DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6303–N–01]

Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG–DR Consolidated Waivers and Alternative Requirements Notice

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

ACTION: Notice.

SUMMARY: On October 29, 2021, HUD allocated over $2 billion in Community Development Block Grant Disaster Recovery (CDBG–DR) funds appropriated by the Disaster Relief Supplemental Appropriations Act, 2022. This Allocation Announcement Notice imposes HUD’s CDBG–DR Consolidated Notice (“Consolidated Notice”) (Appendix B) and any amendments to the Consolidated Notice only on CDBG–DR grants for disasters occurring in 2020, as identified herein. The Consolidated Notice, as amended by this Allocation Announcement Notice, includes waivers and alternative requirements, relevant regulatory requirements, the grant award process, criteria for action plan approval, and eligible disaster recovery activities.

DATES: Applicability Date: February 8, 2022.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW, Room 10166, 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 disaster_recovery@hud.gov.

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I. Allocations

The Disaster Relief Supplemental Appropriations Act, 2022 (Pub. L. 117–43) approved September 30, 2021 (the “Appropriations Act”) makes available $5,000,000,000 in Community Development Block Grant Disaster Recovery (CDBG–DR) funds. These CDBG–DR funds are for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCDA) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the “most impacted and distressed” (MID) areas resulting from a qualifying major disaster in 2020 or 2021. HUD allocated over $2 billion in CDBG–DR funds from the Appropriations Act to assist in long-term recovery from disasters occurring in 2020. The Appropriations Act requires HUD to include with any final allocation for the total estimate of unmet need an additional amount of 15 percent of that estimate for mitigation activities that reduce risk in the MID areas (see Table 1).

In accordance with the Appropriations Act, $5,500,000 of the total amounts appropriated under the Act will be transferred to the Department’s Office of Community Planning and Development (CPD), Program Office Salaries and Expenses, for necessary costs of administering and overseeing CDBG–DR funds, including information technology costs. Additionally, in accordance with the Appropriations Act, up to $7,000,000 shall be made available for capacity building and technical assistance, including assistance on contracting and procurement, to support existing and future CDBG–DR grantees and their subrecipients. HUD will allocate the remaining funds appropriated for CDBG–DR grants from the Appropriations Act when HUD receives the best available data for major disasters occurring in 2020 or 2021.

The Appropriations Act provides that grants shall be awarded directly to a state, local government, or Indian tribe at the discretion of the Secretary.

Pursuant to the Appropriations Act, HUD has identified the MID areas based on the best available data for all eligible affected areas. A detailed explanation of HUD’s allocation methodology is provided in Appendix A of this notice. At least 80 percent of all allocations provided to each grantee must address unmet disaster needs or mitigation activities in the HUD-identified MID areas, as identified in the last column of Table 2. Each grantee may determine where to use the remaining 20 percent of their allocation, but that portion of the allocation may only be used to address unmet disaster needs or mitigation activities in those areas that the grantee determines are “most impacted and distressed” and that received a presidential major disaster declaration identified by the FEMA disaster numbers listed in column one of Table 1. Detailed requirements around MID areas are provided in section II.A.3. of the Consolidated Notice.

Based on further review of the impacts from the eligible disasters, and estimates of unmet need, HUD is making the following allocations:

Table 1—Allocations for Unmet Needs and Mitigation Activities Under Public Law 117–43 for Disasters Occurring in 2020

<table>
<thead>
<tr>
<th>FEMA Disaster No.</th>
<th>State</th>
<th>Grantee</th>
<th>Allocation for unmet needs under this notice from Public Law 117–43</th>
<th>CDBG–DR mitigation set-aside amounts from Public Law 117–43</th>
<th>Total allocated under this notice from Public Law 117–43</th>
</tr>
</thead>
<tbody>
<tr>
<td>4563, 4573</td>
<td>Alabama</td>
<td>State of Alabama</td>
<td>$271,071,000</td>
<td>$40,661,000</td>
<td>$311,732,000</td>
</tr>
<tr>
<td>4558, 4569</td>
<td>California</td>
<td>State of California</td>
<td>201,046,000</td>
<td>30,157,000</td>
<td>231,203,000</td>
</tr>
<tr>
<td>4564</td>
<td>Florida</td>
<td>State of Florida</td>
<td>98,427,000</td>
<td>14,764,000</td>
<td>113,191,000</td>
</tr>
<tr>
<td>4557</td>
<td>Iowa</td>
<td>State of Iowa</td>
<td>49,513,000</td>
<td>7,427,000</td>
<td>56,940,000</td>
</tr>
<tr>
<td>4559, 4570</td>
<td>Louisiana</td>
<td>State of Louisiana</td>
<td>521,853,000</td>
<td>78,278,000</td>
<td>600,131,000</td>
</tr>
<tr>
<td>4547</td>
<td>Michigan</td>
<td>State of Michigan</td>
<td>52,085,000</td>
<td>7,813,000</td>
<td>59,898,000</td>
</tr>
<tr>
<td>4576</td>
<td>Mississippi</td>
<td>State of Mississippi</td>
<td>24,757,000</td>
<td>3,713,000</td>
<td>28,470,000</td>
</tr>
<tr>
<td>4562</td>
<td>Oregon</td>
<td>State of Oregon</td>
<td>367,205,000</td>
<td>55,081,000</td>
<td>422,286,000</td>
</tr>
<tr>
<td>4473, 4560</td>
<td>Puerto Rico</td>
<td>Commonwealth of Puerto Rico</td>
<td>*155,794,000</td>
<td>28,832,000</td>
<td>184,626,000</td>
</tr>
<tr>
<td>4476, 4541</td>
<td>Tennessee</td>
<td>State of Tennessee</td>
<td>37,165,000</td>
<td>5,575,000</td>
<td>42,740,000</td>
</tr>
</tbody>
</table>
II. Use of Funds

Unless otherwise indicated, funds allocated under this notice from Public Law 117–43 are subject to the requirements of this Allocation Announcement Notice and the Consolidated Notice, included as Appendix B, as amended by this Allocation Announcement Notice. This Allocation Announcement Notice outlines additional requirements imposed by the Appropriations Act that apply only to funds allocated under this notice.

The Appropriations Act requires that prior to the obligation of CDBG–DR funds by the Secretary, a grantee shall submit a plan to HUD for approval detailing the use of funds. The plan must include the criteria for eligibility, and how the use of these funds will address long-term recovery and restoration of infrastructure and housing, economic revitalization, and mitigation in the MID areas. This notice requires the grantee to submit an action plan that addresses unmet recovery needs and mitigation activities related to the disasters identified in Table 1.

Therefore, the action plan submitted in response to this notice must describe uses and activities that: (1) Are authorized under title I of the HCDA or allowed by a waiver or alternative requirement; and (2) respond to disaster-related impacts to infrastructure, housing, economic revitalization, and mitigation in the MID areas. Requirements related to action plans are provided in section III.C. of the Consolidated Notice.

In accordance with the Appropriations Act, grantees must spend 15 percent of the amount of each grant, as outlined in Table 1, for mitigation activities as described in section IV.A.2. of this notice. Grantees must also incorporate mitigation measures into its recovery activities as required under section II.A.2. in the Consolidated Notice. Grantees must conduct an assessment of community impacts and unmet needs to inform the plan and guide the development and prioritization of planned recovery activities, pursuant to section III.C.1.a. of the Consolidated Notice.

Additionally, with regard to the 15 percent of funds provided for mitigation activities, grantees must also prepare a mitigation needs assessment to inform their mitigation activities, as described in section IV.A.2.a. of this notice.

To comply with the statutory requirement in the Appropriations Act, grantees shall not use CDBG–DR funds for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers (USACE). Grantees must verify whether FEMA or USACE funds are available prior to awarding CDBG–DR funds to specific activities or beneficiaries. Grantees may use CDBG–DR funds as the non-Federal match as described in section II.C.3. of the Consolidated Notice.

III. Overview of Grant Process

A. Requirements Related to Administrative Funds

III.A.1. Action plan submittal for program administrative costs. The Appropriations Act allows grantees receiving an award under this notice to access funding for program
requirements in section III.A.1. that
and replaced by the alternative
participation requirements, are waived
through (d), and 24 CFR 91.115(b)
provisions of 42 U.S.C. 5304(a)(2) and
costs are awarded in a timely manner in
that grants for program administrative
a more streamlined process and ensure
the plan, for public comment. To permit
costs, and substantial amendments to
action plan for program administrative
costs. The
plan will be developed outside of
DRGR and must include all proposed
uses of funds for program administrative
costs incurred prior to a final action
plan being submitted and approved. The
action plan for program administrative
costs must also include the criteria for
eligibility and the amount to be
budgeted for that activity. If a grantee
chooses an action plan for
program administrative costs, the
grantee should calculate its need to
cover program administrative costs over
the life of the grant and consider how
much of its available program
administrative funds may be reasonably
budgeted at this very early stage of its
grant lifecycle.
III.A.1.a. Publication of the action
plan for program administrative costs
and opportunity for public comment.
The grantee must publish the proposed
action plan for program administrative
costs, and substantial amendments to
the plan, for public comment. To permit
a more streamlined process and ensure
that grants for program administrative
costs are awarded in a timely manner in
order to allow grantees to more rapidly
design and launch recovery activities,
provisions of 42 U.S.C. 5304(a)(2) and
CFR 1003.604, 24 CFR 91.105(b)
through (d), and 24 CFR 91.115(b)
through (d), with respect to citizen
participation, are waived and replaced by the alternative
requirements in section III.A.1. that
apply only to action plans for program
administrative costs and substantial
amendments to these plans.
Additionally, for these action plans
only, grantees are not subject to the
Consolidated Notice action plan
requirements in sections III.B.2.i.,
III.C.2., III.C.3., III.C.6., and III.D.1.a.–c.
The manner of publication of the
action plan for program administrative
costs must include prominent posting
on the grantee’s official disaster
recovery website and must afford
residents, affected local governments,
and other interested parties a reasonable
opportunity to review the contents of
the plan or substantial amendment.
Subsequent to publication of the action
plan or substantial amendment to that
plan, the grantee must provide a
reasonable time frame (no less than
seven days) and multiple methods
(including electronic submission) for
receiving comments on the action plan
or substantial amendment for program
administrative costs. At a minimum, the
topic of disaster recovery on the
grantee’s website, including the posted
action plan or substantial amendment,
must be navigable by interested parties
from the grantee homepage and must
link to the disaster recovery website as
required by section III.D.1.e. of the
Consolidated Notice. The grantee’s
records must demonstrate that it has
notified affected parties through
electronic mailings, press releases,
statements by public officials, media
advertisements, public service
announcements, and/or contacts with
neighborhood organizations. Grantees
are not required to hold any public
hearings on the proposed action plan or
substantial amendment for program
administrative costs.
The grantee must consider all oral and
written comments on the action plan or
any substantial amendment. Any
updates or changes made to the action
plan in response to public comments
should be clearly identified in the
action plan. A summary of comments on
the plan or amendment, and the
granatee’s response to each, must be
included with the action plan or
substantial amendment. Grantee
responses shall address the substance of
the comment rather than merely
acknowledge that the comment was
received.
After the grantee responds to public
comments, it will then submit its action
plan or substantial amendment for
program administrative costs (which
includes Standard Form 424 (SF–424))
to HUD for approval, there is no due
date for the action plan as it may be submitted any time prior to the grantee’s Public
Action Plan. HUD will review the action
plan or substantial amendment for program administrative costs within 15
days from date of receipt and determine
whether to approve the action plan or
substantial amendment to that plan per
the criteria identified in this notice.
III.A.1.b. Certifications waiver and
alternative requirement. Sections
104(b)(4), (c), and (m) of the HCDA
(42 U.S.C. 5304(b)(4), (c) & (m)), sections
106(d)(2)(C) & (D) of the HCDA
(42 U.S.C. 5306(d)(2)(C) & (D)), and section
106 of the Cranston-Gonzalez National
Affordable Housing Act (42 U.S.C.
12706), and regulations at 24 CFR
91.225 and 91.325 are waived and
replaced with the following alternative.
Each grantee choosing to submit an
action plan for program administrative
costs must make the following
certifications listed in section III.F.7. of
the Consolidated Notice and include
them with the submission of this plan:
Paraphrars b., c., d., g., i., j., k., l., p.,
and q. Additionally, HUD is waiving
section 104 and section 106 of the
HCDA and section 210 of the Uniform
Relocation Assistance and Real Property
Acquisition Policies Act of 1970 (42
U.S.C. 4630) only to the extent
necessary to allow grantees to receive a
portion of their allocation as a grant for
program administrative costs before
submitting other statutorily required
certifications. Each grantee must make
certifications included in section
III.F.7. of the Consolidated Notice and
submit them to HUD when it submits its
Public Action Plan in DRGR described
in III.C.1.
III.C. Submission of the action
plan for program administrative costs
in DRGR. After HUD’s approval of
the action plan for program administrative
costs, the grantee enters the activities
from its approved action plan into the
DRGR system if it has not previously
done so and submits its DRGR action
plan to HUD (funds can be drawn from the
line of credit only for activities that
are established in the DRGR system).
HUD will provide additional guidance
(“Fact Sheet”) with screenshots and
step-by-step instructions describing the
submittal process for this DRGR action
plan for program administrative costs.
This process will allow a grantee to
access funds for program administrative
costs while the grantee begins
developing its Public Action Plan in
DRGR as provided in section III.C.1. of
the Consolidated Notice.
III.A.1.d. Incorporation of the action
plan for program administrative costs
into the Public Action Plan. The
grantee shall describe the use of all grant
funds for administrative costs in the Public
Action Plan required by section III.C.1.
Use of grant funds for administrative
costs before approval of the Public Action Plan must be consistent with the action plan for administrative costs. Once the Public Action Plan is approved, the use of all grant funds must be consistent with the Public Action Plan. Upon HUD’s approval of the Public Action Plan, the action plan for administrative costs shall only be relevant to administrative costs charged to the grant before the date of approval of the Public Action Plan.

III.A.2. Use of administrative funds across multiple grants. The Appropriations Act authorizes special treatment of grant administrative funds. Grantees that are receiving awards under this notice, and that have received CDBG–DR or CDBG–MIT grants in the past or in any future acts, may use eligible administrative funds (up to five percent of each grant award plus up to five percent of program income generated by the grant) appropriated by these acts for the cost of administering any CDBG–DR or CDBG–MIT grant without regard to the particular disaster appropriation from which such funds originated. If the grantee chooses to exercise this authority, the grantee must have appropriate financial controls to comply with the requirement that the amount of grant administration expenditures for each CDBG–DR or CDBG–MIT grant will not exceed five percent of the total grant award for each grant (plus five percent of program income generated by the grant), review and modify its financial management policies and procedures regarding the tracking and accounting of administration costs, as necessary, and address the adoption of this treatment of administrative costs in the applicable portions of its Financial Management and Grant Compliance submissions as referenced in section III.A.1. of the Consolidated Notice. Grantees are reminded that all uses of funds for program administrative activities must qualify as an eligible administration cost.

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

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. This section of the notice and the Consolidated Notice describe rules, statutes, waivers, and alternative requirements that apply to allocations under this notice. For each waiver and alternative requirement in this notice and incorporated through the Consolidated Notice, the Secretary has determined that good cause exists, and the waiver or alternative requirement is not inconsistent with the overall purpose of title I of the HCDA. The waivers and alternative requirements provide flexibility in program design and implementation to support full and swift recovery following eligible disasters, while ensuring that statutory requirements are met.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery and mitigation activities. Grantees should work with the assigned CPD representative to request any additional waivers or alternative requirements from HUD headquarters. Waivers and alternative requirements described below apply to all grantees under this notice. Under the requirements of the Appropriations Act, waivers and alternative requirements are effective five days after they are published in the Federal Register or on the website of the Department.

A. Grant Administration

IV.A.1. Duplication of Benefits (DOB). HUD published a Federal Register notice on June 20, 2019, titled, “Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees” (84 FR 28836) (“2019 DOB Notice”), which revised the DOB requirements that apply to CDBG–DR grants for disasters declared between January 1, 2015 and December 31, 2021. To comply with the Stafford Act and the Appropriations Act, grantees must prevent the duplication of benefits and must have adequate policies and procedures for this purpose. Accordingly, grantees that received funds for disasters occurring in 2020 must follow all requirements in the 2019 DOB Notice and the requirements located in section IV.A. of the Consolidated Notice.

IV.A.2. CDBG–DR mitigation set-aside. The Appropriations Act requires HUD to include in any allocation of CDBG–DR funds for unmet needs an additional amount of 15 percent for mitigation activities (“CDBG–DR mitigation set-aside”). Grantees should consult Table 1 for the amount allocated specifically for the CDBG–DR mitigation set-aside. For purposes of grants under this notice, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

In the grantee’s action plan, it must identify how the proposed use of the CDBG–DR mitigation set-aside will: (1) Meet the definition of mitigation activities; (2) address the current and future risks as identified in the grantee’s mitigation needs assessment under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective.

Unlike recovery activities where grantees must demonstrate that their activities “tie-back” to the specific disaster and address a specific unmet recovery need for which the CDBG–DR funds were appropriated, activities funded by the CDBG–DR mitigation set-aside do not require such a “tie-back” to the specific qualified disaster that has served as the basis for the grantee’s allocation. Instead, grantees must demonstrate that activities funded by the CDBG–DR mitigation set-aside meet the provisions included as (1) through (4) in the prior paragraph, to be eligible. Grantees must report activities as a “MIT” activity type in DRGR so that HUD and the public can determine that the grant has met the expenditure requirement for the CDBG–DR mitigation set-aside.

Grantees may also meet the requirement of the CDBG–DR mitigation set-aside by including eligible recovery activities that both address the impacts of the disaster (i.e., have “tie-back” to the specific qualified disaster), and incorporate mitigation measures into the recovery activities. In section II.A.2.b. of the Consolidated Notice, grantees are instructed to incorporate mitigation measures when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential structures with CDBG–DR funds as part of activities eligible under 42 U.S.C. 5305(a) (including activities authorized by waiver and alternative requirement). Additionally, in section II.A.2.c. of the Consolidated Notice, grantees are required to establish resilience performance metrics for those activities.

If grantees wish to count those activities towards the grantee’s CDBG–DR mitigation set-aside, grantees must: (1) Document how those activities and the incorporated mitigation measures will meet the definition of mitigation, as provided above; and (2) Report those activities as a “MIT” activity type in DRGR so they are easily tracked.

IV.A.3. Mitigation needs assessment. In addition to the requirements prescribed in section III.C.1.a of the
Consolidated Notice that grantees must develop an impact and unmet needs assessment, grantees receiving an award under this Allocation Announcement Notice must also include in their action plan a mitigation needs assessment to inform the activities funded by the CDBG–DR mitigation set-aside. Each grantee must assess the characteristics and impacts of current and future hazards identified through its recovery from the qualified disaster and any other Presidentially declared disaster. Mitigation solutions designed to be resilient only for threats and hazards related to a prior disaster can leave a community vulnerable to negative effects from future extreme events related to other threats or hazards. When risks are identified among other vulnerabilities during the framing and design of mitigation projects, and implementation of those projects can enhance protection and save lives, maximize the utility of scarce resources, and benefit the community long after the projects are complete.

Accordingly, each grantee receiving a CDBG–DR allocation under this notice must conduct a risk-based assessment to inform the use of its CDBG–DR mitigation set-aside considering identified current and future hazards. Grantees must assess their mitigation needs in a manner that effectively addresses risks to indispensable services that enable continuous operation of critical business and government functions, and are critical to human health and safety or economic security. In the mitigation needs assessment, each grantee must cite data sources and must, if a minimum, use the risks identified in the current FEMA-approved state or local Hazard Mitigation Plan (HMP). If a jurisdiction is currently updating an expired HMP, the grantee’s agency administering the CDBG–DR funds must consult with the agency administering the HMP update to identify the risks that will be included in the assessment. Mitigation needs evolve over time and grantees are to amend the mitigation needs assessment and action plan as conditions change, additional mitigation needs are identified, and additional resources become available.

IV.A.2.b. Connection of programs and projects to the mitigation needs assessment. Grantees are required by section III.C.1.b. of the Consolidated Notice to describe the connection between identified unmet needs and the allocation of CDBG–DR resources. In a similar fashion, the plan must provide a clear connection between a grantee’s mitigation needs assessment and its proposed activities in the MID areas funded by the CDBG–DR mitigation set-aside (or outside in connection to the MID areas as described in section II.A.3. of the Consolidated Notice). To maximize the impact of all available funds, grantees are encouraged to coordinate and align these funds with other projects funded with CDBG–DR and CDBG–MIT funds, as well as other disaster recovery activities funded by FEMA, USACE, the U.S. Forest Service, and other agencies as appropriate. Grantees are encouraged to fund planning activities that complement FEMA’s Building Resilient Infrastructure and Communities (BRIC) program and to upgrade mapping, data, and other capabilities to better understand evolving disaster risks.

IV.A.3. Interchangeability of disaster funds. The Appropriations Act gives the Secretary authority to authorize grantees that receive an award in this Allocation Announcement Notice and under prior appropriations to use those funds interchangeably and without limitation for the same activities related to unmet recovery needs in the MID areas resulting from a major disaster in the Appropriation Act or in a prior or future appropriation acts, when the MID areas overlap and when the use of the funds will address unmet recovery needs of major disasters in the Appropriation Act or in any prior or future appropriation acts.

Based on this authority, the Secretary authorizes grantees receiving a CDBG–DR grant under the Appropriation Act and prior or future appropriations acts for activities authorized under title I of the FCDA for a specific qualifying disaster(s) to use these funds interchangeably and without limitation for the same activities in MID areas resulting from a major disaster in the Appropriation Act or in a prior or future appropriation acts, as long as the MID areas overlap, and the activities address unmet needs of both disasters.

Grantees are reminded that expanding the eligible beneficiaries of activities in an action plan funded by any prior or future acts to include those impacted by the specific qualifying disaster(s) in this notice requires the submission of a substantial action plan amendment in accordance with section III.C.6. of the Consolidated Notice. Additionally, all waivers and alternative requirements associated with a CDBG–DR grant apply to the use of the funds provided by that grant, regardless of which disaster the funded activity will address.

For example, if a grantee is receiving funds under this notice for a disaster occurring in 2020 and the MID areas for the 2020 disaster overlap with the MID areas for a disaster that occurred in 2017, the grantee may choose to use the funds allocated under this notice to address unmet needs of both the 2017 disaster and the 2020 disaster. In doing so, the grantee must follow the rules and requirements outlined in this notice. However, if the grantee chooses to use its CDBG–DR grant awarded due to a disaster that occurred in 2017 to address unmet needs of both that disaster and the 2020 disaster, the grantee must follow the rules and requirements outlined in the Federal Register notices applicable to its CDBG–DR grant for 2017 disasters.

V. Duration of Funding

The Appropriations Act makes the funds available for obligation by HUD until expended. HUD waives the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution and expenditure of funds, and establishes an alternative requirement providing that each grantee must expend 100 percent of its allocation within six years of the date HUD signs the grant agreement. HUD may extend the period of performance administratively, if good cause for such an extension exists at that time, as requested by the grantee, and approved by HUD. When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee on appropriate programmatic purposes will be recaptured by HUD.

VI. Federal Assistance Listings (Formerly Known as the CFDA Number)

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

VII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available online on HUD’s CDBG–DR website. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the

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Regulations Division at 202–708–3055 (this is not a toll-free number).

James Arthur Jemison II,
Principal Deputy Assistant Secretary for Community Planning and Development.

Appendix A—Detailed Methodology

Allocation of CDBG–DR Funds to Most Impacted and Distressed Areas Due to Presidially Declared Disasters Occurring in 2020

Background

Public Law No: 117–43 on 9/30/2021 (the Disaster Relief Supplemental Appropriations Act, 2022) appropriated $5 billion for CDBG–Disaster Recovery (CDBG–DR) funds for disasters occurring in 2020 and 2021. The statutory text related to the allocation is as follows:

“As for an additional amount for “Community Development Fund”, $5,000,000,000, to remain available until expended, for necessary expenses for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation, in the most impacted and distressed areas resulting from a disaster that occurred in 2020 or 2021 pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) provided further, That any final allocation for the total estimate for unmet need made available under this heading in this Act shall be awarded directly to the state, unit of general local government, or Indian tribe (as such term is defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302)) at the discretion of the Secretary: Provided further, That the Secretary shall allocate, using the best available data, an amount equal to the total estimate for unmet needs for qualifying disasters under this heading in this Act: Provided further, That any final allocation for the total estimate for unmet need made available under this heading in this Act, no less than $1,610,000,000 shall be allocated for major declared disasters that occurred in 2020 within 30 days of the date of enactment of this Act:”

Most Impacted and Distressed Areas

As with prior CDBG–DR appropriations, HUD is not obligated to allocate funds for all major disasters occurring in the statutory timeframes. HUD is directed to use the funds “in the most impacted and distressed areas.” HUD has implemented this directive by limiting CDBG–DR formula allocations to grantees with major disasters that meet three standards:

(1) Individual Assistance/IHP designation. HUD has limited allocations to those disasters where the Federal Emergency Management Agency (FEMA) had determined the damage was sufficient to declare the disaster as eligible to receive Individual and Households Program (IHP) funding.

(2) Concentrated damage. HUD has limited its estimate of serious unmet housing need to counties and ZIP codes with high levels of damage, collectively referred to as “most impacted areas.” For this allocation, HUD is defining most impacted areas as either most impacted counties exceeding $10 million in serious unmet housing needs—and most impacted ZIP Codes—ZIP Codes with $2 million or more of serious unmet housing needs. The calculation of serious unmet housing needs is described below. For disasters the most impacted threshold described above, the unmet need allocations are based on the following factors summed together:

(a) Repair estimates for seriously damaged owner-occupied units without insurance (with some exceptions) in most impacted areas after FEMA and Small Business Administration (SBA) repair grants or loans; an estimate for homeowners served by FEMA’s Permanent Housing Construction program is also deducted from the homeowner unmet need estimate.

(b) Repair estimates for seriously damaged rental units occupied by very low-income renters in most impacted areas;

(c) Repair and content loss estimates for small businesses with serious damage denied by SBA; and

(d) The estimated local cost share for Public Assistance Category C to G projects.

Methods for Estimating Serious Unmet Needs for Housing

The data HUD uses to calculate unmet needs for 2020 qualifying disasters come from the FEMA Individual Assistance program data on housing-unit damage as of September 30, 2021, and reflect disasters occurring in 2020.

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 and SBA’s disaster loan program. HUD calculates “unmet housing needs” as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA and SBA. 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 and/or 1 to 3.9 feet of flooding on the first floor.
- Major-High: $15,000 to $28,800 of FEMA inspected real property damage and/or 4 to 9.8 feet of flooding on the first floor.
- Severe: Greater than $28,800 of FEMA inspected real property damage or determined destroyed and/or 10 feet of flooding on the first floor or determination of “Destroyed” by the FEMA inspector.

To meet the statutory requirement of “most impacted” for rental property, 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 inspected real property damage of $9,000 or above, personal property damage $3,500 or above, or flooding 1 foot or above on the first floor.

Furthermore, a homeowner with flooding outside the 1 percent risk flood hazard area is determined to have unmet needs if they reported damage and no flood insurance to cover that damage. For homeowners inside the 1 percent flood hazard area, homeowners without flood insurance with flood damage below the greater of national median or 120 percent of Area Median Income are determined to have unmet needs. For non-flood damage, homeowners without hazard insurance with incomes below the greater of national median or 120 percent of Area Median Income are included as having unmet needs. The unmet need categories for these types of homeowners are defined as above for real and personal property 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 or determination of “Moderate” damage by the FEMA inspector.
- Major-Low: $2,000 to $3,499 of FEMA inspected personal property damage or 1 to 3.9 feet of flooding on the first floor.
- Major-High: $3,500 to $7,500 of FEMA inspected personal property damage or 4 to 9.8 feet of flooding on the first floor.
- Severe: Greater than $7,500 of FEMA inspected personal property damage or determined destroyed and/or 10 feet of flooding on the first floor or determination of “Destroyed” by the FEMA inspector.

When owner-occupied properties also have a personal property inspection, the personal property amount is used. The personal property-based need categories for owner-occupied units are defined as follows:

- Minor-Low: Less than $2,500 of FEMA inspected personal property damage.
- Minor-High: $2,500 to $3,499 of FEMA inspected personal property damage.
- Major-Low: $3,500 to $4,999 of FEMA inspected personal property damage or 1 to 3.9 feet of flooding on the first floor.
- Major-High: $5,000 to $9,000 of FEMA inspected personal property damage or 4 to 9.8 feet of flooding on the first floor.
- Severe: Greater than $9,000 of FEMA inspected personal property damage or determined destroyed and/or 10 feet or more of flooding on the first floor.

Furthermore, landlords are presumed to have adequate insurance coverage unless the
Methods for Estimating Unmet Infrastructure Needs

To calculate 2020 unmet needs for infrastructure projects, HUD obtained FEMA cost estimates as of September 28, 2021, of the expected local cost share to repair the permanent public infrastructure projects (Categories C to G) to pre-disaster condition.

Allocation Calculation for Unmet Needs

Once eligible entities are identified using the above criteria, the allocation to individual grantee represents their proportional share of the estimated unmet needs. For the formula allocation, HUD calculates total unmet recovery needs for eligible 2020 disasters as the aggregate of:

- Serious unmet housing needs in most impacted counties;
- Serious unmet business needs; and
- Unmet infrastructure need.

Allocation Calculation for Mitigation

Per the statute, mitigation is calculated at 15 percent of the sum of total unmet needs above.

Adjustment for Previous Unmet Need Allocation and Final Allocation

If a disaster has previously received CDBG–DR funding for a portion of the unmet needs calculated for the disaster, which is the case for Puerto Rico that had received 2019 disaster funding for the earthquakes that occurred in both 2019 and 2020, then the amount allocated from 2020 funds reflects the total unmet needs calculated above, the 15 percent mitigation for the total unmet needs, less the CDBG–DR funding previously received.

Appendix B—The Consolidated Notice

CDBG–DR Consolidated Notice Waivers and Alternative Requirements

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I. Waivers and Alternative Requirements

CDBG–DR grantees that are subject to this Consolidated Notice, as indicated in each Federal Register notice that announces allocations of the appropriated CDBG–DR funds (“Allocation Announcement Notice”), must comply with all waivers and alternative requirements in the Consolidated Notice, unless expressly made inapplicable (e.g., a waiver that applies to states only does not apply to units of general local governments and Indian tribes). Except as described in applicable waivers and alternative requirements, the statutory and regulatory provisions governing the CDBG program (and for Indian tribes, the Indian CDBG program) shall apply to grantees receiving a CDBG–DR allocation. Statutory provisions (title I of the HCDA) that apply to all grantees can be found at 42 U.S.C. 5301 et seq. and regulatory requirements, which differ for each type of grantee, are described in each of the three paragraphs below.

Except as modified, the State CDBG program rules shall apply to state grantees receiving a CDBG–DR allocation. Applicable State CDBG program regulations are found at 24 CFR part 570, subpart I. For insular areas, HUD waives the provisions of 24 CFR part 570, subpart F and imposes the following alternative requirement: Insular areas shall administer their CDBG–DR allocations in accordance with the regulatory and statutory provisions governing the State CDBG program, as modified by the Consolidated Notice.

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

Except as modified, CDBG–DR grants made by HUD to Indian tribes shall be subject to the statutory provisions in title I of the HCDA that apply to Indian tribes and the regulations in 24 CFR part 1003 governing the Indian CDBG program, except those requirements in part 1003 related to the funding application and selection process. References to the action plan in the above regulations shall refer to the action plan required by the Consolidated Notice and not to the consolidated plan action required by 24 CFR part 91. All references pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted.

II. Eligible Activities

II.A. Clarification of Disaster-Related Activities

CDBG–DR funds are provided for necessary expenses for activities authorized under title I of the HCDA related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation of risk associated with activities...
carried out for these purposes, in the "most impacted and distressed" areas (identified by HUD or the grantee) resulting from a major disaster. All CDBG–DR funded activities must address an impact of the disaster for which funding was allocated. Accordingly, each activity must: (1) Address a direct or indirect impact from the disaster in a most impacted and distressed area; (2) be a CDBG–eligible activity (or be eligible under a waiver or alternative requirement); and (3) meet a national objective. When appropriations acts provide an additional allocation amount for mitigation of hazard risks that does not require a connection to the qualifying major disaster, requirements for the use of those funds will be included in the Allocation Announcement Notice.

II.A.1. Documenting a Connection to the Disaster. Grantees must maintain records that document how each funded activity addresses a direct or indirect impact from the disaster. Grantees may do this by linking activities to a disaster recovery need that is described in the post-disaster housing analysis in the action plan (requirements for the assessment are addressed in section III.C.1.a.). Sufficient documentation of physical loss must include damage or rebuilding estimates, insurance loss reports, images, or similar information that documents damage caused by the disaster. Sufficient documentation for non-physical disaster-related impacts must clearly show how the activity addresses the disaster impact, e.g., for economic development activities, data about job loss or businesses closing. A grantee must document the assessment in the action plan, to unmet needs in the most impacted and distressed areas. Grantees are required to use 80 percent of all CDBG–DR funds to benefit the HUD-identified MID areas. The HUD-identified MID areas and the minimum dollar amount that must be spent to benefit those areas will be identified for each grantee in the applicable Allocation Announcement Notice. If a grantee seeks to add other areas to the HUD-identified MID area, the grantee must contact its CPD Specialist and submit the request with a data-driven analysis that illustrates the basis for designating the additional area as most impacted and distressed as a result of the qualifying disaster.

II.A.2. Resilience and hazard mitigation. The Consolidated Notice will help to improve long-term community resilience by requiring grantees to fully incorporate mitigation measures that will protect the public, including members of protected classes, vulnerable populations, and underserved communities, from the risks identified by the grantee among other vulnerabilities. This approach will better ensure the revitalization of the community long after the recovery projects are complete. Accordingly, HUD is adopting the following alternative requirement to section 105(a): Grantees may carry out the activities described in section 105(a), as modified by waivers and alternative requirements, to the extent that the activities comply with the following:

II.A.2.a. Alignment with mitigation plans. Grantees must ensure that the mitigation measures identified in their action plan will align with existing hazard mitigation plans submitted to the Federal Emergency Management Agency (FEMA) under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) or other state, local, or tribal hazard mitigation plans.

II.A.2.b. Mitigation measures. Grantees must incorporate mitigation measures when carrying out activities to construct, reconstruct, or rehabilitate residential or non-residential structures with CDBG–DR funds as part of activities eligible under 42 U.S.C. 5305(a) (including activities authorized by waiver and alternative requirement). To meet this alternative requirement, grantees must demonstrate that they have incorporated mitigation measures into CDBG–DR activities as a construction standard to create communities that are more resilient to the impacts of recurring natural disasters and the impacts of climate change. When determining which mitigation measures to incorporate, grantees should design and construct structures to withstand existing and future climate impacts expected to occur over the service life of the project.

II.A.2.c. Resilience performance metrics. Before carrying out CDBG–DR funded activities to construct, reconstruct, or rehabilitate residential or non-residential structures, the grantee must establish resilience performance metrics for the activity, including: (1) An estimate of the projected risk to the completed activity from natural hazards, including those hazards that are influenced by climate change (e.g., high winds destroying newly built homes), (2) identification of the mitigation measures that will address the projected risks (e.g., using building materials that are able to withstand high winds), and (3) an assessment of the benefit of the grantee's measures through verifiable data (e.g., 10 newly built homes will withstand high winds up to 100 mph).

II.A.3. Most impacted and distressed (MID) areas. Funds must be used for costs related to unmet needs in the MID areas resulting from qualifying events. Funds may allocate funds using the best available data that cover the eligible affected areas and identifies MID areas. Grantees are required to use 80 percent of all CDBG–DR funds to benefit the HUD-identified MID areas. The HUD-identified MID areas and the minimum dollar amount that must be spent to benefit those areas will be identified for each grantee in the applicable Allocation Announcement Notice. If a grantee seeks to add other areas to the HUD-identified MID area, the grantee must contact its CPD Specialist and submit the request with a data-driven analysis that illustrates the basis for designating the additional area as most impacted and distressed as a result of the qualifying disaster.

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

HUD may identify an entire jurisdiction or a ZIP code as a MID area for the purposes of allocating funds, the grantee may expand program operations to the whole county or counties that overlap with the HUD designated ZIP code. A grantee must indicate the decision to expand eligibility to the whole county or counties in its action plan.

Grantees must determine where to use the remaining amount of the CDBG–DR grant, but that portion of the allocation may only be used to address unmet needs and that benefit those areas that the grantee determines are most impacted and distressed (‘‘grantee-identified MID areas’’) within areas that received a presidential major disaster declaration identified by the disaster numbers listed in the applicable Allocation Announcement Notice. The grantee must use quantifiable and verifiable data in its analysis, as referenced in its action plan, to identify the MID areas where it will use the remaining amount of CDBG–DR funds.

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

II.B. Housing Activities and Related Floodplain Issues

Grantees may use CDBG–DR funds for activities that may include, but are not limited to, new construction, reconstruction, and rehabilitation of single-family or multifamily housing, homeownership assistance, buyouts, and rental assistance. The broadening of eligible CDBG–DR activities related to housing under the HCDA is necessary following major disasters in which housing, including large numbers of affordable housing units, have been damaged or destroyed. The following waivers and alternative requirements will assist grantees in addressing the full range of unmet housing needs arising from a disaster.

II.B.1. New housing construction waiver and alternative requirement. 42 U.S.C. 5305(a) and 24 CFR 570.207(b) are waived to the extent necessary to permit new housing construction, subject to the following alternative requirement. When a CDBG–DR grantee carries out a new housing construction activity, 24 CFR 570.202 shall apply and shall be read to extend to new construction in addition to rehabilitation assistance. Private individuals and entities must remain compliant with federal accessibility requirements as well as with the applicable site selection requirements of 24 CFR 1.4(b)(3) and 8.4(b)(5).

II.B.2. Construction standards for new construction, reconstruction, and rehabilitation. HUD is adopting an alternative requirement to require grantees to adhere to the applicable construction standards in II.B.2.a. through II.B.2.d. when carrying out activities to construct, reconstruct, or rehabilitate residential structures with CDBG–DR funds as part of activities eligible under 42 U.S.C. 5305(a) (including activities authorized by waiver and alternative requirement). For purposes of the Consolidated Notice, the terms "substantial damage" and "substantial improvement" shall be as defined in 44 CFR 59.1 unless otherwise noted.

II.B.2.a. Green and resilient building standard for new construction and...
reconstruction of housing. Grantees must meet the Green and Resilient Building Standard, as defined in this subparagraph, for: (i) All new construction and reconstruction (i.e., demolishing a housing unit and rebuilding it on the same lot in substantially the same manner) of residential buildings and (ii) all rehabilitation activities of substantially damaged residential buildings, including changes to structural elements such as flooring systems, columns, or load-bearing interior or exterior walls. The Green and Resilient Building Standard requires that all construction covered by the paragraph above and assisted with CDBG–DR funds meet an industry-recognized standard that has achieved certification under (i) Enterprise Green Communities; (ii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iii) ICC-700 National Green Building Standard Green+Resilience; (iv) Living Building Challenge; or (v) any other equivalent comprehensive green building program acceptable to HUD. Additionally, all such covered construction must achieve a minimum energy efficiency standard, such as (i) ENERGY STAR (Certified Homes or Multifamily High-Rise); (ii) DOE Zero Energy Ready Home; (iii) EarthCraft House; EarthCraft Multifamily; (iv) Passive House Institute US (PHIUS), International Passive House certification from the Passive House Institute US (PHIUS), International Passive House Association; (v) Greenpoint Rated New Home, Greenpoint Rated Existing Home (Whole House Improvement); or (vi) Earth Advantage New Homes; or (vii) any other equivalent energy efficiency standard acceptable to HUD. Grantees must identify, in each project file, which of these Green and Resilient Building Standards will be used for any building subject to this paragraph. However, grantees are not required to use the same standards for each project or building.

II.B.2.b. Standards for rehabilitation of nonsubstantially damaged residential buildings. For rehabilitation other than the rehabilitation of substantially damaged residential buildings described in section II.B.2.a., grantees must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist. Grantees must apply these guidelines to the extent applicable for the rehabilitation work undertaken, for example, the use of mold resistant products when replacing surfaces such as drywall. Products and appliances replaced as part of the rehabilitation work, must be ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products or appliances.

II.B.2.c. Elevation standards for new construction, reconstruction, and rehabilitation of substantial damage, or rehabilitation resulting in substantial improvement. The following elevation standards apply to new construction, rehabilitation of substantial damage, or rehabilitation resulting in substantial improvement of residential structures located in an area delineated as a special flood hazard area or equivalent in FEMA’s data sources. 24 CFR 55.2(b)(1) provides additional information on data sources, which apply to all floodplain designations. All structures, defined at 44 CFR 59.1, designed principally for residential use, and located in the one percent annual chance (or 100-year) floodplain, that receive assistance for new construction, rehabilitation of substantial damage, or rehabilitation that results in substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated to the lowest floor, including the basement, at least two feet above the one percent annual chance floodplain elevation (base flood elevation). Mixed-use structures with no dwelling units and no residents below two feet above base flood elevation, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(2)–(3) or successor standard, up to at least two feet above base flood elevation. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed. All structures with floodplain elevations above the one percent annual chance floodplain elevation (base flood elevation). Critical Actions are defined as "any activity where the chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage to property." For example, Critical Actions include hospitals, nursing homes, emergency shelters, police stations, fire stations, and principal utility lines. In addition to other requirements in this section, grantees must comply with applicable state, local, and tribal codes and standards for floodplain management, including elevation standards that apply to all floodplain designations. Grantees using CDBG–DR funds as the non-federal match in a FEMA-funded project may apply the alternative requirement for the elevation of structures described in section III.F.6. Structures that are elevated must meet federal accessibility standards.

II.B.2.d. Broadband infrastructure in housing. Any substantial rehabilitation, as defined by 24 CFR 5.100, reconstruction, or new construction of a building with more than four rental units must include installation of broadband infrastructure, except where the grantee documents that: (i) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (ii) the cost of installing broadband infrastructure would result in an unreasonable increase in the nature of its program or activity, or in an undue financial burden; or (iii) the structure of the housing is substantially rehabilitated makes installation of broadband infrastructure infeasible.

II.B.3. Applicable affordability periods for new construction of affordable rental housing. To meet the low- and moderate-income housing national objective, rental housing assisted with CDBG–DR funds must be rented to low- and moderate-income (LMI) households at affordable rents, and a grantee must define “affordable rents” in its action plan. Because the waiver and alternative requirement in II.B.1. authorizes the use of grant funds for new housing construction, HUD is imposing the following alternative requirement to modify the low- and moderate-income housing national objective criteria in 24 CFR 570.200(a)(3) and (4). In its action plan, a grantee must define the affordability standards, including “affordable rents,” the enforcement mechanisms, and applicable timeframes, that will apply to the new construction of affordable rental housing, i.e., homes that will meet the cumulative substantial damage requirements of five or more units, the affordability requirements described in the action plan apply to the units that will be occupied by LMI households. The minimum timeframes and other related requirements acceptable for compliance with this alternative requirement are the HOME Investment Partnerships Program (HOME) requirements at 24 CFR 92.252(e), including the table listing the affordability periods at the end of 24 CFR 92.252(e). Therefore, the grantee must adopt and implement enforceable affordability requirements that comply with the timeframes and other related requirements at 24 CFR 92.252(e)(1) for the new construction of affordable rental housing in structures containing five or more units.

II.B.4. Affordability period for new construction of homes built for LMI households. In addition to alternative requirements in II.B.1., the following alternative requirement applies to activities to construct new single-family units for homeownership that will meet the LMI housing national objective criteria. Grantees must establish affordability requirements on all newly constructed single-family housing (for purposes of the Consolidated Notice, single-family housing is defined as four units or less), that, upon completion, will be purchased and occupied by LMI households. The minimum affordability period acceptable for compliance are the HOME requirements at 24 CFR 92.254(a)(4). If a grantee applies other standards, the periods of affordability applied by a grantee must meet or exceed the applicable HOME requirements in 24 CFR 92.254(a)(4) and the table of affordability periods directly following that provision. Grantees shall establish resale or recapture requirements for housing funded pursuant to this paragraph and shall describe those requirements in the action plan or substantial amendment in accordance with the requirements in 24 CFR 92.254(b)(3) and (4). The resale or recapture requirements must clearly describe the terms of resale or recapture and the specific circumstances under which resale or recapture will be used. Affordability restrictions must be enforceable and imposed by recorded deed restrictions, covenants, or other similar mechanisms. The affordability restrictions...
restrictions, including the affordability period requirements in this paragraph do not apply to housing units newly constructed or reconstructed for an owner-occupant to replace the owner-occupant’s home that was damaged by the disaster.

II.B.5. Homeownership assistance waiver and alternative requirement. 42 U.S.C. 5305(a)(24) is waived and replaced with the following alternative requirement:

“Provision of direct assistance to facilitate and expand homeownership among persons at or below 120 percent of area median income (except that such assistance shall not be considered a public service for purposes of 42 U.S.C. 5305(a)(8)) by using such assistance to—

(A) subsidize interest rates and mortgage principal amounts for homebuyers with incomes at or below 120 percent of area median income;
(B) finance the acquisition of housing by homebuyers with incomes at or below 120 percent of area median income that is occupied by the homebuyer;
(C) acquire guarantees for mortgage financing obtained by homebuyers with incomes at or below 120 percent of area median income from private lenders, meaning that if a private lender selected by the homebuyer offers a guarantee of the mortgage financing, the grantee may purchase the guarantee to ensure repayment in case of default by the homebuyer. This subparagraph allows the purchase of mortgage insurance by the household but not the direct issuance of mortgage insurance by the grantee;
(D) provide up to 100 percent of any down payment required from homebuyers with incomes at or below 120 percent of area median income; or
(E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by homebuyers with incomes at or below 120 percent of area median income.”

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

II.B.7. Buyout activities. CDBG–DR grantees may carry out property acquisition for a variety of purposes, but buyouts are a type of acquisition for the specific purpose of reducing the risk of property damage. HUD has determined that creating a new activity and alternative requirement for buyouts is necessary for consistency with the application of other Federal resources commonly used for this type of activity. Therefore, subpart B of 42 U.S.C. 5305(a) and establishing an alternative requirement only to the extent necessary to create a new eligible activity for buyouts. The term “buyouts” means the acquisition of properties located in a floodway, floodplain, or a Disaster Risk Reduction Area that is intended to reduce risk from future hazards. Grantees can designate a Disaster Risk Reduction Area, as defined below.

Grantees carrying out buyout activities must establish an open space management plan or equivalent, if one has not already been established, before implementation. The plan must establish full transparency about the planned use of acquired properties post-buyout, or the process by which the planned use will be determined and enforced. But buyouts are subject to all requirements that apply to acquisition activities generally including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601, et seq.) and its implementing regulations at 49 CFR part 24, subpart B, unless waived or modified by alternative requirements. Only acquisitions that meet the definition of a “buyout” are subject to the post-acquisition land use restrictions imposed by the alternative requirement (II.B.7.a. below). The key factor in determining if the acquisition is a buyout is whether the intent of the purchase is to reduce risk of property damage from future flooding or other hazards in a floodway, floodplain, or a Disaster Risk Reduction Area. A grantee that will buyout properties in a Disaster Risk Reduction Area must establish criteria in its policies and procedures to designate an area as a Disaster Risk Reduction Area for the buyout, pursuant to the following requirements:

(1) The area has been impacted by the hazard that has been caused or exacerbated by the disaster for which the grantee received its CDBG–DR allocation;
(2) The hazard identified must be a predictable environmental threat to the safety and well-being of program beneficiaries, including members of protected classes, vulnerable populations, and underserved communities, as evidenced by the best available data (e.g., FEMA Repetitive Loss Data, EPA’s Environmental Justice Screening and Mapping Tool, HHS’s climate change related guidance and data, etc.) and science (such as engineering and structural solutions propounded by FEMA, USACE, other federal agencies, etc.); and
(3) The area must be clearly delineated so that HUD and the public may easily determine which properties are located within the buyout area.

Grantees may only redevelop an acquired property if the property is not acquired through a buyout program (i.e., the purpose of acquisition was something other than risk reduction). When acquisitions are not acquired through a buyout program, the purchase price must be consistent with 2 CFR part 200, subpart E—Cost Principles (“cost principles”) and the pre-disaster fair market value may not be used.

II.B.7.a. Buyout requirements:

(i) Property to be acquired or accepted must be located within a floodway, floodplain, or Disaster Risk Reduction Area.
(ii) Any property acquired or accepted must be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, floodplain and wetlands management practices, or other disaster-risk reduction practices.
(iii) No new structure will be erected on property acquired or accepted under the buyout program other than:

(a) A public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area);
(b) a restroom; or
(c) a flood control structure, provided that:
(1) The structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream; and
(2) the local floodplain manager approves the structure, in writing, before commencement of construction of the structure.
(iv) After the purchase of a buyout property with CDBG–DR funds, the owner of the buyout property (including subsequent owners) is prohibited from making any applications to any Federal entity in perpetuity for additional disaster assistance for any purpose related to the property acquired through the CDBG–DR funded buyout, unless the assistance is for an allowed use as described in paragraph (ii) above. The entity acquiring the property may lease or sell it to adjacent property owners or other parties for compatible uses that comply with buyout requirements in return for a maintenance agreement.
(v) A deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses that comply with buyout requirement perpetuity.
(vi) Grantees must choose from one of two valuation methods (pre-disaster value or post-disaster value) for a buyout program (or a single buyout activity). The grantee must apply its valuation method for all buyouts carried out under the program. If the grantee determines the post-disaster value of a property is higher than the pre-disaster value, a grantee may provide exceptions to its established valuation method on a case-by-case basis. The grantee must describe the process for such exceptions and how it will analyze the circumstances to permit an exception in its buyout policies and procedures. Each grantee must adopt policies and procedures on how it will demonstrate that the amount of assistance for a buyout is necessary and reasonable.
(vii) All buyout activities must be classified using the “buyout” activity type in the Disaster Recovery and Grant Reporting (DRGR) system.
(viii) Any state grantee implementing a buyout program or activity must consult with local or tribal governments within the areas in which buyouts will occur.
II.B.8. Safe housing incentives in disaster-affected communities. The limitation on eligible activities in section 42 U.S.C. 5305(a) is waived and HUD is establishing the following alternative requirement to establish safe housing incentives as an eligible activity. A safe housing incentive is any incentive provided to encourage households to relocate to suitable housing in a lower risk area or in an area promoted by the community’s comprehensive recovery plan. Displaced persons must receive any relocation assistance they are entitled under other legal authorities, such as the URA, section 104(d) of the HCDA, or those described in the Consolidated Notice. The grantee may offer safe housing incentives in addition to the relocation assistance that is legally required.

Grantees must maintain documentation, at least at a programmatic level, describing how the grantee determined the amount of assistance for the incentive was necessary and reasonable. The incentive meets a national objective, and that the incentives are in accordance with the grantee’s approved action plan and published program design(s). A grantee may require the safe housing incentive to be for a particular purpose by the household receiving the assistance. However, this waiver does not permit a compensation program meaning that funds may not be provided to a beneficiary to compensate the beneficiary for an estimated or actual amount of loss from the declared disaster. Grantees are prohibited from offering housing incentives to a homeowner as an incentive to induce the homeowner to sell a second home, consistent with the prohibition and definition of second home in section II.B.12.

II.B.9. National objectives for buyouts and safe housing incentives. Activities that assist LMI persons and meet the criteria for the national objectives described below, including in II.B.10., will be considered to benefit LMI persons unless there is substantial evidence to the contrary and will count towards the calculation of a grantee’s overall LMI benefit requirement as described in section III.F.2. The grantee shall appropriately ensure that activities that meet the criteria for any of the national objectives below do not benefit moderate-income persons to the exclusion of low-income persons.

When undertaking buyout activities, to demonstrate that a buyout project meets the low- and moderate-income housing (LMH) national objective, grantees must meet all requirements of the HCDA, and applicable regulatory criteria described below. 42 U.S.C. 5305(c)(3) provides that any assisted activity that involves the acquisition of property to provide housing shall be considered to benefit LMI persons only to the extent such housing will, upon completion, be occupied by such persons. In addition, 24 CFR 570.483(b)(3), 24 CFR 570.208(a)(3), and 24 CFR 570.47(b) apply the LMH national objective to an eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by LMI households.

A buyout program that merely pays homeowners to leave their existing homes and alternative requirements. In addition to the purchase price, grantees may opt to provide optional relocation assistance, as allowable under Section 104 and 105 of the HCDA (42 U.S.C. 5304 and 42 U.S.C. 5305) and 24 CFR 570.606(d), and as expanded by section IV.F.5. of the Consolidated Notice, to the owner of a property that will be redeveloped if: (a) the property is purchased by the grantee or subrecipient through voluntary acquisition; and (b) the owner’s need for additional assistance is documented. Any optional relocation assistance must provide equal relocation assistance within each class of displaced persons, including but not limited to providing reasonable accommodation exceptions to persons with disabilities. See 24 CFR 570.606(d) for more information on optional relocation assistance. In addition, tenants displaced by these voluntary acquisitions may be eligible for URA relocation assistance. In carrying out acquisition activities, grantees must ensure they are in compliance with the long-term reclamation plans of the community in which the acquisition and redevelopment is to occur.

II.B.12. Alternative requirement for housing rehabilitation—assistance for second homes. HUD is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a) as follows: Properties that served as second homes at the time of the disaster, or following the disaster, are not eligible for rehabilitation assistance or safe housing incentives. This prohibition does not apply to acquisitions that meet the definition of a buyout. A second home is defined for purposes of the Consolidated Notice as a home that is not the primary residence of the owner, a tenant, or any occupant at the time of the disaster or at the time of application for CDBG–DR assistance. Grantees can verify a primary residence using a variety of documentation including, but not limited to, voter registration cards, tax returns, homestead exemptions, driver’s licenses, and rental agreements. Acquisition of second homes at post-disaster fair market value is not prohibited.

II.C. Infrastructure (Public Facilities, Public Improvements), Match, and Elevation of Non-Residential Structures

HUD is adopting an alternative requirement to require grantees to adhere to the applicable construction standards and requirements in II.C.1., II.C.2. and II.C.4., which apply only to those eligible activities described in those paragraphs.

II.C.1. Infrastructure planning and design. All newly constructed infrastructure that is assisted with CDBG–DR funds must be designed and constructed to withstand extreme weather events and the impacts of climate change. To satisfy this requirement, the grantee must identify and implement resilience performance metrics as described in II.A.2.

For purposes of this requirement, an infrastructure activity includes any activity or group of activities (including acquisition or site or other improvements), whether carried out on public or private land, that assists the development of the physical assets that are designed to provide or support...
services to the general public in the following sectors: Surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production and generation, including from renewable energy sources; electricity transmission; broadband; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; schools, hospitals, and housing shelters; and other sectors as may be determined by the Federal Emergency Management Improvement Steering Council. For purposes of this requirement, an activity that falls within this definition is an infrastructure activity regardless of whether it is carried out under sections 105(a)(2), 105(a)(4), 105(a)(14), another section of the HCDA, or a waiver or alternative requirement established by HUD. Action plan requirements related to infrastructure activities are found in section III.C.1.e. of the Consolidated Notice.

II.C.2. Elevation of nonresidential structures. Nonresidential structures, including infrastructure, assisted with CDBG-DR funds must be elevated to the standards described in this paragraph or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(i) or successor standard, up to at least two feet above the 100-year (or one percent annual chance) floodplain. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Activities subject to elevation requirements must comply with applicable federal accessibility mandates.

In addition to the other requirements in this section, the grantee must comply with applicable state, local, and tribal codes and standards for floodplain management, including elevation, setbacks, and cumulative substantial damage requirements. Grantees using CDBG-DR funds as the non-Federal match in a FEMA-funded project may apply the alternative requirement for the elevation of structures described in section IV.D.5.

II.C.3. CDBG-DR funds as match. As provided by the HCDA, grant funds may be used to satisfy a match requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity. This includes programs or activities administered by the FEMA or the U.S. Army Corps of Engineers (USACE). By law, (codified in the HCDA as a note to section 105(a)) only $250,000 or less of CDBG-DR funds may be used for the non-Federal cost-share of any project funded by USACE. Appropriations acts prohibit the use of CDBG-DR funds for any activity reimbursable by, or for which funds are also made available by FEMA or USACE.

In response to a disaster, FEMA may implement, and grantees may elect to follow, alternative procedures for FEMA’s Public Assistance Program, as authorized pursuant to Section 428 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”). Like other project grants, grantees may use CDBG-DR funds as a matching requirement, share, or contribution for Section 428 Public Assistance Projects. For all match activities, grantees must document that CDBG-DR funds have been used for the actual costs incurred for the assisted project and for costs that are eligible, meet a national objective, and meet other applicable CDBG requirements.

II.C.4. Requirements for flood control structures. Grantees that use CDBG-DR funds to assist flood control structures (i.e., dams and levees) are prohibited from using CDBG-DR funds to enlarge a dam or levee beyond the original footprint of the structure that existed before the disaster event, without obtaining pre-approval from HUD and any Federal agencies that HUD determines are necessary for the structural safety or flood control system.

Activities subject to elevation requirements must comply with applicable federal accessibility mandates. In addition to the other requirements in this section, the grantee must comply with applicable state, local, and tribal codes and standards for floodplain management, including elevation, setbacks, and cumulative substantial damage requirements. Grantees using CDBG-DR funds as the non-Federal match in a FEMA-funded project may apply the alternative requirement for the elevation of structures described in section IV.D.5.

II.D. Economic Revitalization and Section 3 Requirements on Economic Opportunities

CDBG-DR funds can be used for CDBG-DR eligible activities related to economic revitalization, including those that support economic revitalization, as described below in II.D.1. Economic revitalization activity must maintain supporting documentation to demonstrate how the grantee has prioritized underserved communities for purposes of its activities that support economic revitalization, as described below in II.D.1.

II.D.1. Prioritizing economic revitalization assistance—alternative requirement. When funding activities outlined in 24 CFR 570.203 and 570.204 and sections 105(a)(4), (15), and (17) of the HCDA, HUD is instituting an alternative requirement in addition to the requirements in these provisions to require grantees to prioritize assistance to disaster-impacted businesses that serve underserved communities and spur economic opportunity for underserved communities that were economically distressed before the disaster.

II.D.2. National objective documentation for activities that support economic revitalization. 24 CFR 570.208(a)(4)(ii), (24 CFR 570.483(b)(4)(ii), (24 CFR 570.506(b)(5)(6), and 24 CFR 1003.208(d) and (e) are revised to allow the Consolidated Notice to identify the LMI 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 the job in comparison to the person’s total household income and size (i.e., the number of persons). Thus, this method streamlines the documentation process by allowing the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

II.D.3. Public benefit for activities that support economic revitalization. When applicable, the public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for the aggregate of all economic development activities. Economic...
development activities support economic revitalization. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per LMI person to whom goods or services are provided by the activity. Out-thresholding can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

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

II.D.4. Clarifying note on Section 3 worker eligibility and documentation requirements. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) applies to CDBG-DR activities that are Section 3 projects, as defined at 24 CFR 75.3(a)(2). The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent. CDBG-DR grantees are directed to HUD’s guidance public, (4), (5), and 570.209b(1), (2), (3)(i), (4), and 24 CFR 1003.209, as amended (https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-09pdfn.pdf). All direct recipients of CDBG-DR funding must report Section 3 information through the DRGR system.

II.D.5. Waiver and modification of the job relocation clause to permit assistance to help a business return. 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 area from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, 24 CFR 570.482(h), and 24 CFR 1003.209, are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another state or to another labor market area within the same state to continue business.

II.D.6. Underwriting. Notwithstanding section 105(e)(1) of the HCDA, no CDBG-DR funds may be provided to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA unless such project has been evaluated and selected in accordance with procedures established by HUD pursuant to section 105(e)(2) of the HCDA for evaluating and selecting economic development projects. Grantees and their subrecipients are required to comply with the underwriting guidelines in Appendix A to 24 CFR part 570 if they are using grant funds to provide assistance to a for-profit entity for an economic development project under section 105(a)(17) of the HCDA. The underwriting guidelines are found at Appendix A of 24 CFR part 570.

II.D.7. Limitation on use of funds for eminent domain. CDBG-DR funds may not be used to support any Federal, state, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. For purposes of this paragraph, public use shall not be construed to include economic development that primarily benefits private entities. The following shall be considered a public use for the purposes of eminent domain: Any use of funds for (1) mass transit, railroad, airport, or highway projects; (2) utility projects that benefit or serve the general public, including energy related, communication-related, water related, and wastewater-related infrastructure; (3) other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government; and (4) projects for the removal of an immediate threat to public health and safety, including the removal of asbestos as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118).

III. Grant Administration

III.A. Pre-Award Evaluation of Management and Oversight of Funds

III.A.1. Certification of financial controls and procurement processes, and adequate procedures for proper grant management. Appropriations acts require that the Secretary certify 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, 42 U.S.C. 5155, to ensure timely expenditure of funds, to maintain a comprehensive website that its processes uphold the principles of full and open competition and include an evaluation of the cost or price of the product or service, and if its procurement processes reflect that it: (i) Adopted 2 CFR 200.318 through 200.327; (ii) follows its own state procurement policies and procedures and establishes requirements for procurement processes for local governments and subrecipients based on full and open competition pursuant to 24 CFR 570.489(g), and the requirements for the state, its local governments, and subrecipients include evaluation of the cost or price of the product or service; or (iii) adopted 2 CFR 200.317, meaning that it will follow its own state procurement...
(b) A local government grantee has proficient procurement processes if the processes are consistent with the specific applicable procurement standards identified in 2 CFR 200.318 through 200.327. When the grantee provides a copy of its procurement processes, it must indicate the sections that incorporate these provisions.

(c) An Indian tribe grantee has proficient procurement processes if its procurement standards are consistent with procurement requirements in 2 CFR part 200 imposed by 24 CFR 1003.501, and additional procurement requirements in 1003.509(e) and 1003.510.

(3) Duplication of benefits. A grantee has adequate policies and procedures to prevent the duplication of benefits (DOB) if the grantee submits and identifies a uniform process that reflects the requirements in section IV.A of the Consolidated Notice, including:

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

(b) determining a grantee’s or an applicant’s unmet need(s) for CDBG-DR assistance before committing funds or awarding assistance; and

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

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

(4) Timely expenditures. A grantee has adequate policies and procedures to determine timely expenditures if it submits policies and procedures that indicate the following to HUD: How it will track and document expenditures of the grantee and its subrecipients (both actual and projected reported in performance reports); how it will account for and manage program income; how it will reprogram funds in a timely manner for activities that are stalled; and how it will project expenditures of all CDBG-DR funds within the period provided for in section V.A.

(5) Comprehensive disaster recovery website. A grantee has adequate policies and procedures to maintain a comprehensive accessible website if it submits policies and procedures indicating to HUD that the grantee will have a separate web page dedicated to its disaster recovery activities assisted with CDBG-DR funds that includes the information described at section III.D.1.d.–e. The procedures must also indicate the frequency of website updates. At minimum, grantees must update their website quarterly.

(a) How the grantee will verify the accuracy of information provided by applicants;

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

(c) the frequency with which the grantee will monitor and verify the subrecipients that will administer CDBG-DR funds, and how it will monitor subrecipients, contractors, and other program participants, and why monitoring is to be conducted and which items are to be monitored;

(d) it has or will hire an internal auditor that provides both programmatic and financial oversight of grantee activities, and has adopted policies that describes the auditor’s role in detecting fraud, waste, and abuse, which policies must be submitted to HUD;

(e) (i) for states or grantees subject to the same requirements as states, a written standard of conduct and conflicts of interest policy that complies with the requirements of 24 CFR 570.489(g) and (h) and subparagraph III.A.1.a.(2)(a) of the Consolidated Notice, which policy includes the process for promptly identifying and addressing such conflicts;

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

(iii) for Indian tribes, a written standard of conduct and conflicts of interest policy that complies with 24 CFR 1003.506, as applicable; and

(f) it assists in investigating and taking action when fraud occurs within the grantee’s CDBG-DR activities and/or programs. All grantees receiving CDBG-DR funds for the first time shall attend and require subrecipients to attend fraud related training provided by HUD OIG, when offered, to assist in the proper management of CDBG-DR grant funds. Instances of fraud, waste, and abuse should be referred to the HUD OIG Fraud Hotline (phone: 1–800–347–3745 or email: hotline@hud.gov).

Following a disaster, property owners and renters are frequently the targets of persons fraudulently posing as government employees, creditors, mortgage servicers, insurance adjusters, and contractors. The grantee’s procedures must address how the grantee will make CDBG-DR beneficiaries aware of the risks of contractor fraud and other potentially fraudulent activity that can occur in communities recovering from a disaster. Grantees must provide CDBG-DR beneficiaries with information that raises awareness of possible contractor fraud, such as how the fraud can be avoided, and what local or state agencies to contact to take action and protect the grantee and beneficiary investment. The grantee’s procedures must address the steps it will take to assist a CDBG-DR beneficiary if the beneficiary experiences contractor or other fraud. If the beneficiary is eligible for additional assistance as a result of the fraudulent activity and the creation of remaining unmet need, the procedures must also address what steps the grantee will follow to provide the additional assistance.

III.A.1.b. Relying on prior submissions—
financial management and grant compliance certification requirements. This section only applies once a grantee has received a CDBG-DR grant through an Allocation Announcement Notice that makes the Consolidated Notice applicable. After that original grant, if a CDBG-DR grantee is awarded a subsequent CDBG-DR grant, HUD will rely on the grantee’s prior submissions provided in response to the Financial Management and Grant Compliance Certification Requirements in the Consolidated Notice. HUD will continue to monitor the grantee’s submissions and updates made to policies and procedures during the normal course of business. The grantee must notify HUD of any substantial changes made to these submissions.

If a CDBG-DR grantee is awarded a subsequent CDBG-DR grant, and it has been more than three years since the executed grant agreement for the original CDBG-DR grant or a subsequent grant is equal to or greater than ten times the amount of the original CDBG-DR grant, grantees must update and resubmit the documentation required by paragraph III.A.1.a. with the completed Certification Checklist to enable the Secretary to certify if the beneficiary has in place proficient financial controls and procurement processes, and adequate procedures for proper grant management. However, the Secretary may require any CDBG-DR grantee to update and resubmit the documentation required by paragraph III.A.1.a. if there is good cause to require it.

III.A.2. Implementation plan. HUD requires each grantee to demonstrate that it has sufficient capacity to manage the CDBG-DR funds and the associated risks. Grantees must evidence their management capacity through their implementation plan submissions. These submissions must meet the criteria below and must be submitted within 120 days of the applicability date of the governing Allocation Announcement Notice or with the grantee’s submission of its action plan, whichever is earlier. If the grantee has requested, and HUD has approved an extension of the submission deadline.

III.A.2.a. To enable HUD to assess risk as described in 2 CFR 200.206, the grantee will submit an implementation plan to HUD. The implementation plan must describe the grantee’s capacity to carry out the recovery.
and how it will address any capacity gaps. HUD will determine that the grantee has sufficient management capacity to adequately reduce risk if the grantee submits implementation plan documentation that addresses (1) through (3) below:

(1) Grantee. The grantee identifies the lead agency responsible for implementation of the CDBG-DR award and indicates that the head of that agency will report directly to the chief executive officer of the jurisdiction. The grantee has conducted an assessment of its capacity to carry out CDBG-DR recovery efforts and has developed a timeline with milestones describing when and how the grantee will address all capacity gaps that are identified. The assessment must include a list of any open CDBG-DR findings and an update on the corrective actions undertaken to address each finding.

(2) Staffing. The grantee must submit an organizational chart of its department or division and must also provide a table that clearly lists personnel and program or organizational unit will be responsible for each of the Financial Management and Grant Compliance Certification Requirements identified in section III.A.1.a. along with staff contact information, if available (i.e., personnel responsible for conducting DOB analysis, timely expenditure, website management, monitoring and compliance, and financial management). The grantee must also submit documentation demonstrating that it has assessed staff capacity and identified positions for the purpose of: Case management, in proportion to the applicant population; program managers who will be assigned responsibility for each primary recovery area; staff who have demonstrated experience in housing, infrastructure (as applicable), and economic revitalization (as applicable); staff responsible for procurement/contract management, regulations implementing Section 3 of the Housing and Urban Development Act of 1968, as amended (24 CFR part 75) (Section 3), fair housing compliance, and environment. An adequate plan must also demonstrate that the internal auditor and responsible audit staff report independently to the chief elected or executive officer or board of the governing body of any designated administering entity.

The grantee’s implementation plan must describe how it will provide technical assistance for any personnel that are not employed by the grantee at the time of action plan submission, and to fill gaps in knowledge or technical expertise required for successful and timely recovery. State grantees must also include how it plans to provide technical assistance to grantees and subrecipients, including units of general local government.

(3) Internal and interagency coordination. The grantee’s plan must describe how it will consult with other relevant government agencies, including the State Hazard Mitigation Officer (SHMO), State or local Disaster Relief Administrator, and any other state and local emergency management agencies, such as public health and environmental protection agencies, that have primary responsibility for the administration of FEMA or USACE funds.

III.A.2. Implementation plan submission. The grantee shall administer its award in accordance with all applicable laws and regulations and shall be financially accountable for the use of all awarded funds. CDBG-DR grantees must comply with the recordkeeping requirements of 24 CFR 570.506 and 24 CFR 570.490, as amended by the Consolidated Notice applicable. After that original grant, if a CDBG-DR grantee is awarded a subsequent CDBG-DR grant, HUD will rely on the grantee’s implementation plan submitted for its original CDBG-DR grant unless it has been more than three years since the executed grant agreement for the original CDBG-DR grant or the subsequent CDBG-DR grant is equal to or greater than ten times the amount of its original CDBG-DR grant. If a CDBG-DR grantee is awarded a subsequent CDBG-DR grant, and it has been more than three years since the executed grant agreement for its original CDBG-DR grant or a subsequent grant is equal to or greater than ten times the amount of the original CDBG-DR grant, the grantee is to update and resubmit its implementation plan to reflect any changes to its capacity, staffing, and coordination.

III.B. Administration, Planning, and Financial Management

III.B.1. Grant administration and planning. Each grantee shall administer its award in compliance with all applicable laws and regulations and shall be financially accountable for the use of all awarded funds. CDBG-DR grantees must comply with the recordkeeping requirements of 24 CFR 570.506 and 24 CFR 570.490, as amended by the Consolidated Notice applicable.

III.B.1.a. Grantee responsibilities. Each grantee shall administer its award in compliance with all applicable laws and regulations and shall be financially accountable for the use of all awarded funds. CDBG-DR grantees must comply with the recordkeeping requirements of 24 CFR 570.506 and 24 CFR 570.490, as amended by the Consolidated Notice applicable.

III.B.2. Plan submission. The grantee must periodically submit an implementation plan to reflect any changes to its capacity, staffing, and coordination. The implementation plan must describe how the grantee will meet the requirements set forth in this section.

III.B.2.a. Planning expenditures cap. Both state and local government grantees are presumed to meet a national objective under the requirements at 24 CFR 570.205. The State CDBG Program administrator, and any other state and local government grantees are presumed to meet a national objective under the requirements at 24 CFR 570.205. The State CDBG Program administrator, and any other state and local government grantees are presumed to meet a national objective under the requirements at 24 CFR 570.205.

III.B.2.b. State grantees only. The provisions of 24 U.S.C. 5306(d) and 24 CFR 570.489(a)(1) and (iii), and 24 CFR 570.489(a)(2) shall not apply to the extent that they cap administration and technical assistance expenditures. If 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 grantee shall be responsible for the administrative costs subject to the planning expenditure cap (state grantees only).

III.B.2.c. Planning expenditures cap. The total for administrative and technical assistance expenditures must not exceed five percent of the grant, plus five percent of program income generated by the grant. The grantee must notify HUD of any deviations from the grant. The grantee must notify HUD of any deviations from the grant.

III.B.3. Administration cap. The grantee must review and modify the grant agreement to reflect any changes to its capacity, staffing, and coordination.

III.B.3.a. Grantee responsibilities. The grantee shall administer its award in accordance with all applicable laws and regulations and shall be financially accountable for the use of all awarded funds. CDBG-DR grantees must comply with the recordkeeping requirements of 24 CFR 570.506 and 24 CFR 570.490, as amended by the Consolidated Notice applicable. After that original grant, if a CDBG-DR grantee is awarded a subsequent CDBG-DR grant, HUD will rely on the grantee’s implementation plan submitted for its original CDBG-DR grant unless it has been more than three years since the executed grant agreement for the original CDBG-DR grant or the subsequent CDBG-DR grant is equal to or greater than ten times the amount of its original CDBG-DR grant. If a CDBG-DR grantee is awarded a subsequent CDBG-DR grant, and it has been more than three years since the executed grant agreement for its original CDBG-DR grant or a subsequent grant is equal to or greater than ten times the amount of the original CDBG-DR grant, the grantee is to update and resubmit its implementation plan to reflect any changes to its capacity, staffing, and coordination.

III.B.3.b. Grant administration cap. The grantee shall administer its award in accordance with all applicable laws and regulations and shall be financially accountable for the use of all awarded funds. CDBG-DR grantees must comply with the recordkeeping requirements of 24 CFR 570.506 and 24 CFR 570.490, as amended by the Consolidated Notice applicable. After that original grant, if a CDBG-DR grantee is awarded a subsequent CDBG-DR grant, HUD will rely on the grantee’s implementation plan submitted for its original CDBG-DR grant unless it has been more than three years since the executed grant agreement for the original CDBG-DR grant or the subsequent CDBG-DR grant is equal to or greater than ten times the amount of its original CDBG-DR grant. If a CDBG-DR grantee is awarded a subsequent CDBG-DR grant, and it has been more than three years since the executed grant agreement for its original CDBG-DR grant or a subsequent grant is equal to or greater than ten times the amount of the original CDBG-DR grant, the grantee is to update and resubmit its implementation plan to reflect any changes to its capacity, staffing, and coordination.

III.C.3.c. Grantee responsibilities. The grantee shall administer its award in accordance with all applicable laws and regulations and shall be financially accountable for the use of all awarded funds. CDBG-DR grantees must comply with the recordkeeping requirements of 24 CFR 570.506 and 24 CFR 570.490, as amended by the Consolidated Notice applicable. After that original grant, if a CDBG-DR grantee is awarded a subsequent CDBG-DR grant, HUD will rely on the grantee’s implementation plan submitted for its original CDBG-DR grant unless it has been more than three years since the executed grant agreement for the original CDBG-DR grant or the subsequent CDBG-DR grant is equal to or greater than ten times the amount of its original CDBG-DR grant. If a CDBG-DR grantee is awarded a subsequent CDBG-DR grant, and it has been more than three years since the executed grant agreement for its original CDBG-DR grant or a subsequent grant is equal to or greater than ten times the amount of the original CDBG-DR grant, the grantee is to update and resubmit its implementation plan to reflect any changes to its capacity, staffing, and coordination.

III.D.1. Grant administration cap. The total for administrative and technical assistance expenditures must not exceed five percent of the grant, plus five percent of program income generated by the grant. The grantee must notify HUD of any deviations from the grant. The grantee must notify HUD of any deviations from the grant.

III.D.2. Grant administration cap. The total for administrative and technical assistance expenditures must not exceed five percent of the grant, plus five percent of program income generated by the grant. The grantee must notify HUD of any deviations from the grant. The grantee must notify HUD of any deviations from the grant.
III.B.2.c. Direct grant administration and means of carrying out eligible activities (state grantees only). Waivers and alternative requirements, the standard at 24 CFR 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the state carries out directly. Activities eligible under the Consolidated Notice may be carried out by a state, subject to state law and consistent with the requirement of 24 CFR 570.200(f), through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients. State grantees continue to be responsible for ensuring that all applicable Federal requirements are met. When states carry out activities directly, they assume responsibility for providing on-going oversight and monitoring of subrecipients and are ultimately responsible for subrecipient compliance with all CDBG-DR requirements.

III.B.2.f. Recordkeeping (state grantees only). When a state carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: A state grantee shall establish and maintain such records as may be necessary to facilitate review and audit by the state’s administration of CDBG-DR funds, under 24 CFR 570.493 and reviews and audits by the state under III.B.2.h. Consistent with applicable statutes, regulations, waivers and alternative requirements, the content of records maintained by the state shall be sufficient to: (a) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (b) make compliance determinations for activities carried out directly by the state; and (c) show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan and/or DRGR system. 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.

III.B.2.g. Change of use of real property (state grantees only). This alternative requirement conforms the change of use of real property rule to the waiver allowing a state to carry out activities directly. For purposes of these grants, all references to “unit of general local government” in 24 CFR 570.489(j), shall be read as “state, local governments, or Indian tribes (either as subrecipient or through a method of distribution), or other subrecipient.”

III.B.2.h. Responsibility for review and handling of noncompliance (state grantees only). This change is in conformance with the waiver allowing a state to carry out activities directly. 24 CFR 570.492 is waived, and the following alternative requirement applies for any state receiving a direct award:

The state shall make reviews and audits, including on-site reviews of any local governments or Indian tribes (either as subrecipient or through a method of distribution) designated public agencies, and other subrecipients, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCDA, as amended, and as modified by the Consolidated Notice. In the case of noncompliance with these requirements, the state shall establish remedies for noncompliance by any subrecipients, designated public agencies, or local governments.

III.B.2.i. Consultation (state grantees only). Currently, the HCDA and regulations require a state grantee to consult with affected local governments in nonentitlement areas of the state in determining the state’s proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b)(2), and 24 CFR 91.110, and imposing an alternative requirement that states receiving an allocation of CDBG-DR funds consult with all disaster-affected local governments (including any CDBG-entitlement grantees), Indian tribes, and any public housing authorities in determining the use of funds. This approach ensures that a state grantee sufficiently assesses the recovery needs of all areas affected by the disaster.

III.C. Action Plan for Disaster Recovery Waiver and Alternative Requirement

Requirements for CDBG actions plans, located at 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(a)(1), 42 U.S.C. 5306(c)(ii), 42 U.S.C. 5306(d)(2)(C)(iv), and 42 U.S.C. 91.220 and 91.320, are waived for CDBG-DR grants. Instead, grantees must submit to HUD an action plan for disaster recovery which will describe programs and activities that conform to applicable requirements as specified in the Consolidated Notice and the applicable Allocation Announcement Notice. HUD will monitor the grantee’s actions and use of funds for consistency with the plan, as well as meeting the performance and timeliness objectives therein. The Secretary will disapprove all action plans that are substantially incomplete if it is determined that the plan does not satisfy all of the required elements identified in the Consolidated Notice and the applicable Allocation Announcement Notice.

III.C.1. Action plan. The grantee’s action plan must identify the use of all funds— including criteria for eligibility and how the uses address long-term recovery needs, restoration of infrastructure and housing, economic revitalization, and the incorporation of mitigation measures in the MIDD areas. HUD created the Public Action Plan in DRGR which is a function that allows grantees to develop and submit their action plans for disaster recovery directly into DRGR. Grantees must use HUD’s Public Action Plan in DRGR to develop all CDBG-DR action plans and substantial amendments submitted to HUD for approval. The Public Action Plan is different from the DRGR Action Plan, which is a comprehensive description of projects and activities in DRGR.

The grantee must describe the steps it will follow to make the action plan, substantial amendments, performance reports, and other relevant program materials available in a form accessible to persons with disabilities and those with limited English proficiency (LEP). All grantees must include sufficient information in its action plan so that all interested parties will be able to understand and comment on the action plan. The action plan (and subsequent amendments) must include a single chart or table that illustrates, at the most practical level, how all funds are budgeted (e.g., by program, subrecipient, grantee-administered activity, or other
category). The grantee must certify, as required by section III.F.7., that activities to be undertaken with CDBG–DR funds are consistent with its action plan.

The action plan must contain:

III.C.1.a. An impact and unmet needs assessment and unmet needs assessment must develop an impact and unmet needs assessment to understand the type and location of community needs and to target limited resources to those areas with the greatest need. CDBG–DR grantees must conduct an impact and unmet needs assessment to inform the use of the grant. Grantees must cite data sources in the impact and unmet needs assessment. At a minimum, the impact and unmet needs assessment must:

- Evaluate all aspects of recovery including housing (interim and permanent, owner and rental, single family and multifamily, affordable and market rate, and housing to meet the needs of persons who were experiencing homelessness pre-disaster), infrastructure, and economic revitalization. While also incorporating hazard mitigation needs into activities that support recovery as required in section II.A.2.;
- Estimate unmet needs to ensure CDBG–DR funds meet needs that are not likely to be addressed by other sources of funds by accounting for the various forms of assistance available to, or likely to be available to, affected communities (e.g., projected FEMA funds) and individuals (e.g., estimated insurance) and, using the most recent available data, estimating the portion of need unlikely to be addressed by insurance proceeds, other Federal assistance, or any other funding sources;
- Assess whether public services (e.g., housing counseling, legal advice and representation, job training, mental health, and general health services) are necessary to complement activities intended to address housing, infrastructure, and economic revitalization and how those services would need to be made accessible to individuals with disabilities including, but not limited to, mobility, sensory, developmental, emotional, or other impairments;
- Describe the extent to which expenditures for planning activities, including the determination of land use goals and policies, will benefit the HUD-identified MID areas, as described in section II.A.3.;
- Describe disaster impacts geographically by type at the lowest level practicable (e.g., county/parish level or lower if available for states, and neighborhood or census tract level for cities); and
- Take into account the costs and benefits of incorporating hazard mitigation measures to protect against the specific identified impacts of future extreme weather events and other natural hazards. This analysis should factor in historical and projected data on risk that incorporates best available science (e.g., the most recent National Climate Assessment).

Disaster recovery needs evolve over time and grantees must amend their action plan to another through a substantial amendment.

III.C.1.b. Connection of programs and projects to unmet needs. The grantee must describe the connection between identified unmet needs and the allocation of CDBG–DR resources. The grantee must develop a clear connection between a grantee’s impact and unmet needs assessment and its proposed programs and projects in the MID areas (or outside in connection to the MID areas as described in section II.A.3). Such description must demonstrate a reasonable and appropriate allocation of resources relative to areas and categories (i.e., housing, economic revitalization, and infrastructure) of greatest needs identified in the grantee’s impact and unmet needs assessment or provide an acceptable justification for a disproportional allocation, while also incorporating hazard mitigation measures to reduce the impacts of recurring natural disasters and the long-term impacts of climate change. Grantee action plans may provide for the allocation of funds for other activities (including leveraging activity and for public service activities, subject to the caps on such activities as described in the Consolidated Notice).

III.C.1.c. Public housing, affordable rental housing, and housing for vulnerable populations. Each grantee must include a description of how it has analyzed, identified, and will address (with CDBG–DR or other sources) the disaster-related rehabilitation, reconstruction, and new construction needs in the MID-area of the types of housing described below.

Specifically, grantees must assess and describe how it will address unmet needs in the following types of housing, subject to the applicable HUD program requirements:

Public housing, affordable rental housing (including both subsidized and market rate affordable housing), and housing for vulnerable populations (See Section III.C.1.c.iii below), including emergency shelters and permanent housing for persons experiencing homelessness, in the areas affected by the disaster. Grantees must coordinate with public housing authorities (PHA) in the MID areas to ensure that the grantee’s representation in the action plan reflects the input of those entities as well as coordinating with State Housing Finance agencies to make sure that all funding sources that are available and opportunities for leverage are noted in the action plan.

(i) Public housing: Describe unmet public housing needs of each disaster-impacted PHA within its jurisdiction, if applicable. The grantee must work directly with impacted PHAs in identifying necessary and reasonable costs and ensuring that adequate funding from all available sources is dedicated to addressing the unmet needs of damaged public housing (e.g., FEMA, insurance, and funds available from programming in HUD’s Office of Public and Indian Housing).

(ii) Affordable rental housing: Describe unmet affordable rental housing needs for LMI households as a result of the disaster or exacerbated by the disaster, including private market units receiving project-based rental assistance or with tenants that participate in

the Section 8 Housing Choice Voucher Program, and any other housing that is assisted under a HUD program in the MID areas. Identify funding to specifically address these unmet needs for affordable rental housing to LMI households. If a grantee is preparing an allocation of CDBG–DR funds for affordable rental housing needs, the action plan must, at a minimum, meet the requirements described in II.B.3.

(iii) Housing for vulnerable populations: Describe how CDBG–DR or other funding sources available will address housing for vulnerable populations, as defined in section III.C.1.d., in the MID area, including how it plans to address: (1) Transitional housing, including emergency shelters and housing for persons experiencing homelessness, permanent supportive housing, and permanent housing needs of individuals and families (including subpopulations) that are experiencing or at risk of experiencing homelessness; (2) the prevention of low-income individuals and families with children (especially the elderly and disabled) and historically underserved communities (i.e., the racial and ethnic minority populations that have historically experienced less access to safe and affordable housing) from becoming homeless; (3) the special needs of persons who are not experiencing homelessness but require supportive housing (i.e., elderly, frail elderly, persons with disabilities (mental, physical, developmental, etc.), victims of domestic violence, persons with alcohol or other substance-use disorder, persons with HIV/AIDS and their families, and public housing residents, as identified in 24 CFR 91.315(e)).

III.C.1.d. Fair housing, civil rights data, and advancing equity. The grantee must use its CDBG–DR funds in a manner that complies with its fair housing and nondiscrimination obligations, including title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., the Fair Housing Act, 42 U.S.C. 3601–19, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 et seq., and Section 109 of the HCCA, 42 U.S.C. 5309. To ensure that the activities performed in connection with the action plan are consistent with these requirements, the grantee must provide an assessment of whether its planned use of CDBG–DR funds will have an unjustified discriminatory effect on or failure to benefit racial and ethnic minorities in proportion to their communities’ needs, particularly in racially and ethnically concentrated areas of poverty, and how it will address the recovery needs of impacted individuals with disabilities.

Grantees should also consider the impact of their planned use of CDBG–DR funds on other protected class groups under fair housing and civil rights laws, vulnerable populations, and other historically underserved communities. For purposes of the Consolidated Notice, HUD defines vulnerable populations as a group or community whose circumstances present barriers to obtaining or understanding information or accessing resources. In the action plan, grantees should identify those populations (i.e., which protected class, vulnerable population, and historically underserved groups were considered) and how those groups can be expected to benefit from the activities set forth in the plan...
consistent with the civil rights requirements set forth above.

To perform such an assessment, grantees must include data for the HUD-identified and grantee-identified MID areas that identifies the following information, as it is available:

- Race and ethnicity of the population, including relevant sub-populations depending on activities and programs outlined in the plan (this would include renters and homeowners if eligibility is dependent on housing tenure) and the specific geographies in the MID areas in which those programs and activities will be carried out;
- LEP populations, including number and percentage of each identified group;
- Number and percentage of persons with disabilities;
- Number and percentage of persons belonging to Federally protected classes under the Fair Housing Act (race, color, national origin, religion, sex—which includes sexual orientation and gender identity); (3) Critical status, and disability) and other vulnerable populations as determined by the grantee;
- Indigenous populations and tribal communities, including number and percentage of each identified group;
- Racially and ethnically concentrated areas and concentrated areas of poverty; and
- Historically distressed and underserved communities;

Grantees must explain how the use of funds will reduce barriers that individuals may face when enrolling in and accessing CDBG–DR funded programs or services, for example, barriers imposed by a lack of outreach to their community or by the lack of information in non-English languages or accessible formats for individuals with different types of disabilities.

Grantees are strongly encouraged to include examples of how their proposed allocations, selection criteria, and other actions can be expected to advance equity for protected class groups. Grantees are strongly encouraged to explain and provide examples of how their actions can be expected to advance the following objectives:

- Equitably benefit protected class groups in the MID areas, including racial and ethnic minorities, and sub geographies in the MID areas in which residents belonging to such groups are concentrated;
- To the extent consistent with purposes and uses of CDBG–DR funds, overcome prior disinvestment in infrastructure and public services for protected class groups, and areas in which residents belonging to such groups are concentrated, when addressing unmet needs;
- Enhance for individuals with disabilities in the MID areas (a) the accessibility of disaster preparedness, resilience, or recovery services, including the accessibility of evacuation services and shelters; (b) the provision of critical disaster-related information in accessible formats; and/or (c) the availability of integrated, accessible housing and supportive services.

Grantees must identify the proximity of natural and environmental hazards (e.g., industrial corridors, sewage treatment facilities, waterways, EPA superfund sites, brownfields, etc.) to affected populations in the MID area, including members of protected classes, vulnerable populations, and underserved communities and explore how CDBG–DR activities may mitigate environmental concerns and increase resilience and improvements in infrastructure to protect against the effects of extreme weather events and other natural hazards.

Grantees must also describe how their use of CDBG–DR funds is consistent with their obligation to affirmatively further fair housing. HUD regulations at 24 CFR 5.151 provide that affirmatively furthering fair housing means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.

State and local government grantees must submit a certification to AFFH in accordance with 24 CFR 5.150, et seq. CDBG–DR grantees must also comply with the recordkeeping requirements of 24 CFR 570.506 and 24 CFR 570.490(b), as amended by the Consolidated Notice.

III.C.1.e. Infrastructure. In its action plan, each grantee must include a description of how it plans to meet the requirements of the Consolidated Notice, including how it will: Promote sound, sustainable long-term recovery planning as described in this section; adhere to the elevation requirements established in section II.C.2.; and coordinate with local and regional planning efforts as described in section III.B.2.i and III.D.1.a. All infrastructure investments must be designed and constructed with the requirements to integrate hazard mitigation information in accessible formats; and extrem events by identifying and implementing resilience performance metrics as described in section II.A.2.c.

If a grantee is allocating funds for infrastructure, its description must include:

1. How it will address the construction or rehabilitation of disaster-related systems (e.g., storm water management systems) or other disaster-related community-based mitigation systems (e.g., using FEMA’s community lifelines). State grantees carrying out infrastructure activities must work with units of general local government and Indian tribes in the MID areas to identify the unmet needs and associated costs of needed disaster-related infrastructure improvements;
2. How mitigation measures and strategies to reduce natural hazard risks, including climate-related risks, will be integrated into rebuilding activities;
3. The extent to which CDBG–DR funded infrastructure activities will achieve objectives outlined in regionally or locally established plans and policies that are designed to reduce future risk to the jurisdiction;

4. How the grantee will evaluate the costs and benefits in selecting infrastructure projects to assist with CDBG–DR funds;
5. How the grantee will align infrastructure investments with other planned federal, state, or local capital improvements and infrastructure development efforts, and will work to foster the potential for additional infrastructure funding from multiple sources, including state and local capital improvement projects in planning, and the potential for private investment and infrastructure.
6. How the grantee will employ adaptable and reliable technologies to prevent premature obsolescence of infrastructure; and
7. How the grantee will invest in restoration of infrastructure and related long-term recovery needs within historically underserved communities that lacked adequate investments in housing, transportation, water, and wastewater infrastructure prior to the disaster.

III.C.1.f. Minimize Displacement. A description of how the grantee will minimize displacement of persons or entities, and assist any persons or entities displaced, and ensure accessibility needs of displaced persons with disabilities. Specifically, grantees must detail how they will meet the Residential Anti-displacement and Relocation Assistance Plan (RARAP) requirements in section IV.F.7. Grantees must indicate to HUD whether they will be amending an existing RARAP or creating a new RARAP specific to CDBG–DR. Grantees must meet the requirements related to the RARAP prior to implementing any activity with CDBG–DR grant funds, such as buyouts and other disaster recovery activities.

Grantees must seek to minimize displacement or adverse impacts from displacement, consistent with the requirements of Section IV.F. of the Consolidated Notice. Section 104(d) of the HCDA (42 U.S.C. 5304(d)) and implementing regulations at 24 CFR part 42, and 24 CFR parts 570 and 570.606, as applicable. Grantees must describe how they will plan their budget for relocation activities in the action plan.

III.C.1.g. Allocation and award caps. The grantee must provide a budget for the full amount of the allocation that is reasonably proportionate to its unmet needs (or provide an acceptable justification for disproportional allocation) and is consistent with the requirements to integrate hazard mitigation measures into all its programs and projects. The grantee shall provide a description of each disaster recovery program or activity to be funded, including the CDBG–DR eligible activities and national objectives associated with each program and the eligibility criteria for assistance. The grantee shall also describe the maximum amount of assistance (i.e., award cap) available to a beneficiary under each of the grantee’s disaster recovery programs. A grantee may find it necessary to provide exceptions on a case-by-case basis to the maximum amount of assistance and must describe the process it will use to make such exceptions in its action plan. At a minimum, each grantee must adopt policies and procedures that communicate how it will analyze the circumstances under which an
exception is needed and how it will demonstrate that the amount of assistance is necessary and reasonable. Each grantee must also indicate in its action plan that it will make exceptions to the maximum award amounts when necessary, to comply with federal accessibility standards or to reasonably accommodate a person with disabilities.

III.C.1.h. Cost controls and warranties. The grantee must provide a description of the standards to be established for construction contractors performing work in the jurisdiction and the mechanism to be used by the grantee to assist beneficiaries in responding to contractor fraud, poor quality work, and associated issues. Grantees must require a warranty period post-construction with a formal notification to beneficiaries on a periodic basis (e.g., 6 months and one month before expiration date of the warranty). Each grantee must also describe its controls for assuring that construction costs are reasonable and consistent with market costs and include plans for recovery in case of construction failure.

III.C.1.i. Resilience planning. Resilience is defined as a community’s ability to minimize damage and recover quickly from extreme events and changing conditions, including natural hazard risks. At a minimum, the grantee’s action plan must contain a description of how the grantee will: (a) Emphasize high quality design, durability, energy efficiency, sustainability, and mold resistance; (b) support adoption and enforcement of modern and/or resilient building codes that mitigate against natural hazards and climate-related risks (e.g., sea level rise, high winds, storm surge, flooding, volcanic eruption, and wildfire fire, where appropriate and as may be identified in the jurisdiction’s rating and identified weaknesses (if any) in building code adoption using FEMA’s Nationwide Building Code Adoption Tracking (BCAT) portal, and provide for accessible building codes and standards, as applicable; (c) establish and support recovery efforts by funding feasible, cost-effective measures that will make communities resilient against future disasters; (d) make land-use decisions that reflect responsible and safe standards to reduce future natural hazard risks, e.g., by adopting or amending an open space management plan that reflects responsible floodplain and wetland management and takes into account continued sea level rise, if applicable, and (e) increase awareness of the hazards in their communities (including for members of protected classes, vulnerable populations, and underserved communities) through outreach to the MID areas. While the purpose of CDBG–DR funds is to recover from a Presidentially declared disaster, integrating hazard mitigation and resilience planning with recovery efforts will promote a more resilient and sustainable long-term recovery. The action plan must include a description of how the grantee will promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, including climate-related natural hazards and the creation of resilience performance metrics as described in paragraph II.A.2.c. of the Consolidated Notice. This information should be based on the history of FEMA and other federal-funded disaster mitigation efforts and, as appropriate, take into account projected increases in sea level, the frequency and intensity of extreme weather events, and worsening wildfires. Grantees must use the Federal Emergency Management Agency’s Hazard Mitigation Plan (HMP), Community Wildfire Protection Plan (CWPP), or other resilience plans to inform the evaluation, and it should be referenced in the action plan.

III.C.1.j. Additional action plan requirements. For each grantee, the action plan must describe how the grantee will distribute grant funds, either through specific programs and projects the grantee will carry out directly (through employees, contractors, or through subrecipients), or through a method of distribution of funds to local governments and Indian tribes (as permitted by III.C.2.d.). The grantee shall describe how the method of distribution to local governments or Indian tribes, or programs/projects carried out directly, will result in long-term recovery from specific impacts of the disaster.

All states must include in their action plan the information outlined in (1) through (7) below (in addition to other information required by section III.C.). For states using a method of distribution, if some required information is unknown when the grantee is submitting its action plan to HUD (e.g., the list of programs or activities required by III.C.1.g or the projected use of CDBG–DR funds by responsible entity as required by subparagraph (5) below), the grantee must update the action plan to HUD directly, using a substantial amendment once the information is known. If necessary to comply with a statutory requirement that a grantee shall submit a plan detailing the proposed use of all funds prior to HUD’s obligation of grant funds, HUD may obligate only a portion of grant funds until the substantial amendment or amendment is submitted and approved by HUD. (1) How the impact and unmet needs assessment informs funding determinations, including a description of the methodology applied. (2) How the distribution and selection criteria will address disaster-related unmet needs in a manner that does not have an unjustified discriminatory effect and ensures the participation of minority residents and those belonging to other protected class groups in the MID areas, including with regards to who may benefit, the timing of who will be prioritized, and the amount or proportion of benefits expected to be received by different communities or groups (e.g., the proportion of benefits going to different locations within the MID or to homeowners versus renters).

(3) How the distribution and selection criteria will address disaster-related unmet needs in a manner that does not have an unjustified discriminatory effect based on race or other protected class and ensure the participation of minority residents and those belonging to other protected class groups in the MID areas. Each description should include an assessment of who may be expected to benefit, the timing of who will be provided funds, and approved before selecting applications.

(4) How the distribution and selection criteria will address disaster-related unmet needs in a manner that does not have an unjustified discriminatory effect based on race or other protected class and ensure the participation of minority residents and those belonging to other protected class groups in the MID areas, including with regards to who may benefit, the timing of who will be prioritized, and the amount or proportion of benefits expected to be received by different communities or groups (e.g., the proportion of benefits going to different locations within the MID or to homeowners versus renters).

(4) The threshold factors and recipient or beneficiary grant size limits that are to be applied.

(5) The threshold factors and grant size limits that are to be applied.

(6) For each proposed program and/or activity, its respective CDBG activity eligibility category (or categories), national objective(s), and what disaster-related impact is addressed, as described in section II.A.1 of the Consolidated Notice.
Ill.C.4. Waiver of 45-day review period for CDBG–DR action plans to 60 days. HUD may disapprove an action plan or substantial action plan amendment if it is incomplete. HUD works with grantees to resolve or provide additional information during the review period, rather than through HUD disapproval of the plan, which in turn would require grantees to take additional time to revise and resubmit their respective plan. Therefore, the Secretary has determined that good cause exists and waives 24 CFR 91.500(a) to extend HUD’s action plan review period from 45 days to 60 days. The action plan (including SF-424 and certifications) must be submitted to HUD for review and approval using DRGR. By submitting required standard forms (that must be submitted during the action plan), the grantee is providing assurances that it will comply with statutory requirements, including, but not limited to civil rights requirements. Applicants and recipients are required to submit assurances of compliance with federal civil rights requirements. A grantee will use DRGR’s upload function to include the SF 424 (including SF 424B and SF 424D, as applicable) and certifications with its action plan. Grantees receiving an allocation are required to submit an action plan within 120 days of the applicability date of the grant agreement (or, if the grantee has requested, and HUD has approved an extension of the submission deadline, HUD will then review each action plan within 60 days from the date of receipt. During its review, HUD typically provides grantees with comments on the submitted plan to avoid the need to disapprove an action plan and offers a grantee the opportunity to make updates to the action plan during the first forty-five days of HUD’s initial sixty-day review period. If a grantee wants to provide a revised action plan, HUD will reject the Public Action Plan in DRGR to return the plan to the grantee. Then, once the grantee resubmits the plan, HUD reviews the revised plan within the initial sixty-day period. HUD is establishing an alternative process that offers a grantee the option to voluntarily provide a revised action plan, updated to respond to HUD’s comments, no later than day forty-five in HUD’s sixty-day review. A grantee is not required to participate in the revisions of the action plan during this time, but with the understanding that an action plan may be determined to be substantially incomplete. The Secretary may disapprove an action plan as substantially incomplete if HUD determines that the action plan does not meet the requirements of the Consolidated Notice and the applicable Allocation Announcement Notice.

Ill.C.5. Obligation and expenditure of funds. Once HUD approves the action plan and approves certifications if required by appropriations acts, it will then sign a grant agreement obligating allocated funds to the grantee. The grantee will continue the action plan process in DRGR to draw funds (see section V.C.1.). The grantee must meet the applicable environmental requirements before the use or commitment of funds for each activity. After the Responsible Entity (1) completes environmental review pursuant to 24 CFR part 58 and receives from HUD an approved Request for Release of Funds and certification (as applicable), or (2) adopts another Federal agency’s environmental review, approval, or permit and receives from HUD (on HUD’s Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for an activity. The disbursement of grant funds must begin no later than 180 calendar days after HUD executes a grant agreement with the grantee. Failure to draw funds within this timeframe may result in HUD’s review of the grantee’s certification of its financial controls, procurement processes, and capacity, and may result in the imposition of any corrective actions described in 24 CFR 1003.701. If HUD has approved an extension of the submission deadline, HUD will review the revised plan within the initial sixty-day review period. If a grantee resubmits the plan, HUD will review the revised plan within 60 days from the date of receipt. During its review, HUD typically provides grantees with comments on the submitted plan to avoid the need to disapprove an action plan and offers a grantee the opportunity to make updates to the action plan during the first forty-five days of HUD’s initial sixty-day review period. If a grantee wants to provide a revised action plan, HUD will reject the Public Action Plan in DRGR to return the plan to the grantee. Following the public hearing requirements described in section Ill.D.1.b and the consultation requirements described in section Ill.D.1.a., which are not required for substantial amendments. A substantial action plan amendment shall require a 30-day public comment period.

Ill.C.6. Substantial amendment. The grantee must notify HUD, but is not required to seek public comment, when it makes any plan amendment that is not substantial. Although nonsubstantial amendments do not require HUD’s approval to become effective, the DRGR system must approve the amendment to change the status of the Public Action Plan to “reviewed and approved.” The DRGR system will automatically approve the amendment by the fifth day, if not completed by HUD sooner.

III.C.7. Projection of expenditures and outcomes. Each grantee must submit projected expenditures and outcomes with the action plan. The projections must be based on each quarter’s expected performance—beginning with the first quarter funds are available to the grantee and continuing each quarter until all funds are expended. The grantee will use DRGR’s upload feature to include projections and accomplishments for each program created.

III.D. Citizen Participation Requirements

III.D.1. Citizen participation alternative requirements. To permit a more streamlined process and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(3), 5304(b) and (c), 5307, 24 CFR 570.486, 24 CFR 1003.604, 24 CFR 91.105(b)(1) through (d), and 24 CFR 91.115(b) through (d), with respect to citizen participation requirements, are waived and replaced by the alternative requirements in this section. The streamlined requirements require the grantee to include public hearings on the proposed action plan and provide a reasonable opportunity (at least 30 days) for citizen comment. The grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in notices providing waivers and alternative requirements). Each local government receiving assistance from a state grantee must follow 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). In addition to the requirements above, the streamlined citizen participation alternative requirements for CDBG–DR grants are as follows:

III.D.1.a. Requirement for consultation during plan preparation. All grantees must consult with states, Indian tribes, local governments, Federal partners, nongovernmental organizations, the private sector, and other stakeholders and affected parties in the surrounding geographic area, including organizations that advocate on behalf of members of protected classes, vulnerable populations, and underserved communities impacted by the disaster, to ensure consistency of the action plan with applicable regional redevelopment plans. A grantee must consult with other relevant government agencies, including state and
local emergency management agencies that have primary responsibility for the administration of FEMA funds, if applicable.

III.D.1.b. Publication of the action plan and opportunity for public comment. Following the creation of the action plan or substantial amendment, and before the grantee submits the action plan or substantial amendment to HUD, the grantee must publish the proposed plan or amendment for public comment. The manner of publication must include prominent posting on the grantee’s disaster recovery website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to review the plan or substantial amendment. Grantees shall consider if there are potential barriers that may limit or prohibit vulnerable populations or underserved communities and individuals affected by the disaster from providing public comment on the grantee’s action plan or substantial amendment. If the grantee identifies barriers that may limit or prohibit equitable participation, the grantee must take reasonable measures to increase coordination, communication, affirmative marketing, targeted outreach, and engagement with underserved communities and individuals, including persons with disabilities and persons with LEP.

At a minimum, the topic of disaster recovery on the grantee’s website must be navigable by all interested parties from the grantee homepage and must link to the disaster recovery website required by section III.D.1.e. The grantee’s records must demonstrate notified affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

Additionally, the CDBG–DR grantee must convene at least one public hearing on the proposed action plan after it has published on its website to solicit public comment and before submittal of the action plan to HUD. If the grantee holds more than one public hearing, it shall ensure that each public hearing is held in a different location within the MID area in locations that the grantee determines will promote geographic balance and maximum accessibility. The minimum number of public hearings a grantee must convene on the action plan to obtain interested parties’ views and to respond to comments and questions shall be determined by the amount of the grantee’s CDBG–DR allocation:

(1) CDBG–DR grantees with allocations under $500 million are required to hold at least one public hearing in a HUD-identified MID area; and
(2) CDBG–DR grantees with allocations over $500 million or more shall convene at least two public hearings in HUD-identified MID areas.

Grantees may convene public hearings virtually (alone, or in concert with an in-person hearing) as long as in-person hearings must be held in facilities that are physically accessible to persons with disabilities. HUD’s implementing regulations for Section 504 of the Rehabilitation Act (24 CFR part 8, subpart C) provide that where physical accessibility is not achievable, grantees must give priority to alternative methods of product or information delivery that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. When conducting a virtual hearing, the grantee must allow questions in real time, with answers coming directly from the grantee’s response to each “attender.” For both virtual and in-person hearings, grantees must update their citizen participation plans to provide that hearings be held at times and locations convenient to potential and actual beneficiaries, with accommodation for persons with disabilities and appropriate auxiliary aids and services to ensure effective communication, and specify how they will meet these requirements. See 24 CFR 8.6 for HUD’s regulations about effective communication. Grantees must also provide meaningful access for individuals with LEP at both in-person and virtual hearings. In their citizen participation plans, state and local government grantees shall identify how the needs of non-English speaking residents will be met in the case of virtual and in-person hearings where a significant number of non-English speaking residents can be reasonably expected to participate. In addition, for both virtual or in-person hearings, the grantee shall provide reasonable notification and access for citizens in accordance with the grantee’s certifications at ILF 7.g., timely responses to all citizen questions and issues, and public access to all questions and responses.

III.D.1.c. Consideration of public comments. The grantee must provide a reasonable time frame (no less than 30 days) and method (including electronic submission) for receiving comments on the action plan or substantial amendment. The grantee must consider all oral and written comments on the action plan or any substantial amendment. Any updates or changes made to the action plan in response to public comments should be clearly identified in the action plan. A summary of comments on the plan or amendment, and the grantee’s response to each, must be included (e.g., uploaded) in DRGR with the action plan or amendment.

Grantee responses shall address the substance of the comment rather than merely acknowledge that the comment was received.

III.D.1.d. Availability and accessibility of documents. The grantee must make the action plan, any substantial amendments, vital documents, and all performance reports available to the public on its website. See the following guidance for more information on vital documents: https://www.leep.gov/guidance/HUD_guidance_fan07.pdf. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and those with LEP. Grantees must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons, including members of protected classes, vulnerable populations, and individuals from underserved communities. In their citizen participation plans, state and local government grantees shall describe their procedures for assessing their language needs and identify any need for translation of notices and other vital documents. At a minimum, the citizen participation plan shall require that the state or local government grantee take reasonable steps to provide language assistance to ensure meaningful access to participation by non-English-speaking residents of the grantee’s jurisdiction.

III.D.1.e. Public website. The grantee must maintain a public website that permits individuals and entities assisting and the general public to see how all grant funds are used and administered. The website must include copies of all relevant procurement documents and, except as noted in the next paragraph, all grantee administrative contracts, details of ongoing procurement processes, action plans and amendments. The public website must be accessible to persons with disabilities and individuals with LEP.

To meet this requirement, each grantee must make the following items available on its website: The action plan created using DRGR (including all amendments); each performance report (as created using the DRGR system); citizen participation plan; procurement policies and procedures; all contracts, as defined in 2 CFR 200.22, that will be paid with CDBG–DR funds (including, but not limited to, subrecipients’ contracts); and a summary including the description and status of services or goods currently being procured by the grantee or the subrecipient (e.g., phase of the procurement, requirements for proposals, etc.). Contracts and procurement actions that do not exceed the micro-purchase threshold, as defined in 2 CFR 200.1, are not required to be posted to a grantee’s website.

III.D.1.f. Application status. The grantee must provide multiple methods of communication, such as websites, toll-free numbers, TTY and relay services, email address, fax number, or other means to provide applicants for recovery assistance with timely information to determine the status of their application.

III.D.1.g. Citizen complaints. The grantee will provide a timely written response to every citizen complaint. If the grantee’s response must be provided within fifteen working days of the receipt of the complaint, or the grantee must document why additional time for the response was required. Complaints regarding fraud, waste, or abuse of government funds should be forwarded to the HUD OIG Fraud Hotline (phone: 1–800–347–3735 or email: hotline@hudoig.gov).

III.D.1.h. General requirements. For plan publication, the comprehensive disaster recovery website and vital documents must ensure effective communication for individuals with disabilities, as required by 24 CFR 8.6 and the Americans with Disabilities Act, as applicable. In addition to ensuring the accessibility of the comprehensive disaster recovery website and vital documents, this obligation includes the requirement to provide auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities, which may take the form of the furnishing of the above referenced materials in alternative formats (24 CFR 8.6(a)(1)). When required by III.D.1.d., grantees must take reasonable steps to ensure meaningful access for individuals with LEP.
III. E. Program Income

III. E.1. Program income waiver and alternative requirement. For state and unit of general local government grantees, HUD is waiving all applicable program income rules at 42 U.S.C. 5304(j), 24 CFR 570.489(e), 24 CFR 570.500, and 24 CFR 570.504 and providing the alternative requirement described herein. Program income earned by Indian tribes that are subrecipients of state grantees or local government grantees will be subject to the program income requirements for subrecipients of those grantees.

III. E.1.a. Definition of program income.

“Program income” is defined as gross income generated from the use of CDBG–DR funds, except as provided in III. E.1.b., and received by a state, local government, Indian tribe, or subrecipient receiving funds from a grantee, or their subrecipients. 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, or a single parcel of land purchased with CDBG–DR funds and other funds). If CDBG funds are used with CDBG–DR funds on an activity, any income earned on the CDBG portion would not be subject to the waiver and alternative requirement in the Consolidated Notice.

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

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

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

(iii) Gross income from the use or rental of real or personal property acquired by a state, local government, or subrecipient thereof with CDBG–DR funds, less costs incidental to generation of the income.

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

(v) Payments of principal and interest on loans made using CDBG–DR funds.

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

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

(viii) Interest earned on program income pending disposition of the income, including interest earned on funds held in a revolving fund account.

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

(x) Gross income paid to a state, local government, or 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.

III. E.1.b. Program income—does not include:

(i) The total amount of funds that is less than $35,000 received in a single year and retained by a state, local government, or a subrecipient thereof.

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

III. E.1.c. Retention of program income.

State grantees may permit a local government that receives or will receive program income to retain the program income but are not required to do so.

III. E.1.d. Program income—use, close out, and transfer.

(i) Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional CDBG–DR funds subject to the requirement in the Consolidated 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 III. E.1.e. below.

(ii) In addition to the alternative requirements dealing with program income required above, the following rules apply:

(1) A state or local government grantee may transfer program income to its annual CDBG program before or after closeout of the grant that generated the program income. In addition, state grantees may transfer program income before closeout to any annual CDBG-funded activities carried out by a local government within the state.

(2) Program income received by a grantee, or received and retained by a subrecipient, after closeout of the grant that generated the program income, may also be transferred to a grantee’s annual CDBG award.

(3) In all cases, any program income received that continues the disaster recovery activity will not be subject to the waivers and alternative requirements of the Consolidated Notice. Rather, those funds will be subject to the state or local government grantee’s regular CDBG program rules. Any other transfer of program income not specifically addressed in the Consolidated Notice may be carried out by the grantee first seeks and then receives HUD’s approval.

III. E.1.e. Revolving funds.

State and local government grantees may establish revolving funds to carry out specific, identified activities. State grantees may also establish a revolving fund to distribute funds to local governments or tribes to carry out specific activities. A revolving fund, for this purpose, is a separate fund (with or without a separate program account) established to carry out specific activities. These activities must generate payments used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrecurring fund activities. A revolving fund established by a CDBG–DR grantee shall not be directly funded or capitalized with CDBG–DR grant funds, pursuant to 24 CFR 570.489(h)(3).

III. F. Other General Waivers and Alternative Requirements

III. F.1. Consolidated Plan waiver. HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.225(a)(5), and 24 CFR 91.325(a)(5)), because the effects of a major disaster alter a grantee’s priorities for disaster recovery activity, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e) is also waived, to the extent that it would require HUD to annually review grantee performance under the consistency criteria. These waivers apply only for 24 months after the applicability date of the grantee’s applicable Allocation Announcement Notice. If the grantee is not scheduled to submit a new three-to-five year consolidated plan within the next two years, the grantee must state its existing three-to-five year consolidated plan to reflect disaster-related needs no later than 24 months after the applicability date of the grantee’s applicable Allocation Announcement Notice.

III. F.2. Overall benefit requirement. The primary objective of the HCDA 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)). Consistent with the HCDA, this notice requires grantees to comply with the overall benefit requirements in the HCDA and 24 CFR 570.484, 24 CFR 570.200(a)(3), and 24 CFR 1003.208, which require that 70 percent of funds be used for activities that benefit LMI persons. For purposes of a CDBG–DR grant, HUD is establishing an alternative requirement that the overall benefit test shall apply only to the grant of CDBG–DR funds described in the Allocation Announcement Notice and related program income.

A grantee may seek to reduce the overall benefit requirement below 70 percent of the total grant, but must submit a substantial amendment as provided in section III.C.6.a. in the Consolidated Notice, and provide a justification that, at a minimum: (a) Identifies the planned activities that meet the needs of its LMI population; (b) describes proposed activities and programs that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee’s long-term disaster recovery plan; (c) describes how the activities/programs identified in (b) prevent the grantee from meeting the 70 percent requirement; (d) demonstrates that LMI persons’ disaster-related needs have been sufficiently met and that the needs of non-LMI persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve non-LMI persons; and (e) demonstrates a compelling need for HUD to lower the percentage of the grant that must benefit low- and moderate-income persons.
III.F.3. Use of the urgent need national objective. Because HUD provides CDBG–DR funds only to grantees with documented disaster-related impacts and each grantee is limited to spending funds only for the benefit of areas that received a Presidential disaster declaration, the Department finds good cause to waive the urgent need national objective criteria in section 104(b)(3) of the HCCDA and to establish the following alternative requirement for any CDBG–DR grantee using the urgent need national objective for a period of 36 months after the applicability date of the grantee’s Allocation Announcement Notice.

Pursuant to this alternative requirement, grantees that use the urgent need national objective must: (1) Describe in the impact and unmet needs assessment why specific needs have a particular urgency, including how the existing conditions pose a serious and immediate threat to the health or welfare of the community; (2) identify each program or activity in their action plan that will use the urgent need national objective—either through its initial action plan submission or through a substantial amendment submitted by the grantee within 36 months of the applicability date of the grantee’s Allocation Announcement Notice; and (3) document how each program and/or activity funded under the urgent need national objective in the action plan responds to the urgency, type, scale, and location of the disaster-related impact as described in the grantee’s impact and unmet needs assessment.

The grantee’s action plan must address all three criteria described above to use the alternative urgent need national objective for the program and/or activity. This alternative urgent need national objective is in effect for a period of 36 months following the applicability date of the grantee’s Allocation Announcement Notice. After 36 months, the grantee will be required to follow the criteria established in section 104(b)(3) of the HCCDA and its implementing regulations in 24 CFR part 570 when using the urgent need national objective for any new programs and/or activities added to an action plan.

III.F.4. Reimbursement of disaster recovery expenses by a grantee or subrecipient. The provisions of 24 CFR 570.489(b) are applied to permit a state grantee to charge to the grant otherwise allowable costs incurred by the grantee, its recipients or subrecipients (including Indian tribes and PHAs) on or after the incident date of the covered disaster.

A local government grantee 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. Section 570.200(b)(1)(i) is waived to the extent that it requires pre-agreement activities to be included in the local government’s consolidated plan. As an alternative requirement, grantees must include any pre-agreement activities in their action plans and any costs of eligible activities that were funded with short-term loans (e.g., bridge loans) and that the grantee intends to reimburse or otherwise charge to the grant, consistent with applicable program requirements.

III.F.5. Reimbursement of pre-application costs of homeowners, renters, businesses, and other qualifying entities. Grantees are permitted to charge to grants the pre-award and pre-application costs of homeowners, renters, businesses, and other qualifying entities for eligible costs these applicants have incurred in response to an eligible disaster that defines their application’s applicable Allocation Announcement Notice. For purposes of the Consolidated Notice, pre-application costs are costs incurred by an applicant to CDBG–DR funded programs before the time of application to a grantee or subrecipient. Pre-application costs may be before (pre-award) or after the grantee signs its CDBG–DR grant agreement. In addition to the terms described in the remainder of the Consolidated Notice, grantees may only charge costs to the grant that meet the following requirements:

- Grantees may only charge the costs for rehabilitation, demolition, and reconstruction of single family, multifamily, and nonresidential buildings, including commercial properties, owned by private individuals and entities. In addition, before the owner applies to a CDBG–DR grantee, recipient, or subrecipient for CDBG–DR assistance:
  - For rehabilitation and reconstruction costs, grantees may only charge costs for activities completed within the same footprint of the damaged structure, sidewalk, driveway, parking lot, or other developed area;
  - As required by 2 CFR 200.403(g), costs must be adequately documented; and
  - Grantees must complete a duplication of benefits charter, which must occur before the underlying activity (e.g., rehabilitation of a government building) begins.

Grantees are also required to consult with the State Historic Preservation Officer, Fish and Wildlife Service, and National Marine Fisheries Service, to obtain formal agreements for compliance with section 106 of the National Historic Preservation Act (54 U.S.C. 200108) and section 7 of the Endangered Species Act of 1973 (5 U.S.C. 1536) when designing a reimbursement program.

All grantees must follow all cross-cutting requirements, as applicable, for all CDBG–DR funded activities including but not limited to the environmental requirements above, the Davis Bacon Act, Civil Rights Requirements, HUD’s Lead Safe Housing Rule, and the URA. III.F.6. Alternative requirement for the elevation of structures when using CDBG–DR funds as the non-Federal match in a FEMA-funded project. Currently, CDBG–DR grantees using FEMA and CDBG–DR funds on the same activity have encountered challenges in certain circumstances in reconciling CDBG–DR elevation requirements and those established by FEMA. FEMA regulations at 44 CFR 9.11(d)(ii) and (iii) prohibit new construction or substantial improvements to a structure unless the lowest floor of the structure is at or above the level of the base flood and, for Critical Actions, at or above the level of the 500-year flood. However, 44 CFR 9.11(d)(iii)(iii) allows for an alternative to elevation to the 100- or 500-year flood level, subject to FEMA approval, which would provide for improvements that would ensure the substantial impermeability of the structure below flood level. While FEMA may change its standards for elevation in the future, as long as the CDBG–DR grantee is following a FEMA-approved flood standard this waiver and alternative requirement will continue to apply.

FEMA funded projects generally commence well in advance of the availability of CDBG–DR funds and when CDBG–DR funds are used as a match on a FEMA project that is underway, the alignment of HUD’s elevation standards with any alternative standard allowed by FEMA may not be feasible and may not be cost reasonable. For these reasons, the Secretary finds good cause to establish an alternative requirement for the use of an alternative, FEMA-approved flood...
The alternative requirements apply when:  
(a) CDBG–DR funds are used as the non-Federal match for FEMA assistance; (b) the Federal match for which CDBG–DR funds will be used as match, commenced before HUD’s obligation of CDBG–DR funds to the grantee; and (c) the grantee has determined and demonstrated with records in the activity file that implementation costs of the required CDBG–DR elevation or flood proofing requirements are not reasonable costs, as that term is defined in the applicable cost principles at 2 CFR 200.404.

III.F.7.  Certifications waiver and alternative requirement. Sections 104(b)(4), (c), and (m) of the HCDA (42 U.S.C. 5304(b)(4), (c) & (m), sections 106(d)(2)(C) & (D) of the HCDA (42 U.S.C. 5306(d)(2)(C) & (D)), and section 106 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12706), and regulations at 24 CFR 91.22(b) are waived and replaced with the following alternative. Each grantee receiving an allocation under an Allocation Announcement Notice must make the following certifications with its action plan:

a. The grantee certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan (RARAP) in connection with any activity assisted with CDBG–DR grant funds that fulfills the requirements of Section 104(d), 24 CFR part 42, and 24 CFR part 570, as amended by waivers and alternative requirements.

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

c. The grantee certifies that the action plan for disaster recovery is authorized under state and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee, and any contractor, subrecipient, or designated public agency carrying out an activity with CDBG–DR funds, has the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations as modified by waivers and alternative requirements.

d. The grantee certifies that activities to be undertaken with CDBG–DR funds are consistent with its action plan.

e. 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, as such requirements may be modified by waivers or alternative requirements.

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

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

h. State grantee certifies that it has consulted with all disaster-affected local governments (including any CDBG-entitlement grantee), Indian tribes, and any local public housing authorities in determining the use of funds, including the method of distribution of funding, or activities carried out directly by the state.

i. 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, economic revitalization, and mitigation in the most impacted and distressed areas for which the President declared a major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.).

2. With respect to activities expected to be assisted with CDBG–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 70 percent (or another percentage permitted by HUD in a waiver) of the grant amount is expended for activities that benefit such persons.

4. The grantee will not attempt to recover any 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 provision; or (b) the grantee has reviewed the requirements to determine that a cost is an allowable cost.

j. The grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

k. State and local government grantees certify that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations, and that it will affirmatively further fair housing. An Indian tribe grantee certifies that the grant will be conducted and administered in conformity with the Indian Civil Rights Act.

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

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

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

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

n. The grantee certifies to the accuracy of its Financial Management and Grant Compliance Certification Requirements, or other recent certification submission, if approved by HUD, and related supporting documentation as provided in section III.A.1. of the Consolidated Notice and the grantee’s implementation plan and related submissions to HUD as provided in section III.A.2. of the Consolidated Notice.

o. The grantee certifies that it will not use CDBG–DR funds for any activity in an area identified as flood prone for land use or hazard mitigation planning purposes by the state, local, or tribal government or delineated as a Special Flood Hazard Area (or 100-year floodplain) in FEMA’s most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the state, local, and tribal government land use regulations and hazard mitigation plans and 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.

p. The grantee certifies that it has in effect and is following lead-based paint safeguards.

q. The grantee certifies that it will comply with the provisions of title I of the HCDA and with other applicable laws.

Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil or criminal penalties under 18 U.S.C. 287, 1001, and 31 U.S.C. 3729.

III.G. Ineligible Activities in CDBG–DR

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

III.G.1. Prohibition on compensation.

Grantees shall not use CDBG–DR funds to provide compensation to beneficiaries for losses stemming from disaster related impacts. Grantees may, however, reimburse disaster-impacted beneficiaries based on the pre-application costs incurred by the beneficiary to complete an eligible activity. Reimbursement of beneficiaries for eligible activity costs are subject to the requirements
established in section III.F.5. of the Consolidated Notice.

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

III.C.3. Prohibiting assistance to private utilities. HUD is adopting the following alternative requirement to section 105(a) and prohibiting the use of CDBG–DR funds to assist a privately-owned utility for any purpose.

IV. Other Program Requirements

IV.A. Duplication of Benefits

The grantee must comply with section 312 of the Stafford Act, as amended, which 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 for which such person, business concern, or other entity has received financial assistance under any other program or from insurance or any other source. To comply with section 312, a person or entity may receive financial assistance only to the extent that the person or entity has a disaster recovery need that has not been fully met. Grantees must also establish policies and procedures to provide for the repayment of a CDBG–DR award when assistance is subsequently provided for that same purpose from any other source. Grantees may be subject to additional DOB requirements described in a separate notice. The applicable Allocation Announcement Notice will describe any additional requirements, as applicable.

Subsidized loans are financial assistance and therefore can duplicate financial assistance provided from another source unless an exception in IV.A.1 applies.

IV.A.1. Exceptions when subsidized loans are not a duplication. When an exception described in paragraphs IV.A.1.a. or IV.A.1.b. applies, documentation required by those paragraphs must be maintained by the grantee. Without this documentation, any approved but undisbursed portion of a subsidized loan must be included in the grantee’s calculation of the total assistance amount unless another exception applies. For cancelled SBA loans, the grantee must notify the SBA that the applicant has agreed to take any action to reinstate the cancelled loan or draw any additional undisbursed loan amounts.

IV.A.1.a. Short-term subsidized loans for costs later reimbursed with CDBG–DR. CDBG–DR funds may be used to reimburse pre-award costs of the grantee or subrecipient for eligible activities on or after the date of the disaster. If the grantee or subrecipient obtained a subsidized short-term loan to pay for eligible costs before CDBG–DR funds became available (for example, a low-interest loan from a local tax increment financing fund), the reimbursement of the costs paid by the loan shall be subtracted from the CDBG–DR assistance.

IV.A.1.b. Declined or cancelled subsidized loans. The amount of a subsidized loan that is declined or cancelled is not a DOB. To exclude declined or cancelled loan amounts from the DOB calculation, the grantee must document all or a portion of the subsidized loan is cancelled or declined.

(i) Declined SBA Loans: Declined loan amounts are loan amounts that were approved or offered by a lender in response to a loan application, but were turned down by the applicant, meaning the applicant never signed loan documents to receive the loan proceeds.

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

(ii) Cancelled Loans: Cancelled loans are loans (or portions of loans) that were initially accepted, accepted, but for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the applicant. The cancelled loan amount is the amount that is no longer available. The loan cancellation may be due to default of the borrower, agreement by both parties to cancel the undisbursed portion of the loan, or expiration of the term for which the loan was available for disbursement. The following documentation is sufficient to demonstrate that any undisbursed portion of an accepted subsidized loan is cancelled and no longer available:

(a) A written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or
(b) a legally binding agreement between the CDBG–DR grantee (or local government, Indian tribe, or subrecipient administering the CDBG–DR assistance) and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts.

IV.B. Procurement

For a grantee to have proficient procurement processes, a grantee must: Indicate the procurement standards that apply to its use of CDBG–DR funds; indicate the procurement standards for subrecipients or local governments as applicable; comply with the standards it certified to HUD that it follows (and update the certification submissions when substantial changes are made); and post the required documentation to the official website as described below; and include periods of performance and date of completion in all CDBG–DR contracts.

State grantees must comply with the procurement requirements at 24 CFR 570.489(g) and the following alternative requirements: The grantee must evaluate the cost or price of the product or service being procured. State grantees shall establish requirements for procurement processes for local governments and subrecipients based on full and open competition consistent with the requirements of 24 CFR 570.489(g), and shall require a local government or subrecipient to evaluate the cost or price of the product or service being procured with CDBG–DR funds. Additionally, if the state agency designated as the administering agency chooses to provide funding to another state agency, the administering agency must specify in its procurement processes whether the agency implementing the CDBG–DR activity must follow the procurement processes that the administering agency is subject to, or whether the agency must follow the same processes to which other local governments and subrecipients are subject, or its own procurement processes.

A grantee shall administer CDBG–DR grant funds in accordance with all applicable laws and regulations. As an alternative requirement, grantees may not delegate, by contract, or otherwise, the responsibility for administering such grant funds.

HUD is establishing an additional alternative requirement for all contracts with contractors used to provide goods and services, as follows:

1. The grantee (or procuring entity) is required to clarify the period of performance or date of completion in all contracts;
2. The grantee (or procuring entity) must incorporate performance requirements and liquidated damages into each procurement contract. Contracts that describe work performed by general management consulting services need not adhere to the requirement on liquidated damages but must incorporate performance requirements; and
3. The grantee (or procuring entity) may contract for administrative support, in compliance with 2 CFR 200.459, but may not delegate or contract to any other party any inherently governmental responsibilities related to oversight of the grant, including policy development, fair housing and civil rights compliance, and financial management.

IV.C. Use of the “Upper Quartile” or “Exception Criteria”

The LMA benefit requirement is modified when fewer than one quarter of the populated-block groups in its jurisdictions contain 51 percent or more LMI persons. In such a community, activities must serve an area that contains a percentage of LMI residents that is within the upper quartile of
all census-block groups within its jurisdiction in terms of the degree of concentration of LMI residents. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee, accordingly. The \"excepted criteria\" applies to CDBG–DR funded activities in jurisdictions covered by such criteria, including jurisdictions that receive disaster recovery funds from a state. Disaster recovery grantees are required to use the most recent data available in implementing the exception criteria (https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees/).

IV.D. Environmental Requirements

IV.D.1. Clarifying note on the process for environmental release of funds when a state carries out activities directly. For CDBG–DR grants, HUD allows state grantees to carry out activities directly and to distribute funds to subrecipients. Per 24 CFR 58.4(b)(1), when a state carries out activities directly (including through subrecipients that are not units of local general government), the state must submit the Certification and Request for Release of Funds to HUD for approval.

IV.D.2. Adoption of another agency's environmental review. Appropriations acts allow recipients of funds that use such funds to supplement Federal assistance provided under section 402, 403, 404, 406, 407, 408(c)(4), or 502 of the Stafford Act to adopt, without review or public comment, any environmental review, approval, or permit performed by another agency. Such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit. This provision allows the recipient of supplemental assistance to adopt another Federal agency's review where the HUD assistance supplements the Stafford Act, and the other Federal agency performed an environmental review for assistance under section 402, 403, 404, 406, 407, or 502 of the Stafford Act.

The designee's environmental review must cover all project activities funded by the HUD recipient for each project. The grantee is only required to supplement the other agency's environmental review to comply with HUD regulations (e.g., publication or posting requirements for Notice of Finding of No Significant Impact (FONSI), Notice of Intent to Request Release of Funds (NOI–RROF), concurrent or combined notices, or HUD approval period for objections) if the activity is modified so the other agency's environmental review no longer covers the activity. The recipient's environmental review obligations are considered complete when adopting another agency's environmental review. To be adequate:

1. The grantee must obtain a completed environmental assessment of the Federal agency's review and retain a copy in its environmental records.
2. The grantee must notify HUD on the Request for Release of Funds (RROF) Form 7015.15 (or the state, if the state is acting as HUD under 24 CFR 58.18) that another agency review is being used. The grantee must include the name of the other Federal agency, the name of the project, and the date of the project's review as prepared by the other Federal agency.

When permitted by the applicable appropriations acts, and notwithstanding 42 U.S.C. 5012a(i)(1), the grantee may, upon receipt of a Request for Release of Funds and Certification, immediately approve the release of funds for an activity or project assisted with CDBG–DR funds if the recipient has adopted an environmental review under this section, or if the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA).

IV.D.3. Historic preservation reviews. The responsible entity must comply with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. Section 306108). Early coordination under section 106 is important to the recovery process and required by 24 CFR 58.5(a).

IV.D.4. Tiered environmental reviews. Tiering, as described at 40 CFR 1508.1(ff) and 24 CFR 58.15, is a means of making the environmental review process more efficient by allowing parties to \"eliminate repetitive discussions of the same issues, focus on the actual issues ripe for decision, and exclude from consideration issues already decided or not yet ripe at each level of environmental review\" (40 CFR 1501.11(a)). Tiering is appropriate when a responsible entity is evaluating a single-family housing program with similar activities within a defined local geographic area (e.g., rehabilitating single-family homes within a city district or county over the course of one to five years) but where the specific sites and activities are not yet known. Public notice and the Request for Release of Funds (HUD-Form 7015.15) are processed at a broad-level, eliminating the need for public participation at the site-specific level. However, funds cannot be spent or committed on a specific site or activity until the site-specific review has been completed and approved.

IV.E. Flood Insurance Requirements

Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, before providing assistance.

IV.E.1. Flood insurance purchase requirements. When grantees use CDBG–DR funds to rehabilitate or reconstruct existing residential buildings in a Special Flood Hazard Area (or 100-year floodplain), the grantee must comply with applicable Federal, state, local, and tribal laws and regulations related to both flood insurance and floodplain management. The grantee must comply with section 102(a) of the Flood Insurance Reform Act of 1994, as amended (42 U.S.C. 4012a) which mandates the purchase of flood insurance protection for any HUD-assisted property within a Special Flood Hazard Area. Therefore, a HUD-assisted homeowner for a property located in a Special Flood Hazard Area must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program.

IV.E.2. Federal assistance to owners remaining in a floodplain.

IV.E.2.a. Prohibition on flood disaster assistance for failure to obtain and maintain flood insurance. Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a), which prohibits flood disaster assistance in certain circumstances. No Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for \"repair, replacement, or restoration\" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood 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.

A grantee may not provide disaster assistance for the repair, replacement, or restoration of a property to a person who has failed to satisfy the Federal requirement to obtain and maintain flood insurance and must implement a process to verify and monitor for compliance with section 582 and the requirement to obtain and maintain flood insurance. Grantees are reminded that CDBG–DR funds may be used to assist beneficiaries in the purchase of flood insurance to comply with this requirement, subject to the requirements of cost reasonableness and other federal cost principles.

IV.E.2.b. Prohibition on flood disaster assistance for households above 120 percent of AMI for failure to obtain flood insurance. When a homeowner located in the floodplain allows their flood insurance policy to lapse, it is assumed that the homeowner is unable to afford insurance and/or is accepting responsibility for future flood damage to the home. Higher income homeowners who reside in a floodplain, but who fail to secure or decide to not maintain their flood insurance, should not be assisted at the expense of lower income households. To ensure that adequate recovery resources are available to assist lower income homeowners who reside in a floodplain but who are unlikely to be able to afford flood insurance, the Secretary finds good cause to establish an alternative requirement.

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

IV.E.2.c. Responsibility to inform property owners to obtain and maintain flood insurance. Section 582 of the National Flood Insurance Reform Act of 1994, as amended,
IV.F. URA, Section 104(d), and Related CDBG Program Requirements

Activities and projects undertaken with CDBG-DR funds may be subject to the URA, section 104(d) of the HCDA (42 U.S.C. 5304(d)), and CDBG program requirements related to displacement, relocation, acquisition, and replacement of housing, except as modified by waivers and alternative requirements provided in this notice. The implementing regulations for the URA are at 49 CFR part 24. The regulations implementing section 104(d) are at 24 CFR part 42. The regulations for applicable CDBG program requirements are at 24 CFR 570.488 and 24 CFR 570.606. HUD is waiving or providing alternative requirements in this section for the purpose of promoting the availability of decent, safe, and sanitary housing with respect to the use of CDBG-DR funds allocated under the Consolidated Notice.

IV.F.1. Section 104(d) one-for-one replacement of lower-income dwelling units. One-for-one replacement requirements at section 104(d)(2)(A)(ii) and (ii) and 104(d)(3) of the HCDA and 24 CFR 42.375 are waived for owner-occupied lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The section 104(d) one-for-one replacement housing requirements apply to occupied and vacant occupiable lower-income dwelling units demolished or converted in connection with a CDBG-DR activity. This waiver exempts all disaster-damaged owner-occupied lower-income dwelling units that meet the grantee’s definition of “not suitable for rehabilitation,” from the one-for-one replacement housing requirements of 24 CFR 42.375. Before carrying out activities that may be subject to the one-for-one replacement housing requirements, the grantee must define “not suitable for rehabilitation” in its action plan or in policies/procedures governing these activities. Grantees are reminded that tenant-occupied and vacant occupiable lower-income dwelling units demolished or converted to another use other than lower-income housing in connection with a CDBG-DR assisted activity are generally subject to one-for-one replacement requirements at 24 CFR 42.375 and that these provisions are not waived. HUD is waiving the section 104(d) one-for-one replacement requirement for owner-occupied lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation because the one-for-one replacement requirements do not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and to economic revitalization. Implementation of this waiver and alternative requirement, grantees must reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units (both rental and owner-occupied) to be rehabilitate and/or reconstruct. Grantees should note that the demolition and/or disposition of public housing units continue to be subject to section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

IV.F.2. Section 104(d) relocation assistance. The relocation assistance requirements at section 104(d)(2)(A)(iii) and (B) of the HCDA and 24 CFR 42.350, are waived to the extent that an eligible displaced person, as defined under 24 CFR 42.305 or implementing regulations, may choose to receive either assistance under the URA and implementing regulations at 49 CFR part 24, or assistance under section 104(d) and implementing regulations at 24 CFR 42.350. This waiver does not impact a person’s eligibility as a displaced person under section 104(d), it merely limits the amounts and types of relocation assistance that a section 104(d) eligible displaced person is eligible to receive. A section 104(d)(1) eligible displaced person is eligible to receive the amounts and types of assistance provided under CDBG-DR funds in connection with the voluntary purchase and occupancy of a home the homebuyer intends to make their primary residence. This waiver is necessary to reduce burdensome administrative requirements for homebuyers following a disaster. Tenants displaced by these voluntary acquisitions may be eligible for relocation assistance.

IV.F.5. CDBG displacement, relocation, acquisition, and replacement housing program regulations—Optional relocation assistance. The regulations at 24 CFR 570.606(d) are waived for displaced persons under the URA, as may be modified by the waivers and alternative requirements in 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 CDBG funds are subject to the requirements of the URA; however, CDBG funds are subject to section 104(d), while FEMA funds are not. This limited waiver of the section 104(d) relocation assistance requirements assures uniform and equitable treatment for individuals eligible to receive benefits under Section 104(d) by establishing that all forms of relocation assistance to those individuals must be in the amounts and for the types of assistance provided to displaced persons under URA requirements.

IV.F.6. Waiver of Section 414 of the Stafford Act. Section 414 of the Stafford Act (42 U.S.C. 5181) provides that “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) [42 U.S.C. 4601 et seq.] [‘URA’] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by [the URA].” Accordingly, homeowner occupants and tenants displaced from their homes as a result of a major disaster caused by a hurricane notified that their homes are damaged by the disaster and not suitable for rehabilitation, have 60 days from the date of notice to decide whether or not to exercise the waiver provided through a HUD program, it is subject to the applicable HUD program requirements, including the requirement that the tenant must be eligible for the rental housing program. Failure to grant this waiver would impede disaster recovery whenever rental program subsidies are available but funds for cash replacement housing payments are limited and such payments are required by the URA to be based on a 42-month term.

IV.F.4. URA voluntary acquisition—homebuyer primary residence purchase. Grantees may implement disaster recovery program activities that provide financial assistance to eligible homeowners to purchase and occupy residential properties as their primary residence. Such purchases are generally considered voluntary acquisitions under the URA and subject to the URA regulatory requirements at 49 CFR 24.101(b)(2). For CDBG-DR, 49 CFR 24.101(b)(2) is waived to the extent that it applies to a homebuyer, who does not have the power of eminent domain, using CDBG-DR funds in connection with the voluntary purchase and occupancy of a home the homebuyer intends to make their primary residence. This waiver is necessary to reduce burdensome administrative requirements for homebuyers following a disaster. Tenants displaced by these voluntary acquisitions may be eligible for relocation assistance.
result of the identified disasters and who would have otherwise been displaced as a direct result of any acquisition, rehabilitation, or demolition of real property for a federally funded program or project may become eligible for a replacement housing payment notwithstanding their inability to meet occupancy requirements prescribed in the URA. Section 414 of the Stafford Act and its implementing regulation at 49 CFR 24.403(d)(1) are waived to the extent that they would apply to real property acquisition, or demolition of real property for a CDBG–DR funded project commencing more than one year after the date of the latest applicable Presidential declared disaster undertaken by the grantees, or subgrantees, provided that the project was not planned, approved, or otherwise underway before the disaster.

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

The waiver will simplify the administration of the disaster recovery process and reduce the administrative burden associated with the implementation of Stafford Act Section 414 requirements for projects commencing more than one year after the date of the Presidentially declared disaster considering most of such persons displaced by the disaster will have returned to their dwellings or found another place of permanent residence.

This waiver does not apply with respect to persons that meet the occupancy requirements to receive a replacement housing payment under the URA nor does it apply to persons displaced or relocated temporarily by other HUD-funded programs or projects. Such persons’ eligibility for relocation assistance and payments under the URA is not impacted by this waiver.

IV.F.7. RARAP Section 104(d), CDBG–DR grantees must certify that they have in effect and are following a RARAP as required by section 104(d)(1) and (2) of the HCCA and 24 CFR 42.325. In addition to the requirements in 24 CFR 42.325 and 24 CFR 570.488 or 24 CFR 570.606(c), as applicable, HUD is specifying the following alternative requirements:

Grantees who are following an existing RARAP for CDBG purposes must either: (1) Amend their existing RARAP; or (2) create a separate RARAP for CDBG–DR purposes, to reflect the following requirements and applicable waivers and alternative requirements as modified by the Consolidated Notice:

Grantees who do not have an existing RARAP in place because they do not manage CDBG–DR funds or do not create a separate RARAP for CDBG–DR purposes, to reflect the following CDBG–DR requirements and applicable waivers and alternative requirements as modified by the Consolidated Notice:

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

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

V. Performance Reviews

Under 42 U.S.C. 5304(e) and 24 CFR 1003.506(a), 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 (consistent process to meet its expenditure requirement), whether the grantee’s activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCCA and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

V.A. Timely Distribution and Expenditure of Funds

HUD waives the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of unobligated funds, and establishes an alternative requirement providing that each grantee must expend 100 percent of its allocation within six years of the date HUD signs the grant agreement. HUD may extend the period of performance administratively, if good cause for such an extension exists at that time, as requested by the grantee, and approved by HUD. When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee on appropriate programmatic purposes will be recaptured by HUD.

V.B. Review of Continuing Capacity

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

V.B.1. Corrective and remedial actions. To effectively administer the CDBG–DR program in a manner that facilitates recovery, particularly the alternative requirements permitting states to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for states in accordance with the authorities for CDBG Entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR 570.494. In response to a deficiency, HUD may issue a warning letter followed by a corrective action plan that may include a management plan which assigns responsibility for further administration of the grant to specific entities or persons. Failure to comply with a corrective action may result in the termination, reduction, or limitation of payments to grantees receiving CDBG–DR funds.

V.B.2. Reduction, withdrawal, or adjustment of a grant, or other appropriate action. Before a reduction, withdrawal, or adjustment of a CDBG–DR grant, or other actions taken pursuant to this section, the recipient shall be notified of the proposed action and be given an opportunity for an informal consultation. Consistent with the procedures described in the Consolidated Notice, HUD may adjust, reduce, or withdraw the CDBG–DR grant (except funds that have been expended for eligible, approved activities) or take other actions as appropriate.

V.B.3. Additional criteria and specific conditions to mitigate risk. To ensure effective grantee implementation of the financial controls, procurement processes, and other procedures that are the subject of the certification by the Secretary, HUD has and may continue to establish specific criteria and conditions for each grant award as provided for at 2 CFR 200.206 and 200.208, respectively, to mitigate the risk of the grant. The Secretary shall specify any such criteria and the resulting conditions in the grant conditions governing the award. These criteria may include, but need not be...
limited to, a consideration of the internal control framework established by the grantee to ensure compliant implementation of its financial controls, procurement processes and payment of funds to eligible entities, as well as the grantee’s risk management strategy for information technology systems established to implement CDBG–DR funded programs. Additionally, the Secretary may amend the grant conditions to mitigate risk of a grant award at any point at which the Secretary determines a condition to be required to protect the Federal financial interest or to advance recovery.

V.C. Grantee Reporting Requirements in the DRGR System

V.C.1. DRGR-related waivers and alternative requirements. The Consolidated Notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), 24 CFR 91.520, and annual status and evaluation reports that are due each fiscal year under 24 CFR 1003.506(a). Alternatively, HUD is requiring that grantees enter information in the DRGR system on a quarterly basis through the performance reports. The information in DRGR and the performance reports must contain sufficient detail to permit HUD’s review of grantee performance and to enable remote review of grantee data to allow HUD to assess compliance and risk.

At a minimum, each grantee must:

a. Enter its action plan and amendments as described in III.C.1, including performance measures, into the Public Action Plan in DRGR;

b. Enter activities into the DRGR Action Plan at a level of detail sufficient to allow HUD to determine grantee compliance (when the activity type, national objective, and the organization that will be responsible for the activity is known);

c. Categorize activities in DRGR under a “project”;

d. Enter into the DRGR system summary information on grantee’s monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its disaster recovery programs;

e. Use the DRGR system to draw grant funds for each activity;

f. Use the DRGR system to track program income receipts, disbursements, revolving loan funds, and leveraged funds (if applicable);

g. Submit a performance report through the DRGR system no later than 30 days following the end of each calendar quarter. For all activities, the address of each CDBG–DR assisted property must be recorded in the performance report; and

h. Publish a version of the performance report that omits personally identifiable information reported in the performance reports submitted to HUD on the grantee’s official website within three days of submission to HUD, or in the event a performance report is rejected by HUD, publish the revised version, as approved by HUD, within three days of HUD approval.

The grantee’s first performance report is due after the first full quarter after HUD signs the grant agreement. Performance reports must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to CDBG–DR funds until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction did not submit a satisfactory report.

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