

Appendix A: CDBG-NDR Program Requirements

This Appendix contains the post-award requirements applicable to Community Development Block Grant (CDBG) funds made available by the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013) (Appropriations Act) and awarded under the National Disaster Resilience Competition as CDBG National Disaster Resilience (CDBG-NDR) grants.

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 this NOFA. Other capitalized terms in this Appendix are defined in the NOFA.

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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 Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (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 this NOFA, this requirement for an Action Plan for Disaster Recovery (Action Plan) is fulfilled by the grantee's submissions: the Applicant's Phase 1 and Phase 2 submissions for this competition together constitute an Action Plan as required under P.L. 113-2.

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 this NOFA for the preparation and submission of an Application. Additionally, HUD must agree in writing that the substantially amended Application would still score in the fundable range for the competition.

The following modifications constitute a substantial amendment requiring HUD approval: any change to 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), any change in program benefit, beneficiaries, or eligibility criteria, the allocation or re-allocation of more than \$1 million, or the addition or deletion of an eligible activity.

Grantees are required under this NOFA to show evidence that firmly committed leverage resources were actually received and used for their intended purposes through quarterly reports as the project proceeds. Sources of leverage funds may be substituted after grant award, as long as the dollar amount of leverage is equal to or greater than the total amount of leverage identified as firmly committed in the application submissions to HUD. Substitution of a leverage source in the same amount committed in the Phase 1 or Phase 2 application is not a substantial amendment. Section VI.A. describes additional DRGR leverage reporting requirements.

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 this NOFA and all applicable requirements. As indicated in this CDBG-NDR 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. Additional information about substantial amendments can be found in section VI.A.3. below.

Amendments to the Action Plan that do not fall within the definition of a substantial amendment are referred to as "non-substantial amendments" or "technical amendments." These are discussed in section VI.A.3. below.

With the exception of general administration and planning activities, the grantee may only use CDBG-RDR funds to assist 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 will not approve 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 and the CDBG-NDR NOFA provide guidance on completing an acceptable BCA.

C. Applicable Statutory and Regulatory Requirements

All recipients of CDBG-NDR grants are subject to: (1) the requirements of the Appropriations Act; (2) the Fiscal Year (FY) 2014 Notice of Funding Availability for National Disaster Resilience Competition (CDBG-NDR NOFA), including all appendices and incorporated portions of the FY 2014 General Section (as amended); and (3) applicable regulations governing the CDBG program at 24 CFR part 570, unless modified by waivers and alternative requirements published by HUD in this NOFA or other applicable Federal Register Notice.

Note that OMB recently published Guidance for Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards which will update 24 CFR parts 84 and 85 and supersede the Circulars listed in the Technical Correction to the FY 2014 General Section. HUD is implementing regulations in accordance with the guidance and expects the new regulations will become effective December 26, 2014. FY 2014 grantees will be required to comply with the HUD implementing regulations when they become effective, but shall not use them before the effective date. Information regarding how to receive copies of the current and revised circulars can be found in the Technical Correction to the FY 2014 General Section.

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

A. Statutory Expenditure Deadline

The Appropriations Act requires that HUD obligate all 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 two years of the date HUD obligates funds to a grantee (funds are obligated to a grantee upon HUD's signing of the grantee's CDBG-DR grant agreement). Action Plans must demonstrate how funds will be fully expended within two years of obligation. For any portion of funds that the grantee believes will not be expended by the deadline and that it desires to retain, it must submit a letter to HUD justifying why it is necessary to extend the deadline for a specific portion of funds. The letter must meet all the deadlines and other requirements in Appendix E to this NOFA.

Grantees are advised that waivers of the two year expenditure deadline may not be granted. Any funds not expended by the deadline (or extended deadline, if a waiver is approved) will be recaptured. Grantees must continue to meet the requirements for Federal cash management at 24 CFR 85.20(a)(7), as may be amended, and therefore may not draw down funds in advance

of need to attempt to comply with the expenditure deadline in accordance with HUD's long-standing implementation of this requirement.

B. Secretary's Certifications and Grantee Submissions

The Appropriations Act requires the Secretary to certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive websites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds.

To provide a basis for the Secretary to make the certification, each grantee must submit the certification required in Appendix F related to the requirements of Public Law 113-2. In addition, before HUD issues 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 attached to an award selection letter issued by HUD. A HUD representative will review the grantee's submission and complete the HUD portion of the Certification Checklist. Failure to submit the checklist and documentation within 30 days of the award selection letter may result in the cancellation of the award selection.

A sample checklist is available online:

http://portal.hud.gov/hudportal/documents/huddoc?id=drsi_sandy_checklist.pdf

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

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

(a) Grantee submits its most recent OMB Circular A-133 audit and annual financial statement, and the submission indicates that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of the CDBG program. If the A-133 or annual financial statement identified weaknesses or deficiencies, the grantee must provide documentation showing how those weaknesses have been removed or are being addressed; and

(b) With its completed checklist, grantee must submit Exhibit 3-18, Guide for Review of Financial Management, as modified to support the financial controls certification required by Pub. L. 113-2 grantees (Modified Exhibit 3-18). This exhibit is available online:

http://portal.hud.gov/hudportal/documents/huddoc?id=cdbg_dr_exhibit_3_18.pdf

The completed Modified Exhibit 3-18 must demonstrate the financial standards are complete and conform to the requirements of Exhibit 3-18. The grantee must identify which sections of its financial standards address each of the questions in Modified Exhibit 3-18 and which personnel or unit are responsible for each checklist item.

(2) *Procurement.* A grantee has in place a proficient procurement process if the:

(a) Grantee has adopted the specific procurement standards identified in 24 CFR 85.36, as may be amended. The grantee must provide a copy of its procurement standards and indicate the sections of its procurement standards that incorporate 24 CFR 85.36, as may be amended. The procedures should also indicate which personnel or unit are responsible for each item; or

(b) Grantee's procurement process/standards are equivalent to the procurement standards at 24 CFR 85.36, as may be amended (applicable to State grantees only). Grantee must provide its procurement standards and indicate the sections of its procurement standards that align with each procurement provision of 24 CFR 85.36 (may be submitted as a crosswalk mapping state law procurement provisions to equivalent provisions in 24 CFR part 85). The procedures should also indicate which personnel or unit are responsible for the task.

(3) *Duplication of benefits.* A grantee has adequate procedures to prevent the duplication of benefits when it provides to HUD a uniform prevention of duplication of benefits procedure wherein the grantee identifies its processes for each of the following: verifying all sources of disaster assistance; determining an applicant'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 are responsible for the task. Duplication of benefits requirements applicable to the use of CDBG-NDR funds are discussed in section II.C. of this Appendix.

(4) *Adequate procedures to determine timely expenditures.* A grantee has adequate procedures to determine timely expenditures if a grantee provides procedures to HUD that indicate how the grantee 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 are responsible for the task.

(5) *Procedures to maintain comprehensive websites regarding all disaster recovery activities assisted with these funds.* A grantee has adequate procedures to maintain comprehensive websites regarding all disaster recovery activities if its procedures indicate that the grantee will have a separate page dedicated to its disaster recovery that will contain links to all action plans, action plan amendments, 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 are responsible for the task.

(6) *Procedures to detect fraud, waste, and abuse of funds.* A grantee has adequate procedures to detect fraud, waste, and abuse if its procedures indicate how the grantee will verify the accuracy

of information provided by applicants; provides a monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring, and which items are monitored; and that the internal auditor has affirmed and described its role in detecting fraud, waste, and abuse.

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

After submitting materials necessary to support the Secretary’s certification, 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 grantee’s support for its certifications.

Second, grantees must to submit to the Department a projection of expenditures and outcomes to ensure funds are expended in a timely manner. The projections must be based on each quarter’s expected performance—beginning the quarter funds are available to the grantee and continuing each quarter until all funds are expended. Each grantee must include these projected expenditures and outcomes in activity set-up in HUD’s Disaster Recovery Grant Reporting system (DRGR) within 90 days of grant award. The information in DRGR (known as 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. However, amending Action Plans to accommodate changes to the timeline for projected expenditures does not fall within the definition of substantial amendment and is not subject to citizen participation requirements.

Guidance on the preparation of projections is available on HUD’s website under the headings Office of Community Planning and Development, Disaster Recovery Assistance (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 website (<https://drgr.hud.gov/public/>).

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

Third, 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 VI.A. of this Appendix. 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 Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (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 at 76 FR 71060 (November 16, 2011), which is referenced in paragraph A.2 under section VI of this CDBG-NDR NOFA. The Department published additional guidance July 25, 2013, titled “Guidance on Duplication of Benefit Requirements and Provision of CDBG-DR Assistance.” For all awards under this NOFA, 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:

- Applicant conducts Phase 1 consultation that meets the requirements of Appendix I.
- Applicant conducts citizen participation in accordance with the requirements of the CDBG-NDR NOFA (see section III.C.1. of the CDBG-NDR NOFA) and this Appendix, including one public hearing and at least 15 days for Phase 1 citizen comment;
- Applicant responds to public comment and submits its Phase 1 application and certifications;
- HUD reviews Phase 1 applications in accordance with this NOFA and invites highest scoring applicants to submit a Phase 2 submission;
- Applicant conducts Phase 2 consultation that meets the requirements of Appendix I.
- Applicant conducts citizen participation in accordance with the requirements of the CDBG-NDR NOFA (see section III.C.1. of the CDBG-NDR NOFA), including one public hearing and at least 15 days for Phase 2 for citizen comment;
- Applicant responds to public comment and submits its Phase 2 application and certifications;
- If the application is selected for award, HUD sends an award letter selection letter outlining next steps before award is effective;
- Within 30 days of grant award selection letter, awardee submits evidence 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 as described in section II of this Appendix;

- Once certification checklist is completed and HUD determines that submissions are sufficient, the Secretary makes the certification required by the Appropriations Act;
- HUD sends unsigned grant agreement and grant conditions;
- Awardee ensures that the HUD-approved application is posted on its official website;
- Grantee signs and returns the fully executed grant agreement;
- HUD signs the grant agreement and establishes the proper amount in a line of credit for the grantee (this triggers the two 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 DRGR (the DRGR Action Plan) and submits it to HUD within the system (funds can be drawn from the line of credit only for activities that are established in DRGR);
- 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 paragraph A.20 under section VI of this Appendix) 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; and
- Grantee amends its published application to include its projection of expenditures and outcomes within 90 days of the date of the award letter.

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

This section of the Appendix describes requirements imposed by the Appropriations Act, applicable waivers, and alternative requirements. For each waiver and alternative requirement described in this Appendix and the NOFA, 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 this 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-DR appropriation, or any formula award under the Appropriations Act.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities (for waiver requests instructions, see Appendix E). Except where noted, waivers and alternative requirements described below apply to all grantees under this NOFA. Under the requirements of the Appropriations Act, regulatory waivers must be published in the Federal Register no later than five days before the effective date of such waiver.

Except as described in this NOFA, statutory and regulatory provisions governing the State CDBG program shall apply to any State receiving an allocation under this CDBG-NDR NOFA while statutory and regulatory provisions governing the Entitlement CDBG program shall apply to entitlement units of general local government. 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 Appendix pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted. The “date of this NOFA” shall mean the effective date of the CDBG-NDR NOFA 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), 24 CFR 91.220, and 91.320 are waived for funds provided under the CDBG-NDR NOFA. Instead, each grantee must submit to HUD an Application for CDBG-NDR. The Applicant’s Phase 1 and Phase 2 submissions for this competition together constitute an Action Plan required under P.L. 113-2. HUD will monitor the grantee’s activities and use of funds for consistency with its 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 CDBG-NDR NOFA, including in this Appendix.

a. Action Plan-related requirements. The Application must meet the criteria of the NOFA and must 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 two 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 how it will promote (a) sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account possible sea level rise (for example, by using the new FEMA floodplain maps and designs applying the new Advisory Based Flood Elevations (ABFE) or higher).

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 re-building 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) For purposes of this CDBG-NDR NOFA, 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 (NC, Homes, Midrise, Existing Buildings O&M, 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 non-substantially-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:* (i) For construction projects completed, under construction, or under contract prior to the date that assistance is approved for the project, the grantee is encouraged to apply the applicable standards to the extent feasible, but the Green Building Standard is not required; (ii) for specific required equipment or materials for which an ENERGY STAR- or

Water-Sense-labeled or FEMP-designated product does not exist, the requirement to use such products does not apply.

(e) *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 water website; Indoor AirPlus website; Healthy Indoor Environment Protocols for Home Energy Upgrades website; and ENERGY STAR website: 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 the transitional housing, 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, non-minority 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;

b. 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, it must describe in its Application all criteria used to determine the distribution, including the relative importance of each criterion.

c. 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.

d. *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 this NOFA 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 paragraph A.10 under section VI), 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 this CDBG-NDR NOFA at paragraphs A.2 and A.17 of section VI;
- (d) The grantee must establish monitoring standards and procedures that are sufficient to ensure program requirements, including nonduplication of benefits, are met and that provide for continual quality assurance and investigation. 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);

e. Clarification of disaster-related activities. All CDBG-NDR activities must clearly tie back to the disaster for which funding was appropriated. This means each activity must be CDBG-eligible (or receive a waiver), meet a national objective, and address a direct or indirect impact from the disaster in a county covered by a Presidential disaster declaration and cited in Table 2 of this CDBG-NDR NOFA. Additional details on disaster-related activities are provided under Section VI, parts B through D.

(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 how each activity is connected, or tied-back, to the disaster for which it is receiving CDBG assistance, as that term is defined in the CDBG-NDR NOFA. 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 non-physical losses, post-disaster analyses or assessments, using the most rigorous methods feasible, may document the relationship between the disaster and the related effects.

(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, and restoration of infrastructure, 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 this NOFA are limited to activities that respond to the Qualified Disaster(s) for which HUD made the award. However, funds awarded pursuant to this CDBG-NDR NOFA may be used to address an unmet need that arose from a previous disaster or a previous community development need, which was exacerbated by a disaster cited in this NOFA. If an impact or need originating from a disaster identified in this CDBG-NDR NOFA is subsequently exacerbated by a future disaster, funds under this CDBG-NDR NOFA may also be used to address the resulting exacerbated unmet need, with prior HUD approval.

f. 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 CDBG-NDR NOFA 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 will only select grantees for CDBG-NDR awards with documented disaster-related impacts (as supported by data provided by FEMA, SBA, and Applicants), and each grantee is limited to spending funds only in counties identified as the most impacted and distressed area in the Action Plan.

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

g. Certification of proficient controls, processes and procedures. The Appropriations Act requires that the Secretary certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive websites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. To enable the Secretary to make the certification, each grantee must submit the items listed in Section II.B. of this Appendix to the grantee's designated HUD representative. The information must be submitted within 30 days of the award letter. Grant agreements will not be executed until HUD has issued a certification in response to the grantee's submission.

h. Obligation and expenditure of funds. Upon the Secretary's certification, HUD will issue a grant agreement obligating the funds to the grantee. Only the funds described by the grantee in its Application will be obligated. 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.

i. 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.

j. Projection of expenditures and outcomes. Each grantee must amend its published Action Plan (Phase 1 and Phase 2 submission) by entering into DRGR its projected expenditures and outcomes within 90 days of the date of the award letter from HUD. Additional information on compliance with this requirement is available in Section II.B. of this Appendix.

k. Action Plan Amendments and Submission to HUD. As the grantee proposes to amend its Action Plan, each proposed amendment must be highlighted, or otherwise identified, within the context of the entire Application and be submitted to HUD. For substantial amendments, grantees must complete citizen participation requirements of this NOFA and section VI.A.3. of this Appendix before HUD can approve the Amendment. HUD will only approve a substantial amendment if the new score is still within the competitive range. The beginning of

every amendment must include a section that identifies exactly what content is being added, deleted, or changed. This section must also include a chart or table that clearly illustrates where funds are coming from and where they are moving. 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 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 two years of the date of obligation will be enforced relative to the activities 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 Web site. The Department will acknowledge receipt of the proposed amendment via e-mail 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.

2. HUD performance review authorities and grantee reporting requirements in the Disaster Recovery Grant Reporting (DRGR) System.

a. Performance review authorities. 42 U.S.C. 5304(e) requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner, whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCD Act and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner. This CDBG-NDR NOFA 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-DR 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 its Action Plan into DRGR, 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, permits HUD review of compliance requirements, and allows 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.

c. Tracking oversight activities in the DRGR system; use of DRGR data for HUD review and dissemination. Each grantee must also enter into DRGR 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 provide reports to Congress and the public, as well as to (1) monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department's monitoring.

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 (see Notice CPD-14-02: Closeout Instructions for CDBG Programs Grants).

Each QPR will include information about the uses of funds in activities identified in the DRGR system 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 complete 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 committed in the grantee's Action Plan 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 at each Phase of the competition and for each substantial amendment, and require providing a reasonable opportunity (at least 15 days for Phase 1 and 15 days for Phase 2) 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 portions required by the NOFA and this Appendix:* Only the following portions of the Action Plan must be published for public comment: 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 for public comment, opportunity for public comment, hearing, and substantial amendment criteria. Before the Applicant submits the Phase 1 and Phase 2 Application submissions for this NOFA, or a substantial amendment, the Applicant will publish the proposed submission. Applicants are not required to comply with citizen participation requirements before submitting a written request, consistent with the NOFA, for a threshold determination during the first 45 days after publication of this NOFA.

The manner of publication must include prominent posting on the Applicant's official Web site 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 be navigable by citizens from the Applicant's homepage. Applicants are required to hold at least one public hearing to solicit public comments on the Phase 1 submission, one public hearing to solicit comments on the Phase 2 submission, and one hearing before finalizing each substantial amendment submission.

Applicants 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 organizations located in or serving the target area or neighborhood.

Applicants 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 Applicant 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 Application submission, the Applicant 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 Application or amended submission and a list of commenters by name or organization must be submitted to HUD along with the submission. Such a summary submitted with the submission will not count against the application page limits specified in this NOFA.

The criteria for determining what changes in the Application constitute a substantial amendment requiring HUD prior approval are first, any change to the Application that would result in a change of more than 5 points in the score for capacity or soundness of approach or that would change the most impacted and distressed target area(s). Also, the following modifications will constitute a substantial amendment requiring HUD prior approval: a change in program benefit, beneficiaries, or eligibility criteria; the allocation or re-allocation of more than \$1 million; or the addition or deletion of an activity. Subsequent to award, a grantee may substantially amend the Application if it follows the same citizen participation requirements in this Notice for the preparation and submission of an Application, and HUD agrees in writing that the amended Application would still score in the fundable range for the competition.

b. Non-substantial amendment. The grantee is not required to undertake public comment when it makes any plan amendment that is not substantial. The grantee must impose an effective date five days after submission to HUD.

c. Physical Accessibility. Note that all meetings must be held in facilities that are physically accessible to persons with disabilities. Where physical accessibility is not achievable, Applicants and Partners must give priority to alternative methods of product or information delivery that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate in accordance with HUD's implementing regulations for 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 section 8.6.

d. Post-award requirements. The grantee must update its citizen participation plan to reflect the requirements of the NOFA and this Appendix applicable to CDBG-NDR grants. 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 satisfies the requirements of 24 CFR 91.105 or 91.115, as applicable (except as provided for in notices providing waivers and alternative requirements for this grant).

(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.* The grantee must make the Application, any 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 CDBG-DR activities eligible under this NOFA, 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) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the State carries out directly. In addition, activities eligible under this 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 six 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 six 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 NOFA. If not completed since the Qualified Disaster that led to the grantee's eligibility under this 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 non-entitlement areas of the State in determining the State’s proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b), and 91.110, to the extent necessary to comply with the consultation requirements in the NOFA and in Appendix I.

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. Grantees under this NOFA 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 CDBG-NDR NOFA waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 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. Grantees may seek to reduce the overall benefit requirement below 50 percent of the total grant, but must submit a justification for a consistent with the instructions in Appendix E. 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 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 community may apply the criteria if it receives funds from a State CDBG-NDR grantee and the State grantee permits the use.

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 CDBG-NDR NOFA 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 CDBG-NDR NOFA 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 NOFA, the annual CDBG program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant to be used for 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) *For State grantees under this CDBG-NDR NOFA*, 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 cap 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. 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) *Entitlement 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. The City also remains limited to spending 20 percent of its total allocation on a combination of planning and general administration costs.

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 area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, for State

grantees receiving an award under this CDBG-NDR NOFA, 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 title 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, the requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply, except the requirements that specific references to 24 CFR parts 84 and 85 must be included in subrecipient agreements. Pursuant to 24 CFR 570.489(n) (revised April 23, 2012) and 570.502, State grantees must ensure that its costs and those of its state recipients and subrecipients are in conformance with OMB Circular A-87, as may be amended and incorporated in HUD regulations, whether carrying out activities directly or 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 of the State’s administration of CDBG-DR funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the State; compliance with requirements of this NOFA 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, 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 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. 24 CFR 570.492 is waived and the following alternative requirement applies for any State receiving a direct award under this CDBG-NDR NOFA: 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 CDBG-NDR NOFA. 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 CDBG-NDR NOFA. 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, 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 receiving a direct award under this CDBG-NDR NOFA 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 CDBG-NDR NOFA 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, except as modified by this Appendix, 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 CDBG-NDR NOFA. 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 which could be funded from the revolving fund. Such program income is not required to be disbursed for non-revolving fund activities.

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

18. *Reimbursement of disaster recovery expenses.* 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 NOFA. An entitlement grantees is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable costs incurred on or after the publication date of this NOFA. 24 CFR 570.200(h)(1)(i) will not apply to the extent that it requires pre-agreement activities to be included in a consolidated plan. The Department expects both all grantees to include all pre-agreement activities in their Applications. The provisions at 24 CFR 570.200(h) and 570.489(b) apply to grantees reimbursing costs incurred by itself or its recipients or subrecipients prior to the execution of a grant agreement with HUD.

19. *One-for-One Replacement, Relocation, and Real Property Acquisition Requirements.* Activities and projects assisted by CDBG-DR are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 et seq.) (“URA”) and Section 104(d) of the HCD Act (42 U.S.C. 5304(d)) (“Section 104(d”). The implementing regulations for the URA are at 49 CFR part 24. The regulations for Section 104(d) are at 24 CFR part 42, subpart C. For the 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 grantees under this CDBG-NDR NOFA:

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 CDBG-NDR NOFA 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 CDBG-NDR NOFA.

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 CDBG-NDR NOFA, 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 NOFA.

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 funds allocated under this CDBG-NDR NOFA 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-DR 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-DR 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 CDBG-NDR NOFA, 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 allocations under this CDBG-NDR NOFA 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 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), 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. *Duplication of benefits.* Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source. To comply with this law and provisions of the Appropriations Act, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met. Duplication of benefits requirements applicable to CDBG-NDR grantee are specified in section II.C. of this Appendix. The duplication of benefits submission requirements related to the certification required by Public Law 113-2 are specified in section II.B. of this Appendix. Additional duplication of benefits requirements related to reporting and policies and procedures are described throughout this Appendix.

22. *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. Furthermore, per 570.489(g), a State shall establish requirements for procurement policies and procedures for local governments based on full and open competition. All local governments receiving funds from a State through a method of distribution (also called state recipients, subgrantees, or

local governments) are subject to the procurement policies and procedures required by the State.

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

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

b. Direct grants to local governments. Note that, as in the formula CDBG program, local governments receiving a direct grant from HUD will be subject to the procurement requirements of 24 CFR 85.36(b) through (i), as may be amended.

c. Additional requirements related to procurement. Congress and HUD may request periodic updates from grantees that employ contractors. A contractor is a third-party firm that the grantee acquires through a formal procurement process to perform specific functions; a subrecipient is not a contractor. Grantees must incorporate performance requirements and penalties into each procured contract or agreement. The Appropriations Act requires HUD to provide grantees with technical assistance on contracting and procurement processes.

23. Public website. The Appropriations Act requires grantees to maintain a public website which 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 all amendments); each QPR (as created using the DRGR system) detailing expenditures for each contractor; procurement policies and procedures; executed CDBG-NDR contracts; and status of services or goods currently being procured by the grantee—e.g., phase of the procurement, requirements for proposals, etc.

24. Timely distribution of funds. The provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with the alternative requirements under this NOFA. Section 904(c) of the Appropriations Act requires that all funds be expended within two years of the date HUD obligates funds to a grantee. Therefore, each grantee must expend all funds within two years of the date its grant agreement with HUD is executed. Note that grantees may request that HUD obligate funds in set amounts over time, provided that all funds are obligated prior to September 30, 2017. Note that the Department will amend the grant agreement when the Department obligates each amount of funds to the grantee. As stated in paragraph A.1.a, in this section, the requirement for each grantee to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation. 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. See sections III and VII

of this NOFA for additional details on expenditure of funds.

To track grantees' progress, HUD will evaluate timeliness in relation to each grantee's established projection schedules (see section III of this CDBG-NDR NOFA, and paragraph A.1.1 under section VI). 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.

25. *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-DR activities and certifications in accordance with the requirements and criteria described in this NOFA, 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.

26. *Corrective and remedial actions.* To ensure compliance with the requirements of the Appropriations Act and to effectively administer the CDBG-DR program in a manner that facilitates recovery, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) 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 will apply to local governments receiving direct grants from HUD.

27. *Reduction, withdrawal, or adjustment of a grant or other appropriate action.* Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action taken pursuant to this section, the recipient shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation. Consistent with the procedures described in this CDBG-NDR NOFA, 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

28. *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 CDBG-NDR

NOFA. 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 (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.

29. *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 activities that include housing incentives and lead to redevelopment of the floodplain are necessary and reasonable, is consistent with the BCA, and increases resilience. In addition, the incentives must be in accordance with the grantee's Application and published program design(s). Note that this waiver does not permit a compensation program. Additionally, a grantee may require the incentive to be used for a particular purpose by the household receiving the assistance.

30. *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 three 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.

31. *Acquisition of real property and flood buyouts.* Grantees under this NOFA are able to carry out property acquisition for a variety of purposes. However, the term "buyouts" as referenced in this NOFA 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-DR funds for buyouts, the grantee must uniformly apply whichever valuation method it chooses;
- (5) All buyout activities must be classified using the “buyout” activity type in the DRGR system; and
- (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, a grantees must ensure it is in compliance with its long-term redevelopment plans.

32. *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 (mortgage interest deductions), is not eligible for rehabilitation assistance, residential incentives, or to participate in a CDBG-NDR buyout program (as defined by this CDBG-NDR NOFA).

33. *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 the Special Flood Hazard Area (SFHA) (or “100-year” floodplain). However, Federal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner for a property located in the SFHA must obtain and maintain flood insurance in the amount and duration prescribed by FEMA’s National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for any HUD-assisted property within the 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. 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 proposed under this NOFA 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 structure under this NOFA, the Grant Terms and Conditions will require the Grantee to upload into DRGR (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 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 P.L. 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 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 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 to report any problems, ask questions, and obtain additional information related to the structure

34. *Use of CDBG as Match.* 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-DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers (USACE). By law, the amount of CDBG-NDR funds that may be contributed to a USACE project is \$250,000 or less.

35. *National Objective Documentation for Economic Development Activities.* 24 CFR 570.483(b)(4)(i) and 570.208(a)(4)(i) are waived to allow the grantees under this CDBG-NDR NOFA 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-DR 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.

36. *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 NOFA 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.

37. Clarifying note on Section 3 income documentation requirements. Pursuant to the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) and 24 CFR 135.5, the Secretary is authorized to establish income limits to consider an individual to be a Section 3 resident. This CDBG-NDR NOFA 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.

38. 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 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.

39. 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 grantees under this CDBG-NDR NOFA 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-DR funds made available under this CDBG-NDR NOFA may also 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.

40. Certifications waiver and alternative requirement. Sections 91.325 and 91.225 of title 24 of the Code of Federal Regulations are waived. Each State or local government applying for an award under this CDBG-NDR NOFA must make the certifications required by Appendix F and submit the certifications with its Phase 1 application, and if invited by HUD, its Phase 2 application.

41. Information collection approval note. OMB has granted emergency approval in lieu of an overly abbreviated comment period. A 60-day notice is forth-coming shortly. Comments on the 60-day notice should be directed to regulations.gov. The information

collection requirements contained in this document were approved by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number [Paperwork Reduction Act Number XXXX].. 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 is estimated to average 35.59 hours for Planning Grant applications per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, quarterly reports, and final report. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

VI. Duration of Funding

The Appropriations Act requires that HUD obligate all funds provided under the Community Development Fund heading not later than September 30, 2017. The Appropriations Act (Section 904(c) of title IX in division A) requires that all funds be expended within two years of the date HUD obligates funds. However, the Act permits OMB to grant waivers of the two-year expenditure requirement. OMB has granted HUD the authority to grant waivers under limited circumstances. Therefore, each grantee must expend all funds within two years of the date HUD signs the grant agreement with the grantee, unless the grantee requests and receives a waiver of the deadline from HUD under the procedures described in Appendix E of the NOFA. 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. HUD will amend the grant agreement each time it obligates additional funds, which will trigger the two-year deadline for that portion of the award. Funds remaining in the grantee's line of credit at the time of this expenditure deadline will be recaptured.

VII. Catalog of Federal Domestic Assistance

The primary Catalog of Federal Domestic Assistance (CFDA) number for the disaster recovery grants under this CDBG-NDR NOFA is 14.272. Additional supporting CFDA's are: 14.218; 14.228.