



This document is scheduled to be published in the Federal Register on 06/07/2016 and available online at <http://federalregister.gov/a/2016-13430>, and on [FDsys.gov](http://FDsys.gov)

**Billing Code 4210-67**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-5936-N-01]**

**Notice of National Disaster Resilience Competition Grant Requirements**

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

**ACTION:** Notice.

**SUMMARY:** This notice lists the awardees of Phase 2 of the National Disaster Resilience Competition (NDRC). The NDRC was conducted in accordance with Notice of Funding Availability (NOFA) FR-5800-N-29A2, published on grants.gov (Primary CFDA Number 14.272, last modified June 25, 2015). Awardees have been allocated \$999,108,000 made available pursuant to the Disaster Relief Appropriations Act, 2013, Public Law 113-2 (Appropriations Act). This notice also updates and republishes Appendix A to the NOFA, which states the requirements applicable to NDRC grant recipients, including applicable waivers and alternative requirements. HUD is publishing the post-award requirements of Appendix A in the Federal Register because the Appropriations Act requires HUD to publish waivers and alternative requirements in the Federal Register no later than 5 days before their effective date. The requirements of Appendix A will also be incorporated into the grant agreement between the Grantees and HUD. The updates to Appendix A included in this notice reflect necessary revisions to citations and requirements that have changed since the NOFA's publication, as a result of the Department's implementation of the Office of Management and Budget's (OMB) final guidance, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, through amendments to 24 CFR parts 84, 85, and 570.

**DATES:** Effective Date: [**Insert date of publication in the Federal Register**]

**FOR FURTHER INFORMATION CONTACT:** Stanley Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7286, Washington, DC 20410, telephone number 202-708-3587 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Fax inquiries may be sent to Mr. Gimont at 202-401-2044.

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**Section 1: Program Background and Purpose:**

NDRC awardees identified in this notice were allocated Community Development Block Grant National Resilient Disaster Recovery (CDBG-NDR) grant funds on a competitive basis. These funds were made available by the Appropriations Act for disaster recovery from major disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (Stafford Act) in 2011, 2012, and 2013. The Appropriations Act made available \$16 billion in Community Development Block Grant Disaster Recovery (CDBG-DR) funds. On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG disaster recovery grants under the Appropriations Act to \$15.18 billion.

HUD has not allocated other Appropriations Act funds competitively. As of September 2014, HUD had allocated or set aside approximately \$13 billion – \$14 billion in response to Hurricane Sandy, and Tropical Storms Irene and Lee; \$514 million in response to disasters occurring in 2011 or 2012; and \$654 million in response to other 2013 disasters. The Department determined that the data available for the earliest disasters eligible under the Appropriations Act no longer credibly represented additional current unmet needs (beyond those for which HUD had already allocated funding by formula) to support a formula

allocation method for the remaining funding. No other reasonably current data sources common to all possible eligible jurisdictions existed at the time of the allocation. Because the law directs that CDBG-DR assistance must flow to the Most Impacted and Distressed areas with unmet recovery and revitalization needs related to the effects of a covered major disaster, HUD decided that a competition framework would work best to elicit the data needed to inform allocation choices, and ensure that the unmet disaster recovery and revitalization needs of communities around the country were appropriately considered.

To comply with statutory direction that CDBG-NDR funds be used for disaster-related expenses in the Most Impacted and Distressed areas related to the Qualified Disaster, HUD has required that Grantees address unmet needs in areas identified in the Grantee's approved application and accepted by HUD as "Most Impacted and Distressed" as a result of the effects of the Qualified Disaster.

The Appropriations Act requires funds to be used only for specific disaster recovery related purposes. The Appropriations Act also requires that, prior to the obligation of CDBG-NDR funds, a Grantee shall submit a plan detailing the proposed use of funds, including criteria for eligibility and how the use of these funds will address disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the Most Impacted and Distressed areas. This Action Plan is discussed in section 3.I.B, "Action Plan, Amendments, and Benefit Cost Analysis," below.

Allowable costs for CDBG-NDR funds under this appropriation include only those expenses necessary to meet the Unmet Recovery Needs of the Most Impacted and Distressed target area(s), but once the necessary Tie-Back is established for a Project, it could be designed to also meet other community development objectives and economic revitalization needs, including greater Resilience to address the negative effects of climate change. Tie-Back to the Qualifying Disaster was established for CDBG-NDR

projects by demonstrating a logical link to addressing Unmet Recovery Needs from the Qualifying Disaster. Under this competition, HUD awarded points for leverage, long-term commitments, and regional coordination. The most competitive proposals, however, brought other resources and commitments to bear beyond the CDBG-NDR request to enhance Resilience beyond the Most Impacted and Distressed target areas with Unmet Recovery Needs (MID-URN target areas).

### **Summary of Competition Details**

HUD has established six goals for the NDRC: First, to fairly allocate remaining Appropriation Act funds; second, to create multiple examples of local disaster recovery planning that apply science-based and forward-looking risk analysis to address recovery, Resilience, and revitalization needs; third, to leave a legacy of institutionalizing, in as many States and local jurisdictions as possible, the implementation of thoughtful, innovative, and resilient approaches to addressing future risks; fourth, to provide resources to help communities plan and implement disaster recovery that makes them more resilient to future threats or hazards, including extreme weather events and climate change, while also improving quality of life for existing residents and making communities more resilient to economic stresses or other shocks; fifth, to fully inform and engage community stakeholders about the current and projected impacts of climate change and to develop pathways to Resilience based on sound science; and sixth, to leverage investments from the philanthropic community to help communities define problems, set policy goals, explore options, and craft solutions to inform their own local and regional resilient recovery strategies. As with all CDBG assistance, the priority is on serving low- and moderate-income people.

The NDRC applied elements of the Hurricane Sandy Task Force's rebuilding strategy to support Grantee efforts to build back stronger and more resilient through integrating comprehensive planning and investing in meaningful efforts in their

recovery and revitalization. The Task Force was established by Executive Order 13632 (published in the Federal Register on December 14, 2012, at 77 FR 74341) to: (1) ensure governmentwide and regionwide coordination was available to assist communities make decisions about long-term rebuilding and (2) develop a comprehensive rebuilding strategy.

The NDRC bears some similarities to other Federal programs that address disaster recovery and threat and hazard mitigation. This similarity (and the distinctions noted below) is deliberate. The similarity allows States and local governments to invest CDBG-NDR funds to support or fill gaps to address unmet needs inaccessible or unaffordable to other Federal programs, and for which insurance and State, local, and other resources are unavailable. In addition, any similarity in program structure will enable lessons learned from the competition to potentially be transferable to other Federal programs. The distinctions, on the other hand, spring from the CDBG nature of the funding source, as directed in the congressional appropriation. Among major disaster recovery programs, CDBG is notable in its statutory focus on determining and meeting the unmet needs of vulnerable lower-income people and communities and targeting the Most Impacted and Distressed areas. CDBG is also singular in its ability to consider a wide range of local community development objectives related to recovery and economic revitalization, including integrally related Resilience objectives. HUD intends that the most successful proposals from the competition will take advantage of these CDBG similarities and distinctions to envision and implement recovery Projects that serve multiple purposes and position recovering communities for a prosperous and more resilient future. To ensure programs harmonize and do not duplicate benefits, HUD required all Applicants to describe how they consult with or coordinate with funders of other proposed recovery and Resilience investments in the Most Impacted and Distressed target area and region. The CDBG context also leads naturally to requiring Resilience elements

within recovery projects because it creates stability. Reducing current and future risk is essential to the long-term economic well-being of communities and businesses. When a disaster chills local and regional economies, investments in anchor Projects to reduce risk and stimulate economic revitalization can be an essential part of any disaster recovery.

**Eligible Applicants.** Eligible Applicants in Phase 1 were States with Qualified Disasters and units of general local government who received CDBG-DR funding from HUD for disasters occurring in 2011 — 2013 (including Grantees under prior disaster recovery supplemental funding) — a total of 67 potential Applicants (See Appendix B to the NOFA for a list of eligible Applicants). HUD set aside \$181 million for applications serving Hurricane Sandy Qualified Disasters in the States of New York and New Jersey and in New York City, due to the catastrophic level of damage caused in those areas from Hurricane Sandy and tropical storms in 2011. Note that HUD reserved the right to fund applications out of rank order to ensure geographic diversity of funding. For the same reason, HUD also reserved the right to partially fund an application(s). To ensure HUD had complete understanding on how to scale down Projects, each Phase 2 Applicant was required to identify any phasing or scalability inherent in its proposal. Those invited to submit applications for Phase 2 should have developed proposals with scalable options to the degree possible and practicable, and were required to ensure that each component proposed for CDBG-NDR funding had independent utility.

Successful completion of Phase 1 was a threshold requirement for eligible Applicants for Phase 2.

**Phase 1: Framing Unmet Recovery Needs, Vulnerabilities, and Community Development Objectives (Closed).** During Phase 1 (the framing phase) of the NDRC, Applicants consulted with stakeholders and comprehensively framed the recovery needs,

relevant risks and vulnerabilities (current and future), and related community development opportunities in the target geographic areas. Every fundable application had to first demonstrate a logical link, or Tie-Back, to addressing Unmet Recovery Needs stemming from the effects of the community's presidentially declared major disaster from 2011, 2012, or 2013. The other objectives, needs, or issues a Project would address were unique to the Applicant's community. For example, a community that suffered a flood might want to offer flood buyouts and property acquisition in the Most Impacted and Distressed areas, followed by restoration of a wetland to limit future flooding and provide a nature preserve or recreation area. A community that lost housing and a road during a mudslide might not only want to construct housing in a safer area for survivors, but also to find a financing mechanism for affected downstream businesses to survive the effects of the last event and be prepared for and recover more quickly from future hazards. Once the community framed the recovery need(s), identified current and future risks and vulnerabilities and noted community development opportunities, the Applicant had to identify and seek commitments from the public and private Partners it needs to develop and implement a solution, and develop a high level implementation idea. The Applicant's responses in Phase 1 described this framing process and its results, identified the Partners and other resources, and described the resulting resilient recovery concept or idea.

The Phase 1 CDBG-NDR NOFA included criteria and deadlines for both this initial "framing" phase and the later "implementation" phase of the competition. Applicants had approximately 180 days from the Phase 1 CDBG-NDR NOFA publication to complete the framing process and to submit initial proposals stating in general terms the Applicant's vulnerability(ies), issue(s), community development objectives, team (meaning the Applicant, all Partners, and any other supporting entities), required threshold items, known obstacles, substantial consultation and citizen

engagement (particularly with affected and Vulnerable Populations), and general information about Unmet Recovery Needs.

After the 180-day deadline, HUD reviewed, rated, and provided detailed comments on each initial application that met all threshold requirements. HUD then ranked the applications by score and selected the qualifying Applicants for the Phase 2 application round.

**Phase 2: From Framing to Implementation (Closed).** In the second phase of the competition (the implementation phase), the highest scoring Applicants from the first phase were invited to fully articulate a Resilience-enhancing disaster recovery or revitalization Project or program that addressed as many of the Phase 1 identified risks, vulnerabilities, and community development opportunities as feasible and compete for implementation funding. The best Projects demonstrated how the proposal or Project would help the community recover from the effects of the covered disaster, advance community development objectives such as economic revitalization, and improve the community's ability to absorb or rapidly recover from the effects of a future extreme event, stress, threat, hazard, or other shocks. The proposed Phase 2 Project could be a pilot for the overall Phase 1 solution, could be limited to the CDBG-NDR-eligible portion of a Phase 1 concept that would benefit a geography larger than the Most Impacted and Distressed target area, or could be a stand-alone portion of a Project idea envisaged in Phase 1 that could take years or decades to completely realize. In any case, the Phase 2 Project could not be contingent on actions outside the scope of the Project to provide a defined level of protection against the threat(s) and hazard(s) identified, meet a CDBG-NDR national objective, or comply with program requirements as described in this notice. The Applicant was asked to explain how the Phase 2 proposal logically arises from the Phase 1 framing.

In Phase 2, each Applicant completed a benefit cost analysis (BCA) for any Covered Project(s), as described in the NOFA. Although the required completion of a BCA is new to CDBG disaster recovery, Rebuild by Design competitors completed BCAs and the analysis process helped improve the final proposals. The Federal Emergency Management Agency (FEMA) and U.S. Department of Transportation (DOT) also employ BCAs in reviewing applications for major Projects, and cost efficiency analysis is employed in reviews of environmental impact and consideration of alternatives. The CDBG-NDR BCA provided a sense of the cost efficiency of the proposal, but the BCA score was not used alone to rate soundness of approach. HUD recognizes that the benefits and costs may be difficult or impossible to comprehensively quantify, but, regardless of a proposed Project's scale, HUD did not fund any Phase 2 activities for which the benefits to the Applicant's community, and to the United States as a whole, were not demonstrated by the evidence submitted to justify the costs. Appendix H to the NOFA provided guidance on completing an acceptable BCA. Note that quantifying or otherwise accounting for social and ecological benefits and costs were a critical component, as was consideration of all related resources, including leverage, and the benefits and costs of long-term commitments under Factor 5.

Some of the resources provided to CDBG Grantees to support completion of the environmental reviews required under 24 CFR part 58 are also useful sources of information for a benefit-cost analysis. Consideration of these resources at an early stage in a Project may help speed the required environmental reviews. Applicants were strongly encouraged to integrate general and Project planning with the environmental review process, and to coordinate these reviews under the Unified Federal Review (UFR) process, where possible and as appropriate. The Applicant could have used public outreach meetings not only to seek Phase 1 planning input and Phase 2 Project comments or to meet the consultation requirement of the NDRC competition, but also to inform the

public about environmental effects of different design approaches or of a proposed Project and its alternatives. Examples of required outreach included scoping for the National Environmental Policy Act, notices and evaluation in compliance with Executive Orders 11988 and 11990 (the 8-step decision process for floodplain management and wetlands protection), and consultation for section 106 of the National Historic Preservation Act (54 U.S.C. 306108). The Applicant engagement plan was to include strategies to ensure that vulnerable and underserved populations are involved throughout the planning and decisionmaking processes, including outreach and engagement of low-income and minority populations in furtherance of the Department's environmental justice obligations under Executive Order 12,898. This informs decisionmakers of the widest possible range of needs and options. Meaningful engagement and participation ensures the highest probability of success for all stakeholders.

After HUD provided comments on the initial Phase 1 submissions, each continuing Applicant had approximately 120 days in Phase 2 to develop a final submission. HUD considered soundness of approach, needs, capacity, leverage, and long-term commitment at this phase. Leverage in this phase could have included traditional financial and some types of in-kind contributions. The application must also have included the supporting actions undertaken by the Applicant locally (e.g., building code updates, executive orders, zoning revisions, comprehensive and mitigation plan linkages, interagency partnerships, financing mechanisms, or completing and adopting a forward-looking communitywide Resilience assessment and plan) to better position the Applicant to be more resilient to future threat(s) and hazard(s).

Following submission of the Phase 2 applications, HUD and Federal agency partners reviewed, rated, and ranked the applications in accordance with the published criteria. HUD then determined the Phase 2 awards as published in this notice.

## **Selection of Awardees**

HUD considered for funding any completed Phase 2 application that met all thresholds and received at least 75 percent of the total points available in Phase 2. The applicable postaward requirements that were included in Appendix A to the NOFA are updated in this notice and apply to awards described herein. These postaward grant management requirements are, insofar as feasible, identical to those imposed under the notices published for grants made under the formula allocations under the Appropriations Act.

In both phases, HUD required thoughtful, evidence-based practice, incorporating consideration of the latest findings regarding the range of possible effects of climate change and other risks on the target geography during the useful life of any proposed Project. Many of the communities eligible to apply had already been subject to repetitive or increasingly severe disaster events and their community and regional plans, built environment, building codes, and design/construction practices may not yet have adjusted to enhance community Resilience to expected threat(s) and hazard(s) based on the best available data and science. Planning for an investment in a structure or improvement intended to endure and remain in service through its useful life must involve detailed consideration of the context in which the structure will be placed: the expected intensity and frequency of wind, rain, fire, flooding, snow loads, earthquake, drought conditions, and effects of climate change, for example and as relevant, should all influence community investment and policy decisions.

States and local governments were strongly encouraged to take or commit to Resilience-enhancing actions to protect their communities from threat(s) and hazard(s), as well as to ensure the useful life of their Projects under changing conditions, including future risk caused by climate change. Taking or committing to actions enhanced the

competitiveness of Phase 1 and 2 proposals. HUD only invited an Applicant to Phase 2 if it had at least committed to taking a permanent Resilience-enhancing action, and HUD awarded points in Phase 2 to Applicants that have or will implement significant Resilience-enhancing action(s), such as updating State and local building codes, zoning, hazard mitigation, consolidated or comprehensive plans (including area-specific plans), and other ordinances or matters within the span of control of the Applicant and public sector Partners. Such improvements may have included coordination or merger of local plans or requirements in a way that will clearly enhance Resilience, such as hazard mitigation assessments and plans incorporated into forward-looking comprehensive plans updated to consider future impacts from climate change. Only significant updates made or major actions taken after the date of the Qualified Disaster were considered in responding to Factor 5: Regional Coordination and Long-Term Commitment. If such changes were planned for completion within one year of grant award, Applicants could include them in this factor only if they also submitted, as an attachment to their application, a hard commitment to complete the changes by a specified date (see the Long-term Commitment Factor of Phase 2 for details). Applicants were required to identify leveraging funds to pay for costs attributable to any portion of a proposed Project (including any mitigating action) that was not necessary to meet Unmet Recovery Needs in the Most Impacted and Distressed area resulting from a Qualified Disaster.

## Section 2: NDRC Awards

The following awards have been made to Applicants for funding a portion of their Application. The components of the Applications for which CDBG-NDR funds may be used will be identified in grant agreements between HUD and the following CDBG-NDR awardees:

<b>NDRC Awardees</b>	<b>Total CDBG-NDR Award</b>
Connecticut	\$54,277,359
New Orleans, LA	\$141,260,569
Iowa	\$96,887,177
New York City, NY	\$176,000,000
Louisiana	\$92,629,249
Springfield, MA	\$17,056,880
Tennessee	\$44,502,374
Virginia	\$120,549,000
Shelby County, TN	\$60,445,163
Minot, ND	\$74,340,770
California	\$70,359,459
New York State	\$35,800,000
New Jersey	\$15,000,000
<b>TOTAL</b>	<b>\$999,108,000</b>

### **Section 3: CDBG-NDR Program Requirements**

This notice contains the postaward requirements applicable to CDBG funds made available by the Appropriations Act and awarded under the NDRC as CDBG-NDR grants. This notice supersedes Appendix A to the NOFA and updates the CDBG-NDR program requirements to reflect HUD's recent regulatory amendments to implement Federal uniform requirements.

The Appropriations Act provides that funds shall be awarded directly to a State or unit of general local government (local government) at the discretion of the Secretary. A State or local government recipient of a CDBG-NDR grant is a "Grantee," as defined by the NOFA. Other terms in this notice are defined in the NOFA, and the definitions in the NOFA are expressly incorporated and made a part of this notice and continue to apply in the post-award period.

#### **I. Use of Funds**

##### **A. General**

The Appropriations Act made funds available 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 Stafford Act, due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The Appropriations Act requires funds to be used only for these specific disaster-related purposes.

##### **B. Action Plan, Amendments, and Benefit Cost Analysis**

The Appropriations Act requires that, prior to the obligation of funds by HUD, a Grantee shall submit a plan detailing the proposed use of funds, including criteria for eligibility and how the use of these funds will address disaster relief, long-term recovery, restoration of infrastructure, and housing and economic revitalization in the Most Impacted

and Distressed areas. For purposes of awards made in response to Phase 2 submissions under the NOFA, the Grantee's Phase 1 and Phase 2 submissions for this competition, constitute, together, the action plan required by the Appropriations Act.

Following execution of a grant agreement, the Grantee will publish on its website the action plan (DRGR Action Plan) contained in HUD's Disaster Recovery and Grant Reporting system (DRGR) that reflects the components funded through the CDBG-NDR grant. HUD will provide clarifying guidance as to the content and format of the DRGR Action Plan, which will help ensure clear communication of CDBG-NDR activities to the public.

A Grantee may amend the Action Plan, but must receive prior HUD approval for substantial amendments to the plan. Before making any substantial amendment to the Action Plan, a Grantee must follow the same citizen participation requirements required by the NOFA for the preparation and submission of an NDRC application. Additionally, HUD must agree in writing that the substantially amended Application would still score in the fundable range for the competition based on the rating factors in the NOFA. Additional information about substantial amendments can be found in section 3.V.A.3 below.

With the exception of general administration of the CDBG-NDR grant, the Grantee may only use CDBG-NDR funds to carry out or plan for the HUD approved components of a Grantee's Phase 2 activities for which the Grantee has submitted to HUD, and HUD has approved, an analysis of the activity's benefits and costs. For Covered Projects, as described in the NOFA, HUD has not approved the analysis if the benefits to the Applicant's community, and to the United States as a whole, are not demonstrated by the evidence submitted to justify the costs. Appendix H to the NOFA and the CDBG-NDR NOFA provided guidance on completing an acceptable BCA. For Applicants proposing a program rather than a specific Covered Project, HUD's acceptance of such a program-level BCA was not an approval of the Project- or activity-level analysis itself, which HUD will reserve the right to

review after award through the Grant Terms and Conditions. A “program” for purposes of the BCA refers to a set of related measures or activities with a particular long-term goal or objective. A program is implemented by a specified agency that uses defined policies and procedures to select Projects or activities to assist.

### **C. Applicable Statutory and Regulatory Requirements**

**1. General.** All recipients of CDBG-NDR grants are subject to: (1) the requirements of the Appropriations Act; (2) portions of the Fiscal Year (FY) 2014 General Section of the Department’s broader NOFA (as amended) and the NOFA (including appendices) made applicable by the grant agreement and this notice; and (3) applicable regulations governing the CDBG program at 24 CFR part 570, unless modified by waivers and alternative requirements published in this notice or other applicable Federal Register notices and; (4) the requirements of the grant agreement governing the CDBG-NDR award.

**2. Uniform Requirements.** Grantees are subject to the revised Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Requirements). On December 26, 2013, the OMB published (at 78 FR 78608) the final Uniform Requirements, which are codified at 2 CFR part 200. HUD adopted the Uniform Requirements at 2 CFR part 2400. HUD published conforming changes to its CDBG program regulations on December 7, 2015 (80 FR 75931), that updated CDBG program regulations to reflect references to appropriate sections of 2 CFR part 200. The effective date of HUD’s conforming rule is January 6, 2016.

### **3. Other PostAward Requirements, including incorporated sections of the Fiscal Year 2014 General Section of the Department’s Broader NOFA, as Amended:**

- **Incorporated Sections of the General Section.** HUD is incorporating portions of the FY 2014 General Section to the Department’s FY 2014 NOFAs for Discretionary Programs (General Section), as amended by the technical correction to HUD’s

General Section to the Department's FY 2014 NOFAs for Discretionary Programs (technical correction), relevant to the award of CDBG-NDR funds. Grantees must adhere to the requirements of the sections of the General Section, as amended by the technical correction, identified in the NOFA under the heading "1. Applicable Requirements of the General Section (as modified by the Technical Correction to the General Section)." Other requirements of the General Section are superseded by the requirements applicable to the use of CDBG-NDR funds identified in this notice and in the grant agreement.

- **System for Award Management.** Grantees must have a valid, active registration in the System for Award Management (SAM).
- **False Statements.** A false statement in an application is grounds for denial or termination of an award and possible punishment, as provided in 18 U.S.C. 1001.
- **Conducting Business in Accordance with Ethical Standards/Code of Conduct.** Grantees must adhere to the conflict of interest requirements of 2 CFR part 570. In addition, local governments and States that have adopted the Uniform Requirements are required to develop and maintain a written standards of conduct as required by 2 CFR 200.318.
- **Equal Access to HUD-assisted or HUD-insured Housing.** The Department is committed to ensuring that its programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. HUD funding recipients and subrecipients must comply with 24 CFR 5.105(a)(2) in connection with determining eligibility for housing assisted with HUD funds or subject to an FHA-insured mortgage, and in connection with making such housing available. This includes making eligibility determinations and making housing available regardless of actual or perceived sexual orientation, gender identity, or

marital status, and prohibiting inquiries about sexual orientation or gender identity for the purpose of making eligibility determinations or making housing available.

Applicants are encouraged to become familiar with these requirements, HUD's definitions of sexual orientation and gender identity at 24 CFR 5.100, clarifications to HUD's definition of family at 24 CFR 5.403, and other regulatory changes made through HUD's Equal Access Rule, published in the Federal Register on February 3, 2012 at 77 FR 5662.

- **Procurement of Recovered Materials.** State agencies and agencies of a political subdivision of a State that are using assistance under a program NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of section 6002 of the Solid Waste Disposal Act. In accordance with section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Please refer to 2 CFR 200.322 and to [www.epa.gov/osw/conserves/tools/cpg/pdf/rcra-6002.pdf](http://www.epa.gov/osw/conserves/tools/cpg/pdf/rcra-6002.pdf) for complete text and requirements of section 6002.
- **Compliance with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282) (Transparency Act), as Amended.** Prime Grant Awardee Reporting. Prime recipients of the Department's financial assistance are

required to report certain subawards in the Federal Funding Accountability and Transparency Act Subaward System (FSRS) website located at <https://www.fsrs.gov/> or its successor system for all prime awards listed on the FSRS website. Starting with awards made October 1, 2010, prime financial assistance awardees receiving funds directly from the Department were required to report subawards and executive compensation information both for the prime award and subaward recipients, including awards made as pass-through awards or awards to vendors, if the initial prime grant award is \$25,000 or greater, or the cumulative prime grant award will be \$25,000 or greater if funded incrementally, as directed by HUD in accordance with OMB guidance; and the subaward is \$25,000 or greater, or the cumulative subaward will be \$25,000 or greater. For reportable subawards, if executive compensation reporting is required and subaward recipients' executive compensation is reported through the SAM system, the prime recipient is not required to report this information. The reporting of award and subaward information is in accordance with the requirements of the Transparency Act, as amended by section 6202 of Public Law 110-252, and OMB Guidance issued to Federal agencies on September 14, 2010 (75 FR 55669), and in OMB policy guidance. Please refer to [www.fsrs.gov](http://www.fsrs.gov) for complete information on requirements under the Transparency Act and OMB guidance.

- **Compliance with Section 872 of the Duncan Hunter National Defense**

**Authorization Act for Fiscal Year 2009 (Public Law 110-417), (Section 872).**

Section 872 requires the establishment of a governmentwide data system (currently designated the Federal Awardee Performance and Integrity Information System) to contain information related to the integrity and performance of entities awarded Federal financial assistance. Federal officials will make use of this information in making awards. OMB published final guidance to implement this requirement on

July 22, 2015, at 80 FR 43301, for Federal awards issued on or after January 1, 2016, that meet the thresholds described in the preamble to the OMB guidance. Grantees are required to comply with any guidance issued by HUD to implement OMB's rule.

## **II. Timely Expenditure of Funds and Prevention of Waste, Fraud, Abuse, and Duplication of Benefits**

### **A. Statutory Expenditure Deadline and Period of Availability**

#### **1. Expenditure Deadline and Extensions.**

The Appropriations Act requires that HUD obligate all CDBG-NDR funds not later than September 30, 2017. To further ensure the timely expenditure of funds, section 904(c) under Title IX of the Appropriations Act, requires that all funds be expended within 2 years of the date HUD obligates funds to a Grantee, unless the Grantee requests and HUD approves an extension to the deadline. Funds are obligated to a Grantee upon HUD's signing of the Grantee's CDBG-NDR grant agreement, or amended grant agreement, obligating funds. Grantees may request to obligate awarded funds in phases as established in a schedule submitted by the Grantee, provided all funds are obligated prior to September 30, 2017. Grantees must not draw down funds in advance of need, to attempt to comply with the expenditure deadline.

#### **2. Extensions of the Expenditure Deadline.**

For any portion of funds that the Grantee believes will not be expended by the deadline and that it desires to retain, the NOFA required the Grantee to submit a letter to HUD justifying why it is necessary to extend the deadline for a specific portion of funds. Appendix E to the NOFA also required Applicants to submit extension requests with the application if the Applicant submitted a schedule that indicated time needed for completion of the proposal exceeds 24 months. Some Applicants submitted extension requests to HUD within their applications and such extensions were considered within the application review process. If granted, any extensions will be published in the Federal Register in a subsequent notice.

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

Grantees are advised that extensions of the 2-year expenditure deadline may not be granted. Any funds not expended by the deadline (or extended deadline, if an extension is approved) will be recaptured.

### **3. Cancellation of Grant Funds.**

Although HUD has authority to grant extensions of the 24-month expenditure deadline, Grantees are advised that 31 U.S.C. 1552(a) continues to apply to funds appropriated under the Appropriations Act. Specifically, CDBG–DR funds are to remain available for expenditure for 5 years following the period of availability for obligation. All funds under the Appropriations Act, including those subject to an extension of the expenditure deadline, must be expended by September 30, 2022. Any grant funds that have not been disbursed by September 30, 2022, will be canceled and will no longer be available for disbursement to the Grantee or for obligation or expenditure for any purpose.

### **B. Secretary’s Certifications and Grantee Submissions**

The Appropriations Act requires the Secretary to certify, in advance of signing a grant agreement, that the awardee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by

section 312 of the Stafford Act, to ensure timely expenditure of funds, to maintain comprehensive websites regarding all disaster recovery activities assisted with these funds, and to detect and prevent waste, fraud, and abuse of funds.

To provide a basis for the Secretary to make the certification, each awardee submitted the certification required in Appendix F of the NOFA, related to the requirements of Public Law 113-2. In addition, before HUD executes a grant agreement, each awardee will satisfactorily complete a Certification Checklist and submit required documentation that, in HUD's determination, is sufficient to support the Secretary's certification. The Certification Checklist will be posted by HUD and sent to awardees following award announcement. A HUD representative will review the awardee's submission and complete the HUD portion of the Certification Checklist. Failure to submit the checklist and documentation within 30 days of the effective date of this notice may result in the cancellation of the award selection.

To enable the Secretary to make the certification, each awardee must submit the items listed below to their designated HUD representative, in addition to submitting the Certification Checklist. Grant agreements will not be executed until HUD has issued a certification in response to the awardee's submission.

**(1) Financial Control Checklist.** An awardee has in place proficient financial controls at the time of the Secretary's certification if each of the following criteria is satisfied.

(a) The awardee submits its most recent single audit and annual financial statement, and the submission indicates that the awardee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of the CDBG program. If the single audit or annual financial statement identified weaknesses or deficiencies,

the awardee must provide documentation showing how those weaknesses have been removed or are being addressed; and

(b) With its completed checklist, the awardee must submit the Guide for Review of Financial Management, as modified, to support the financial controls certification required for Grantees by Public Law 113-2 (Public Law 113-2 Financial Management Guide).

The completed Public Law 113-2 Financial Management Guide must demonstrate that the financial standards are complete and conform to the requirements of the guide. The awardee must identify which sections of its financial standards address each of the questions in Public Law 113-2 Financial Management Guide and which personnel or unit is responsible for each checklist item.

**(2) Procurement.** An awardee has in place a proficient procurement process if:

(i) *For local governments:* The grantee will follow the specific applicable procurement standards identified in 2 CFR 200.318–200.326 (subject to 2 CFR 200.110, as applicable). The grantee must provide a copy of its procurement standards and indicate the sections of its procurement standards that incorporate these provisions. The procedures should also indicate which personnel or unit is responsible for each item.

(ii) *For States:* The grantee has adopted 2 CFR 200.318 – 200.326 (subject to 2 CFR 200.110, as applicable), or the effect of grantee’s procurement process/standards are equivalent to the effect of procurements under 2 CFR 200.318 – 200.326, meaning that they operate in a manner providing fair and open competition. The grantee must provide its procurement standards and indicate how the sections of its procurement standards align with the provisions of 2 CFR 200.318 – 200.326, so that HUD may evaluate the overall effect of the grantee’s procurement standards. The procedures should also indicate which personnel or unit is responsible for the task. Guidance on the procurement rules applicable to States is provided in section 3.V.A.21, of this notice. HUD will review this information

and determine whether the standards, taken as a whole, are equivalent to the standards at 2 CFR part 200, subpart D.

**(3) Duplication of Benefits.** An awardee has adequate procedures to prevent the duplication of benefits if they contain uniform procedures for each of the following: verifying all sources of disaster assistance; determining a beneficiary's unmet need(s) before awarding assistance; and ensuring beneficiaries agree to repay the assistance if they later receive other disaster assistance for the same purpose. The procedures should also indicate which personnel or unit is responsible for the task. Duplication of benefits requirements applicable to the use of CDBG-NDR funds are discussed in section 3.II.C of this notice.

**(4) Adequate Procedures to Determine Timely Expenditures.** An awardee has adequate procedures to determine timely expenditures if they contain uniform procedures that indicate how the awardee will track expenditures each month; how it will monitor expenditures of its recipients; how it will reprogram funds in a timely manner for activities that are stalled; and how it will project expenditures. The procedures should also indicate which personnel or unit is responsible for the task.

**(5) Procedures to Maintain Comprehensive Websites Regarding All Disaster Recovery Activities Assisted with These Funds.** An awardee has adequate procedures to maintain comprehensive websites regarding all disaster recovery activities if its procedures indicate that the awardee will have a separate page dedicated to its disaster recovery that will contain links to all Action Plans, including the DRGR Action Plan and portions required to be posted for citizen comment; Action Plan amendment; performance reports; citizen participation requirements; and activity/program information for activities described in the Action Plan. The procedures should also indicate the frequency of website updates and which personnel or unit is responsible for the task.

**(6) Procedures to Detect Fraud, Waste, and Abuse of Funds.** An awardee has

adequate procedures to detect fraud, waste, and abuse if its procedures indicate how the awardee will verify the accuracy of information provided by applicants; provide a monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring, and which items are monitored; and indicate that the internal auditor has affirmed and described its role in detecting fraud, waste, and abuse.

**(7) Awardee Certification.** As part of the submission of a complete Certification Checklist, the awardee is required to attest to the proficiency and adequacy of its controls.

**(8) Design.** This notice amends the NOFA to clarify that prior to the Grantee's obligation of funds for construction, the Grantee will demonstrate that the engineering design for a Project is feasible, prior to obligation of funds by the Grantee for construction. This demonstration is satisfied if a registered professional engineer (or other design professional) certifies that the design meets the appropriate code or industry design and construction standards.

**(9) Continuing Obligation Related to Certification.** After submitting materials necessary to support the Secretary's certification and the grant agreement is signed, Grantees have continuing obligations. HUD may request an update to the Grantee's certification submission each time the Grantee submits a substantial Action Plan amendment, or if HUD has reason to believe the Grantee has made material changes to the Grantee's support for its certifications.

Grantees must submit to the Department, for approval, an update to the program schedule (projection of expenditures) and milestones (outcomes) included in the application response to the Phase 2, Factor 3, Soundness of Approach rating. The projections must be based on each quarter's expected performance—beginning the quarter in which funds are available to the Grantee and continuing each quarter until all funds are expended. Each Grantee must also include these projected expenditures and outcomes in activity set-up in the

DRGR system within 90 days of the grant award letter. The information in the DRGR system (contained in the DRGR Action Plan) must be amended to reflect any subsequent changes, updates, or revision of the projections. Any subsequent changes, updates, or revision of the projections must receive written approval from HUD. Amending Action Plans solely to accommodate changes to the timeline for projected expenditures does not fall within the definition of substantial amendment and is not subject to citizen participation requirements.

Guidance on the preparation of projections is available on HUD's website under the heading Office of Community Planning and Development Disaster Recovery Assistance (commonly known as the CPD Disaster Recovery website). The projections will enable HUD, the public, and the Grantee, to track proposed versus actual performance. HUD will make the DRGR Action Plan and performance reports available on the DRGR Public Data Portal at <https://drgr.hud.gov/public/>.

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

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

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

Other reporting, procedural, and monitoring requirements are discussed under "Grant Administration" in section 3.V.A of this notice. The Department will institute risk analysis

and on-site monitoring of Grantee management, as well as collaborate with the HUD Office of Inspector General to plan and implement oversight of these funds.

### **C. Duplication of Benefits Requirements**

Duplication of benefits requirements in section 312 of the Stafford Act and in the Appropriations Act apply to the use of CDBG-NDR funds. To help prevent the duplication of benefits, HUD published a notice in the Federal Register on November 16, 2011, at 76 FR 71060. The Department published additional guidance on July 25, 2013, titled “Guidance on Duplication of Benefit Requirements and Provision of CDBG-DR Assistance.” The steps and actions described in the November 2011 and the July 2013 guidance documents are mandatory requirements applicable to the use of CDBG-NDR funds.

### **III. 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 the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974, as amended (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

### **IV. Overview of Grant Process**

To begin expenditure of CDBG-NDR funds, the following expedited steps are necessary:

- If the application is selected for award, HUD sends an initial allocation letter notifying the Applicant that it has been selected for funding. HUD subsequently sends a grant

award letter outlining next steps before the award is effective, and transmitting the unsigned grant agreement and grant conditions.

- Within 30 days of the effective date of this notice, awardee submits evidence, as described in section 3.II of this notice, that it has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act; ensure timely expenditure of funds; maintain comprehensive websites regarding all disaster recovery activities assisted with these funds; and detect and prevent waste, fraud, and abuse of funds.
- Once the Certification Checklist is completed and HUD determines that submissions are sufficient, the Secretary makes the certification required by the Appropriations Act.
- Grantee signs and returns the grant agreement.
- HUD signs the grant agreement and establishes the proper amount in a line of credit for the Grantee (this triggers the 2-year expenditure deadline for any funds obligated by this grant agreement).
- Grantee requests and receives DRGR system access (if the Grantee does not already have it).
- Grantee enters the activities from its application into the DRGR system that reflect the components funded through the CDBG-NDR grant (as contained in the DRGR Action Plan), submits it to HUD within the system (funds can be drawn from the line of credit only for activities that are established in DRGR System, and publishes on its website the DRGR Action Plan.
- The Grantee may draw down funds from the line of credit after the responsible entity completes applicable environmental review(s) pursuant to 24 CFR part 58 (or section

3.V.A.20 of this notice) and, as applicable, receives from HUD or the State an approved Request for Release of Funds and certification.

- Grantee begins to draw down funds within 60 days of receiving access to its line of credit.
- Grantee amends its published Action Plan to include any updates to its projection of expenditures and outcomes within 90 days of the date of the grant award letter.

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

This section of the notice describes requirements imposed by the Appropriations Act, applicable waivers, and alternative requirements. For each waiver and alternative requirement described in this notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act.

The waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift resilient disaster recovery, while meeting the unique requirements of the Appropriations Act. The following requirements apply only to the CDBG-NDR funds awarded under the NOFA, and not to funds provided under any other component of the CDBG program, such as the annual formula Entitlement or State and Small Cities programs, Section 108 Loan Guarantee Program, the Neighborhood Stabilization Program, any prior CDBG disaster recovery appropriation, or any formula award under the Appropriations Act.

The NOFA required Applicants to submit waiver requests necessary to carry out an activity described in their applications (Phase 1 or Phase 2). HUD anticipates that Grantees may encounter changing conditions or other good cause that justifies requesting a new or modified waiver or alternative requirement after the award. Therefore, Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities.

An overall benefit waiver request may be made by submitting a detailed justification that, at a minimum: (a) identifies how the disaster-related needs of the low- and moderate-income population in the declared disaster area were sufficiently addressed by other means, or that the needs of non-low- and non-moderate-income persons are disproportionately greater by a significant margin, and that the jurisdiction lacks other resources to serve the needs of non-low- and non-moderate-income individuals; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the Grantee's long-term disaster recovery plan; and (c) describes how the activities/programs identified in (b) prevent the Grantee from meeting the 50 percent requirement. For any other waiver or alternative requirement request, Grantees must submit a written request that includes: the requirement to be waived and, if applicable, the alternative requirement to be added (meaning how the current requirement should be altered); a detailed statement of how the request is necessary to address Unmet Recovery Needs; the demographics of the population to be assisted; and a statement of alternative approaches considered to eliminate the need for a waiver.

Except where noted, waivers and alternative requirements described below apply to all Grantees under this notice. Under the requirements of the Appropriations Act, regulatory waivers must be published in the Federal Register no later than 5 days before the effective date of such waiver.

Except as described in this notice, statutory and regulatory provisions governing the State CDBG program shall apply to any State Grantee, while statutory and regulatory provisions governing the Entitlement CDBG program shall apply to local government Grantees. 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.

All references in the NOFA and in this notice pertaining to timelines and/or deadlines are in terms of calendar days, unless otherwise noted. All references to “substantial improvement” shall be as defined in the HUD regulations at 24 CFR 55.2, unless otherwise noted.

#### **A. Grant Administration.**

**1. Application for CDBG-NDR Waiver and Alternative Requirement.** The requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), and 24 CFR 91.220 and 91.320 are waived for funds provided under the NOFA. Instead, HUD required each Grantee to submit an application for CDBG-NDR, and the Applicant’s Phase 1 and Phase 2 submissions for this competition together constitute an Action Plan required under Public Law 113-2. HUD notes that 24 CFR 570.304 and 24 CFR 570.485, to the extent they govern annual formula CDBG grant approvals, do not apply to National Disaster Resilience Competition (NDRC) allocations, but the standard of review of certifications continues to apply to Grantee certifications. HUD will monitor the Grantee’s activities and use of funds for consistency with its approved Action Plan and all other requirements, including performance and timeliness. Per the Appropriations Act, and in addition to the requirements at 24 CFR 91.500, the Secretary may disapprove a substantial amendment to an Action Plan (application) if it is determined that the amended application does not satisfy all of the required elements identified in the NOFA, including in this notice, or the application would not score in the fundable range based on the rating factors in the NOFA. However, in reviewing substantial amendments, HUD will not penalize Grantees for scaling and scoping decisions made by HUD as part of the NDRC award selection process.

**a. Action Plan-related Requirements.** The application was required to meet the criteria of the NOFA and identify the proposed use(s) of the Grantee's allocation, including criteria for eligibility, and how the uses address long-term recovery needs. Because HUD may not obligate Appropriations Act funds after September 30, 2017, the last date that Grantees may submit an amendment that would involve obligation of awarded funds by HUD is June 1, 2017. The requirement to expend funds within 2 years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable. All proposed amendments must address an unmet need in a Most Impacted and Distressed area, as established in the Action Plan or the proposed amendment, using the methodology required by the NOFA.

The Grantee must develop a policy describing (a) how it will promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account possible sea level rise; and (b) how it will coordinate with other local and regional planning efforts to ensure consistency.

In addition, grantees must adopt and meet the following minimum elevation or floodproofing requirements, applicable to all grantees receiving funds pursuant to the Appropriations Act. In order to better ensure a sustainable long-term recovery, grantees must elevate (or may, for certain nonresidential structures as described below, floodproof) new construction and substantially improved structures one foot higher than the latest Federal Emergency Management Agency (FEMA) issued base flood elevation. This standard was made after considering the history of FEMA flood mitigation efforts. This higher elevation also takes into account projected sea level rise, which is not considered in current FEMA maps and National Flood Insurance Program premiums, which will

potentially rise as FEMA Flood Insurance Rate Maps that take Hurricane Sandy into account are issued.

Each grantee must not use grant funds for any activity in an area delineated as a special flood hazard area, or equivalent, in FEMA's most recent and current data source unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain. At a minimum, actions to minimize harm must include elevating or floodproofing new construction and substantial improvements to one foot above the base flood elevation and otherwise acting in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source and best available data under Executive Order 11988 is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

Executive Order 11988, on floodplain management, requires that Federal agencies use the best available flood data to determine the location of projects and activities. In addition, best available flood risk data must be used to determine requirements for reconstruction, and the elevation of structures for grants funding (in whole or part) new construction and substantial improvements, as defined at 24 CFR 55.2(b)(8). If a new construction or substantial improvement project or activity is located in a floodplain, the lowest floor must be designed using the base flood elevation, determined in accordance with the best available data, plus one foot as the baseline standard for elevation. If higher elevations are required by locally adopted code or standards, those higher standards would apply.

Instead of elevating nonresidential structures that are not critical actions as defined at 24 CFR 55.2(b)(2), grantees may design and construct the project such that, below the flood level, the structure is floodproofed using the best available flood data plus one foot. Floodproofing requires structures to be water tight with walls substantially impermeable to

the passage of water and with structural components having the capability of resisting hydrostatic loads, hydrodynamic loads, the effects of buoyancy or higher standards required by the FEMA National Flood Insurance Program, as well as State and locally adopted codes. All mixed-use structures must be floodproofed consistent with the latest FEMA guidance

Additionally, the Grantee will encourage, where appropriate, construction methods that emphasize high quality, durability, energy efficiency, a healthy indoor environment, sustainability, and water or mold resistance, including how it will support adoption and enforcement of modern building codes and reduction of hazard risk, including possible sea level rise, storm surge, and flooding. All rehabilitation, reconstruction, and new construction should be designed to incorporate principles of sustainability, including water and energy efficiency, Resilience, and mitigating the impact of future disasters. Whenever feasible, Grantees should follow best practices such as those provided by the U.S. Department of Energy Home Energy Professionals: Professional Certifications and Standard Work Specifications. Grantees rebuilding housing in areas prone to high winds are especially encouraged to consider inclusion of construction methods from the Resilient Star demonstration underway by the Department of Homeland Security.

At a minimum, HUD is requiring the following construction standards:

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

**(b) Certification Standards.** For purposes of this notice, the Green Building Standard

means the Grantee will require that all construction covered by subparagraph (a), above, meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High Rise); (ii) Enterprise Green Communities; (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iv) ICC-700 National Green Building Standard; (v) EPA Indoor airPLUS (ENERGY STAR a prerequisite); or (vi) any other equivalent comprehensive green building program, including regional programs such as those operated by the New York State Energy Research and Development Authority or the New Jersey Clean Energy Program.

**(c) Standards for Rehabilitation of Nonsubstantially Damaged Residential Buildings.**

For rehabilitation other than that described in subparagraph (a), above, Grantees must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available on the CPD Disaster Recovery website. Grantees must apply these guidelines to the extent applicable to the rehabilitation work undertaken, including the use of mold resistant products when replacing surfaces such as drywall. When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP) designated products and appliances. For example, if the furnace, air conditioner, windows, and appliances are replaced, the replacements must be ENERGY STAR-labeled or FEMP-designated products; WaterSense-labeled products (e.g., faucets, toilets, showerheads) must be used when water products are replaced. Rehabilitated housing may also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).

**(d) Implementation.** For construction Projects completed, under construction, or under contract prior to the date that assistance is approved for the Project, the Grantee is encouraged to apply the applicable standards to the extent feasible, but the Green Building Standard is not

required. For specific required equipment or materials for which an ENERGY STAR- or WaterSense-labeled or FEMP-designated product does not exist, the requirement to use such products does not apply.

**(e) Policies.** HUD encourages Grantees to implement green infrastructure policies to the extent practicable. Additional tools for green infrastructure are available at the Environmental Protection Agency's (EPA) water website; Indoor airPLUS website; Healthy Indoor Environment Protocols for Home Energy Upgrades website; and ENERGY STAR website, [www.epa.gov/greenbuilding](http://www.epa.gov/greenbuilding).

**(f) Housing Related Information.**

(i) Grantees are reminded that public housing is eligible for FEMA Public Assistance and must ensure that there is no duplication of benefits when using CDBG-NDR funds to assist public housing. Information on the public housing agencies impacted by the disaster is available on the Department's website.

(ii) To the extent the Grantee undertakes housing activities, the Grantee will encourage the provision of housing, for all income groups, that is disaster-resistant, including transitional housing and permanent supportive housing. Grantees must also assess how planning decisions may affect racial, ethnic, and low-income concentrations, and promote the availability of affordable housing in low-poverty, nonminority areas where appropriate and in response to disaster-related impacts.

(iii) The Grantee shall minimize displacement of persons or entities, and assist any persons or entities displaced.

(iv) Any safe room construction, reconstruction, or rehabilitation is required to meet at least consistent with the requirements of FEMA P-320 or FEMA P-361.

(v) Wind retrofit construction, reconstruction, or rehabilitation activities funded under CDBG-DR are required to be implemented in conformance with FEMA P-804.

**(g) Funds Awarded to a State.** For each program or activity that will be carried out by the State, the application as entered into the DRGR Action Plan must describe: (1) the Projected use of the CDBG-NDR funds, including the entity administering the program/activity, budget, and geographic area; (2) the threshold factors or Applicant eligibility criteria, grant size limits, and proposed start and end dates; (3) how the Projected use will meet CDBG eligibility criteria and a national objective; (4) how the Projected use relates to a specific impact of the disaster and will result in long-term recovery; and (5) estimated and quantifiable performance outcomes (i.e., a performance measure) relative to the identified unmet need.

If a State, in its application, uses a method of distribution to allocate funds to local governments, its Action Plan must describe all criteria used to determine the distribution, including the relative importance of each criterion. If this information was not included in the application, the Action Plan must be amended to include this information prior to drawing funds (this amendment is not a substantial amendment if the method of distribution has not changed since the submission of the application).

**(h) Funds Awarded Directly to a Local Government.** The local government's application as entered into the DRGR Action Plan, shall describe: (1) the Projected use of the CDBG-DR funds, including the entity administering the program/activity, budget, and geographic area; (2) the threshold factors or Applicant eligibility criteria, grant size limits, and proposed start and end dates; (3) how the Projected use will meet CDBG eligibility criteria and a national objective; (4) how the Projected use relates to a specific impact of the disaster and will result in long-term recovery; and (5) estimated and quantifiable performance outcomes (i.e., a performance measure) relative to the identified unmet need.

**b. General Grant Oversight.**

(a) The Grantee must put in place mechanisms and/or procedures to detect and prevent fraud, abuse, and mismanagement of funds (including potential conflicts of interest).

(b) The Grantee must maintain adequate capacity of its administering agency(ies) and staffs, and the capacity of any local government or other organization or Partner expected to carry out disaster recovery programs. The Grantee will plan and provide for increasing the capacity of local governments or other organizations, as needed and where capacity deficiencies (e.g., outstanding Office of Inspector General audit findings) have been identified. Grantees are responsible for providing adequate technical assistance to Partners, subrecipients, or subgrantees to ensure the timely, compliant, and effective use of funds. Although local governments or other organizations may carry out disaster recovery programs and Projects, each Grantee under the NOFA and this notice remains legally and financially accountable for the use of all funds and may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight (also see section 3.V.A.10 of this notice), policy development, and financial management.

(c) The Grantee will manage program income (e.g., including, in agreements, whether subrecipients may retain it), and the purpose(s) for which it may be used. Waivers and alternative requirements related to program income can be found in paragraphs A.2(d) and A.17 of section 3.V of this notice;

(d) The Grantee must establish monitoring standards and procedures that are sufficient to ensure program requirements, including preventing duplication of benefits, are met and that provide for continual quality assurance and investigation. Some of this information may be adopted from the Grantee's submission of information that is required for the Department's certification. Grantees must also operate a robust internal audit function with an organizational diagram showing that responsible audit staff report independently to the chief

officer or board of the organization designated to administer the CDBG-NDR award (typically, the organization is designated by a chief, elected official);

**c. Clarification of Disaster-related Activities.** Each CDBG-NDR activity must be CDBG-eligible (or permissible under a waiver or alternative requirement published in an applicable Federal Register notice), meet a national objective, and Tie-back to the Qualifying Disaster by demonstrating a logical link to addressing Unmet Recovery Needs from the Qualifying Disaster. Additional details on disaster-related activities are provided under section 3.V.B of this notice.

**(a) Ineligible Business Assistance.** Local and regional economic recoveries are typically driven by small businesses. To target assistance to small businesses, the Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) to prohibit Grantees from assisting businesses, including privately owned utilities, that do not meet the definition of a small business as defined by SBA at 13 CFR part 121.

**(b) Tie-Back to the Qualified Disaster and Ineligible Projects for Temporary Measures.**

**(i) Tie-Back to the Disaster.** Each Grantee must document Tie-Back, to show how each activity is connected to the Qualified Disaster for which it is receiving CDBG assistance. The Grantee must ensure that each activity reasonably ties back to addressing demonstrated direct and indirect effects of the Qualified Disaster. In regard to physical losses, damage or insurance estimates may demonstrate the connection to the direct effects of the disaster. For economic, social, or other nonphysical losses, post-disaster analyses or assessments, using the most rigorous methods feasible, may document the relationship between the disaster and the related effects. If Tie-back has been sufficiently documented in the application, the Grantee does not need to maintain additional documentation (although

additional information documenting Tie-back may be necessary to support a substantial amendment).

**(ii) Temporary Measures.** 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 effects of the declared disaster. HUD requires CDBG-NDR Grantees to incorporate resiliency measures into all activities, to ensure that communities recover to be safer, stronger, and more resilient. Incorporation of these measures also reduces costs in recovering from future disasters. However, Projects for temporary measures, including those that are designed solely to prepare for future needs and not to address a recovery need of the Qualified Disaster (e.g., sandbags, bladders, geotubes, newly established emergency operation centers) are ineligible for CDBG-NDR assistance. Equipment is generally ineligible for CDBG-NDR assistance unless necessary in the provision of an eligible public service or special economic development activity. Resilience measures that are not incorporated into rebuilding activities must Tie back to the Qualified Disaster and be a necessary expense related to disaster relief, long-term recovery, restoration of infrastructure, and housing, or economic revitalization. HUD has determined that, generally, designing a Project that improves Resilience to negative effects of climate change while meeting an Unmet Recovery Need is a necessary and reasonable cost of recovery.

**(iii)** Grantees are not limited in their recovery to returning to pre-disaster conditions. HUD encourages Grantees to carry out activities that not only address disaster-related effects, but leave communities sustainably positioned to meet the needs of their post-disaster populations and to further prospects for stability and growth.

**(iv) Use of Funds for Disasters Not Covered by The Appropriations Act.** CDBG-DR funds awarded under the NOFA and this notice are limited to activities that respond to the Qualified Disaster(s) for which HUD made the award. However, if the

Grantee addresses an unmet need that arose from a previous disaster or a previous community development need that was exacerbated by a Qualified Disaster, and this use of funds was described in the Grantee's application that was approved for funding by HUD, and included in the grant agreement, the Grantee's activity may meet the remaining unmet need. If an impact or need originating from a Qualified Disaster identified in the NOFA is subsequently exacerbated by a future disaster, in some cases funds under the NOFA and this notice may be used to address the resulting exacerbated unmet need, with prior HUD approval.

**d. Use of the Urgent Need National Objective.** The 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 until two years after the date HUD obligates funds to a Grantee for the activity. In the context of disaster recovery, these standard requirements may prove burdensome and redundant. Since the Department has only selected Grantees for CDBG-NDR awards with documented disaster-related impacts (as supported by data provided by FEMA, SBA, and Applicants), each Grantee is limited to spending funds only in counties identified in the Action Plan as the Most Impacted and Distressed area.

Grantees need not issue formal certification statements to qualify an activity as meeting the urgent need national objective. Instead, each Grantee receiving a CDBG-NDR award was required to document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the Grantee. This waiver and alternative requirement allows Grantees to more effectively and quickly implement disaster recovery programs. For activities that meet the urgent need national objective, Grantees were required to reference in their Action Plan the type, scale, and location of the disaster-related impacts that each Project, program, and/or activity is addressing (Action Plans must be amended, as necessary, to ensure that this information is included for each Project, Program, or

CDBG-eligible activity undertaken with CDBG-NDR funds). As a reminder, at least 50 percent of each Grantee's CDBG-NDR grant award must be used for activities that benefit low- and moderate-income persons, unless waived.

**e. Obligation and Expenditure of Funds.** Upon the Secretary's certification, HUD will issue a grant agreement obligating the funds to the Grantee. Funds will be obligated based on the schedule described by the Grantee in its application or later requested by the Grantee and approved by HUD. In addition, HUD will establish the line of credit and the Grantee will receive DRGR system access (if it does not have access already). The Grantee must also enter its application activities into the DRGR system before it may draw funds, as described in paragraph A.2 below.

**f. Environmental Requirements.** Each activity must meet the applicable environmental requirements. After the responsible entity completes an environmental review(s) pursuant to 24 CFR part 58, as applicable (or paragraph A.20, 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 the activity. Note that the disbursement of grant funds must begin no later than 60 days after the Grantee has received access to its line of credit.

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

**(i) Substantial Amendments.** The following modifications constitute a substantial amendment requiring HUD approval: any change to the funded portions of the Phase 1 or Phase 2 application that would result in a change of more than 5 points in the score for

Capacity or Soundness of Approach factors, any change to the Most Impacted and Distressed target area(s) (a revised area must meet Most Impacted and Distressed threshold requirements in the NOFA, including Appendix G to the NOFA), any change in program benefit, beneficiaries, or eligibility criteria, the allocation or reallocation of more than \$1 million, or the addition or deletion of an eligible activity. Amendments to the Action Plan that do not fall within the definition of a substantial amendment are referred to as “nonsubstantial amendments.”

For substantial amendments, Grantees must complete the citizen participation requirements of this notice, at section 3.V.A.3, before HUD can approve the amendment. HUD will only approve a substantial amendment if the new score is still within the competitive range. If the substantial amendment criteria are triggered, HUD will review the proposed change against the rating factors and threshold criteria and consider whether the application, inclusive of the proposed change, would continue to score in the fundable range. This review is not limited to the Capacity and Soundness of Approach factors. In reviewing substantial amendments, HUD will not penalize Grantees for scaling and scoping decisions made by HUD as part of the NDRC award selection process. Additionally, in re-rating and re-ranking any substantial amendment, the Grantee’s initial leverage score will remain unchanged if the Grantee will meet the amount of leverage included in its grant terms. As indicated in the NOFA, if a Grantee makes or proposes to make a substantial amendment to its Project, HUD reserves the right to amend the Grantee’s award and reduce the grant amount or recapture the grant, as necessary.

**(ii) Information for Substantial and Nonsubstantial Amendments.** If the Grantee proposes to amend its Action Plan, each proposed amendment must be highlighted, or otherwise identified, within the context of the funded portions of the application and be submitted to HUD. All amendments must comply with provisions of this notice, including

Tie-back requirements. Grantees may not amend an Action Plan to include funding for ineligible activities identified in section C.2 of the NOFA. The beginning of every proposed amendment must include a section that identifies exactly what content is being added, deleted, or changed and whether it is believed that the change would affect the scoring under the rating factors, and, thus, potentially trigger a substantial amendment. This section must also include a chart or table that clearly illustrates where funds are coming from and to where they are moving. The amendment must include a revised budget allocation table that reflects the entirety of all funds, as amended. A Grantee's most recent version of its application and its DRGR Action Plan must be accessible for viewing as a single document, at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments. The requirement for each Grantee to expend funds within 2 years of the date of obligation will be enforced relative to the date activities are funded under each obligation, as applicable, even if the Action Plan is amended. Every amendment to the Action Plan (substantial and nonsubstantial) must be numbered sequentially and posted on the Grantee's website. The Department will acknowledge receipt of the proposed amendment via email or letter within 5 business days of receipt. HUD may seek additional information from the Grantee to determine whether a proposed amendment is a substantial amendment.

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

**(iv) Leverage Accepted by HUD.** Grantees are required to show, through quarterly reports as the Project proceeds, evidence that firmly committed leverage resources in the amount required by the grant terms and conditions were actually received and used for their intended purposes. The Grantee may not propose an amendment to reduce the amount of leverage pledged once a final amount is identified in the grant agreement. In re-rating and re-

ranking any substantial amendment, the Grantee's initial leverage score will remain unchanged if the Grantee will meet the amount of leverage included in its grant terms. Sources of leverage funds may be substituted after grant award without affecting a Grantee's leverage score in any re-rating and re-ranking, as long as the dollar amount of leverage is equal to or greater than the total amount of leverage required by the grant terms and conditions. Substitution of a leverage source in the same amount committed and identified in the grant terms and conditions is a nonsubstantial amendment. Section 3.V.A.2.e describes additional DRGR leverage reporting requirements.

**(v) Partners Accepted by HUD.** The NOFA permitted a Grantee to identify a Partner in its application that the Grantee would be otherwise required by program requirements to competitively procure. A Grantee is not required to secure the services of any Partner by competitive procurement if the Partner is duly documented and identified in the application. The Department has granted permission for single source procurement of these Partners, pursuant to 2 CFR 200.320(f)(3) (cited in the NOFA as 24 CFR 85.36(d)(4)(i)(C), which has since been superseded by the Uniform Requirements) and advised State Grantees that have not adopted the local government procurement requirements in part 200 to review State requirements associated with single source procurement and to follow all applicable procurement requirements. In many cases, this will entail the Grantee undertaking a cost analysis prior to making payments to such a Partner, and the Grantee will be responsible for ensuring compliance with requirements that all CDBG-NDR costs be necessary and reasonable (for local government Grantees, see 2 CFR 200.323, for State governments that have not adopted 2 CFR 200.323, see State procurement requirements applicable to single source procurements). If a Partner dissolves the partnership after award and before activities are complete, the Grantee should make its best effort to replace the Partner with a similarly skilled Partner, if the Grantee's application was rated and ranked

based on the capacity of the dissolved Partner. The Grantee's application may have to be re-rated and re-ranked based on the lost capacity unless the Grantee follows a contingency plan included in its application to address such a loss. If a Grantee wants to add a Partner that would otherwise have to be procured as a contractor after the award or if the Partner was identified in the application but was found by HUD to lack sufficient documentation, through HUD's application review process, then that selection would not be covered by the single-source permission above and would be subject to procurement requirements under 2 CFR part 200 or State law, as applicable. Additionally, as required by Appendix D to the NOFA, the Grantee shall execute a written subrecipient agreement, developer agreement, contract, or other agreement, as applicable, with each Partner regarding the use of the CDBG-NDR funds, before disbursing any CDBG-NDR funds to the Partner. The written agreement must conform with all CDBG-NDR requirements and shall require the Partner to comply with all applicable CDBG-NDR requirements, including those found in Disaster Relief Appropriations Act, 2013 (Public Law 113-2), title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5302 et seq.), the CDBG program regulations at 24 CFR part 570, this notice and any other applicable Federal Register notice, and commitments made in the grantee's Phase 1 and Phase 2 applications.

## **2. HUD Performance Review Authorities and Grantee Reporting Requirements in the Disaster Recovery Grant Reporting System (DRGR).**

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

Applicants were informed by section VI.A.4 of the General Section of the Department's broader NOFA (as amended, and made applicable by the NOFA) that the Department expects Grantees to fulfill performance promises made as part of their application. This notice waives the requirements for submission of a performance report, pursuant to 42 U.S.C. 12708 and 24 CFR 91.520. In the alternative, and to ensure consistency between grants allocated under the Appropriations Act and prior CDBG disaster recovery appropriation laws, HUD is requiring that Grantees enter information in the DRGR system in sufficient detail to permit the Department's review of Grantee performance on a quarterly basis and to enable remote review of Grantee data to allow HUD to assess compliance and risk.

**b. DRGR Action Plan.** Each Grantee must enter the components of its Action Plan funded through the CDBG-NDR grant into the DRGR system, including performance measures. This is referred to as the DRGR Action Plan. As more detailed information about uses of funds is identified by the Grantee, the Grantee must enter this information into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports, HUD review of compliance requirements, and citizen understanding of progress. The information must also be entered into the DRGR system so that the Grantee is able to draw its CDBG-NDR funds from the line of credit. To enter an activity into the DRGR system, the Grantee must know the activity type, national objective, and the organization that will be responsible for the activity. In addition, a Data Universal Numbering System (DUNS) number must be entered into the system for any entity carrying out a CDBG-NDR funded activity, including the Grantee, recipient(s) and subrecipient(s), contractor(s), and developers. Additionally, following execution of a grant agreement, Grantees must publish on their websites the DRGR Action Plan. HUD will provide clarifying guidance as to the content and format of the DRGR Action Plan, which will help ensure clear communication of CDBG-NDR activities to the public.

**c. Tracking Oversight Activities in the DRGR System; Use of DRGR Data for HUD**

**Review and Dissemination.** Each Grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its disaster recovery programs. The Grantee's Quarterly Performance Report (QPR) will include a summary indicating the number of Grantee oversight visits and reports (see subparagraph e for more information on the QPR). HUD will use data entered into the DRGR Action Plan and the QPR, transactional data from the DRGR system, and other information provided by the Grantee to: (1) provide reports to Congress and the public; as well as to (2) monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (3) reconcile budgets, obligations, funding draws, and expenditures; (4) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (5) analyze the risk of Grantee programs to determine priorities for the Department's monitoring.

**d. Tracking Program Income in the DRGR System.** Grantees must use the DRGR system to draw grant funds for each activity. Grantees must also use the DRGR system to track program income receipts, disbursements, and revolving loan funds. If a Grantee permits local governments or subrecipients to retain program income, the Grantee must establish program income accounts in the DRGR system. The DRGR system requires Grantees to use program income before drawing additional grant funds, and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

**e. DRGR System Quarterly Performance Report (QPR).** Each Grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the Grantee's official website. HUD will also post the reports via the DRGR Public website.

The Grantee's first QPR is due after the first full calendar quarter after the grant award. For example, a grant award made in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until the grant program is completed and meets the criteria for closeout. During the grant closeout process, a final QPR may be required by HUD to ensure complete reporting. HUD will close out CDBG-NDR grants in accordance with this notice (or other applicable Federal Register notice) and notice CPD 2014-02, Closeout Instructions for Community Development Block Grant (CDBG) Programs Grants, as amended, insofar as the notice applies to CDBG-DR grants.

Each QPR will include information about the uses of funds for activities identified in the DRGR Action Plan during the applicable quarter. This includes, but is not limited to, the: Project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as number of housing units completed or number of low- and moderate-income persons benefiting; and the race and ethnicity of persons assisted under direct-benefit activities. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed. Grantees must include a description of actions taken in that quarter to affirmatively further fair housing, within the section titled "Overall Progress Narrative" in the DRGR system. In addition, leveraged funds shall be identified for each activity, as applicable, in the DRGR system, and use of leverage funds required by the Grantee's grant agreement shall be included in the Grantee's QPR.

**3. 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, 91.105(b) and (c), and 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below.

Note that the citizen participation process is distinct from consultation requirements. The streamlined requirements mandate at least one public hearing at the Applicant's level of government for each substantial amendment, and require providing a reasonable opportunity (at least 15 days for any substantial amendment) for citizen comment and ongoing citizen access to information about the use of grant funds.

The streamlined citizen participation requirements for CDBG-NDR grants are:

**a. Publication of the Action Plan, Access to Information, and Substantial**

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

The manner of publication of a proposed substantial amendment 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 must, for citizens, be navigable from the Grantee's homepage. Grantees are required to hold at least one public hearing to solicit public comments before finalizing each substantial amendment submission.

Grantees are also encouraged to notify affected citizens of proposed amendments and public hearings, through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with organizations located in or serving the target area or neighborhood.

Grantees are responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency (LEP). Each Grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction and the appropriate format for persons with disabilities.

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 any proposed substantial amendment, the Grantee must provide a reasonable time frame and method(s) (including electronic submission) for receiving comments on the submission. A summary by topic of all comments received on the amended submission and a list of commenters by name or organization must be submitted to HUD along with the submission.

Following execution of a grant agreement, the Grantee must post on its website the DRGR Action Plan that reflects the components funded through CDBG-NDR funds. HUD

will provide clarifying guidance as to the content and format of the DRGR Action Plan that will help ensure clear communication of CDBG-NDR activities to the public. Subsequent to award, a Grantee may substantially amend the Action Plan if it follows the citizen participation requirements in this notice, and HUD agrees in writing that the initial application, inclusive of the proposed amendment, would still score in the fundable range for the competition.

**b. Nonsubstantial Amendment.** The Grantee is not required to undertake public comment when it makes any Action Plan amendment that is not substantial. The Grantee must impose an effective date 5 business days after submission to HUD.

**c. Physical Accessibility.** Meetings must be held in facilities that are physically accessible to persons with disabilities, or where physical accessibility is not achievable, Grantees and Partners must give priority to alternative methods of product or information delivery regarding programs and activities to qualified individuals with disabilities in the most integrated setting appropriate, in accordance with HUD's implementing regulations for section 109 of the HCD Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) at 24 CFR Part 8 and all applicable laws and regulations. In addition, all notices of and communications during all training sessions and public meetings shall be provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities, or provide other means of accommodation for persons with disabilities, consistent with section 504 of the Rehabilitation Act of 1973 and HUD's section 504 regulations. See 24 CFR part 8.6.

**d. Additional Post-Award Requirements.** The Grantee must update its citizen participation plan for CDBG-NDR grants to reflect the requirements of this notice. The purpose of this plan is to inform citizens of the citizen complaint process and the Grantee's response policy, the methods through which the public can learn about the grant and activity

status, and the process the city will use to amend the Action Plan. The plan must satisfy 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).

**(1) Website.** The topic of disaster recovery must be navigable by citizens from the Grantee (or relevant agency) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

**(2) Availability and Accessibility of the Application/Action Plan and the DRGR Action Plan.** The Grantee must make the previously published portions of the Application, the Application as submitted to HUD, the DRGR Action Plan, any Action Plan 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 Application and to the Grantee's use of grant funds.

**(3) Citizen Complaints.** The Grantee will provide a timely written response to every citizen complaint. As required by law, the Grantee will provide a response within 15 working days of the receipt of the complaint, if practicable.

#### **4. Direct Grant Administration and Means of Carrying Out Eligible Activities**

**a. Requirements Applicable to State Grantees.** Requirements at 42 U.S.C. 5306 are waived, to the extent necessary, to allow a State to directly carry out eligible activities with CDBG-NDR funds, rather than distribute all funds to local governments. Experience in administering CDBG supplemental disaster recovery funding demonstrates that this practice

can expedite recovery. Pursuant to this waiver, the standard at section 570.480(c), the provisions at 42 U.S.C. 5304(e)(2), and the CDBG State program regulations will also include activities that the State carries out directly. In addition, activities eligible under the NOFA may be carried out, subject to State law, by the State through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients or recipients, so long as the State is consistent with its Action Plan, including description of capacity and commitments to work with Partners. Notwithstanding this waiver, State Grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements contained in the HCD Act and 24 CFR part 570, as well as ensuring such compliance by subgrantees.

**b. Requirements for All Grantees — Direct Administration and Assistance to Neighborhood Organizations Described in 42 U.S.C 5305(a)(15) of the HCD Act.** Activities made eligible at 42 U.S.C. 5305(a)(15) may only be undertaken by the eligible entities described in that section, whether the assistance is provided to such an entity from the State or from a local government.

**5. Consolidated Plan Waiver.** To the extent that the Grantee did not receive points for consistency with the Consolidated Plan for the jurisdiction in which the Most Impacted and Distressed area is located, HUD is waiving the requirement for consistency with the consolidated plan, for no longer than 6 months (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5), 91.225(a)(5), 91.325(b)(3), and 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 for 6 months. All applications that did not submit the Certification of Consistency with the Consolidated Plan (form HUD-2991) in the attachments must update the Consolidated Plan within 6 months of grant

award. At a minimum, the updated consolidated plan must include the criteria discussed in this notice. If not completed since the Qualified Disaster that led to the Grantee's eligibility under the NOFA, a Grantee must update its Analysis of Impediments to Fair Housing Choice in coordination with its post-waiver consolidated plan update or within the 18 months after the consolidated plan update, so that it more accurately reflects conditions following the disaster.

**6. Requirement for Consultation During Plan Preparation.** Currently, the statute and regulations require States to consult with affected units of local government in nonentitlement areas of the State in determining the State's proposed method of distribution. Because Grantees complied with the extensive consultation requirements of the NOFA, including Appendix I to the NOFA, HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), and 24 CFR 91.325(b) and 91.110, to permit Grantees to rely on the consultation completed during Phase 1 and Phase 2 of the competition. No additional consultation is necessary to carry out the Project or program for which the Grantee received an allocation of CDBG-NDR funds.

**7. 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 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 Grantees affected by the Qualified Disasters. CDBG-NDR Grantees 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), and 24 CFR 570.484 and 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.

A Grantee may seek a waiver to reduce the overall benefit requirement below 50 percent of the total grant (see instructions to request waivers in section 3.V), but overall benefit waivers are uncommon and Grantees, generally, must have submitted a request and justification for this waiver with its application. The 50 percent overall benefit requirement will not be reduced unless the Secretary specifically finds that there is a compelling need to further reduce the threshold.

**8. Use of the “Upper Quartile” or “Exception Criteria” for Low- and Moderate-Income Area Benefit Activities.** Per the requirements at 42 U.S.C. 5305(c)(2)(A), certain communities are allowed to use a percentage of 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.” For entitlement communities that meet the regulatory exception criteria, the State (or its subgrantee, if permitted by the State) may apply the criteria if acting directly in that community.

**9. Use of “Uncapped” Income Limits.** The Quality Housing and Work Responsibility Act of 1998 (Title V of Public Law 105-276) enacted a provision that directed the Department to grant exceptions to at least 10 jurisdictions that are currently “capped” under HUD’s low- and moderate-income limits. Under this exception, a number of CDBG entitlement grantees may use “uncapped” income limits that reflect 80 percent of the actual median income for the area. Each year, HUD publishes guidance on its website identifying which grantees may use uncapped limits. The uncapped limits apply to disaster recovery activities funded pursuant to this notice in jurisdictions covered by the uncapped limits,

including jurisdictions that receive disaster recovery funds from the State, if the State permits the use.

## **10. Grant Administration Responsibilities and General Administration Cap**

**a. Grantee responsibilities.** Per the Appropriations Act, each Grantee shall administer its award directly, in compliance with all applicable laws and regulations. Each Grantee shall be financially accountable for the use of all funds provided in this notice and may contract for administrative support, but Grantees may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight, policy approval or adoption, and financial management.

**b. General administration Cap.** For grants under this notice, the annual CDBG program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant award, inclusive of any program income, to be used for general administration costs, by the Grantee, by local governments, or by subrecipients. Thus, the total of all costs charged to the grant and classified as general administration must be less than or equal to the 5 percent cap. (See Notice CPD 13-07 for additional guidance regarding classification of general administration costs.)

**(1) Alternative Requirements.** For State Grantees under this notice, the provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) will not apply to the extent that they specify a cap on general 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. Thus, 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for general 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 general

administration costs. Planning costs subject to the 20 percent cap are those defined in 42 U.S.C. 5305(a)(12).

**(2) Local Government Grantees Are Also Subject to the 5 Percent Administrative Cap.** This 5 percent applies to all general administration costs, whether incurred by the Grantee or its subrecipients. Local government Grantees also remain limited to spending 20 percent of the total CDBG-NDR award on a combination of planning and general administration costs.

**(3) Planning and Administrative Costs Pledged as Leverage:** Grantees cannot charge to the grant any administrative and planning costs pledged as leverage.

**11. 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 general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that effective CDBG disaster recoveries have relied on some form of areawide 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 570.208(d)(4) when funding disaster recovery-assisted, planning-only activities, 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 administer are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205.

**12. Waiver And Alternative Requirement for Distribution to CDBG Metropolitan Cities and Urban Counties — Applicable to State Grantees Only.** Section 5302(a)(7) of 42 U.S.C. (definition of “nonentitlement area”) and provisions of 24 CFR part 570 that would prohibit or restrict a State from distributing CDBG funds to entitlement communities and Indian tribes under the CDBG program, are waived, including 24 CFR 570.480(a) and 570.486(c) (revised April 23, 2012). Instead, the State may distribute funds to local governments and Indian tribes.

**13. 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 through a subrecipient, the requirements at 24 CFR 570.503, 570.500(c), and 570.489(m) apply, except only the specific references to 2 CFR part 200 made applicable by the State CDBG regulations must be included in subrecipient agreements. Pursuant to 24 CFR 570.489(p) (revised December 7, 2015), a State Grantee must ensure that its costs and those of its State recipients and subrecipients are in conformance with 2 CFR part 200, subpart E, as may be amended, where carrying out activities directly, including through the use of a subrecipient.

**(14) Recordkeeping.**

**(a) State Grantees.** 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 under 24 CFR 570.493

of the State's administration of CDBG-NDR funds. 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; ensure compliance with requirements of this notice and any other notice governing the use of CDBG-NDR grants; and show how activities funded are consistent with the descriptions of activities proposed for funding in the Action Plan and DRGR system. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, disability, and gender characteristics of persons who are Applicants for, participants in, or beneficiaries of the program.

**b. Local Government Grantees.** Entitlement Grantees remain subject to the recordkeeping requirements of 24 CFR 570.506.

**15. Change of Use of Real Property — Applicable to State Grantees Only.** This waiver conforms to the change of the 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.”

**16. 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. Section 570.492 of 24 CFR 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 local governments, as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2), as amended, and as modified by this notice. In the case of noncompliance with these requirements, the State shall take such actions as may be

appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or local governments.

**17. Program Income Alternative Requirement.** The Department is waiving applicable program income rules at 42 U.S.C 5304(j), 24 CFR 570.500(a) and (b), 570.504, and 570.489(e) to the extent necessary to provide additional flexibility as described under this notice. The alternative requirements provide guidance regarding the use of program income received before and after grant 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-NDR funds and received by a State, local government, or tribe, or a subrecipient of a State, local government, or tribe, unless excluded from the definition as described in paragraph 17.a.(2) and paragraph 17.d below. When income is generated by an activity that is only partially assisted with CDBG-NDR funds, the program income to the CDBG-NDR grant shall be prorated to reflect the percentage of CDBG-NDR funds used (e.g., a single loan supported by CDBG-NDR funds and other funds; a single parcel of land purchased with CDBG-NDR 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-NDR funds;
- (b) Proceeds from the disposition of equipment purchased with CDBG-NDR funds;
- (c) Gross income from the use or rental of real or personal property acquired with CDBG-NDR funds by a State, local government, or tribe, or subrecipient of a State, local government, or tribe, less costs incidental to generation of the income (i.e., net income);

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

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

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

(g) Proceeds from the sale of obligations secured by loans made with CDBG-NDR 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-NDR portion of a public improvement; and

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

(b) Amounts generated by activities both eligible 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 local government Grantee receiving a direct CDBG-NDR award may permit a subrecipient to retain program income. State Grantees may permit a 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 CDBG-NDR grant funds subject to the requirements of this notice and must be used in accordance with the Grantee's Action Plan. 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, modified by this notice, the following rules apply: A Grantee may transfer program income before closeout of the CDBG-NDR grant that generated the program income to its annual CDBG program. In addition, a State Grantee may transfer program income before closeout to any annual CDBG-funded activities carried out by a local government or Indian tribe within the State, including a local government that is an Entitlement CDBG grantee if that Entitlement grantee received CDBG disaster recovery assistance from the State or from HUD under Public Law 113-2.

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 received, and not used to continue disaster recovery activities, will not be subject to the waivers and alternative requirements of this notice. Rather, those funds will be subject to the Grantee's non-disaster formula CDBG program rules.

**d. Revolving Loan Funds.** Entitlement Grantees, State Grantees, and local governments or tribes (as 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 that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities.

State Grantees may also establish a revolving fund to distribute funds to local governments or tribes to carry out specific, identified activities. The same requirements, outlined above, apply to this type of revolving loan fund. Lastly, note that no revolving fund established per this notice, shall be directly funded or capitalized with an advance of CDBG-NDR grant funds.

**18. Reimbursement of Disaster Recovery Expenses.** Grantees may not use CDBG-NDR grant funds to pay for any activities carried out on or before the date of the letter notifying the grantee of the award of the grant, except that grant funds may be used to reimburse CDBG-NDR eligible costs of grant application preparation, including planning and citizen outreach activities. The provisions of 24 CFR 570.489(b) are applied to permit a State to reimburse itself for otherwise allowable application-related costs incurred by itself or its recipients, subgrantees or subrecipients (including public housing authorities) on or after the date of publication of the initial CDBG-NDR NOFA. An entitlement Grantee is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable application-related costs incurred on or after the publication date of the initial CDBG-NDR NOFA. Section 570.200(h)(1)(i) of 24 CFR will not apply to the extent that it requires preagreement activities to be included in a consolidated plan. The Department expected Grantees to include all preagreement activities in their applications. The provisions at 24 CFR 570.200(h) and 570.489(b), as modified by this paragraph, apply to Grantees reimbursing application-related costs incurred by itself or its recipients or subrecipients prior to signing a grant agreement with HUD.

## **19. One-for-One Replacement, Relocation, and Real Property Acquisition**

**Requirements.** Activities and Projects assisted by CDBG-NDR 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 purposes of promoting the availability of decent, safe, and sanitary housing and expediting disaster recovery and rehousing efforts, HUD is waiving the following URA and Section 104(d) requirements for CDBG-NDR Grantees:

**a. One-for-One Replacement.** One-for-one replacement requirements at section 104(d)(2)(A)(i)-(ii) and (d)(3) and 24 CFR 42.375 are waived in connection with funds allocated under this notice for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The Section 104(d) one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable lower-income dwelling units.

This waiver exempts disaster-damaged units that meet the Grantee's definition of "not suitable for rehabilitation" from the one-for-one replacement requirements. Before carrying out a program or activity which may be subject to the one-for-one replacement requirements, the Grantee must define "not suitable for rehabilitation" in its application or in policies/procedures governing these programs and activities. Grantees with questions about the one-for-one replacement requirements are encouraged to contact the HUD regional relocation specialist responsible for their State.

HUD is waiving the one-for-one replacement requirements because they do not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Furthermore, the requirements may discourage Grantees from

converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and may impede economic revitalization. Grantees should reassess post-disaster population and housing needs to determine the appropriate type, amount, and location 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, neither of which is waived by this notice.

**b. Relocation Assistance.** The Section 104(d) relocation assistance requirements at section 104(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, as modified by this notice, for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (e.g., buyouts and relocation). Both FEMA and HUD funds are subject to the URA; however, HUD's CDBG Funds are also subject to Section 104(d), while FEMA funds are not. The URA provides that a displaced person is eligible to receive a rental assistance payment that covers a period of 42 months. By contrast, Section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the Section 104(d) requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under this notice.

**c. Arm's Length Voluntary Purchase.** The requirements at 49 CFR 24.101(b)(2)(i) – (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses CDBG-NDR funds and does not have the power of eminent

domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often large-scale acquisition needs of Grantees, this waiver is necessary to reduce burdensome administrative requirements following a disaster. Grantees are reminded that any tenants occupying real property that is acquired through voluntary purchase may be eligible for relocation assistance.

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

**e. Tenant-Based Rental Assistance.** The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(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 Housing Choice Voucher Program), 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. Moving Expenses.** The requirements at section 202(b) of the URA and 49 CFR 24.302, which require that a Grantee offer a displaced person the option to receive a fixed moving cost payment based on the Federal Highway Administration's Fixed Residential Moving Cost Schedule instead of receiving payment for actual moving and related expenses, are waived. As an alternative, the Grantee must establish and offer the person a "moving expense and dislocation allowance" under a schedule of allowances that is reasonable for the jurisdiction and that takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

Without this waiver and alternative requirement, disaster recovery may be impeded by requiring Grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established "moving expense and dislocation allowance."

**g. Optional Relocation Policies.** The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the Grantee or State recipient level. Unlike the annual formula CDBG program, States receiving CDBG-NDR funds 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 also makes clear that local governments 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-NDR funds.

## **20. Environmental Requirements.**

**a. Clarifying Note on the Process for Environmental Release of Funds When a State Carries Out Activities Directly.** In the CDBG program, a State distributes CDBG Funds to local governments and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For State Grantees under this notice, HUD allows the State to carry out activities directly, in addition to distributing funds to subrecipients and/or subgrantees. Thus, per 24 CFR 58.4, when a State carries out activities directly, the State must submit the certification and request for release of funds to HUD for approval.

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

**c. Release of Funds.** In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a request for release of funds and certification, immediately approve the release of funds for an activity or Project assisted with CDBG-NDR funds if the recipient has adopted an environmental review, approval or permit

under subparagraph b, above, or the activity or Project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

**d. Historic Preservation Reviews.** To facilitate expedited historic preservation reviews under section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108), HUD strongly encourages Grantees to allocate general administration funds to support the capacity of the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) to review CDBG-NDR Projects.

## **21. Procurement.**

**a. State Grantees.** Per 24 CFR 570.489(d), a State must have fiscal and administrative requirements for expending and accounting for all funds. Additionally, States and State subgrantees (Units of General Local Governments) and subrecipients shall follow requirements of 24 CFR 570.489(g). HUD is imposing a waiver and alternative requirement to require the State to establish requirements for procurement policies and procedures based on full and open competition for subrecipients, in addition to units of general local government.

The State can comply with the requirement under 24 CFR 570.489(g) to follow its procurement policies and procedures and establish procurement requirements for its UGLGs and subrecipients in one of three ways (subject to 2 CFR 200.110, as applicable):

(i) A State can follow its existing procurement policies and procedures and establish requirements for procurement policies and procedures for units of general local government and subrecipients, based on full and open competition, that specify methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability;

(ii) A State can adopt 2 CFR 200.317, which requires the State to follow the same policies and procedures it uses for procurements from its non-Federal funds and comply with

2 CFR §200.322 (procurement of recovered materials) and 2 CFR §200.326 (required contract provisions), but requires the State to make its subrecipients and UGLGs follow 2 CFR 200.318 through 200.326; or

(iii) A State can adopt the provisions that apply to CDBG entitlement grantees (2 CFR 200.318 through 2 CFR 200.326) for itself and its subgrantees (subrecipients and units of general local government).

**b. Direct Grants to Local Governments.** Any unit of general local government receiving a direct grant from HUD is subject to procurement requirements in the Uniform Administrative Requirements at 2 CFR 200.318 through 2 CFR 200.326 (subject to 2 CFR 200.110, as applicable).

**c. Additional Requirements Related to Procurement (States and Local Governments).** HUD may request periodic updates from grantees that employ contractors. A contractor is a third-party firm that the grantee acquires through a procurement process to perform specific functions, consistent with the procurement requirements in the CDBG program regulations. A subrecipient is not a contractor (see 2 CFR 200.330). Grantees are also required to ensure all contracts and agreements (with subrecipients, recipients, and contractors) clearly state the period of performance or date of completion. Grantees must incorporate performance requirements and penalties into each contract or agreement. The Appropriations Act requires HUD to provide Grantees with technical assistance on contracting and procurement processes.

**22. Public Website.** The Appropriations Act requires Grantees to maintain a public website that provides information accounting for how all grant funds are used and managed/administered, including details of all contracts and ongoing procurement policies. To meet this requirement, each Grantee must make the following items available on its website: the Action Plan (including the latest version of its Action Plan, the latest version of

its DRGR Action Plan, the version as submitted to HUD for the competition, and all amendments, as described in section 3.V.A.3 of this notice); each QPR (as created using the DRGR system) detailing expenditures for each contractor; procurement policies and procedures; executed CDBG-NDR contracts; and the status of services or goods currently being procured by the Grantee (e.g., phase of the procurement, requirements for proposals, etc.).

**23. Timely Distribution of Funds.** The provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with the following alternative requirement: Grantees must adhere to the requirement in section 904(c) of the Appropriations Act, which requires that all funds be expended within 2 years of the date HUD obligates funds to a Grantee, as described in section 3.II.A.1.a in 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 to ensure this deadline is met.

Additionally, to track Grantees' progress, HUD will evaluate timeliness in relation to each Grantee's established projection schedules (see section 3.II. B and section 3.V.A.1.j of this notice). 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 pursuant to this section, HUD will take into account the extent to which unexpended funds have been obligated by the Grantee and its subrecipients for specific activities at the time the finding is made and other relevant information. As stated in the NOFA, if a Grantee does not proceed within a reasonable time frame, HUD reserves the right to withdraw any funds the Grantee has not obligated under their award. If funds are withdrawn prior to September 30, 2017, HUD shall

redistribute any withdrawn amounts to one or more other jurisdictions eligible for CDBG-DR funding.

**24. Review of Continuing Capacity to Carry Out CDBG-Funded Activities in a Timely Manner.** If HUD determines at any time that the Grantee has not carried out its CDBG-NDR activities and certifications in accordance with the requirements and criteria described in this notice, HUD will undertake a further review to determine whether or not the Grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the following alternative requirements to provisions under 42 U.S.C. 5304(e): the nature and extent of the Grantee's performance deficiencies, types of corrective actions the Grantee has undertaken, and the success or likely success of such actions.

**25. Corrective and Remedial Actions.** To ensure compliance with the requirements of the Appropriations Act and to effectively administer the CDBG-NDR program in a manner that facilitates recovery, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) of the HCD Act to the extent necessary to impose the following alternative requirement: HUD may undertake corrective and remedial actions for States in accordance with the authorities applicable to entitlement Grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. Before determining appropriate corrective actions, HUD will notify the Grantee of the procedures applicable to its review. As in the annual CDBG program, in accordance with 24 CFR 570.300, the policies and procedures set forth in subpart O apply to local governments receiving direct grants from HUD.

**26. 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 notice, the Grantee 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.

**B. Common Eligibility Waivers and Alternative Requirements and Other Provisions:**

**Housing, Floodplain Issues, Infrastructure, Economic Revitalization**

**1. Housing-Related Eligibility Waivers.** The broadening of 42 U.S.C. 5305(a)(24) 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, 42 U.S.C. 5305(a) is waived to the extent necessary to allow: homeownership assistance for households with up to 120 percent of the area median income, down payment assistance for up to 100 percent of the down payment (an increase from the limit in 42 U.S.C. 5305(a)(24)(D)), and 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.

**2. Housing incentives.** 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 a 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. Grantees providing housing incentives must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. Incentives to relocate individuals

outside of a floodplain, when combined with acquisition that would lead to redevelopment in the floodplain, is not permissible if it does not increase Resilience. When assessing compliance under this alternative requirement, HUD will look closely at how those activities that include housing incentives are necessary and reasonable, are consistent with the BCA submitted with the application, and increase Resilience. In addition, the incentives must be in accordance with the Grantee's Action Plan and any other program policies. Note that this waiver does not permit a compensation program. Additionally, a Grantee may require the incentive to be used for a particular purpose by the household receiving the assistance.

### **3. Limitation on Emergency Grant Payments Interim Mortgage Assistance.** 42

U.S.C. 5305(a)(8) is modified to extend interim mortgage assistance to qualified individuals from 3 months, for up to 20 months. Interim mortgage assistance is typically used in conjunction with a buyout program, or the rehabilitation or reconstruction of single-family housing, during which mortgage payments may be due but the home is uninhabitable. The time required for a household to complete the rebuilding process may often extend beyond 3 months. Thus, interim assistance is critical for many households facing financial hardship during this period. A Grantee using this alternative requirement must document, in its policies and procedures, how it will determine the amount of assistance to be provided is necessary and reasonable.

### **4. Acquisition of Real Property and Flood Buyouts.** Grantees under this notice and the NOFA are able to carry out property acquisition for a variety of purposes. However, the term "buyouts," as referenced in this notice refers, to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding. HUD is providing alternative requirements for consistency with the application of other Federal resources commonly used for this type of activity.

#### **a. Buyout Requirements.**

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

(2) No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than (a) a public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area), (b) a rest room, (c) a flood control structure, or (d) a structure that the local floodplain manager approves in writing before the commencement of the construction of the structure.

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

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

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

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

**b. Redevelopment of Acquired Properties.**

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

(2) Grantees may redevelop an acquired property if: (a) the property is not acquired through a buyout program, and (b) the purchase price is based on the property's post-flood fair market value (the pre-flood value may not be used). In addition to the purchase price, Grantees may opt to provide relocation assistance to the owner of a property that will be redeveloped if the property is purchased by the Grantee or subgrantee through voluntary acquisition, and the owner's need for additional assistance is documented.

(3) In carrying out acquisition activities, the Grantee must ensure compliance with its long-term redevelopment plans.

**5. Alternative Requirement for Housing Rehabilitation — Assistance for Second Homes.** The Department is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a) as follows: A "second home", as defined in IRS Publication 936 (Home Mortgage Interest Deductions), is not eligible for rehabilitation assistance, residential incentives, or to participate in a CDBG-NDR buyout program (as defined by this notice).

**6. Floodplains and Flood insurance.** Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, prior to providing assistance. For additional information, please consult with the Field Environmental Officer in the local HUD Field Office, or review the guidance on flood insurance requirements on HUD's website. Additional requirements for flood insurance, future Federal disaster assistance, and flood control structures are included below.

**a. Flood insurance Purchase Requirements.** HUD does not prohibit the use of CDBG-NDR funds for existing residential buildings in a 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 an 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 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for any HUD-assisted property within an SFHA.

**b. Future Federal Assistance to Owners Remaining in a Floodplain.**

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person, at any time, has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has, subsequently, failed to obtain and maintain flood insurance, as required under applicable Federal law, on such property. This means that a Grantee may not provide disaster assistance for the repair, replacement, or restoration to a person who has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a Grantee that receives CDBG-NDR funds or that designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

**(3) Duty to notify.** In the event of the transfer of any property described in subparagraph (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.

**c. Floodplain Management.** HUD CDBG-NDR grants must conform to Executive Orders 11988, on Floodplain Management, and 11990, on Wetlands, as well as HUD's regulations at 24 CFR parts 55 and 58, which may include identifying alternate locations, and, as necessary, modifying the Project.

**d. Federally Funded Levees, Floodwalls, and Other Flood Control Structures.** The requirements in this section apply to new structures and improvements to existing structures.

**(1) Operation and Maintenance.** HUD expects the Grantee or one of its Partners to take responsibility for operating and maintaining any levee, floodwall, or other flood control structure.

**(2) Purpose.** One function of such a structure must be for the purpose of providing flood protection for existing structures at risk of flooding, although the CDBG-NDR Project incorporating such a structure must also meet an Unmet Recovery Need and may include co-benefits that meet other community development objectives, but must not be created to reduce flooding to currently undeveloped land.

**(3) Special Requirements for Levees.** A levee or levee system (new or existing) proposed under this NOFA must be technically sound (i.e., levee is tied off to high ground, is geotechnically stable, etc.), well maintained, and provide reliable flood protection. Any levee Project carried out as a CDBG-NDR activity must meet FEMA accreditation standards upon completion and the Sources and Uses statement must identify, and the Leverage response commit to providing a source of funding for operations and maintenance of the levee in perpetuity.

If HUD provides funding for such a structure under this notice, the grant terms and conditions will require the Grantee to upload into the DRGR system (and, if directed by HUD, the National Levee Database) shape files or other geographic information system data delineating the exact location of the assisted structure and of the area served and protected by

the structure (meaning the area subject to inundation to any depth in the event of a levee breach at any location), and to provide additional data for input to the National Levee Database, including the status of the levee under the U.S. Army Corps of Engineers Public Law 84-99 Program (Levee Rehabilitation and Improvement Program), accreditation status under the National Flood Insurance Program; levee owner/operator, and public party that is legally responsible for the maintenance of the levee; number of all structures, and of people that reside, in the leveed area; critical structures and facilities in the leveed area, as-built plans sealed by a licensed professional engineer; levee cross-section plots and coordinates; levee features (i.e., gravity drains, pump stations relief wells, boreholes, etc.); levee design flow; levee design frequency; level of freeboard being no less than 3 vertical feet; and points of contact for public safety/emergency management and repository for the Levee Emergency Action Plan, levee operations and maintenance, and flood risk/floodplain management plan for the levee.

Information provided to HUD for submission to the National Levee Database (or to the database, as directed by HUD) is to be updated on an annual basis or any time that there is a change in the status of the levee, including updates to the inspection date, inspection type, and inspection rating of the levee. This information will be shared with FEMA, the U.S. Army Corps of Engineers, members of the House and Senate appropriations committees, and any other interested Federal agencies and affected parties, as appropriate. This information is intended to be used to ensure that no additional Federal resources are used for operations and maintenance of the structure in the future.

**(4) Public Notification.** In addition, because occupants in the floodplain behind flood control structures are at risk when the levee or other structure is overtopped or fails, the grant terms and conditions governing HUD funding for any levee, floodwall, or other flood control structure will require the Grantee to provide, to all property owners, businesses, and residents in the leveed area, notification of the presence, condition, and level of protection of the levee, on

no less than an annual basis. This notification must include messages regarding public safety information and evacuation procedures, promotion of flood insurance, family and business evacuation planning, and point of contact for reports of any problems, questions, and additional information related to the structure.

**7. Use of CDBG-NDR as Match and Order of Assistance Between FEMA, U.S. Army Corps of Engineers, and CDBG-NDR.** As provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-NDR activity. This includes programs or activities administered by FEMA or the U.S. Army Corps of Engineers. By law, the amount of CDBG-NDR funds that may be contributed to a U.S. Army Corps of Engineers Project is \$250,000 or less. However, the Appropriations Act prohibits use of funds for any activity reimbursable by, or for which funds are made available by, FEMA or the U.S. Army Corps of Engineers.

**8. National Objective Documentation for Economic Development Activities.**

Sections 570.483(b)(4)(i) and 570.208(a)(4)(i) of 24 CFR 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 by allowing the collection of wage data from the assisted business for each position created or retained, 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 has determined that, in the context of disaster recovery, this waiver is consistent with the HCD Act.

**9. 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 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 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; the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs. HUD is also waiving 570.482(g) and 570.209(c) and (d) to the extent these provisions are related to public benefit.

#### **10. Clarifying note on Section 3 Resident Eligibility and Documentation**

**Requirements.** The definition of “low-income persons” in 12 U.S.C. 1701u and 24 CFR 135.5, is the basis for eligibility as a Section 3 resident. This notice authorizes Grantees to determine that an individual is eligible to be considered a Section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.

**11. 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(h) are waived to allow a Grantee to provide assistance to any eligible 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.

**12. Alternative Requirement for Assistance to Businesses, Including Privately-Owned Utilities.** The Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) as follows: When CDBG-NDR Grantees provide funds to for-profit businesses, such funds may only be provided to a small business, as defined by the SBA under 13 CFR Part 121. CDBG-NDR funds may not be used to directly assist a privately owned utility for any purpose. Note that a private utility may be a Partner to the Applicant for purposes of implementing a CDBG-NDR program.

## **C. Certifications and Collection of Information**

**1. Certifications Waiver and Alternative Requirement.** Sections 91.325 and 91.225 of title 24 of the Code of Federal Regulations are waived, and as an alternative requirement, each State or local government that applied for an award under the NOFA are held to the certifications required by Appendix F to the NOFA and submitted with its Phase 1 and its Phase 2 applications as a requirement for funding.

a. As required by the NOFA, an Applicant signing the SF-424 cover page, either through electronic submission or in paper copy submission (for those Applicants granted a waiver to submit in paper), affirms that the certifications and assurances associated with the Application are material representations of the facts upon which the Department will rely when making an award to the Applicant. If it is later determined that the signatory to the application submission knowingly made a false certification or assurance or did not have the authority to make a legally binding commitment for the Applicant, the Applicant may be subject to criminal prosecution, and the Department may terminate the award to the Applicant organization or pursue other available remedies.

**b. Affirmatively Furthering Fair Housing Certification.** All activities under this notice shall be carried out in a manner that affirmatively furthers fair housing, as required by section 808(e)(5) of the Fair Housing Act, as amended (42 U.S.C. 3608(e)(5)). Each Applicant made the required certification for CDBG-NDR activities included in Appendix F of the NOFA.

Grantees shall adhere to the certifications included in Appendix F of the NOFA and 24 CFR § 570.601, and take appropriate actions to support and document compliance with the certification.

**2. Information Collection Approval Note.** The information collection requirements contained in this document were approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number [Paperwork Reduction Act Number 2506-0203]. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The public reporting burden for the collection of information following the award of funds is estimated to average 56.2 hours per annum, per respondent, for grant set-up and

administration. This includes the time for executing the grant agreement, establishing the grant within the DRGR system, voucher submissions, and quarterly reports. The information will be used for monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

#### **Section 4: Duration of Funding**

CDBG-NDR funds are subject to 31 U.S.C. 1552(a), and, therefore, are to remain available for expenditure for 5 years following the period of availability for obligation. All funds under the Appropriations Act must be expended by September 30, 2022. In addition, the Appropriations Act requires that HUD obligate all CDBG-NDR funds by September 30, 2017. The Appropriations Act (Section 904(c) of title IX in division A) also requires that all funds be expended within 2 years of the date HUD obligates funds. For more information, including information on extensions, see section 3.II of this notice.

#### **Section 5: Catalog of Federal Domestic Assistance**

The primary Catalog of Federal Domestic Assistance (CFDA) number for the disaster recovery grants under this notice is 14.272. Additional supporting CFDA's are 14.218 and 14.228.

#### **Section 6: Finding of No Significant Impact**

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

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

Date: June 1, 2016

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Nani A. Coloretti, Deputy Secretary

**[FR-5936-N-01]**

[FR Doc. 2016-13430 Filed: 6/6/2016 8:45 am; Publication Date: 6/7/2016]