carry out activities directly. Pursuant to this waiver, the standard at section 570.480(c) will also include activities that the State carries out directly. Note that any city or county receiving a direct award under this Notice will be subject to the standard CDBG entitlement program regulations. Thus, the waiver and alternative requirement described here is inapplicable to local jurisdictions.

Activities eligible under this Notice may be undertaken, subject to State law, by the grantee through its employees, through procurement contracts, or through loans or grants under agreements with subrecipients. Activities made eligible under section 105(a)(15) of the HCD Act, as amended, may only be undertaken by entities specified in that section, whether the assistance is provided to such an entity from the State or from a unit of general local government.

4. *Consolidated Plan waiver.* HUD is waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5), 24 CFR 91.225(a)(5), 24 CFR 91.325(b)(2), and 24 CFR 91.225(b)(3)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. However, this waiver applies only until the grantee first updates its full consolidated plan more than 30 months following the

disaster. While grantees are encouraged to incorporate disaster-recovery needs into their consolidated plan updates as soon as practicable, any unmet disaster-related needs and associated priorities should be incorporated into the grantee's next consolidated plan update following the expiration of the 30-month waiver period. If not completed already, the grantee should update its Analysis of Impediments in coordination with its post-waiver consolidated plan update, so that it more accurately reflects housing conditions following the disaster.

This waiver also allows the disaster recovery action plan for non-entitlement communities to also serve as an abbreviated Consolidated Plan under the authority at 42 U.S.C. § 12705(b) because the Secretary has determined that this is appropriate given the types and amounts of assistance the non-entitlement will receive for disaster purposes. For non-entitlement communities, HUD is also waiving 24 CFR part 91, subpart C to the extent that these provisions require elements that are not specifically required by this Notice.

The waiver is granted consistent with the non-entitlement's existing submission of needs data for addressing housing and community development needs in the State's Consolidated Plan. Note that the 30 month requirement does not apply to any non-entitlement community receiving funds under this Notice, however, it must update and amend its Action Plan within 18 months of the date of this Notice to include actions it plans to take to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing. Such policies, procedures and processes include, but are not limited to, land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment. Consistent with 91.220(j), proposed plans or actions should be reviewed periodically to ensure they best respond to the barriers to affordable housing, as they exist at that time.

5. *Requirement for consultation during plan preparation.* Currently, the statute and regulations require States to consult with affected units of local government in non-entitlement areas of the State in determining the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that any State receiving an allocation under this Notice consult with all disaster-affected units of general local government, including any CDBG-entitlement communities, in determining the use of funds. This ensures State grantees sufficiently assess the recovery needs of all areas affected by the disaster. For local governments receiving a direct award under this Notice, HUD is waiving 24 CFR 91.100 with the alternative requirement that the jurisdiction should consult with adjacent units of general local government, including local government agencies with metropolitan-wide planning responsibilities, particularly for problems and solutions that go beyond a single jurisdiction.

6. *Overall benefit waiver and alternative requirement.* The primary objective of the HCD Act is the “development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.” 42 U.S.C. § 5301(c). To carry out this objective, the statute requires that 70 percent of the aggregate of a regular CDBG program's funds be used to support activities benefitting low- and moderate-income persons. This target could be difficult to reach, and perhaps even impossible, for many communities affected by the 2011 disasters. Grantees under this Notice experienced disaster impacts that affected entire communities—regardless of income, and the existing requirement may prevent grantees from providing assistance to damaged areas of need.

Therefore, this Notice waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 24 CFR 570.200(a)(3), that 70 percent of funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of funds must benefit low- and moderate-income persons. This provides grantees with greater flexibility to carry out recovery activities by allowing up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums or blight national objectives.

7. *Use of the “upper quartile” or “exception criteria” for low- and moderate-income area benefit activities—not applicable to all grantees.* Section 105(c)(2)(A) of the HCD Act provides that “In any case in which an assisted activity described in subsection (a) is designed to serve an area generally and is clearly designed to meet identified needs of persons of low and moderate income in such area, such activity shall be considered to principally benefit persons of low and moderate income if . . . (ii) in any metropolitan city or urban county, the area served by such jurisdiction is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income. . .” HUD permits an exception to the low- and moderate-income area benefit requirement that an area contain at least 51 percent low- and moderate-income residents. This exception applies to entitlement communities that have few, if any, areas within their jurisdiction that have 51 percent or more low- and moderate-income residents. These communities are allowed to use a percentage less than 51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the “exception criteria” or the “upper quartile”. A grantee qualifies for this exception when less than one quarter of the populated block groups in its jurisdictions contain 51 percent or more low- and moderate-income persons. In such communities, activities must serve an area which contains a percentage of low- and moderate-

income residents that is within the upper quartile of all Census block groups within its jurisdiction in terms of the degree of concentration of low- and moderate-income residents. HUD assesses each grantee's census block groups to determine whether a grantee qualifies to use this exception and identifies the alternative percentage the grantee may use instead of 51 percent for the purpose of qualifying activities under the low- and moderate-income area benefit. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee accordingly.

The Department has considered and granted the requests of Orange County, New York to apply the exception criteria to these disaster recovery grants. The Department also grants the request of the State of New Jersey to allow the following entitlement communities that have disaster declarations and total damage that exceeds \$3,000,000 to apply the exception criteria for these disaster recovery grants: Passaic County, Bergen County, Morris County, Somerset County, Essex County, Middlesex County, and Monmouth County. HUD also waives section 105(c)(2)(ii) of the HCD Act and the regulations at 570.208(a)(1)(ii) to the extent that they limit the exception criteria to any metropolitan city or urban county to allow the city of Minot, a non-entitlement community, to utilize the exception criteria for the purpose of classifying activities under the low- and moderate-income area benefit national objective. HUD will provide data to the city of Minot on how this exception shall be applied.

It must be noted that HUD annually updates the low- and moderate-income summary data used to identify the exception criteria; disaster recovery grantees are required to use the most recent data available in implementing the exception criteria.

8. *Note on change to administration limitation.* For all grantees under today's Notice, the annual CDBG program administration requirements must be modified to be consistent with the

Appropriations Act, which allows up to 5 percent of the grant to be used for administrative costs, whether by the grantee, by entities designated by the grantee, by units of general local government, or by subrecipients. Thus, the total of all costs classified as administrative must be less than or equal to the 5 percent cap.

A. For State grantees under this Notice, the provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap administration and technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding \$100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed 5 percent. States remain limited to spending a maximum of 20 percent of their total grant amount on a combination of planning and program administration costs. Planning costs subject to the 20 percent cap are those defined in 42 U.S.C. 5305(a)(12).

B. Any city or county receiving a direct award under this Notice is also subject to the 5 percent administrative cap. This 5 percent applies to all administrative costs—whether incurred by the grantee or its subrecipients. However, cities or counties receiving a direct allocation under this Notice also remain limited to spending 20 percent of their total allocation on a combination of planning and program administration costs.

9. *Planning-only activities—applicable to State grantees only.* The annual State CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out

by entitlement communities are more likely to include non-project specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. These plans may guide long-term community development efforts comprising multiple activities funded by multiple sources. In the entitlement program, these more general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4).

The Department notes that almost all effective CDBG disaster 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. Therefore, for State grantees receiving an award under this Notice, the Department is removing the eligibility requirements at 24 CFR 570.483(b)(5) or (c)(3). Instead, States must comply with 24 CFR 570.208(d)(4) when funding disaster recovery-assisted planning-only grants, or directly administering planning activities that guide recovery in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or undertake are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205.

10. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties—applicable to State grantees only.* Section 5302(a)(7) of title 42, U.S.C. (definition of “nonentitlement area”) and provisions of 24 CFR part 570 that would prohibit a State from distributing CDBG funds to entitlement communities and Indian tribes under the CDBG program, are waived, including 24 CFR 570.480(a). Instead, the State may distribute funds to units of local government and Indian tribes.

11. *Use of subrecipients—applicable to State grantees only.* The State CDBG program rule does not make specific provision for the treatment of entities that the CDBG Entitlement program calls “subrecipients.” The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, for States taking advantage of the waiver to carry out activities directly, the requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply, except that specific references to 24 CFR parts 84 and 85 must be included in subrecipient agreements. OMB Circular A-87 shall apply to States and any subrecipients of a State, whether carrying out activities directly or through the use of a subrecipient.

12. *Recordkeeping—applicable to State grantees only.* When a State carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: the State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State’s administration of CDBG disaster recovery funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other federal requirements, the content of records maintained by the State shall be sufficient to: enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the State; and show how activities funded are consistent with the descriptions of activities proposed for funding in the Action Plan and/or DRGR system. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

13. *Change of use of real property—applicable to State grantees only.* This waiver conforms to the change of use of real property rule to the waiver allowing a State to carry out

activities directly. For purposes of this program, all references to “unit of general local government” in 24 CFR 570.489(j), shall be read as “unit of general local government or State.”

14. *Responsibility for review and handling of noncompliance —applicable to State grantees only.* This change is in conformance with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies for any State receiving a direct award under this Notice: the State shall make reviews and audits, including onsite reviews of any subrecipients, designated public agencies, and units of general local government, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCD Act, as amended, as modified by this Notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or units of general local government.

15. *Housing-related eligibility waivers.* The broadening of Section 105(a)(24) of the HCD Act is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case of the disasters eligible under this Notice. Thus, in accordance with the grantees’ requests, 42 U.S.C. 5305(a) is waived to the extent necessary to allow: (1) homeownership assistance for households with up to 120 percent of the area median income, (2) down payment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)), and (3) new housing construction. While homeownership assistance may be provided to households with up to 120 percent of the area median income, only those funds used to serve households with up to 80 percent of the area median income may qualify as meeting the low- and moderate-income person benefit national objective.

16. *Housing incentives to resettle in disaster-affected communities—not applicable to all grantees.* Incentive payments are generally offered in addition to other programs or funding (such as insurance), to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan. For example, a grantee may offer an incentive payment (possibly in addition to a buyout payment) for households that volunteer to relocate outside of floodplain or to a lower-risk area.

Therefore, 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to allow the provision of housing incentives. These grantees must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable, and the incentives must be in accordance with the grantee's approved Action Plan and published program design(s). This waiver does not permit a compensation program. Additionally, if the grantee requires the incentives to be used for a particular purpose by the household receiving the assistance, then the eligible use for that activity will be that required use, not an incentive. This waiver does not apply to the following grantees: the city of Birmingham, Jefferson County, and the State of Texas.

17. *Limitation on emergency grant payments—not applicable to all grantees.* 42 U.S.C. 5305(a)(8) is waived to extend interim mortgage assistance to qualified individuals from three months to up to 20 months. The time required for a household to complete the rebuilding process may often extend beyond three months, during which mortgage payments may be due but the home is inhabitable. Thus, this interim assistance will be critical for many households facing financial hardship during this period. This waiver and alternative requirement do not apply to the following grantees: Jefferson County, city of Tuscaloosa, State of Missouri, and the State of Texas.

18. *Buildings for the general conduct of government—not applicable to all grantees.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow grantees to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible. HUD believes this waiver is consistent with the overall purposes of the HCD Act, and is necessary for many grantees to adequately address critical infrastructure needs created by the disaster. This waiver does not apply to the following grantees: city of Birmingham, Jefferson County, and the State of Missouri.

Regardless of this waiver, CDBG disaster recovery funds allocated under this Notice may not be used for activities reimbursable by, or for which funds are made available by, FEMA or the Army Corps of Engineers.

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

20. *One-for-One Replacement Housing, Relocation, and Real Property Acquisition Requirements.* CDBG-assisted activities, programs and projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42

U.S.C. 4601 *et seq.*)("URA") and section 104(d) of the HCD Act (42 U.S.C. 5304(d))("Section 104(d)"). The implementing regulations for the URA are at 49 CFR part 24. The regulations for Section 104(d) are at 24 CFR part 42, subpart C.

For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and Section 104(d) requirements for grantees under this Notice:

A. One-for-one replacement requirements at 42 U.S.C. 5304(d)(2)(A)(i)-(ii) and (d)(3) and 24 CFR 42.375 are waived for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. HUD is waiving this requirement because the requirement does not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Furthermore, the requirement may discourage grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures, unsuitable for rehabilitation, can pose a threat to public health and safety and to economic revitalization. Grantees should reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note, however, that the demolition and/or disposition of Public Housing Authority-owned public housing units is covered by Section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

B. The Section 104(d) relocation assistance requirements at 42 U.S.C. 5304(d)(2)(A) and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24 for activities related to disaster recovery.

This waiver is necessary to eliminate disparities in rental assistance payments associated with activities typically funded by HUD and FEMA (e.g., buyouts and relocation). FEMA funds

are subject to the requirements of the URA and, consequently, FEMA requires rental assistance payments for displaced persons to be calculated on the basis of an amount necessary to enable the displaced person to rent comparable replacement housing for a period of 42 months. CDBG funds are also subject to the URA requirements; however, unlike FEMA funds, they are also subject to the provisions of Section 104(d). Section 104(d) requires that the calculation of rental assistance payments for displaced persons be made on the basis of 60 months. When a project is subject to both the URA and Section 104(d), the displaced person may choose to receive assistance under either authority. This waiver of the Section 104(d) requirements assures uniform and equitable treatment in getting the URA and its implementing regulations as the sole standard for relocation assistance under this Notice.

C. The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an arm’s length voluntary purchase carried out by a person who does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements following a disaster.

D. The requirements at sections 204(a) and 206 of the URA, 49 CFR 24.2(a)(6)(viii), 24.402(b)(2), and 24.404 are waived to the extent that they require the grantee to provide relocation assistance sufficient to reduce a low-income person’s rent/utility costs to 30 percent of household income post-displacement when the person had been paying rent in excess of 30 percent of household income without “demonstrable hardship” before the project. Thus, to the extent that a tenant has been paying rent in excess of 30 percent of household income without demonstrable hardship, a reduction in rental assistance payments to 30 percent of household

income would not be required. Before using this waiver, the grantee must establish a definition of “demonstrable hardship.”

E. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(ix) and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee’s replacement housing financial assistance obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that the tenant is provided referrals to comparable replacement dwellings in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. This waiver gives grantees an additional relocation resource option.

F. The requirements at section 202(b) of the URA and 49 CFR 24.302, which require that a grantee offer a displaced person the option to receive a “moving expense and dislocation allowance” based on a schedule of allowances prepared by the Federal Highway Administration as an alternative to receiving payment for actual moving and related expenses, are waived. As an alternative, the grantee must establish and offer the person a “moving expense and dislocation allowance” under a schedule of allowances that is reasonable for the jurisdiction and that takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Without this waiver and alternative requirement, disaster recovery may be impeded by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable

moving and related expenses if they find that approach preferable to the locally established “moving expense and dislocation allowance.”

G. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee or state recipient level. Unlike the regular CDBG program, States may carry out disaster recovery activities directly or through subrecipients. The regulation at 24 CFR 570.606(d) governing optional relocation policies does not account for this distinction. This waiver makes clear that local governments, including subrecipients, receiving CDBG disaster funds may establish separate optional relocation policies. This waiver is intended to provide States and local governments with maximum flexibility in developing optional relocation policies with CDBG disaster recovery funds.

21. *Program income alternative requirement.* The Department is waiving applicable program income rules at 570.500(a) and (b), 570.504, 42 USC 5304(j), and 570.489(e) to the extent necessary to provide additional flexibility as described under today’s Notice. The alternative requirements provide guidance regarding the use of program income received before and after grant closeout and address revolving loan funds.

A. Definition of program income.

(1) For the purposes of this subpart, “program income” is defined as gross income generated from the use of CDBG funds, except as provided in subparagraph D of this paragraph, and received by: (1) a State, unit of local government, or tribe, or (2) a subrecipient of a State, unit of general local government, or tribe. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel

of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

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

(b) Proceeds from the disposition of equipment purchased with CDBG funds;

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

(d) Net income from the use or rental of real property owned by a State, unit of general local government, or tribe or subrecipient of a State, unit of general local government, or tribe, that was constructed or improved with CDBG funds;

(e) Payments of principal and interest on loans made using CDBG funds;

(f) Proceeds from the sale of loans made with CDBG funds;

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

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

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

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

(2) “Program income” does not include the following:

(a) The total amount of funds which is less than \$25,000 received in a single year and retained by a State, unit of local government, tribe, or retained by a subrecipient thereof;

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

B. Retention of program income. Per 24 CFR 570.504(c), a unit of government receiving a direct award under this Notice may permit a subrecipient to retain program income. State grantees may permit a unit of local government or tribe which receives or will receive program income to retain the program income, but are not required to do so.

C. Program income—use, closeout, and transfer.

(1) 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 disaster recovery CDBG funds subject to the requirements of this Notice and must be used in accordance with the grantee’s Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in subparagraph D of this paragraph.

(2) In addition to the regulations dealing with program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: grantees may transfer program income before closeout of the grant that generated the program income to its annual CDBG program. In addition, State grantees may transfer program income before closeout to any annual CDBG-funded activities administered by a unit of general local government or Indian tribe within the State. Program income received by a grantee, or received and retained by a subgrantee, after

closeout of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. In all cases, any program income that is not used to continue the disaster recovery activity that generated the program income ceases to be subject to the waivers and alternative requirements of this Notice.

For nonentitlement communities without another ongoing CDBG grant received directly from HUD, program income on hand when the CDBG disaster recovery grant is closed by HUD, shall continue to be subject to the eligibility requirements and all other applicable provisions under this Notice until expended. Program income received after closeout by HUD of the CDBG disaster recovery grant shall not be governed by the provisions of this Notice, except that such income shall be used for activities that meet a CDBG national objective and the eligibility requirements described in section 105 of the HCD Act.

D. Revolving loan funds. Units of general local government receiving a direct award under this Notice, State grantees, and units of local government or tribes (permitted by a State grantee) may establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities generate payments, which will be used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments which could be funded from the revolving fund. Such program income is not required to be disbursed for non-revolving fund activities.

State grantees may also establish a revolving fund to distribute funds to units of local government or tribes to carry out specific, identified activities. The same requirements, outlined

above, apply to this type of revolving loan fund. Last, note that no revolving fund, established per this Notice, shall be directly funded or capitalized with CDBG disaster recovery grant funds.

22. National Objective Documentation for Economic Development Activities. 24 CFR 570.483(b)(4)(i) and 570.208(a)(4)(i) are waived to allow the grantees under this Notice to identify low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement—in which grantees must review the annual wages or salary of a job in comparison to the person’s total household income and size (i.e. number of persons). Thus, it streamlines the documentation process because it allows the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

This alternative requirement has been granted on several prior occasions to CDBG disaster recovery grantees, and to date, those grants have not exhibited any issues of concern in calculating the benefit to low- and moderate-income persons. The Department believes this waiver is consistent with the HCD Act.

23. Public benefit for certain economic development activities. The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds were set more than a decade ago and, under disaster recovery conditions (which often require a larger investment to achieve a given result), can

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

This Notice waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 24 CFR 570.209(b)(1), (2), (3)(i), (4), for economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects). However, grantees shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; and the types of jobs. Paragraph (g) of 24 CFR 570.482, and 24 CFR 570.209(c), and (d) are also waived to the extent these provisions are related to public benefit.

24. Allow reimbursement for pre-agreement costs. The provisions of 24 CFR 570.489(b) are applied to permit a State to reimburse itself for otherwise allowable costs incurred by itself or its subgrantees on or after the incident date of the covered disaster. Any unit of general local government receiving a direct allocation under this Notice is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable costs incurred on or after the incident date of the covered disaster. 24 CFR 570.200(h)(1)(i) will not apply to the extent that it requires pre-agreement activities to be included in a consolidated plan.

The Department expects both State grantees and units of general local government receiving a direct award under this Notice to include all pre-agreement activities in their Action Plans.

25. Clarifying note on the process for environmental release of funds when a State carries out activities directly. Usually, a State distributes CDBG funds to units of local government and takes on HUD's role in receiving environmental certifications from the grant

recipients and approving releases of funds. For this grant, HUD will allow a State grantee to also carry out activities directly instead of distributing all program funds to subrecipients and/or subgrantees. According to the environmental regulations at 24 CFR 58.4, when a State carries out activities directly, the State must submit the certification and request for release of funds to HUD for approval.

26. Duplication of benefits. In general, section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5155), as amended, prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source. In order to comply with this law, grantees must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met.

Given the often complex nature of this issue, the Department has published a separate Notice explaining the duplication of benefit requirements applicable to CDBG disaster recovery grantees; it can be found at 76 FR 71060 (published November 16, 2011). Grantees under today's Notice are hereby subject to 76 FR 71060 in full.

27. Flood buyouts—not applicable to all grantees. Grantees under this notice are able to undertake property acquisition for a variety of purposes. However, the term “buyouts” as referenced in this Notice refers to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding. HUD is providing alternative requirements for consistency with the application of other federal resources commonly used for this type of activity. The following alternative requirements do not apply to the city of Birmingham, and Jefferson County.

A. For buyout activities, the following requirements apply:

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

(2) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than (a) a public facility that is open on all sides and functionally related to a designated open space; (b) a rest room; or (c) a structure that the local floodplain manager approves in writing before the commencement of the construction of the structure; and

(3) after receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or relocation program, no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity.

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

C. All buyouts must still meet activity eligibility and national objective requirements.

D. Grantees should identify all acquisition activities that are buyouts in the DRGR system.

28. *Flood insurance.*

A. Flood insurance purchase requirements. HUD does not prohibit the use of CDBG Disaster Assistance for existing residential buildings in the Special Flood Hazard Area (SFHA)

(or “100-year” floodplain). However, Federal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner for a property located in the SFHA must obtain and maintain flood insurance in the amount and duration prescribed by FEMA’s National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 mandates the purchase of flood insurance protection for any HUD-assisted property within the SFHA.

B. Future federal assistance to owners remaining in floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received federal flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the abovementioned repair, replacement, or restoration to a person who has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the

transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph (5), the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(a) Obtain flood insurance in accordance with applicable federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(b) Maintain flood insurance in accordance with applicable federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(a) The transferee fails to obtain or maintain flood insurance, in accordance with applicable federal law, with respect to the property;

(b) The property is damaged by a flood disaster; and

(c) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the federal disaster relief assistance provided with respect to the property.

(5). The notification requirements apply to personal, commercial, or residential property for which federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or

restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable federal law with respect to such property.

(6). The term “Federal disaster relief assistance” applies to HUD or other federal assistance for disaster relief in “flood disaster areas.” The term “flood disaster area” is defined in section 582(d)(2) of the National Flood Insurance Reform Act of 1994, as amended, to include an area receiving a presidential declaration of a major disaster or emergency as a result of flood conditions.

29. Procurement.

A. Grants to States. Per 24 CFR 570.489(d), a State must have fiscal and administrative requirements for expending and accounting for all funds. Furthermore, per 24 CFR 570.489(g), a State shall establish requirements for procurement policies and procedures for units of general local government based on full and open competition. All subgrantees of a State (including units of general local government) are subject to the procurement policies and procedures required by the State.

A State may meet the above requirements by adopting 24 CFR part 85. If a State has adopted part 85 in full, it must follow the same policies and procedures it uses when procuring property and services with its non-Federal funds. However, the State must ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations per 24 CFR 85.36(a).

If a State has *not* adopted 24 CFR 85.36(a), but *has* adopted 24 CFR 85.36(b) through (i), the State and its subgrantees must follow State and local law (as applicable), so long as the procurements conform to applicable Federal law and the standards identified in 24 CFR 85.36(b) through (i).

B. Direct grants to units of general local government. Any unit of general local government receiving a direct appropriation under today's Notice will be subject to 24 CFR 85.36(b) through (i).

30. *Timely distribution of funds.* 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with alternative requirements under this Notice. HUD expects each grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner. HUD will evaluate timeliness in relation to each grantee's established performance schedule as identified in its Action Plan.

The Department will, absent substantial evidence to the contrary, deem a grantee to be carrying out its programs and activities in a timely manner if the schedule for carrying out its activities is substantially met.

In determining the appropriate corrective action to take with respect to a HUD determination that a grantee is not carrying out its activities in a timely manner pursuant to this section, HUD will take into account the extent to which unexpended funds have been obligated by the grantee and its sub-recipients for specific activities at the time the finding is made and other relevant information.

If a grantee is determined to be untimely pursuant to this section, and the grantee is again determined to be untimely 12 months following the initial determination, HUD may elect to recapture any unobligated funds and reallocate to another entity with the authority and capacity to carry out the remaining recovery activities, unless HUD determines that the untimeliness resulted from factors beyond the grantee's reasonable control.

31. *Performance review authorities.* Section 104(e)(1) of the HCD Act requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the recipient has carried out its activities in a timely manner, whether the recipient has carried out those activities and its certifications in accordance with the requirements and the primary objectives of the Act and with other applicable laws, and whether the recipient has a continuing capacity to carry out those activities in a timely manner.

The requirements for submission of a Performance Evaluation Report (PER) pursuant to 42 U.S.C. 12708 and 24 CFR 91.520 are waived. In the alternative, and to ensure consistency between grants allocated under this Notice and grants allocated previously under the CDBG disaster recovery program, HUD is requiring that:

A. Each grantee must enter its Action Plan for Disaster Recovery, including performance measures, into HUD's DRGR system. As more detailed information about uses of funds is identified by the grantee, the grantee must enter such detail into DRGR, in sufficient detail to serve as the basis for acceptable performance reports.

B. Each grantee must submit a quarterly performance report, as HUD prescribes, no later than 30 days following the end of each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and all expenditures have been reported. Each quarterly report will include information about the uses of funds during the applicable quarter including (but not limited to) the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG disaster recovery funds to be expended on each activity; beginning and completion dates of activities; achieved performance outcomes such as number of housing units complete or number of low- and moderate-income persons benefiting; and the race

and ethnic status of persons assisted under direct-benefit activities. Within the section titled “Overall Progress Narrative” in DRGR, grantees must include a description of the actions taken to affirmatively further fair housing.

Quarterly reports to HUD must be submitted using HUD’s DRGR system and, within 3 days of submission, be posted on the grantee’s official website.

C. Reporting requirements. Once each grantee enters its action Plan into the DRGR system, it must submit to HUD a projection of expenditures and outcomes (projected on a quarterly basis) for each major activity type in DRGR. This will enable HUD to track proposed versus actual performance in coordination with each grantee’s submission of DRGR quarterly performance reports.

D. In addition to providing these reports to Congress and the public, HUD will use them—in addition to transactional data from DRGR and other information provided by the grantee—to: (1) monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate applicable administrative and public service limitations and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for monitoring.

32. Review of continuing capacity to carry out CDBG funded activities in a timely manner. If HUD determines that the grantee has not carried out its CDBG activities and certifications in accordance with the requirements and criteria described in this section, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types

of corrective actions the recipient has undertaken, and the success or likely success of such actions.

33. *Corrective and remedial actions.* HUD will undertake corrective and remedial actions in accordance with 24 CFR § 570.910 and 24 CFR § 570.913.

34. *Reduction, withdrawal, or adjustment of a grant or other appropriate action.* Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action, taken pursuant to this section, the recipient shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation.

Consistent with the procedures described in this Notice, the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured.

35. *Certifications waiver and alternative requirement.* Sections 91.325 and 91.225 of title 24 of the Code of Federal Regulations are waived. Each State or unit of general local government receiving a direct allocation under this Notice must make the following certifications with its Action Plan:

A. The grantee certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within its jurisdiction take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See 24 CFR 570.487(b)(2) and 570.601(a)(2).)

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

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

D. 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, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

E. The grantee certifies that activities to be undertaken with funds under this Notice are consistent with its Action Plan.

F. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for in this Notice.

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

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

I. Each State receiving a direct award under this Notice certifies that it has consulted with affected units of local government in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the method of distribution of funding.

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

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas for which the President declared a major disaster in 2011, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*).

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

(3) The aggregate use of CDBG disaster recovery funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent of the grant amount is expended for activities that benefit such persons.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG disaster recovery 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. 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) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

L. The grantee certifies that it has adopted and is enforcing the following policies. In addition, States receiving a direct award must certify that they will require units of general local government that receive grant funds to certify that they have adopted and are enforcing:

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

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

M. Each State or unit of local government receiving a direct award under this Notice certifies that it (and any subrecipient or administering entity) has the capacity to carry out disaster recovery activities in a timely manner; or the State or unit of local government will develop a plan to increase capacity where such capacity is lacking.

N. The grantee certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55.

O. 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.

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

36. *Information collection approval note.* HUD has submitted documentation to OMB seeking emergency approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The submission is under review by OMB and approval pending. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information, unless the collection displays a valid control number.

VII. Duration of Funding

The Appropriations Act directs that these funds be available until expended. However, in accordance with 31 U.S.C. 1555, HUD shall close the appropriation account and cancel any remaining obligated or unobligated balance if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for 2 consecutive fiscal years. In such a case, the funds shall not be available for obligation or expenditure for any purpose after the account is closed.

VIII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.218; 14.228.

IX. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street,

SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

Date: April 9, 2012

Mercedes M. Márquez
Assistant Secretary for Community
Planning and Development

[FR-5628-N-01]

Appendix A—Allocation Methodology

This section describes the methods behind HUD’s allocation of \$400 million in the 2011 CDBG Disaster Recovery Funds. Section 239 of Public Law 112-55, enacted on November 18, 2011, appropriates \$400 million through the Community Development Block Grant (CDBG) program for:

...necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (Public Law 93–383) related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in 2011; Provided, That funds shall be awarded directly to the State or unit of general local government at the discretion of the Secretary; ...

HUD allocates funds based on its estimate of the total unmet needs for infrastructure and the unmet needs for severe damage to businesses and housing that remain to be addressed in the most impacted counties after taking into account December 2011 data on insurance, FEMA assistance, and SBA disaster loans. To meet the statutory requirement that the funds be targeted to “the most impacted or distressed areas,” this allocation:

(1) Limits funding to the states and counties with the highest level of severe unmet

needs. Specifically, the calculation of unmet housing and business needs is limited only to those homes and businesses that experienced severe damage (see definitions below).

That is, it excludes homes and businesses with minor or moderate damage that may have some unmet needs remaining. Further, to target funds to the most impacted or distressed

areas, only counties with \$10 million¹ or more in severe unmet housing and business needs are used to determine a state's allocation. Thus, funding is provided based on the severe needs of the most impacted counties in each state.

- (2) **Factors in disaster related infrastructure repair costs statewide that are not reimbursed by FEMA Public Assistance.** For all of these disasters, this is calculated as the 25 percent state match requirement.
- (3) **Funds are allocated based on each state's share of total unmet needs.** This is calculated as each state's proportional share of the sum of infrastructure and severe unmet housing and business needs from the most impacted counties.²
- (4) **Restricts funding only to states that receive a minimum grant of \$10 million or more.** These funds are limited to only the states with the highest levels of unmet need. As such, funding is limited to states that would receive aggregate funding of \$10 million or more based on their total unmet needs. The calculated grant amounts for states that would have received less than \$10 million are provided to the states above \$10 million through a pro-rata increase.
- (5) **Specifies the counties and jurisdictions that are most impacted or distressed by:**
- a. **Providing direct funding to CDBG entitlement jurisdictions (and one nonentitlement city) with significant remaining severe unmet needs.** Within a State, if an entitlement jurisdiction accounts for \$6 million or more of the funding allocated to a State, it is allocated a direct grant (the \$6 million threshold

¹ For the cut off thresholds used in this formula, minimum county need of \$10 million in severe unmet housing and business needs, the \$10 million minimum grant for a state (point 4), and the \$6 million minimum grant for an entitlement jurisdiction (point 5a), these represent "natural breaks" in the distribution. That is, the next county, state or grantee on the list has a significant separation in need or estimated grant from the last county, state, or grantee included in the list.

² When calculating the grants, the internal weight between factors is maintained at the ratio of all severe unmet housing and business needs in all counties to unmet infrastructure needs in all counties.

represents a “natural break” in funding among entitlement jurisdictions).

Otherwise the funding is provided directly to the State. Due to its extraordinarily high level of localized need, one non-entitlement jurisdiction (Minot, ND) also receives a direct allocation.

- b. Directing that a minimum of 80% of the total funds allocated within a state, including those allocated directly to the State and to local governments, must be spent on the disaster recovery needs of the communities and individuals in the most impacted and distressed counties (*i.e.*, those counties identified by HUD).** The principle behind the 80 percent rule is that each state received its allocation based on the unmet needs in the most impacted counties (those counties with more than \$10 million in severe unmet housing and business needs) and thus HUD will require that all grantees within a State direct these limited resources toward those most impacted counties³. Nonetheless, HUD recognizes that there are likely circumstances where its data is incomplete, damage is highly localized outside of one of the heavily impacted counties, or recovery would otherwise benefit from expenditures outside of those most impacted counties and thus provides some flexibility to address those needs for State grantees. While local governments receiving direct grant allocations from HUD must spend their total grant within their own jurisdictions, HUD will allow a portion of the State non-entitlement grant to be spent outside of the most impacted counties, in an amount

³ Each state receives funding based on *all* of infrastructure needs within a state, minus the infrastructure needs estimated to lie within entitlement jurisdictions receiving direct grants. In addition, each state also receives funding from all severe housing and business needs in the most impacted counties minus the estimated severe housing and business needs within entitlement jurisdictions receiving direct grants.

not to exceed that which yields 80 percent of all funding within a state to be spent in the most impacted counties.

HUD will provide States with county level data on unmet needs to assist with their planning.

Methods for estimating unmet needs for business, infrastructure, and housing:

The data HUD staff have identified as being available to calculate unmet needs for the targeted disasters (major disasters with Presidential declaration issued in 2011 and for which FEMA individual assistance was available) come from the following data sources:

- FEMA Individual Assistance program data on housing unit damage, as of 12/20/2011;
- SBA for management of its disaster assistance loan program for housing repair and replacement, as of 12/21/2011;
- SBA for management of its disaster assistance loan program for business real estate repair and replacement as well as content loss, as of 12/22/2011; and
- FEMA estimated and obligated amounts under its Public Assistance program for permanent work, federal and state cost share, as of 12/20/2011.

Calculating Severe Unmet Housing Needs

The core data on housing damage for both the unmet housing needs are based on home inspection data for FEMA's Individual Assistance program. For unmet housing needs, the FEMA data are supplemented by Small Business Administration data from its Disaster Loan Program. HUD calculates "unmet housing needs" as the number of housing units with unmet

needs times the estimated cost to repair those units less repair funds already provided by FEMA and SBA, where:

- The owner-occupied units included in the unmet needs analysis are those determined by FEMA to be eligible for a repair or replacement grant.
- Each of the FEMA inspected owner-occupied units are classified by HUD into one of five categories:
 - Minor-Low: Less than \$3,000 of FEMA inspected damage
 - Minor-High: \$3,000 to \$7,999 of FEMA inspected damage
 - Major-Low: \$8,000 to \$14,999 of FEMA inspected damage
 - Major-High: \$15,000 to \$28,800 of FEMA inspected damage
 - Severe: Greater than \$28,800 of FEMA inspected damage or determined destroyed.

Only units in the Major-High and Severe categories are counted toward the severe unmet housing needs calculation.

- The rental units included in the unmet needs analysis are those assessed for personal property loss, near owner-occupied dwellings with major-high and severe damage, and where the tenant has an income of less than \$20,000. The use of the \$20,000 income cut-off for calculating rental unmet needs is intended to capture the loss of affordable rental housing.
- The average cost to fully repair a home for a specific disaster within each of the damage categories noted above is calculated using the median ratio between real property damage

repair costs determined by the Small Business Administration for its disaster loan program and the FEMA assessment of real estate damage, for the subset of homes inspected by both SBA and FEMA. Because SBA inspects for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally greater than FEMA estimations of the cost to make the home habitable. If fewer than 25 SBA inspections are made for homes within a FEMA damage category, the median ratio between SBA and FEMA assessment of damage in the category for that disaster has a cap applied at the 75th percentile of all damaged units for that category for all disasters and a floor applied at the 25th percentile. If there are no SBA inspections within a FEMA damage category, the national median ratio between SBA and FEMA assessment of damage within a FEMA damage category is used.

- To obtain estimates for unmet needs, only properties receiving a FEMA grant are included in the calculation (since these are the cases assumed to have insufficient insurance coverage). Furthermore, the FEMA grant amount and all SBA loans are subtracted out of the total estimated damage to obtain a final unmet needs estimate.

Calculating Infrastructure Needs

To best proxy unmet infrastructure needs, HUD uses data from FEMA's Public Assistance program on the state match requirement (usually 25 percent of the estimated public assistance needs). This allocation uses only a subset of the Public Assistance damage estimates reflecting the categories of activities most likely to require CDBG funding above the Public Assistance and state match requirement. Those activities are categories: C-Roads and Bridges; D-Water Control Facilities; E-Public Buildings; F-Public Utilities; and G-Recreational-Other.

Categories A (Debris Removal) and B (Protective Measures) are largely expended immediately after a disaster and reflect interim recovery measures rather than the long-term recovery measures for which CDBG funds are generally used. Because Public Assistance damage estimates are available only statewide (and not county), CDBG funding allocated by the estimate of unmet infrastructure needs are sub-allocated to counties and local jurisdictions based on each jurisdiction's proportion of unmet housing needs (categories minor-high to severe).

Calculating Economic Revitalization Needs

Based on SBA disaster loans to businesses, HUD used the sum of real property and real content loss of small businesses not receiving an SBA disaster loan. This is adjusted upward by the proportion of applications that were received for a disaster that content and real property loss were not calculated because the applicant had inadequate credit or income. For example, if a state had 160 applications for assistance, 150 had calculated needs and 10 were denied in the pre-processing stage for not enough income or poor credit, the estimated unmet need calculation would be increased as $(1 + 10/160) * \text{calculated unmet real content loss}$.

Because applications denied for poor credit or income are the most likely measure of requiring the type of assistance available with CDBG recovery funds, the calculated unmet business needs for each state are adjusted upwards by the proportion of total applications that were denied at the pre-process stage because of poor credit or inability to show repayment ability. Similar to housing, estimated damage is used to determine what unmet needs will be counted as severe unmet needs. Only properties with total real estate and content loss in excess of \$65,000 are considered severe damage for purposes of identifying the most impacted areas.

Category 1 : real estate + content loss = below 12,000

Category 2 : real estate + content loss = 12,000 – 30,000

Category 3: real estate + content loss = 30,000 – 65,000

Category 4 : real estate + content loss = 65,000 – 150,000

Category 5 : real estate + content loss = above 150,000

To obtain unmet business needs, the amount for approved SBA loans is subtracted out of the total estimated damage. Since SBA business needs are best measured at the county level, HUD estimates the distribution of needs to local entitlement jurisdictions based on the distribution of all unmet housing needs.

[FR Doc. 2012-9094 Filed 04/13/2012 at 8:45 am; Publication Date: 04/16/2012]