

grantees. This questionnaire will capture key project information to supplement information already available in reports and manuscripts from the approximately 54 HHD grants that were awarded from fiscal years 2005 to 2009, including any 2004 grant not included in the earlier evaluation, and any more recent grantee whose grant ends this fiscal year. OHHLHC is especially interested in determining whether any of the grantee's data sets (i.e., resulting from project evaluation)

would be of value to OHHLHC for additional analyses. After a review of available reports and manuscripts, OHHLHC anticipates roughly half of these grantees (up to 30) will be asked to complete the online questionnaire. OHHLHC will target those grantees that have carried out the greatest number of interventions, collected the most detailed evaluation data on cost, health and housing impacts and outcomes, and can demonstrate significant capacity-building and sustainable approaches to

guide policy development and guidance for future healthy homes efforts. A questionnaire was developed for the 2005 evaluation that captured key information about recruitment/enrollment, assessment, interventions, skills training, and community education/outreach in HHI grantee projects. This questionnaire will be modified for this new data collection effort. The online questionnaire will be administered through a secure Web site.

#### TOTAL BURDEN ESTIMATE

Requirement	Number of respondents	Hours per respondent	Total hours	Cost per hour	Labor cost	Startup cost	O&M cost	Total cost
Complete questionnaire .....	30	16	480	\$32.75	\$15,720	\$0	\$0	\$15,720
Total .....	30	16	480	.....	\$15,720	\$0	\$0	\$15,720

*Status:* New collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended

Dated: February 27, 2013.

**Colette Pollard,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5696-N-01]

### Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy

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

**ACTION:** Notice.

**SUMMARY:** This Notice advises the public of the initial allocation of \$5,400,000,000 of Community Development Block Grant disaster recovery (CDBG-DR) funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2) for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster due to Hurricane Sandy. This Notice describes applicable waivers and alternative requirements, relevant statutory provisions for grants provided under this Notice, the grant award process,

criteria for plan approval, and eligible disaster recovery activities.

**DATES:** *Effective Date:* March 11, 2013.

**FOR FURTHER INFORMATION CONTACT:** Stan Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to [disaster\\_recovery@hud.gov](mailto:disaster_recovery@hud.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Allocation
- II. Use of Funds
- III. Timely Expenditure of Funds, and Prevention of Fraud, Abuse, and Duplication of Benefits
- IV. Authority to Grant Waivers
- V. Overview of Grant Process
- VI. Applicable Rules, Statutes, Waivers, and Alternative Requirements
  - A. Grant Administration
  - B. Housing and Related-Floodplain Issues
  - C. Infrastructure
  - D. Economic Revitalization
  - E. Certifications and Collection of Information
- VII. Duration of Funding
- VIII. Catalog of Federal Domestic Assistance
- IX. Finding of No Significant Impact
  - Appendix A: Allocation Methodology

#### I. Allocation

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2, approved

January 29, 2013)(Appropriations Act) makes available \$16,000,000,000 in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The law provides that funds shall be awarded directly to a State or unit of general local government (UGLG) (hereafter local government) at the discretion of the Secretary. Unless noted otherwise, the term "grantee" refers to any jurisdiction receiving a direct award under from HUD under this Notice.

To comply with statutory direction that funds be used for disaster-related expenses in the most impacted and distressed areas, HUD computes allocations based on the best available data that cover all the eligible affected areas. This Notice allocates funds based on unmet housing and economic revitalization needs, but not infrastructure restoration needs as FEMA damage estimates are very preliminary as of the date of this Notice.

Based on a review of the impacts from Hurricane Sandy, and estimates of unmet need calculated by the Department, this Notice provides the following Round 1 awards:

TABLE 1—ROUND 1 ALLOCATIONS UNDER PUBLIC LAW 113–2

FEMA Disaster No.	State	Grantee	Allocation
4085 .....	New York .....	New York City .....	\$1,772,820,000
4085 .....	New York .....	New York State .....	1,713,960,000
4086 .....	New Jersey .....	New Jersey .....	1,829,520,000
4087 .....	Connecticut .....	Connecticut .....	71,820,000
4089 .....	Rhode Island .....	Rhode Island .....	3,240,000
4091 .....	Maryland .....	Maryland .....	8,640,000
Total .....	.....	.....	5,400,000,000

Table 2 shows the “most impacted and distressed” counties impacted by Hurricane Sandy. While these funds may also be used by states to address

remaining unmet needs in declared counties impacted by Hurricane Irene and Tropical Storm Lee in 2011, at least 80 percent of the funds provided under

this Notice must address unmet needs within the “most impacted and distressed” counties identified in Table 2.

TABLE 2—MOST IMPACTED AND DISTRESSED COUNTIES WITHIN WHICH FUNDS MAY BE EXPENDED

Grantee	Counties within which CDBG–DR funds may be expended	Most impacted and distressed counties	Minimum amount that must be expended in most impacted and distressed counties (percent)
New York City .....	All Counties .....	All Counties .....	100
New York .....	Nassau, Suffolk, Rockland, Westchester, Ulster, Orange, Putnam, Sullivan, Schoharie, Tioga, Broome, Greene, and all Counties in New York City.	Nassau, Suffolk, Rockland .....	80
New Jersey .....	All Counties .....	Ocean, Monmouth, Atlantic, Hudson, Bergen, Middlesex, Cape May, Union, Essex.	80
Connecticut .....	Fairfield, Mashantucket Pequot Indian Reservation, Middlesex, New Haven, New London.	Fairfield, New Haven .....	80
Rhode Island .....	Washington, Newport .....	Washington .....	80
Maryland .....	Somerset .....	Somerset .....	100

In addition to the funds allocated in this Notice, and in accordance with the Appropriations Act, \$10,000,000 will be transferred to the Department’s Office of Community Planning and Development (CPD), Program Office Salaries and Expenses, for necessary costs, including information technology costs, of administering and overseeing CDBG–DR funds made available under the Appropriations Act; \$10,000,000 will also be transferred to the Office of the Inspector General for necessary costs of overseeing and auditing CDBG–DR funds made available under the Appropriations Act.

A detailed explanation of HUD’s allocation methodology is provided at Appendix A. As more detailed and complete damage assessments become available, HUD will conduct an additional review of unmet long-term disaster recovery needs. This review will inform a second allocation of funds to address the effects of Hurricane Sandy. A forthcoming allocation will address other qualifying disasters that occurred in 2011 or 2012. The Department will establish, at a future

date, a policy to address qualifying events in 2013.

Each grantee receiving an allocation under this Notice must submit an initial Action Plan for Disaster Recovery no later than 90 days after the effective date of this Notice. However, grantees are encouraged to submit their Action Plans as soon as possible. HUD will only approve Action Plans that meet the specific criteria identified in this Notice. For more information on the Action Plan requirements, see paragraph A.1 under section VI of this Notice: “Applicable Rules, Statutes, Waivers, and Alternative Requirements.”

## II. Use of Funds

The Appropriations Act requires funds to be used only for specific disaster-related purposes. The law also requires that prior to the obligation of funds, a grantee shall submit a plan detailing the proposed use of 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. Thus, in an Action Plan for Disaster Recovery, grantees must describe uses and activities that: (1) are authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCD Act) or allowed by a waiver or alternative requirement published in this Notice; and (2) respond to a disaster-related impact. To help meet these requirements, grantees must conduct an assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities. For more guidance on the needs assessment and the creation of the Action Plan, see paragraph A.1 under section VI of this Notice.

Additionally, 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).

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

To 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 funds that the grantee believes will not be expended by the deadline, 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 detail the compelling legal, policy, or operational challenges for any such waiver, and must also identify the date by when the specified portion of funds will be expended. HUD will forward the request to the Office of Management and Budget (OMB) and publish any approved waivers in the **Federal Register** once granted. Waivers to extend the expenditure deadline may be granted by OMB in accordance with guidance to be issued by OMB, but grantees are cautioned that such waivers may not be approved. Funds remaining in the grantee's line of credit at the time of its expenditure deadline will be returned to the U.S. Treasury, or if before September 30, 2017, will be recaptured by HUD. The Appropriations Act requires that HUD obligate all funds not later than September 30, 2017. Grantees must continue to meet the requirements for Federal cash management at 24 CFR 85.20(a)(7).

In addition to the above, 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 Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. Departmental guidance to assist in preventing a duplication of benefits is provided in a notice published in the **Federal Register** at 76 FR 71060 (November 16, 2011) and in paragraph A.21 under section VI of this Notice. To provide a basis for the Secretary to make the certification, each grantee must submit documentation to the Department demonstrating its compliance with the above

requirements. For a complete listing of the required documentation, see paragraph A.1.i under section VI of this Notice.

Additionally, this Notice requires grantees 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 amend its Action Plan to include these projections within 90 days of Action Plan approval. Action Plans must also be amended to reflect any subsequent changes, updates, or revision of the projections. Amending Action Plans to accommodate these changes is not considered to be a substantial amendment. Guidance on the preparation of projections is available on HUD's Web site under the Office of Community Planning and Development, Disaster Recovery Assistance (herein also referred to as the CPD Disaster Recovery Web site). This will enable HUD, the public, and the grantee, to track proposed versus actual performance. For more information on the projection requirements, see paragraph A.1.l under section VI of this Notice.

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 completion dates for each activity in HUD's Disaster Recovery Grant Reporting (DRGR) system. When target dates are not met, grantees are required to explain why in the activity narrative. For additional guidance on DRGR system reporting requirements, see paragraph A.2 under section VI of this Notice. More information on the timely expenditure of funds is included in paragraphs A.24–27 under section VI of this Notice.

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

### IV. Authority To Grant Waivers

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation

that the Secretary administers in connection with the obligation by the Secretary or 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 HCD Act. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

### V. Overview of Grant Process

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

- Grantee adopts citizen participation plan for disaster recovery in accordance with the requirements of this Notice;
- Grantee consults with stakeholders, including required consultation with affected, local governments and public housing authorities (as identified in section VI of this Notice);
- Within 30 days of the effective date of this Notice (or when the grantee submits its Action Plan, whichever is sooner), grantee 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 Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds;
- Grantee publishes its Action Plan for Disaster Recovery on the grantee's official web site for no less than 7 calendar days to solicit public comment;
- Grantee responds to public comment and submits its Action Plan (which includes Standard Form 424 (SF-424) and certifications) to HUD no later than 90 days after the effective date of this Notice;
- HUD expedites review of Action Plan (allotted 45 days from date of receipt; however, completion of review is anticipated much sooner) and approves the Plan according to criteria identified in this Notice;
- HUD sends an Action Plan approval letter, grant conditions, and signed grant agreement to the grantee. If the Action Plan is not approved, a letter will be sent identifying its deficiencies; the grantee must then re-submit the Action Plan within 45 days of the notification letter;

- Grantee ensures that the HUD-approved Action Plan is posted on its official Web site;
- Grantee signs and returns the fully executed grant agreement;
- HUD establishes the proper amount in a line of credit for the grantee;
- Grantee requests and receives DRGR system access (if the grantee does not already have it);
- If it has not already done so, grantee enters the activities from its published Action Plan into DRGR and submits it to HUD 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 Notice) and, as applicable, receives from HUD or the State an approved Request for Release of Funds and certification;
- Grantee begins to draw down funds within 60 days of receiving access to its line of credit;
- Grantee amends its published Action Plan to include its projection of expenditures and outcomes within 90 days of the Action Plan approval; and
- Grantee updates its full consolidated plan to reflect disaster-related needs no later than its Fiscal Year 2015 consolidated plan update.

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

This section of the Notice describes requirements imposed by the Appropriations Act, as well as applicable waivers and alternative requirements. For each waiver and alternative requirement described in this Notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act. The waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift recovery following Hurricane Sandy, while also ensuring that statutory requirements unique to this appropriation are met. As a result, the following requirements apply only to the CDBG-DR funds appropriated in the Appropriations Act, and not to funds provided under the annual formula State or Entitlement CDBG programs, or those provided under any other component of the CDBG program, such as the Section 108 Loan Guarantee Program, the Neighborhood Stabilization Program, or any prior CDBG-DR appropriation.

Grantees may request additional waivers and alternative requirements

from the Department as needed to address specific needs related to their recovery activities. Except where noted, waivers and alternative requirements described below apply to all grantees under this Notice. Under the requirements of the Appropriations Act, regulatory waivers must be published in the **Federal Register** no later than five days before the effective date of such waiver.

Except as described in this Notice, statutory and regulatory provisions governing the State CDBG program shall apply to any State receiving an allocation under this Notice while statutory and regulatory provisions governing the Entitlement CDBG program shall apply to New York City. 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.

References to the Action Plan in these regulations shall refer to the Action Plan required by this Notice. All references in this Notice pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted. The date of this Notice shall mean the effective date of this Notice unless otherwise noted. All references to “substantial damage” and “substantial improvement” shall be as defined in 44 CFR 59.1 unless otherwise noted.

#### A. Grant Administration.

1. *Action Plan for Disaster Recovery 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 Appropriations Act. Instead, each grantee must submit to HUD an Action Plan for Disaster Recovery. This streamlined Plan will allow grantees to more quickly and effectively implement disaster recovery programs while conforming to statutory requirements. During the course of the grant, HUD will monitor the grantee's actions and use of funds for consistency with the Plan, and meeting the performance and timeliness objectives therein. Per the Appropriations Act, and in addition to the requirements at 24 CFR 91.500, the Secretary may disapprove an Action Plan if it is determined that the Plan does not satisfy all of the required elements identified in this Notice.

a. *Action Plan.* The Action Plan must identify the proposed use(s) of the grantee's allocation, including criteria for eligibility, and how the uses address long-term recovery needs. To develop

and submit an acceptable Action Plan in a timely manner, a grantee may elect to program or budget only a portion of the grantee's CDBG-DR award in an Action Plan. Funds dedicated for uses not described in accordance with paragraphs b (applicable to State grantees) or c (applicable to UGLG grantees) under this section will not be obligated until the grantee submits, and HUD approves, an Action Plan amendment programming the use of those funds at the necessary level of detail. Although a grantee may submit a partial Action Plan, the partial Action Plan must be amended one or more times until it describes uses for 100 percent of the grantee's CDBG-DR award, subject to the limitations that HUD may not obligate Appropriations Act funds after September 30, 2017 and the last date that grantees may submit an amendment 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.

The Action Plan must contain:

(1) An impact and unmet needs assessment. Each grantee must develop a needs assessment to understand the type and location of community needs to enable it to target limited resources to areas with the greatest need. At a minimum, the needs assessment must evaluate three core aspects of recovery—housing, infrastructure, and the economy (e.g., estimated job losses). The assessment of emergency shelter needs and housing needs must address interim and permanent; owner and rental; single family and multifamily; public, HUD-assisted, affordable, and market rate. For purposes of this Notice, HUD-Assisted Multifamily Housing is defined as housing that: (1)(a) is part of a multifamily housing property (defined as five units or more), and (b) assisted by FHA insurance; or (2)(a) Housing that receives project-based rental assistance under HUD's section 202, 811 or Section 8 programs; or (b) receives other HUD project-based rental assistance (e.g., Rent Supplement contracts, Rental Assistance Payments (RAP) contract Interest Reduction Payments (IRP) Agreements; or (3) properties that have active Deed Restrictions and/or a Use Agreement as a result of past HUD assistance.

The assessment must also take into account the various forms of assistance available to, or likely to be available to, affected communities and individuals (including estimated insurance and eligible FEMA, SBA, or other Federal assistance) to identify disaster recovery needs that are not likely to be addressed by other sources of funds. Grantees must

use the best, most recent available data (e.g., from FEMA and SBA), cite data sources, and estimate the portion of need likely to be addressed by insurance proceeds, other Federal assistance, or any other funding source.

Impacts must be described by type at the lowest geographic level practicable (e.g., city/county level or lower if available). For example, most needs estimates will have a count of businesses, homeowners, and renters that are likely to have difficulty recovering within a neighborhood and community. Grantees must pay special attention to neighborhoods with high percentages of damaged homes and provide a demographic analysis (e.g., race, ethnicity, disability, age, tenure, income, home value, structure type) in those neighborhoods to identify any special needs that will need to be addressed. The needs assessment must also identify the types of businesses (including the North American Industry Classification System code, the standard used by Federal statistical agencies in classifying business establishments and available at [www.census.gov/eos/www/naics/](http://www.census.gov/eos/www/naics/)) most impacted with a description of their likely barriers to recovery. In addition, a needs assessment must take into account the costs of incorporating mitigation and resiliency measures to protect against future hazards. Examples of disaster recovery needs assessments can be found on the CPD Disaster Recovery Web site.

Grantees may obtain data on impacts and assistance provided that can be used to (a) Support identifying individuals likely to need recovery assistance; (b) prevent duplication of benefits risk at time of program design; and (c) assist grantees with their unmet needs assessment by contacting Juan Gil (FEMA) via email at [juan.gil@fema.dhs.gov](mailto:juan.gil@fema.dhs.gov) or by calling (940) 898–5141 and Frank Adinolfi (SBA) via email at [frank.adinolfi@sba.gov](mailto:frank.adinolfi@sba.gov) or by calling (202) 205–6734. HUD will also provide grantees with neighborhood level aggregate data to assist with planning.

Disaster recovery needs evolve over time as the full impact of a disaster is realized and costs of damages transition from estimated to actual. Remaining recovery needs also evolve over time as they are met by dedicated resources. As a result, the needs assessment and Action Plan must be amended as conditions change and additional needs are identified. CDBG–DR funds may be used to reimburse the costs of conducting the needs assessment.

(2) A description of the connection between identified unmet needs and the

allocation of CDBG–DR resources by the grantee. Such description must demonstrate a proportionate allocation of resources relative to areas and categories (i.e., housing, economic revitalization, infrastructure) of greatest needs;

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

(4) A description of how the grantee will leverage CDBG–DR funds with funding provided by other Federal, state, local, private, and non-profit sources to generate a more effective and comprehensive recovery. Examples of other Federal sources are those provided by HUD, FEMA (specifically the Public Assistance Program, Individual Assistance Program, and Hazard Mitigation Grant Program), SBA (specifically the Disaster Loans program), U.S. Department of Transportation, USACE, U.S. Environmental Protection Agency, and the U.S. Department of Health and Human Services. The grantee must maximize leveraging of CDBG–DR funds for the entire recovery. Leveraged funds shall be identified for each activity, as applicable, in the DRGR system;

(5) A description of how the grantee's programs or activities will attempt to protect people and property from harm, and how the grantee will encourage 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 mitigation of hazard risk, including possible sea level rise, storm surge, and flooding, where appropriate. 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*.

To foster the rebuilding of more resilient neighborhoods and communities, HUD strongly encourages grantees to consider sustainable rebuilding scenarios such as the use of different development patterns, infill development and its reuse, alternative neighborhood designs, and the use of green infrastructure. The Partnership for Sustainable Communities is an interagency partnership between HUD, the Department of Transportation, and the Environmental Protection Agency. The Partnership for Sustainable Communities' six Livability Principles should serve as a guide to grantees working in areas that were substantially destroyed. When grantees seek to rebuild such areas, grantees should describe how they will consider sustainable urban design and construction in their redevelopment planning process. The Livability Principles can be found at the Partnership for Sustainable Communities' Web site [www.sustainablecommunities.gov](http://www.sustainablecommunities.gov).

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 Notice, the Green Building Standard means the grantee will require that all construction covered by subparagraph (a), above, meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High Rise); (ii) Enterprise Green Communities; (iii) LEED (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 Web site. 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 WaterSense-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 Web site; *Indoor AirPlus* Web site; Healthy Indoor Environment *Protocols for Home Energy Upgrades* Web site; and *ENERGY STAR* Web site: [www.epa.gov/greenbuilding](http://www.epa.gov/greenbuilding).

(6) A description of how the grantee will identify and address the rehabilitation (as defined at 24 CFR 570.202), reconstruction, and replacement of the following types of housing affected by the disaster: public housing (including administrative offices), HUD-assisted housing (defined at subparagraph (1), above), McKinney-Vento funded shelters and housing for the homeless—including emergency shelters and transitional and permanent housing for the homeless, and private market units receiving project-based assistance or with tenants that participate in the Section 8 Housing Choice Voucher Program. As part of this

requirement, the grantee must identify how it will address the rehabilitation, mitigation, and new construction needs of each impacted Public Housing Authority (PHA) within its jurisdiction. The grantee must work directly with the PHA in identifying necessary costs and ensure that adequate funding is dedicated to addressing the unmet needs of damaged public housing. In its Action Plan, each grantee must set aside funding to specifically address the needs described in this subparagraph; 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-DR funds to assist public housing. Information on the public housing agencies impacted by the disaster is available on the Department's Web site;

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

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

(9) A description of how the grantee will manage program income (e.g., 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 Notice at paragraphs A.2 and A.17 of section VI;

(10) A description of monitoring standards and procedures that are sufficient to ensure program requirements, including nonduplication

of benefits, are met and that provide for continual quality assurance and investigation. Some of this information may be adopted from the grantee's submission of information that is required for the Department's certification (see paragraph A.1.i, below; guidance on the prevention of duplication of benefits is available at paragraph A.21 of section VI). However, a grantee may need to include additional details to fully inform the public of the grantee's standards and procedures. Grantees must also describe their required 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-DR award (typically, the organization is designated by a chief elected official);

(11) A description of the mechanisms and/or procedures that are in place or will be put into place to detect and prevent fraud, abuse, and mismanagement of funds (including potential conflicts of interest);

(12) A description demonstrating the adequacy of the grantee's capacity, and the capacity of any UGLG or other organization expected to carry out disaster recovery programs (this assessment shall include a description of how the grantee will provide for increasing the capacity of UGLGs 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 subrecipients or subgrantees to ensure the timely, compliant, and effective use of funds. Although UGLGs or other organizations may carry out disaster recovery programs and projects, each grantee under this Notice remains legally and financially accountable for the use of all funds and may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight (also see paragraph A.10 under section VI), policy development, and financial management;

b. *Funds awarded to a State.* A State's Action Plan, or partial Action Plan, shall describe the specific programs or activities the State will carry out directly, and/or how it will distribute funds to UGLGs (i.e., its method of distribution). Each Plan must also describe how the State's needs assessment informs the allocation(s) identified in the Plan, and how unmet needs that have been identified but not

yet addressed will be addressed in a subsequent amendment to the Plan.

In addition, for each program or activity that will be carried out by the State, the Action Plan or partial Action Plan must 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.

When the State uses a method of distribution to allocate funds to UGLGs, it must describe all criteria used to determine the distribution, including the relative importance of each criterion.

*c. Funds awarded directly to an UGLG.* The UGLG's Action Plan, or partial Action Plan, shall describe specific programs and/or activities it will carry out directly or through subrecipients, including other local governments. Each Plan must also describe how the UGLG's needs assessment informed the allocation(s) identified in the Plan, and how unmet needs that have been identified but not yet addressed will be addressed in a subsequent amendment to the Plan.

In addition, for each program or activity that will be carried out by the UGLG or through a subrecipient, the Action Plan or partial Action Plan must 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. Clarification of disaster-related activities.* All CDBG-DR activities must clearly address an impact of 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 Notice. Additional details on disaster-related activities are provided under Section VI, parts B through D.

(1) Housing. Typical housing activities include new construction and rehabilitation of single family or multifamily units (including garden apartments, condominiums, and units that participate in a housing cooperative). Most often, grantees use CDBG-DR funds to rehabilitate damaged homes and rental units; rehabilitation activities may include the costs associated with mold remediation. However, grantees may also fund new construction or rehabilitate units *not* damaged by the disaster if the activity clearly addresses a disaster-related impact and is located in a disaster-affected area. This impact can be demonstrated by the disaster's overall effect on the quality, quantity, and affordability of the housing stock and the resulting inability of the existing stock to meet post-disaster needs and population demands.

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

(3) Economic Revitalization. Without the return of businesses and jobs to a disaster-impacted area, recovery may be impossible. Therefore, HUD strongly encourages grantees to envision economic revitalization as a cornerstone to long-term recovery. Economic revitalization is not limited to activities that are "special economic development" activities under the HCD Act, or to activities that create or retain jobs. For CDBG-DR purposes, economic revitalization can include any activity that demonstrably restores and improves the local or regional economy, such as addressing job losses. Examples of eligible activities include providing loans and grants to businesses, funding job training, building education facilities to teach technical skills, making improvements to commercial/retail districts, and financing other efforts that attract/retain workers in devastated communities.

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.

All economic revitalization activities must address an economic impact(s) caused by the disaster (e.g., loss of jobs).

Through its needs assessment and Action Plan, the grantee must clearly identify the economic loss or need resulting from the disaster, and how the proposed activities will address that loss/need.

(4) Preparedness and Mitigation. The Appropriations Act states that funds shall be used for recovering from a Presidentially-declared major disaster. As such, all activities must respond to the impacts of the declared disaster. HUD strongly encourages grantees to incorporate preparedness and mitigation measures into all rebuilding activities, which helps to ensure that communities recover to be safer, stronger, and more resilient. Incorporation of these measures also reduces costs in recovering from future disasters. Mitigation measures that are not incorporated into rebuilding activities must be a necessary expense related to disaster relief, long-term recovery, and restoration of infrastructure, housing, or economic revitalization. Furthermore, the costs associated with these measures may not prevent the grantee from meeting unmet needs.

(5) Connection to the Disaster. Each grantee must document how each activity is connected to the disaster for which it is receiving CDBG assistance. In regard to physical losses, damage or insurance estimates are often the most effective tool for demonstrating the connection to the disaster. For economic or other non-physical losses, post-disaster analyses or assessments may document the relationship between the loss and the disaster.

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

*e. Use of funds for disasters not covered by the Appropriations Act.* CDBG-DR funds awarded under this Notice are limited to activities that respond to the disasters identified in section I, Table 1, and areas that have Presidential disaster declarations for Hurricane Irene and Tropical Storm Lee as described in section I, Allocation. However, funds awarded in this Notice may be used to address an unmet need that arose from a previous disaster, which was exacerbated by a disaster cited in this Notice. If an impact or need originating from a disaster identified in this Notice is subsequently exacerbated by a future disaster, funds under this Notice may also be used to address the resulting exacerbated unmet need.

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 Notice until two years after the date HUD obligates funds to a grantee for the activity. In the context of disaster recovery, these standard requirements may prove burdensome and redundant. Since the Department only provides CDBG–DR awards to grantees with documented disaster-related impacts (as supported by data provided by FEMA, SBA, and other sources), and each grantee is limited to spending funds only in counties with a Presidential disaster declaration of recent origin respective to each appropriation, the following temporary, streamlined alternative requirement recognizes the inherent urgency in addressing the serious threat to community welfare following a major disaster.

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

Grantees must identify these disaster-related impacts in their Action Plan needs assessment. The needs assessment must be updated as new or more detailed/accurate disaster-related impacts are known. As a reminder, at least 50 percent of each grantee's CDBG–DR grant award must be used for activities that benefit low- and moderate-income persons.

g. *Clarity of the Action Plan.* All grantees must include sufficient information so that citizens, UGLGs (where applicable), and other eligible subgrantees, subrecipients, or applicants will be able to understand and comment on the Action Plan and, if applicable, be able to prepare responsive applications to the grantee. The Action Plan must include a single chart or table that illustrates, at the most practical level, how all funds programmed by the Action Plan are budgeted (e.g., by program, subgrantee, grantee-administered activity, or other category).

h. *Review and Approval of the Action Plan.* For funds provided under the

Appropriations Act, 24 CFR 91.500 has been augmented with the following requirements. The initial Action Plan must be submitted to HUD (including Standard Form 424 (SF–424) and certifications) within 90 days of the date of this Notice. HUD will expedite its review of each Action Plan—taking no more than 45 days from the date of receipt to complete its review. The Secretary may disapprove an Action Plan if it is determined that the Plan does not meet the requirements of this Notice.

i. *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 Web sites 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 below to the grantee's designated HUD representative. The information must be submitted within 30 days of the effective date of this Notice, or with the grantee's submission of its Action Plan, whichever date is earlier. Grant agreements will not be executed until HUD has issued a certification in response to the grantee's submission.

(1) Financial Control Checklist. A grantee has in place proficient financial controls if each of the following criteria are satisfied:

(a) Most recent OMB Circular A–133 audit and annual financial statement 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) Completed HUD monitoring checklist for financial standards (Exhibit 3–18 of the Community Planning and Development *Monitoring Handbook* 6509.02) and the grantee's financial standards. The checklist and standards must demonstrate the financial standards are complete and conform with the requirements of Exhibit 3–18. The grantee must identify which sections of its financial standards

address each of the questions in the monitoring checklist 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. The grantee must provide a copy of its procurement standards and indicate the sections of its procurement standards that incorporate 24 CFR 85.36. 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 (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. 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.

Departmental guidance to assist in preventing a duplication of benefits is provided in a notice published in the **Federal Register** at 76 FR 71060 (November 16, 2011) and in paragraph A.21, section VI, of this Notice.

(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 Web sites regarding all disaster recovery activities assisted with these funds. A grantee has adequate procedures to maintain comprehensive Web sites 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 Web site 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 its submission, the grantee is required by paragraph E.42.q to attest to the proficiency and adequacy of its controls.

j. *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 Action Plan, at the necessary level of detail, 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 Action Plan activities into the DRGR system before it may draw funds as described in paragraph A.2, below.

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.

k. *Amending the Action Plan.* As the grantee finalizes its long-term recovery goals, or as needs change through the recovery process, the grantee must amend its Action Plan to update its needs assessment, modify or create new activities, or re-program funds, as necessary. Each amendment must be highlighted, or otherwise identified, within the context of the entire Action

Plan. The beginning of every Action Plan amendment must include a section that identifies exactly what content is being added, deleted, or changed. This section must also include a chart or table that clearly illustrates where funds are coming from and where they are moving to. The Action Plan must include a revised budget allocation table that reflects the entirety of all funds, as amended. A grantee's most recent version of its entire Action Plan 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.

If a grantee amends its Action Plan to program additional funds that the Department has allocated to it, the grant agreement must also be revised. As stated in paragraph 1.a, 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.

l. *Projection of expenditures and outcomes.* Each grantee must amend its published Action Plan to project expenditures and outcomes within 90 days of the Action Plan approval. 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. The published Action Plan must be amended to reflect any subsequent changes, updates, or revision of the projections. Amending the Action Plan to accommodate these changes is not considered a substantial amendment. Guidance on the preparation of projections is available on HUD's Web site. The projections will enable HUD, the public, and the grantee, to track proposed versus actual performance.

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. Grantees are advised that HUD is increasing its monitoring and

technical assistance effort to coincide with the two-year expenditure deadline.

This Notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708 and 24 CFR 91.520. In the alternative, and to ensure consistency between grants allocated under the Appropriations Act and prior CDBG-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 for Disaster Recovery, including performance measures, into HUD's DRGR system. As more detailed information about uses of funds is identified by the grantee, it must be entered into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports, and permits HUD review of compliance requirements.

The Action Plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG-DR funds. The grantee may enter activities into DRGR before or after submission of the Action Plan to HUD. 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-DR funded activity, including the grantee, recipient(s) and subrecipient(s), contractor(s), and developers. To comply with the statutory requirements regarding identification of contractors, and to provide a mechanism for tracking large contracts in DRGR, HUD is requiring grantees to identify in the DRGR system any contract over \$25,000.

Each activity entered into the DRGR system must also be categorized under a "project". Typically, projects are based on groups of activities that accomplish a similar, broad purpose (e.g., Housing, Infrastructure, or Economic Development) or are based on an area of service (e.g., Community A). If a grantee submits a partial Action Plan or amendment to describe just one program (e.g., Single Family Rehabilitation), that program is entered as a project in DRGR. Further, the budget of the program would be identified as the project's budget. If a State grantee has only identified the Method of Distribution (MOD) upon HUD's approval of the published Action Plan, the MOD itself typically serves as

the projects in the DRGR system, rather than the activities. As funds are distributed to subgrantees and subrecipients, who decide which specific activities to fund, those activity fields are then populated.

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 Web site. 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

all funds have been expended and all expenditures have been reported.

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. Grantees must also record the amount of funding expended for each contractor identified in the Action Plan. The DRGR system will automatically display the amount of program income received, 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.

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. The streamlined requirements do not mandate public hearings at a state, entitlement, or local government level, but do require providing a reasonable opportunity (at least 7 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for a grant carried out under this Notice are:

a. *Publication of the Action Plan, opportunity for public comment, and substantial amendment criteria.* Before the grantee adopts the Action Plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment (including the information required in this Notice for an Action Plan for Disaster Recovery). The manner of publication must include prominent posting on the grantee's official 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 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.

Despite the expedited process, grantees are still responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency (LEP). Each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction. For assistance in ensuring that this information is available to LEP populations, recipients should consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* published on January 22, 2007, in the **Federal Register** (72 FR 2732).

Subsequent to publication of the Action Plan, the grantee must provide a reasonable time frame and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. In its Action Plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: a change in program benefit or eligibility criteria; the allocation or re-allocation of more than \$1 million; or the addition or deletion of an activity. The grantee may substantially amend the Action Plan if it follows the same procedures required in this Notice for the preparation and submission of an Action Plan for Disaster Recovery. Prior to submission of a substantial amendment, the grantee is encouraged to work with its HUD representative to ensure the proposed change is consistent with this Notice, and all applicable regulations and Federal law.

b. *Non-substantial amendment.* The grantee must notify HUD, but is not required to undertake public comment, when it makes any plan amendment that is not substantial. HUD must be notified at least five days before the amendment becomes effective. However, every amendment to the Action Plan (substantial and non-substantial) must be numbered sequentially and posted on the grantee's Web site. The Department will

acknowledge receipt of the notification of non-substantial amendments via email within 5 business days.

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

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

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

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 Notice, rather than distribute all funds to UGLGs. 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 Notice 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. 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 UGLG.

c. *Use of Funds for Structures Owned by Religious Organizations.* The provision of assistance for buildings used for religious purposes is governed by 24 CFR 570.200(j). Although CDBG funds cannot be used for structures dedicated solely to religious use, such as a religious congregation's principal place of worship, grantees may in certain circumstances pay some rehabilitation or new construction costs for structures used for religious and secular purposes.

Funding for rehabilitating or reconstructing storm-damaged or destroyed buildings may be appropriate where a facility is not used exclusively for the benefit of the religious congregation, such as a building used as a homeless shelter, food pantry, adult literacy center, or child care center. Where a structure is used for both religious and secular uses, CDBG-DR funds may pay the portion of eligible rehabilitation or construction costs attributable to the non-religious use. For example, for a building that is used 50 percent of the time for, or has 50 percent of the square footage dedicated to, homeless services, CDBG-DR funds may pay 50 percent of the rehabilitation or construction cost. Grantees are encouraged to work closely with their CPD Representative to ensure compliance with the requirements of 24 CFR 570.200(j) or to obtain further guidance on the applicability of this rule to specific programs or properties.

5. *Consolidated Plan waiver.* HUD is waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5), 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. However, this waiver applies only until the grantee first updates its full consolidated plan. HUD expects grantees to update its full consolidated plan to reflect disaster-related needs no later than its Fiscal Year 2015 consolidated plan update. At a minimum, the updated consolidated plan must include the criteria discussed in this Notice. While grantees are encouraged to incorporate disaster recovery needs into their consolidated plan updates as soon as practicable, any

unmet disaster-related needs and associated priorities must be incorporated into the grantee's next consolidated plan update by Fiscal Year 2015. If not completed already, the grantee must update its Analysis of Impediments to Fair Housing Choice in coordination with its post-waiver consolidated plan update, so that it more accurately reflects housing 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, with the alternative requirement that any State receiving an allocation under this Notice consult with all disaster-affected UGLGs (including any CDBG-entitlement communities, and local public housing authorities in affected areas) in determining the use of funds. This ensures State grantees sufficiently assess the recovery needs of all areas affected by the disaster.

For New York City, HUD is supplementing 24 CFR 91.100 with the additional requirement that the jurisdiction must consult with adjacent UGLGs, including local government agencies with metropolitan-wide planning responsibilities (particularly for problems and solutions that go beyond a single jurisdiction), and local public housing authorities (affected by the disaster).

Last, all grantees must consult with States, tribes, UGLGs, and other stakeholders and affected parties in the surrounding geographic area to ensure consistency with applicable regional redevelopment plans.

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 regular CDBG program's funds be used to support activities benefitting low- and moderate-income persons. This target could be difficult to reach, and perhaps even impossible, for many grantees affected by Hurricane Sandy. Grantees under this Notice experienced disaster impacts that affected entire communities—regardless of income, and the existing requirement

may prevent grantees from providing assistance to damaged areas of need. Therefore, this Notice waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 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 that, at a minimum: (a) Identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/ programs identified in (b) prevent the grantee from meeting the 50 percent requirement; and (d) demonstrates that the needs of non-low and moderate-income persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them. Upon request, a sample justification can be provided by the Department. Note that 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.* This exception applies to entitlement communities that have few, if any, areas within their jurisdiction that have 51 percent or more low- and moderate-income residents. per the requirements at 42 U.S.C. 5305(c)(2)(A), these communities are allowed to use a percentage less than 51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the "exception criteria" or the "upper quartile".

HUD assesses Census block groups to determine whether an entitlement community meets the exception criteria. For communities that qualify, the Department identifies the alternative percentage (i.e., the lowest proportion) the community may use, instead of 51 percent, for the purpose of qualifying

activities under the low- and moderate-income area benefit. HUD advises the entitlement community accordingly. Periodically, HUD updates the low- and moderate-income summary data used to identify the exception criteria; disaster recovery grantees are required to use the most recent data available in implementing the exception criteria. Note that for entitlement communities that meet the exception criteria, the community may apply the criteria if it receives funds from a State grantee.

9. *Use of "uncapped" income limits.* The Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105–276) enacted a provision that 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 Web site identifying which grantees may use uncapped limits. The uncapped limits apply to disaster recovery activities funded pursuant to this Notice in jurisdictions covered by the uncapped limits, including jurisdictions that receive disaster recovery funds from the State.

10. *Grant administration responsibilities and general administration cap.*

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

b. *General administration cap.* For grants under this Notice, the annual CDBG program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant to be used for general administration costs, by the grantee, by UGLs, 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.

(1) For State grantees under this Notice, the provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) will not apply to the extent that they 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) New York City is 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 Notice, the Department is removing the eligibility requirements at 24 CFR 570.483(b)(5) or (c)(3). Instead, States must comply with 570.208(d)(4) when funding disaster recovery-assisted planning-only grants, or directly administering planning activities that

guide recovery in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or 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 UGLGs 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 2 CFR part 225 (OMB Circular A–87), 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; and show how activities funded are consistent with the descriptions of activities proposed for

funding in the Action Plan and/or DRGR system. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

b. *UGLGs grantees.* New York City remains 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 Notice: the State shall make reviews and audits, including onsite reviews of any subrecipients, designated public agencies, and UGLGs, as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2), as amended, and as modified by this Notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or UGLGs.

17. *Program income alternative requirement.* The Department is waiving applicable program income rules at 42 U.S.C 5304(j), 24 CFR 570.500(a) and (b), 570.504, and 570.489(e) to the extent necessary to provide additional flexibility as described under this Notice. The alternative requirements provide guidance regarding the use of program income received before and after grant closeout and address revolving loan funds.

a. *Definition of program income.*

(1) For the purposes of this subpart, “program income” is defined as gross income generated from the use of CDBG–DR funds, except as provided in subparagraph D of this paragraph, and received by a State, UGLG, or tribe, or a subrecipient of a State, UGLG, or tribe. When income is generated by an activity that is only partially assisted with

CDBG–DR funds, the income shall be prorated to reflect the percentage of CDBG–DR funds used (e.g., a single loan supported by CDBG–DR funds and other funds; a single parcel of land purchased with CDBG–DR 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–DR funds;

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

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

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

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

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

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

(j) Gross income paid to a State, UGLG, 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–DR 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, UGLG, 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 UGLG receiving a direct award under this Notice may permit a subrecipient to retain program income. State grantees may permit a UGLG or tribe, which receives or will

receive program income, to retain the program income, but are not required to do so.

*c. Program income—use, closeout, and transfer.*

(1) Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional disaster recovery CDBG funds subject to the requirements of this Notice and must be used in accordance with the grantee's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in subparagraph d of this paragraph.

(2) In addition to the regulations dealing with program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: A grantee may transfer program income before closeout of the 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 UGLG or Indian tribe within the State. Program income received by a grantee, or received and retained by a subgrantee, after closeout of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. In all cases, any program income received, and *not* used to continue disaster recovery activities, will *not* be subject to the waivers and alternative requirements of this Notice. Rather, those funds will be subject to the grantee's regular CDBG program rules.

*d. Revolving loan funds.* New York City, State grantees, and UGLGs 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 UGLGs or tribes to carry out specific,

identified activities. The same requirements, outlined above, apply to this type of revolving loan fund. Last, note that no revolving fund, established per this Notice, shall be directly funded or capitalized with an advance of CDBG-DR 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 costs incurred by itself or its recipients subgrantees or subrecipients (including public housing authorities) on or after the incident date of the covered disaster. New York City is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable costs incurred on or after the incident date of the covered disaster. 24 CFR 570.200(h)(1)(i) will not apply to the extent that it requires pre-agreement activities to be included in a consolidated plan. The Department expects both State grantees and New York City to include all pre-agreement activities in their Action Plans. 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 Notice:

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

grantee's definition of "not suitable for rehabilitation" from the one-for-one replacement requirements. Before carrying out a program or activity which may be subject to the one-for-one replacement requirements, the grantee must define "not suitable for rehabilitation" in its Action Plan 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 re-assess post-disaster population and housing needs to determine the appropriate type, amount, and location of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note, however, that the demolition and/or disposition of Public Housing Authority-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970, neither of which is waived by this Notice.

*b. Relocation assistance.* The Section 104(d) relocation assistance requirements at section 104(d)(2)(A) and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this Notice, for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (e.g., buyouts and relocation). Both FEMA and HUD funds are subject to the URA; however, HUD's CDBG funds are also subject to Section 104(d), while FEMA funds are not. The URA provides that a displaced person is eligible to receive a rental assistance payment that covers a period of 42 months. By contrast, Section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the Section 104(d) requirements

assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under this Notice.

c. *Arm's length voluntary purchase.* The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses funds allocated under this Notice 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 Action Plan 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 regular 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 UGLs receiving CDBG disaster funds may establish separate optional relocation policies. This waiver is intended to provide States and UGLs 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 regular CDBG program, a State distributes CDBG funds to UGLs and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases

of funds. For State grantees under this Notice, HUD allows the State to carry out activities directly, in addition to distributing funds to subrecipients and/or subgrantees. Thus, per 24 CFR 58.4, when a State carries out activities directly, the State must submit the certification and request for release of funds to HUD for approval.

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

c. *Release of funds.* In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a request for release of funds and certification, immediately approve the release of funds for an activity or project assisted with allocations under this Notice if the recipient has adopted an environmental review, approval or permit under subparagraph b, above, or the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

d. *Historic preservation reviews.* To facilitate expedited historic preservation reviews under Section 106 of the National Historic Preservation Act of 1966 (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–DR 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.

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

#### 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 UGLGs based on full and open competition. All subgrantees of a State (UGLGs) 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. 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 UGLGs.* New York City will be subject to the procurement requirements of 24 CFR 85.36(b) through (i).

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 Web site.* The Appropriations Act requires grantees to maintain a public Web site 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 enter information on contracts in the DRGR system activity profiles (for all contracts valued over \$25,000), and make the following items available on its Web site: 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–DR 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 Notice. 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 a grant agreement must be amended when the Department allocates additional 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 Notice 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 Notice, and paragraph A.1.l 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 Notice, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the following alternative requirements to provisions under 42 U.S.C. 5304(e): the nature and extent of the grantee's performance deficiencies, types of corrective actions the grantee has undertaken, and the success or likely success of such actions.

#### 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. In accordance with 24 CFR 570.300, the policies and procedures set forth in subpart O will apply to New York City.

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

#### B. *Housing and Related Floodplain Issues.*

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 Notice. Thus, 42

U.S.C. 5305(a) is waived to the extent necessary to allow: homeownership assistance for households with up to 120 percent of the area median income, down payment assistance for up to 100 percent of the down payment (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 to resettle in disaster-affected communities.* 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. In addition, the incentives must be in accordance with the grantee's approved Action Plan and published program design(s). Note that this waiver does not permit a compensation program. Additionally, a grantee may require the incentive to be used for a particular purpose by the household receiving the assistance.

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

a. *Buyout requirements:*

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

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

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

(4) Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value or post-flood value as a basis for property value). However, in using CDBG-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 UGLGs.

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, grantees must ensure they are in compliance with their 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-DR buyout program (as defined by this Notice).

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 Web site.

a. *Flood insurance purchase requirements.* HUD does not prohibit the use of CDBG-DR 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-DR 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. Infrastructure (Public Facilities, Public Improvements, Public Buildings)*

34. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow grantees to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible. HUD believes this waiver is consistent with the overall purposes of the HCD Act, and is necessary for many grantees to adequately address critical infrastructure needs created by the disaster.

35. *Use of CDBG as Match.* Additionally, 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).

#### *D. Economic Revitalization.*

36. *National Objective Documentation for Economic Development Activities.* 24 CFR 570.483(b)(4)(i) and 570.208(a)(4)(i) are waived to allow the grantees under this Notice to identify low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement in which grantees must review the annual wages or salary of a job in comparison to the person's total

household income and size (i.e., number of persons). Thus, it streamlines the documentation process 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.

37. *Public benefit for certain economic development activities.* The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

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

38. *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 Notice authorizes grantees to determine that an individual is eligible to be considered a Section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.

39. *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.

40. *Waiver to permit some activities in support of the tourism industry (State of New Jersey only).* The State of New Jersey plans to provide disaster recovery grant assistance to support the State's \$38 billion tourism industry and promote travel to communities in the disaster-impacted areas and has requested an eligibility waiver for such activities. Without such intervention, the State estimates a \$950 million loss in the third quarter of 2013. Tourism industry support, such as a national consumer awareness advertising campaign for an area in general, is ineligible for regular CDBG assistance. However, such support was eligible, within limits, for CDBG–DR funds appropriated for recovery of Lower Manhattan following the September 11, 2001, terrorist attacks, and HUD understands that such support can be a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues. However, because the State of New Jersey is proposing advertising and marketing activities rather than direct assistance to tourism-dependent businesses, and because long-term benefit from the proposed activities must be derived using indirect means, 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived only to the extent necessary to make eligible use of no more than \$25 million for assistance for the tourism industry, including promotion of a community or communities in general, provided the assisted activities are designed to support tourism to the most impacted and distressed areas related to the effects of Hurricane Sandy. This waiver will expire at the end of the grantee's two year expenditure period.

41. *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 Notice 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 Notice may also not be used to assist a privately-owned utility for any purpose.

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

42. *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 UGLG receiving a direct allocation under this Notice must make the following certifications with its Action Plan:

a. The grantee certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within its jurisdiction and take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard (see 24 CFR 570.487(b)(2) and 570.601(a)(2)). In addition, the grantee certifies that agreements with subrecipients will meet all civil rights related requirements pursuant to 24 CFR 570.503(b)(5).

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

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

d. The grantee certifies that the Action Plan for Disaster Recovery is authorized under State and local law (as applicable) and that the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG–DR funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

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

f. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations

at 49 CFR part 24, except where waivers or alternative requirements are provided for in this Notice.

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

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

i. Each State receiving a direct award under this Notice certifies that it has consulted with affected UGLGs in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the uses of funds, including method of distribution of funding, or activities carried out directly by the State.

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

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas for which the President declared a major disaster in the aftermath of Hurricane Sandy, pursuant to the Stafford Act.

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

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

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG–DR grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (a) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such

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

k. The grantee certifies that it (and any subrecipient or recipient) will conduct and carry out the grant in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

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

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

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

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

n. The grantee will not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent in FEMA's most recent and current data source unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

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

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

q. The grantee certifies that it has reviewed the requirements of this Notice and requirements of Public Law 113–2 applicable to funds allocated by this Notice, and 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, to ensure timely expenditure of funds, to maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and to detect and prevent waste, fraud, and abuse of funds.

43. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20) under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information, unless the collection displays a valid control number.

## VII. Duration of Funding

The Appropriations Act requires that HUD obligate all funds provided under Chapter 9, Community Development Fund, not later than September 30, 2017. Concurrently, section 904(c) of the Appropriations Act requires that all funds be expended within two years of the date HUD obligates funds.

Therefore, each grantee must expend all funds within two years of the date HUD signs the grant agreement with the grantee. Note that if a grantee amends its Action Plan to program additional funds that the Department has allocated to it, the grant agreement must also be revised. As stated in paragraph 1.a, under section VI of this Notice, the requirement for each grantee to expend funds within two years is triggered by each amendment to the grant agreement. That is, each grant amendment has its own expenditure deadline. Pursuant to section 904(c) of the Appropriations Act, grantees or HUD may request waivers of the two-year expenditure deadline from the Office of Management and Budget. For any funds that the grantee believes will not be expended by the deadline, 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 detail the compelling legal, policy, or operational challenges for any such waiver, and must also identify the date by when the specified portion of funds will be expended. Funds remaining in the grantee's line of credit at the time of this expenditure deadline will be returned to the U.S. Treasury.

## VIII. Catalog of Federal Domestic Assistance

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

## IX. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: February 28, 2013.

**Mark Johnston,**

*Deputy Assistant Secretary for Special Needs Programs.*

## Appendix A—Allocation Methodology

To expedite recovery while recognizing that time is needed to get a full understanding of long-term recovery needs relating to eligible disasters supported by Public Law 113–2, this allocation provides \$5.4 billion of the \$16 billion, reserving the balance to address the full scope of needs when better information is available.

## Background

Public Law 113–2 states:

For an additional amount for “Community Development Fund”, \$16,000,000,000, to remain available until September 30, 2017, 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 (42 U.S.C. 5121 et seq.) due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013, for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.):

*Provided*, That funds shall be awarded directly to the State or unit of general local government as a grantee at the discretion of the Secretary of Housing and Urban Development:

*Provided further*, That the Secretary shall allocate to grantees not less than 33 percent

of the funds provided under this heading within 60 days after the enactment of this Act based on the best available data:

*Provided further*, That prior to the obligation of funds, a grantee shall submit a plan to the Secretary for approval detailing the proposed use of all funds, including criteria for eligibility and how the use of these funds will address long-term recovery and restoration of infrastructure and housing and economic revitalization in the most impacted and distressed areas:

The legislation specifies that the CDBG—DR funds are to be used “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” and further specifies that the funds are not to be used for activities reimbursable by FEMA or the Corps of Engineers.

The language also calls for HUD to use “best available” data to make its allocation. For this allocation, similar to prior allocations, HUD makes a determination of unmet needs by estimating unmet needs related to the main intended uses of the funds:

- “restoration of \* \* \* housing”. We make an estimate with best available data on the amount of housing damage not likely to be covered by insurance, SBA disaster loans, or FEMA housing assistance. To target the “most impacted and distressed areas”, the calculation limits the need calculation only to homes with high levels of individual damage (see below).

- “economic revitalization”. We make an estimate with best available data on the amount of damage to businesses applying for an SBA loan that are expected to be turned down, usually because of inadequate credit or income to support the needed loan amount.

- “restoration of infrastructure”. Due to the early stage of the disaster, HUD did not use data on infrastructure need for this first allocation, pending getting better information on infrastructure needs which will be used in a later allocation. That noted, grantees may use this initial allocation to begin addressing infrastructure needs.

These estimated needs are then summed together and an allocation is made among the grantee universe based on their proportional share of “unmet needs”. At this point, there is good data on number of affected households and likely damage, but there is less complete data on the extent other resources have addressed those needs, specifically:

- Severe unmet housing needs. HUD limits the calculation of unmet needs to only properties with significant damage. This goes toward meeting the Congressional requirement of most impacted. Information on the adequacy of insurance to address housing needs was still very early in the disaster response, a high percentage of affected property owners are still determining how much of their recovery needs will be covered by insurance. To adjust for this uncertainty, HUD applied assumptions about insurance coverage rates to calculate the severe housing needs.

- Unmet business loss. It is very early in the disaster response to accurately estimate

the needs for business to recover. This estimate looks at the properties that have applied for SBA disaster loans and extrapolates both estimated damage and disapproval rates based on the applications requested to date. As with the housing estimates, HUD applies an assumption about expected SBA denial rates.

#### Methodology for Calculating Unmet Needs

##### Available Data

The “best available” data HUD staff have identified as being available to calculate unmet needs at this time for the targeted disasters come from the following data sources:

- FEMA Individual Assistance program data on housing unit damage;
- SBA for management of its disaster assistance loan program for housing repair and replacement;
- SBA for management of its disaster assistance loan program for business real estate repair and replacement as well as content loss; and

##### Calculating Unmet Housing Needs

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA’s Individual Assistance program. For unmet housing needs, the FEMA data are supplemented by Small Business Administration data from its Disaster Loan Program. HUD calculates “unmet housing needs” as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA, where:

- Each of the FEMA inspected owner units are categorized by HUD into one of five categories:
  - Minor-Low: Less than \$3,000 of FEMA inspected *real property* damage
  - Minor-High: \$3,000 to \$7,999 of FEMA inspected *real property* damage
  - Major-Low: \$8,000 to \$14,999 of FEMA inspected *real property* damage
  - Major-High: \$15,000 to \$28,800 of FEMA inspected *real property* damage and/or 1 to 4 feet of flooding on the first floor.
  - Severe: Greater than \$28,800 of FEMA inspected *real property* damage or determined destroyed and/or 4 or more feet of flooding on the first floor.

To meet the statutory requirement of “most impacted” in this legislative language, homes are determined to have a high level of damage if they have damage of “major-low” or higher. That is, they have a real property FEMA inspected damage of \$8,000 or flooding over 1 foot. Furthermore, a homeowner is determined to have unmet needs if they have received a FEMA grant to make home repairs. For other homeowners at this stage of the disaster, assumptions are made about the likely percent of damage *not covered* by insurance. This is assumed to increase by severity of damage to the home. The assumptions applied to ascertain the range of allocations were 30 percent for homes with major-low damage; 50 percent for homes with major-high damage; and 70 percent for homes with severe damage.

- FEMA does not inspect rental units for real property damage so personal property

damage is used as a proxy for unit damage. Each of the FEMA inspected renter units are categorized by HUD into one of five categories:

- Minor-Low: Less than \$1,000 of FEMA inspected *personal property* damage
- Minor-High: \$1,000 to \$1,999 of FEMA inspected *personal property* damage
- Major-Low: \$2,000 to \$3,499 of FEMA inspected *personal property* damage
- Major-High: \$3,500 to \$7,499 of FEMA inspected *personal property* damage or 1 to 4 feet of flooding on the first floor.
- Severe: Greater than \$7,500 of FEMA inspected *personal property* damage or determined destroyed and/or 4 or more feet of flooding on the first floor.

For rental properties, to meet the statutory requirement of “most impacted” in this legislative language, homes are determined to have a high level of damage if they have damage of “major-low” or higher. That is, they have a FEMA personal property damage assessment of \$2,000 or greater or flooding over 1 foot. Furthermore, landlords are presumed to have adequate insurance coverage unless the unit is occupied by a renter with income of \$30,000 or less. Units are occupied by a tenant with income less than \$30,000 are used to calculate likely unmet needs for affordable rental housing.

- The average cost to fully repair a home for a specific disaster *to code* within each of the damage categories noted above is calculated using the average real property damage repair costs determined by the Small Business Administration for its disaster loan program for the subset of homes inspected by both SBA and FEMA. Because SBA is inspecting for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally more than the FEMA estimates on the cost to make the home habitable. If fewer than 100 SBA inspections are made for homes within a FEMA damage category, the estimated damage amount in the category for that disaster has a cap applied at the 75th percentile of all damaged units for that category for all disasters and has a floor applied at the 25th percentile.

##### Calculating Economic Revitalization Needs

Based on SBA disaster loans to businesses, HUD used the sum of real property and real content loss of small businesses not receiving an SBA disaster loan times 85 percent. This is adjusted upward by a per business unmet need times the number of applications denied pre-inspection for inadequate credit or income or the loan was still in processing and did not yet have an inspection.

Because applications denied for poor credit or income are the most likely measure of requiring the type of assistance available with CDBG recovery funds, the calculated unmet business needs for each state are adjusted upwards by the proportion of total application that were denied at the pre-process stage because of poor credit or inability to show repayment ability.

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