COMMUNITY DEVELOPMENT BLOCK GRANT MITIGATION (CDBG-MIT) GRANT AGREEMENT

Grantee's Name: Commonwealth of Puerto Rico

Tax ID Number: 6-6055879

DUNS Number: 1-25967484

Unique Federal Award Identification Number (FAIN): B-18-DP-72-0002

Appropriation Account: 86X0162

Program Accounting Code: M3T

Federal Award Date: 05/12/2021

Period of Performance Start Date: 05/12/2021

Period of Performance End Date: 05/12/2033

Date Use of Funds May Begin: September 20, 2017

Amount of Federal Funds Obligated by this action: $8,285,284,000

Amount of Federal Funds Previously Obligated: $0

Dates of Prior Obligation:

Total Amount of the Federal Award: $8,285,284,000

Federal awarding agency: Department of Housing and Urban Development

Contact information for HUD: Tennille S. Parker, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Community Planning and Development, U.S. Department of Housing and Urban Development, 451 7th Street, S.W., Room 7282, Washington, D.C. 20410

Assistance Listing: 14.228 Community Development Block Grants/State's program

Indirect cost rate for the grant: See Attachment 1

Check One: ☒Original Funding Approval **or** ☐Amendment

I. General Terms and Conditions

Statutory and Regulatory Requirements, Grantee Submissions

This grant agreement between the Department of Housing and Urban Development (HUD) and the above-named grantee is made pursuant to the authority of Public Law 115-123 (Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018) (February 9, 2018)) (the "Appropriations Act").

The grantee agrees to use the grant funds, also referred to as Community Development Block Grant Mitigation funds (CDBG-MIT), in accordance with this grant agreement. The requirements of the Appropriations Act and title I of the Housing and Community Development Act of 1974 (HCDA) (42 USC 5301 et seq.) and applicable implementing regulations at 24 CFR part 570, as now in effect and as may be amended from time to time, and as modified by waivers, alternative requirements, and other requirements described in this grant agreement and in Federal Register notices, published as of the date of this grant agreement or in the future, are hereby incorporated into and made a part of this agreement.

The grantee must comply with the applicable requirements at 2 CFR part 200, as amended. Amendments to 2 CFR 200.216 and 200.340 became effective on August 13, 2020 and amendments to the rest of 2 CFR part 200 became effective on November 12, 2020. Subsequent amendments were made to 2 CFR part 200, effective February 22, 2021. The amendments renumbered some subparts of 2 CFR part 200. Where Federal Register notices (with applicability dates preceding the amendments' effective dates) refer to specific regulations of 2 CFR part 200 that were renumbered or revised by the amendments to 2 CFR part 200, the requirements that apply to the grant are the requirements in 2 CFR part 200, as amended, notwithstanding the renumbered regulatory reference.

The grantee's submissions to HUD to obtain the grant – the grantee's action plan for mitigation (the "action plan"), implementation plan, capacity assessment, and certifications (including documentation submitted in support of certifications) – as may be modified from time to time as required or permitted by the grant requirements, are also incorporated into and made a part of this agreement.

The requirements of the *Federal Register* notice(s) as of the date of this agreement are included for convenience as Appendix A. However, as mentioned above, these *Federal Register* notice(s) refer to specific regulations of 2 CFR part 200 that have since been renumbered or revised, and where these *Federal Register* notice(s) refer to specific regulations of 2 CFR part 200 that were renumbered or revised, the requirements that apply are the requirements in 2 CFR part 200, as amended. The grant requirements may be amended from time to time by future Federal Register notices. Additional or amended grant requirements published in the *Federal Register* apply even if this grant agreement (including Appendix A) is not updated. The requirements include but are not limited to the following (with revisions to reflect 2 CFR part

200 citations in effect as of the date of this grant agreement below, identified by citations in brackets):

1. Use of CDBG-MIT

The grantee agrees that use of this grant will be consistent with its action plan and all CDBG–MIT activities will: (1) meet the definition of mitigation activities; (2) address the current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed area(s), as described in the applicable *Federal Register* notice(s), ("MID area"); (3) be CDBG-eligible activities under the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective, including additional criteria for mitigation activities and a Covered Project.

Mitigation Definition. For the purposes of this grant, 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.

Limitation on Use of Funds for Electrical Power System Enhancements. The grantee is prohibited from using CDBG–MIT funds for mitigation activities to reduce the risk of disaster-related damage to electric power systems until after HUD publishes the *Federal Register* notice governing the use of the $2 billion in Community Development Block Grant disaster recovery (CDBG-DR) funds for enhanced or improved electrical power systems. This limitation includes a prohibition on the use of CDBG–MIT funds for mitigation activities carried out to meet the matching requirement, share, or contribution for any Federally funded project that is providing funds for electrical power systems improvements until HUD publishes the *Federal Register* notice governing the use of CDBG–DR funds to provide enhanced or improved electrical power systems. After publication of HUD's electrical power systems notice, use of CDBG–MIT funds to mitigate risks to electric power systems, including the provision of non-Federal cost share for any Federally-funded activity related to electrical power systems, shall be limited to activities that meet the requirements for CDBG–MIT funds and that are not inconsistent with the requirements of HUD's electrical power systems notice and any additional requirements on the use of CDBG–MIT funds published in the electrical power systems notice.

2. Combined technical assistance and administrative expenditures cap.

The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) do not apply to the extent that they cap administration and technical assistance expenditures, limit the grantee's ability to charge a nominal application fee for grant applications for activities the grantee carries out directly, and require a dollar-for-dollar match of grantee funds for administrative costs exceeding $100,000. HUD waived 42 U.S.C. 5306(d)(5) and (6) and imposed the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed 5 percent of the grant plus 5 percent of program income generated by the grant. Under this alternative requirement, the grantee is limited to spending a

maximum of 15 percent of its total grant amount or $750 million, whichever is less, on planning costs. Planning costs subject to the 15 percent cap are those defined in 42 U.S.C. 5305(a)(12).

3. Staffing, key personnel, organizational structure, and internal audit function.

Implementation Plan and Capacity Assessment. HUD evaluated the grantee's capacity to effectively manage the funds through a review of the grantee's implementation plan and capacity assessment. The grantee must implement its CDBG–MIT grant consistent with the implementation plan and capacity assessment as approved by HUD. HUD will monitor the grantee's use of funds to determine the grantee's compliance with the implementation plan, including performance and timeliness objectives therein.

Procedures to detect and prevent fraud waste and abuse. A grantee has adequate procedures to detect and prevent fraud, waste, and abuse if it submits procedures that enhance those previously certified by HUD for the grantee's CDBG–DR grant and if those policies or procedures include: (i) The criteria to be used to evaluate the capacity of potential subrecipients; (ii) The frequency with which the grantee will monitor other agencies of the grantee that will administer CDBG–MIT funds, how it will enhance its monitoring of subrecipients, contractors and other program participants, how and why monitoring is to be conducted and which items are to be monitored; (iii) Enhancements to the internal auditor function established for the grantee's CDBG-DR grant, if applicable; or if the CDBG–MIT grant is to be administered by an agency that does not administer a CDBG–DR grant, how the internal auditor function is to be established and resourced. The internal audit function must provide both programmatic and financial oversight of grantee activities and the submission must include a document signed by the internal auditor that describes his or her role in detecting fraud, waste, and abuse.

3. Payment

The grantee's requests for payment, and the Federal Government's payments upon such requests, must comply with 31 CFR part 205. The grantee must use procedures to minimize the time elapsing between the transfer of grant funds and disbursement of funds by the grantee to units of general local government. Grantees must also have procedures in place, and units of general local government must use these procedures to minimize the time elapsing between the transfer of funds by the grantee and disbursement for CDBG activities. 24 CFR 570.489(c).

4. Registration.

The grantee shall comply with requirements established by the Office of Management and Budget (OMB) concerning the Dun and Bradstreet Data Universal Numbering System (DUNS), the System for Award Management (SAM.gov), and the Federal Funding Accountability and Transparency Act as provided in 2 CFR part 25, Universal Identifier and Central Contractor Registration, and 2 CFR part 170, Reporting Subaward and Executive Compensation Information.

5. Subrecipients.

Carrying out activities with subrecipients. Eligible activities may be carried out by the grantee, subject to state law and consistent with the requirement of 24 CFR 570.200(f), through assistance provided under agreements with subrecipients. For a grantee taking advantage of the waiver to carry out activities directly through subrecipients, the requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply.

The grantee continues to be responsible for civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489(g) and (h) relating to conflicts of interest, and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

A State grantee may carry out activities in tribal areas. The grantee shall coordinate with the Indian tribe with jurisdiction over the tribal area when providing CDBG–MIT assistance to beneficiaries in tribal areas. If the grantee carries out projects in tribal areas, either directly or through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients, the grantee must obtain the consent of the Indian tribe with jurisdiction over the tribal area to allow the grantee to carry out or to fund CDBG–MIT projects in the area. Indian tribes that receive CDBG-MIT funding from the grantee must comply with applicable nondiscrimination requirements (see 24 CFR 1003.601).

Evaluation of the capacity of potential subrecipients. The grantee shall adhere to the criteria for the evaluation of potential subrecipients as provided in the documentation submitted in support of its certifications regarding procedures to detect fraud, waste and abuse.

Subrecipient monitoring and management. The provisions of [2 CFR 200.331] through [200.333] apply to the grantee's use of subrecipients. 24 CFR §570.489 (m).

Subrecipient Audit: Subrecipients are subject to 24 CFR 570.502 and therefore are required to comply with the audit requirements in 2 CFR part 200, subpart F. The grantee shall develop and administer an audits management system to ensure that audits of units of general local government are conducted in accordance with 2 CFR part 200, subpart F, pursuant to 24 CFR §570.489(n).

Responsibility for review and handling of noncompliance. The grantee shall make reviews and audits, including onsite reviews of any subrecipients, designated public agencies, and local governments, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCDA, as amended, and as modified by applicable ***Federal Register*** notices. In the case of noncompliance with these requirements, the grantee shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The grantee shall establish remedies for noncompliance by any designated subrecipients, public agencies, or local governments.

Administrative Cap Includes Subrecipient Administrative Costs. Five percent of the grant plus five percent of program income may be used for administrative costs by the grantee, units of

general local government, or by subrecipients. Thus, the total of all costs classified as administrative for any CDBG-MIT grantee must be less than or equal to the five percent cap.

Fraud-Related Training for Subrecipients. The grantee shall attend and require subrecipients to attend fraud-related training provided by HUD OIG to assist in the proper management of CDBG–MIT grant funds. Additional information about this training will be posted on the HUD website.

Change of use of real property rule includes subrecipients. The grantee is subject to the waiver and alternative requirement applicable to the change of use of real property rule. All references to ‘‘unit of general local government’’ in 24 CFR 570.489(j) shall be read as ‘‘State, unit of general local government (UGLG) or State subrecipient.’’

Reimbursement for Subrecipient Costs. The provisions of 24 CFR 570.489(b) are applied to permit the grantee to charge to the CDBG-MIT grant eligible pre-award costs incurred by itself, its recipients or subrecipients (including public housing authorities (PHAs)) that are associated with CDBG-MIT funds and comply with grant requirements. The Department requires the grantee to include all pre-award activities in its action plan.

CDBG–MIT funds shall not be used to reimburse homeowners, businesses or entities (other than grantees, local governments, and subrecipients described above) for mitigation activities completed prior to September 4, 2019.

Procurement.

For all contracts procured by subrecipients for contractors used to provide discrete services or deliverables only: (a) The subrecipient is required to clearly state the period of performance or date of completion in all contracts; (b) The subrecipient must incorporate performance requirements and liquidated damages or, for administrative and consultant contracts, penalties, into each procured contract (contracts that describe work performed by general management consulting services need not adhere to this requirement); and (c) The subrecipient may contract for administrative support but may not delegate or contract to any other party any inherently governmental responsibilities related to management of the grant, such as oversight, policy development, monitoring, internal auditing, and financial management.

Timely Expenditures. To meet the requirement for adequate procedures to determine timely expenditures, the procedures must describe how the grantee will monitor expenditures of its subrecipients.

Flood Insurance. Subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements.

Implementation Plan and Capacity Assessment. The grantee’s implementation plan and capacity assessment must describe how it will ensure effective communication and coordination between State and local departments and divisions involved in the design and implementation of

mitigation planning and projects, including, but not limited to subrecipients responsible for implementing the grantee's action plan.

Subrecipient Program Income. Under this agreement, the definition of "program income" includes gross income generated from the use of CDBG–MIT funds that are received by a subrecipient, except as provided in the requirements related to Revolving Funds, but does not include the total amount of funds that is less than $35,000 received by a subrecipient or 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 (which may include subrecipients.

The grantee may permit a local government or Indian tribe that receives or will receive program income to retain the program income but are not required to do so. If the grantee provides CDBG–MIT funds to a local government and permits local governments to retain program income, or the grantee permits subrecipients to retain program income prior to grant closeout, the grantee must establish program income accounts in the Disaster Recovery Grant Reporting (DRGR) system. In addition to the regulations addressing program income found at 24 CFR 570.489(e) and 570.504, the grantee may transfer program income before closeout to any annual CDBG-funded activities carried out by a local government within the State.

Revolving loan funds. Subject to the other requirements on revolving funds that apply to the use of grant funds, the grantee may permit local governments to establish revolving funds to carry out specific, identified mitigation activities, and may also establish a revolving fund to distribute funds to local governments to carry out specific, identified mitigation activities. However, no revolving fund shall be directly funded or capitalized with CDBG–MIT grant funds, pursuant to 24 CFR 570.489(f)(3).

Optional relocation policies of subrecipients. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee level. This waiver permits the grantee to establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies.

Cost principles applicable to Subrecipients. As required by the regulation at 24 CFR §570.489(p), the grantee must ensure that costs incurred by its subrecipients are in conformance with 2 CFR part 200, subpart E. All cost items described in 2 CFR part 200, subpart E, that require Federal agency approval are allowable without prior approval of HUD, to the extent that they otherwise comply with the requirements of 2 CFR part 200, subpart E, and are otherwise eligible, except for the following:

(1) Depreciation methods for fixed assets shall not be changed without the express approval of the cognizant Federal agency (2 CFR 200.436).

(2) Fines, penalties, damages, and other settlements are unallowable costs to the CDBG program (2 CFR 200.441).

(3) Costs of housing (*e.g.*, depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445).

(4) Organization costs (2 CFR 200.455).

Underwriting. The grantee and its 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 Part 570. https://www.ecfr.gov/cgi-bin/text-idx?SID=7d3cce71b6a1bbdc3f81715006fbae37&mc=true&node=pt24.3.570&rgn=div5#ap24.3.570.0000_0nbspnbspnbsp.a

Tracking oversight activities in the DRGR system. The grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its mitigation activities. The grantee's Quarterly Performance Report (QPR) will include a summary indicating the number of grantee oversight visits and reports. Any instances of fraud, waste, or abuse identified should be referred to the HUD OIG Fraud Hotline (phone: 1–800–347–3735 or email: *hotline@hudoig.gov*). Grantees must establish internal controls to ensure that no personally identifiable information shall be reported in DRGR.

Certifications. In its application, the grantee certified that any subrecipient carrying out an activity with CDBG–MIT funds, possess(es) the legal authority to carry out the program for which it is seeking funding in accordance with applicable requirements. The grantee also certified in its application submissions that any subrecipient or administering entity currently has or will develop and maintain the capacity to carry out mitigation activities in a timely manner.

7. Cost Verification.

The grantee will apply the cost principles at 2 CFR part 200, subpart E to all CDBG-MIT expenditures, including the requirement that costs be necessary and reasonable for the performance of the CDBG–MIT grant.

The grantee shall implement the CDBG-MIT programs and projects in accordance with the controls described in its action plan, as amended, for assuring that construction costs are reasonable and consistent with market costs at the time and place of construction.

8. Implementation of a Covered Project

HUD established additional requirements specific to the implementation of a Covered Project, as defined in the applicable *Federal Register* notice(s).

Prior to the grantee's execution of a contract for the construction, rehabilitation, or reconstruction of an approved Covered Project the grantee shall have: (a) engaged an independent, third-party entity (e.g., a cost estimator) to verify the planned project costs and cost

changes to the contract during implementation to determine the costs of the contract and any changes to the contract are reasonable; (b) secured the certification of a licensed design professional stating that the project design or redesign meets a nationally recognized design and performance standard applicable to the project, including, if applicable, criteria recognized by FEMA for a project of its type, pursuant to FEMA's Hazard Mitigation Assistance Guidance and Hazard Mitigation Assistance Guidance Addendum; and (c) established a plan for financing the operation and maintenance of the project during its useful life.

9. Additional Criteria to Meet a National Objective

The grantee is subject to the following requirements in order to ensure that the use of CDBG-MIT funds is consistent with the mitigation purposes for which funds were provided.

Additional criteria applicable to all mitigation activities funded with CDBG-MIT funds. The provisions of 24 C.F.R. 570.483(e) and 570.208(d) are modified by an alternative requirement to add the following additional criteria for all mitigation activities funded with CDBG-MIT funds. To meet a national objective, all CDBG-MIT funded activities must:

(i) Demonstrate the ability to operate for the useful life of the project; and each grantee must plan for the long-term operation and maintenance of infrastructure and public facility projects funded with CDBG-MIT funds. The grantee must have a plan to fund the long-term operation and maintenance for CDBG-MIT projects.

(ii) Be consistent with other mitigation activities. The CDBG-MIT activity must be consistent with the other mitigation activities that the grantee will carry out with CDBG-MIT funds in the MID area. To be consistent, the CDBG-MIT activity must not increase the risk of loss of life or property in a way that undermines the benefits from other uses of CDBG-MIT funds in the MID area.

Additional criteria applicable to Covered Projects funded with CDBG-MIT funds. The provisions of 24 C.F.R. 570.483(e) and 570.208(d) are modified by an alternative requirement to add the following additional criteria for Covered Projects funded with CDBG-MIT funds. Pursuant to the applicable *Federal Register* notices to meet a national objective, all Covered Projects must: (i) Demonstrate long-term efficacy and fiscal sustainability; and (ii) Demonstrably benefit the MID area.

Prohibition on use of slum and blight national objective. Unless a grantee has received prior approval from HUD, CDBG-MIT funded activities cannot meet the CDBG national objective for the elimination of slum and blight as provided at 24 CFR 570.208(b) and 24 CFR 570.483(c).

10. Program Income

HUD waived applicable program income rules at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), 570.500 and 570.504 only to the extent necessary to provide additional flexibility to the grantee as described below. The alternative requirements provide guidance regarding the use of program income received before and after grant close out and address revolving loan funds.

When income is generated by an activity that is only partially assisted with CDBG–MIT funds, the income shall be prorated to reflect the percentage of CDBG–MIT funds used (*e.g.,* a single loan supported by CDBG–MIT funds and other funds; a single parcel of land purchased with CDBG-MIT funds and other funds). Program income includes, but is not limited to, the following:

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

Proceeds from the disposition of equipment purchased with CDBG–MIT funds.

Gross income from the use or rental of real or personal property acquired by the grantee, local government, or subrecipient thereof with CDBG–MIT funds, less costs incidental to generation of the income (*i.e.*, net income).

Net income from the use or rental of real property owned by the grantee, local government, or subrecipient thereof, that was constructed or improved with CDBG–MIT funds.

Payments of principal and interest on loans made using CDBG–MIT funds.

Proceeds from the sale of loans made with CDBG–MIT funds.

Proceeds from the sale of obligations secured by loans made with CDBG–MIT funds.

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

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

Gross income paid to the grantee, local government, or a subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG–MIT assistance.

"Program income" does not include the following: The total amount of funds that is less than $35,000 received in a single year and retained by the grantee, local government, or a subrecipient thereof; 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.

*Retention of program income***.** The grantee may permit a local government or Indian tribe that receives or will receive program income to retain the program income, but are not required to do so.

Program income—use, closeout, and transfer. Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue mitigation activities, is treated as additional CDBG–MIT funds subject to the grant

requirements and grant agreement must be used for mitigation activities in accordance with the grantee's action plan. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in the Revolving Loan Requirements and Repair, operation and maintenance of certain CDBG–MIT projects.

In addition to the regulations addressing program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: The grantee may transfer program income to its annual CDBG program before closeout of the grant that generated the program income. In addition, the grantee may transfer program income before closeout to any annual CDBG-funded activities carried out by a local government within the State. Program income received by the grantee after closeout of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. In all cases, any program income received that is *not* used to continue the mitigation activity will not be subject to the waivers and alternative requirements that apply to the CDBG-MIT grant. Rather, those funds will be subject to the grantee's regular CDBG program rules.

Revolving loan funds. The grantee and local governments may establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities generate payments used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities.

The grantee may also establish a revolving fund to distribute funds to local governments to carry out specific, identified activities. The same requirements, outlined above, apply to this type of revolving loan fund. Note that 24 CFR 570.489(f)(3) provides that no revolving loan fund shall be directly funded or capitalized with CDBG–MIT grant funds.

Repair, operation and maintenance of certain CDBG–MIT projects. The grantee may request a waiver from HUD for the use of program income to reimburse its agencies for the repair, operation and maintenance of publicly owned and operated projects funded with CDBG–MIT funds, according to the requirements published in the *Federal Register* notice(s) for the use of program income for this purpose by local government grantees.

Tracking program income in the Disaster Recovery Grant Reporting (DRGR) System. The grantee must use the DRGR system to draw grant funds. The grantee must also use the DRGR system to track program income receipts, disbursements, revolving loan funds, and leveraged funds (if applicable). If the grantee provides CDBG-MIT funds to a local government and permits local governments to retain program income, or the grantee permits subrecipients to retain program income prior to grant closeout, the grantee must establish program income accounts in the DRGR system. The DRGR system requires grantees to use program income

before drawing additional grant funds and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

11. Environmental and Flood Insurance:

Assumption of Responsibilities for Environmental Review. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to section 104(g) of title I and published in 24 CFR part 58.

Flood insurance. The grantee, 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, prior to providing assistance.

12. Amendments

The streamlined citizen participation requirements include substantial amendment criteria. Before the grantee submits any substantial amendment to the action plan, the grantee will publish the proposed amendment. The manner of publication must include prominent posting on the grantee's official website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the amendment's contents.

The grantee must provide a 30-day public comment period and reasonable method(s) (including electronic submission) for receiving comments on the substantial amendment. In its action plan, the grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: The addition of a CDBG–MIT Covered Project; A change in program benefit or eligibility criteria; the addition or deletion of an activity; or the allocation or reallocation of a monetary threshold specified by the grantee in its action plan. The grantee may substantially amend the action plan if it follows the same procedures required for the preparation and submission of a CDBG-MIT action plan, provided, however, that a substantial action plan amendment shall require a 30-day public comment period and shall be subject to public hearings to the extent required by the applicable *Federal Register* notices.

The grantee must notify HUD, but is not required to seek public comment, when it makes any plan amendment that is not substantial. HUD must be notified at least 5 business days before the amendment becomes effective. However, every amendment to the action plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's website. The Department will acknowledge receipt of the notification of nonsubstantial amendments via email within 5 business days. Nonsubstantial amendments shall be numbered in sequence with other nonsubstantial and substantial amendments and incorporated into the action plan.

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

The grantee must make any substantial amendments available to the public on its website and on request. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and those with limited English proficiency.

13. Procurement

The grantee must comply with the procurement requirements at 24 CFR 570.489(g), which require that when procuring property or services to be paid for in whole or in part with CDBG funds, the grantee shall follow its procurement policies and procedures. The grantee shall establish requirements for procurement policies and procedures for units of general local government and subrecipients, based on full and open competition, consistent with the requirements of 24 CFR 570.489(g), and shall require an evaluation of the cost or price of the product or service (including professional services like legal services or case management). Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the grantee. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by §570.489(h).) The grantee shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The grantee shall make subrecipient and contractor determinations in accordance with the standards in [2 CFR 200.331].

The grantee shall evaluate or require an evaluation of the cost or price of the product or service.

HUD may request periodic updates from the grantee if it uses contractors. A contractor is a third-party person or organization from which the grantee acquires good or services through a procurement process, consistent with the procurement requirements in the CDBG program regulations. HUD established an additional alternative requirement for ***all*** contracts with contractors used to provide discrete services or deliverables only, as follows:

The grantee (or procuring entity) is required to clearly state the period of performance or date of completion in all contracts;

The grantee (or procuring entity) must incorporate performance requirements and liquidated damages into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to this requirement; and

The grantee (or procuring entity) may contract for administrative support but may not delegate or contract to any other party any inherently governmental responsibilities related to

management of the grant, such as oversight, policy development, monitoring, internal auditing, and financial management. Technical assistance resources for procurement are available to grantees either through HUD staff or through technical assistance providers engaged by HUD or the grantee.

14. Public Website

HUD is requiring the grantee to maintain a public website that provides information accounting for how all CDBG-MIT grant funds are used, managed and administered, including links to all action plans, action plan amendments, performance reports, CDBG–MIT citizen participation requirements, and activity/program information for activities described in the action plan, including details of all contracts and ongoing procurement policies. To meet this requirement, the grantee will make the following items available on its website: The action plan (including all amendments); each Quarterly Performance Report (QPR) (as created using the DRGR system); procurement policies and procedures; all executed contracts that will be paid with CDBG-MIT funds; and the status of services or goods currently being procured (e.g., phase of the procurement, requirements for proposals, etc.).

15. Audits

Audits of the grantee and units of general local government shall be conducted in accordance with 2 CFR part 200, subpart F, which implements the Single Audit Act. The grantee shall develop and administer an audits management system to ensure that audits of units of general local government are conducted in accordance with 2 CFR part 200, subpart F. 24 CFR §570.489(n).

16. Reporting

Performance review. HUD waived the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), 24 CFR 91.520, and 24 CFR 1003.506. Alternatively, HUD is requiring that grantees enter information in DRGR in sufficient detail to permit the Department's review of grantee performance on a quarterly basis through the QPR and to enable remote review of grantee data to allow HUD to assess compliance and risk. HUD-issued general and appropriation-specific guidance for DRGR reporting requirements can be found on the HUD exchange at: *https://www.hudexchange. info/programs/drgr/.*

The grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee's official website. In the event the QPR is rejected by HUD, the grantee must post the revised version, as approved by HUD, within 3 days of HUD approval. The grantee's first QPR is due after the first full calendar year quarter after HUD signs the grant agreement. For example, a grant agreement signed in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to CDBG–MIT 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.

Each QPR will include information about the uses of funds in activities identified in the DRGR action plan during the applicable quarter. This includes, but is not limited to, the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non–CDBG–MIT funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as number of housing units completed or number of low- and moderate-income persons served; and the race and ethnicity of persons assisted under direct-benefit activities. For all housing and economic development activities, the address of each CDBG–MIT assisted property must be recorded in the QPR. The grantee must not include such addresses in its public QPR; when entering addresses in the QPR, the grantee must select "Not Visible on PDF" to exclude them from the report required to be posted on its website. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed in the QPR. The grantee must include a description of actions taken in that quarter to affirmatively further fair housing, within the section titled "Overall Progress Narrative" in the DRGR system.

Use of DRGR data for HUD review and dissemination. HUD will use data entered into the DRGR action plan and the QPR, transactional data from the DRGR system, and other information provided by the grantee, to provide reports to Congress and the public, as well as to: (1) Monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department's monitoring.

17. Recordkeeping.

When the grantee carries out activities directly, 24 CFR 570.490(b) is waived and the grantee shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the grantee's administration of CDBG–MIT funds, under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the grantee shall be sufficient to: (1) Enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the grantee; and (3) 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 (FHEO) purposes, 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. The grantee must report FHEO data in the DRGR system at the activity level.

18. HUD Review and Remedies for Noncompliance

Review of continuing capacity to carry out CDBG-funded activities in a timely manner. If HUD determines that the grantee has not carried out its CDBG–MIT activities and certifications in accordance with the requirements for CDBG-MIT funds, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the grantee's performance deficiencies, types of corrective actions the grantee has undertaken, and the success or likely success of such actions, and apply corrective and remedial actions.

Corrective and remedial actions. To ensure compliance with the requirements of the Appropriations Act and to effectively administer the CDBG–MIT program in a manner that facilitates recovery, particularly the alternative requirements permitting the grantee to act directly to carry out eligible activities, HUD waived 42 U.S.C. 5304(e) to the extent necessary to establish the following alternative requirement: HUD may undertake corrective and remedial actions for the grantee in accordance with the authorities applicable to entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. 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 the grantee.

Reduction, withdrawal, or adjustment of a grant, or other appropriate action. Prior to a reduction, withdrawal, or adjustment of a CDBG–MIT grant, or other actions taken pursuant to this section, the grantee shall be notified of the proposed action and be given an opportunity for an informal consultation. Consistent with the procedures described in this agreement, the Department may adjust, reduce, or withdraw the CDBG–MIT grant or take other actions as appropriate, except for funds that have been expended for eligible, approved activities.

19. Duration of Funding

The Appropriations Act requires that funds be expended within two years of the date that HUD obligates funds to a grantee, but also authorizes the Office of Management and Budget (OMB) to provide a waiver of this requirement. OMB has waived this requirement for CDBG-MIT funds appropriated under the Public Law 115-56 and the Appropriations Act.

Notwithstanding the OMB waiver, however, the grantee is subject to the period of performance identified in this grant agreement.

The grantee is required to expend fifty percent of this CDBG–MIT grant on eligible activities within six years of HUD's execution of this grant agreement and one hundred percent

of this grant within twelve years of HUD's execution of the agreement absent a waiver and alternative requirement as requested by the grantee and approved by HUD.

Further, consistent with 31 U.S.C. 1555 and OMB Circular No. A–11, if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for two consecutive fiscal years, any remaining unobligated balance will be made unavailable for obligation or expenditure.

20. Closeout

HUD will close out the grant in accordance with the grant closeout requirements of [2 CFR 200.344].

II. Specific Conditions

1. Program Risk: With respect to the use of grant funds, the grantee must comply with the requirements of section 21210 of the Appropriations Act and requirements of the Puerto Rico Oversight, Management and Economic Stability Act, 48 U.S.C. 2101 *et seq.* (PROMESA).

2. Community Engagement Risk. Based on the risk posed by the grantee's lack of experience in administering a CDBG-MIT grant, particularly experience in engaging the community after a major disaster, within 120 days of execution of this grant agreement, the grantee must update its Citizen Participation Plan to include specific outreach actions designed to mitigate risks from public pressure and lack of broad community input in the identification of mitigation needs.

3. Financial Management Capacity Risk. Based on the risk posed by the grantee's limited financial management staff capacity and to ensure compliant implementation of the grantee's internal control framework, the grantee must maintain and adhere to the policies and procedures for its established Financial Management System and internal control framework or submit to HUD a new plan with a schedule for otherwise obtaining and maintaining the necessary financial management capacity.

   So that HUD can better monitor the grantee's financial management capacity, the grantee shall provide, via upload in DRGR, support documentation for each voucher drawdown request made in DRGR for its CDBG-MIT grant. The grantee shall continue to upload support documentation for its voucher drawdown requests in DRGR until completion of HUD's first two on-site monitoring reviews and the grantee's resolution of any significant findings that result from those reviews.

4. Policies and procedures. To address the risks caused by the scale and complexity of the grantee's programs, the grantee shall submit the final policies and procedures for implementation of activities to HUD within 30 days of HUD's execution of the grant agreement or before the grantee awards funds to subrecipients, whichever is later.

5. Additional implementation plan capacity assessment requirements. To reduce risk of noncompliance due to inadequate financial management capacity and program complexity, the grantee shall submit evidence that it has secured or is in the process of securing staff and contractors necessary to effectively implement CDBG-MIT funded programs and projects. Staff and contractors must be identified by the grantee in a Staff Analysis Worksheet. The Staff Analysis Worksheet must be submitted within 90 days of this grant agreement as a supplement to the grantee's pre-grant implementation and capacity assessment submission. The Worksheet must show all staff that are in place and all of their responsibilities, including:

   - staff that have responsibilities for program-related civil rights compliance;

- staff responsible for contractor oversight;
- staff responsible for the financial oversight of funds and implementation of programs associated with the obligation; and,
- staff responsible for fraud prevention and their specific responsibilities.

After receiving the Staff Analysis Worksheet, HUD may establish a special condition requiring the grantee to hire specific staff positions that HUD determines are critical to the grantee's implementation of CDBG-MIT funded programs and projects. Any specific position required by HUD must be advertised within 90 days of HUD's inclusion of a specific position in a grant condition and filled within 90 days following advertisement. To reduce the risk of noncompliance within a particular program or project due to lack of staff capacity, when HUD requires the grantee to hire a specific position, a portion of CDBG-MIT funds the Grantee designated at risk of noncompliance shall remain in a restricted balance in the DRGR system until HUD receives evidence that the grantee has advertised and filled the required staff positions. The amount of the restricted balance will be identified in the grant condition, and will be based on HUD's determination of the amount that will allow the grantee to undertake initial work to support the launch of the at-risk activity, but will reduce the risk by adding staff capacity before incurring significant activity implementation costs.

6. Grantee Oversight of Other Entities. Based on the risk of noncompliance with grant requirements due to the use of subrecipients and agencies or instrumentalities of the Commonwealth of Puerto Rico that receive a subaward or otherwise carry out any part of this grant (Commonwealth Agencies) that do not have experience administering CDBG-DR or CDBG-MIT grants, the grantee must do the following:

    (a) Within 90 days of the execution of the grant agreement or later date if extended by HUD, the grantee must provide an updated monitoring plan for overseeing the performance of subrecipients and Commonwealth Agencies under the approved action plan for CDBG-MIT that includes: a plan to monitor the activities of the subrecipient or Commonwealth Agency as necessary to ensure that the funds are used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions that apply to the use of the funds, and that performance goals are achieved, including:

        (1) Review of financial and performance reports required by the grantee;

        (2) Review of expenditures to determine that all uses of funds conform to the cost principles at 2 CFR Part 200, Subpart E – Cost Principles, and are net of all applicable credits;

(b) Determine whether specific conditions on subawards to subrecipients or in interagency agreements with Commonwealth Agencies are needed and impose specific conditions as needed in accordance with [2 CFR §200.208].

(c) Based on the subrecipient's or Commonwealth Agency's risk of noncompliance, ensure proper accountability and compliance with program requirements and achievement of performance goals by:

i. Providing the subrecipient and Commonwealth Agency with training and technical assistance on program-related matters.

ii. Submitting policies and procedures that describe how, based on risk, the grantee will perform on-site reviews of the subrecipient and Commonwealth Agency's program operations and arrange for agreed-upon-procedures engagements as described in 2 CFR 200.425;

(d) For subrecipients only, verify that every (where not included in the audit of the grantee) subrecipient is audited as required by Subpart F—Audit Requirements of 2 CFR part 200 when it is expected that the subrecipient's subaward expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR §200.501 Audit requirements.

(e) Consider whether the results of the subrecipient and Commonwealth Agency's audits, on-site reviews, or other monitoring necessitate adjustments to the grantee's own records.

(f) Enforce all interagency agreements with Commonwealth Agencies and take enforcement action against noncompliant subrecipients as described in [2 CFR §200.339] Remedies for noncompliance of this part and in program regulations.

(g) Update the monitoring plan in accordance with this condition if after submittal of an updated monitoring plan, a new subrecipient or Commonwealth Agency is added/changed or an action plan amendment affects staff or contractors.

7. Fiscal Distress Risk. Based on the financial risk posed by the grantee's fiscal distress (as evidenced by ongoing debt restructuring pursuant to the PROMESA, the grantee must comply with the requirements of the October 26, 2017 "ORDER GRANTING URGENT JOINT MOTION OF THE COMMONWEALTH OF PUERTO RICO, PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY, PUERTO RICO ELECTRIC POWER AUTHORITY, AND THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY FOR ORDER CONCERNING RECEIPT AND USE OF ANTICIPATED FEDERAL DISASTER RELIEF FUNDS AND PRESERVING

RIGHTS OF PARTIES," as may be amended from time to time by the United States District Court for the District of Puerto Rico or other court with jurisdiction (the Order).

As required by the Order, grant funds received by the Commonwealth or other Non-Federal entity (as defined by [2 CFR 200.1]) shall be deposited solely into Disaster Relief Accounts, meaning a new, segregated, non-co-mingled, unencumbered account held in the name of the Commonwealth or of the Non-Federal entity to whom the funds have been provided, and shall be used solely for eligible activities. Evidence of the Disaster Relief Account held by the Commonwealth must be provided to HUD within 60 days of the date of this grant agreement with the submission of a completed SF-1199 (direct deposit form) or other similar form specified by HUD. The grantee must maintain documentation of the Disaster Relief Accounts held by other Non-Federal entities that receive grant funds from the grantee.

THE UNDERSIGNED, as authorized officials on behalf of the Grantee or the Secretary, have executed this **COMMUNITY DEVELOPMENT BLOCK GRANT MITIGATION (CDBG-MIT) GRANT AGREEMENT**, which shall be effective as of the date of execution by the Secretary.

Department of Housing
GRANTEE

BY: _____
(Signature)

William O. Rodríguez Rodríguez
(Name)

Secretary
(Title)

May 5, 2021
(Date)

HOUSING AND URBAN DEVELOPMENT

BY: JESSIE KOME Digitally signed by JESSIE KOME Date: 2021.05.12 13:57:50 -04'00'
(Signature)

Jessie Handforth Kome
(Name)

DIrector, Office of Block Grant Assistance
(Title)

May 12, 2021
(Date)

Attachment 1

The grantee shall submit a schedule of its indirect cost rate(s) in the format set forth. The grantee shall provide HUD with a revised schedule when any change is made to the rate(s) described in the schedule.

The schedule and any revisions HUD receives from the grantee shall be incorporated and made a part of the grant agreement, provided that the rate(s) described comply with 2 CFR part 200, subpart E.

Administering Department/Agency	Indirect Cost Rate	Direct Cost Base
PRDOH	1.39 %	$440,241,610
	%	
	%	
	%	
	%	
	%	

Instructions: The grantee must identify each agency or department of the grantee that will carry out activities under the grant, the indirect cost rate applicable to each department/agency, and the type of direct cost base to which the rate will be applied. Do not include indirect cost rates for subrecipients. A governmental department or agency unit that receives more than $35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs.

Appendix A

Table of Contents

I. Overview

This appendix contains the general requirements for Community Development Block Grant Mitigation (CDBG-MIT) grants for mitigation activities under the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, Pub. L. 115-123, approved February 9, 2018) (the "Appropriations Act"). This appendix describes some deadlines that have already passed. The requirements and deadlines are described here for convenience...

The grant requirements may be amended from time to time by future notices. Additional or amended grant requirements published in the Federal Register apply even if this appendix is not updated.

This appendix does not substantively revise the requirements published in the Federal Register. For convenience, this appendix also describes the allocations and overview of the grant process for CDBG-MIT grants as described in the notice published on August 30, 2019 titled "Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees" (84 FR 45838) ("CDBG-MIT Main Notice").

Unless otherwise noted, the effective date of the requirements in the CDBG-MIT Main Notice as described in this appendix is September 4, 2019 (the applicability date of the CDBG-MIT Main Notice).

I.A. *Policy Objectives*

The Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, Pub. L. 115-123, approved February 9, 2018) (the "Appropriations Act"), made available $28 billion in Community Development Block Grant disaster recovery (CDBG-DR) funds, and directed HUD to allocate not less than $12 billion for mitigation activities proportional to the amounts that CDBG-DR grantees received for qualifying disasters in 2015, 2016, and 2017. The CDBG-MIT Main Notice accordingly allocates $6,875,044,000 in CDBG-MIT funds for mitigation activities consistent with the Appropriations Act.

CDBG-MIT funds represent a unique and significant opportunity for grantees to use this assistance in areas impacted by recent disasters to carry out strategic and high-impact activities to mitigate disaster risks and reduce future losses. While it is impossible to eliminate all risks, CDBG-MIT funds will enable grantees to mitigate against disaster risks, while at the same time allowing grantees the opportunity to transform State and local planning.

Through this allocation for mitigation, HUD seeks to:

- Support data-informed investments in high-impact projects that will reduce risks attributable to natural disasters, with particular focus on repetitive loss of property and critical infrastructure;
- Build the capacity of States and local governments to comprehensively analyze disaster risks and to update hazard mitigation plans through the use of data and meaningful community engagement;
- Support the adoption of policies that reflect local and regional priorities that will have long-lasting effects on community risk reduction, to include the risk reduction to community lifelines such as Safety and Security, Communications, Food, Water, Sheltering, Transportation, Health and Medical, Hazardous Material (management) and Energy (Power & Fuel); and future disaster costs (e.g. adoption of forward-looking land use plans that integrate the hazard mitigation plan, latest edition of the published disaster-resistant building codes and standards (to include wildland urban interface, flood and all hazards, ASCE-24, and ASCE-7 respectively), vertical flood elevation protection, and policies that encourage hazard insurance for private and public facilities); and
- Maximize the impact of available funds by encouraging leverage, private-public partnerships, and coordination with other Federal programs.

The guiding structure and objectives established for CDBG-MIT funds bear similarities to other federal programs that address hazard mitigation, particularly FEMA's Hazard Mitigation Grant Program (HMGP). Accordingly, HUD has structured the CDBG-MIT Main Notice and its requirements to complement HMGP policies and processes where possible. For example, both CDBG-MIT funds and FEMA HMGP funds require grantees to conduct a multi-hazard risk assessment to inform projects and programs. Additionally, a grantee's use of CDBG-MIT funds will be focused on effectively addressing risks to indispensable services that enable the continuous operation of critical business and government functions, and that are critical to the protection of human health and safety, or economic security, as described in section V.A.2.a.(1) of the CDBG-MIT Main Notice.

The Appropriations Act provides CDBG-MIT funds as a supplemental appropriation to the Community Development Block Grant (CDBG) program. Accordingly, the alignment of CDBG-MIT funds with other federal mitigation programs must also occur within the basic CDBG framework. The national objectives of the CDBG program are: a) providing benefit to low- and moderate-income persons; b) preventing or eliminating slum and blighting conditions; or c) addressing a severe and recently arising urgent community welfare or health need. Unlike other forms of Federal disaster recovery assistance, CDBG-DR and CDBG-MIT grants have a statutory focus on benefiting vulnerable lower-income people and communities and targeting the most impacted and distressed areas.

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 proposed use of all funds including the criteria for eligibility and how the use of these funds will address mitigation in the most impacted and distressed (MID) areas. The Appropriations Act also provides HUD with waiver authority that enabled HUD to modify the basic CDBG requirements to support hazard mitigation when needed. However, there are several statutory requirements under the basic CDBG framework (e.g., requirements related to labor standards, nondiscrimination, the environment and fair housing) which HUD is not authorized to waive. Because this framework will largely remain intact throughout the CDBG-MIT Main Notice and to ensure compliance with all applicable program requirements, HUD strongly encourages grantees to designate the agency that administers its CDBG-DR funds to also administer this CDBG-MIT grant.

The CDBG-MIT Main Notice also balances the goals of aligning mitigation policies across federally-funded programs, maximizing efficiencies, and preserving critical aspects of the CDBG structure. As discussed in section V.A. of the CDBG-MIT Main Notice, Grant Administration and Action Plan Requirements, grantees are encouraged to use CDBG-MIT planning funds to update the FEMA-approved Hazard Mitigation Plans (HMP) and are required to reference the applicable FEMA HMP in their action plan and describe how the HMP has informed the CDBG-MIT action plan. Grantees may also use these funds for planning activities, including but not limited to regional mitigation planning, the integration of mitigation plans with other planning initiatives, activities related to FEMA's Pre-Disaster Mitigation (PDM, to be renamed Building Resilient and Infrastructure Communities (BRIC) as part of implementation of section 1234 of the Disaster Recovery Reform Act of 2018, which amended section 203 of the Stafford Act (42 U.S.C. 5133)) and Flood Mitigation Assistance (FMA), modernizing building codes and regional land-use plans, and upgrading mapping, data, and other capabilities to better understand evolving disaster risks. For example, in wildland fire risk areas, grantees may use these funds to develop a Community Wildfire Protection Plan (CWPP). Additionally, State grantees are encouraged to use CDBG-MIT planning funds to meet the additional requirements for an e*nhanced* HMP and for eligible CDBG-MIT activities that increase a grantee's capacity to participate in FEMA's HMGP Program Administration by States (PAS) initiative. This use of CDBG-MIT funds, in combination with FEMA HMGP assistance, will have long-term benefits by supporting high-quality mitigation planning, building a foundation for continuous coordination and data-driven outcomes, and providing common goals for selecting high impact projects across multiple programs and funding sources.

HUD recognizes that the first-time appropriation of mitigation-only CDBG funds may pose challenges to grantees in aligning their mitigation strategies and activities with their obligation to use most of their CDBG-MIT funds to benefit low- and moderate-income persons and to use the funds in the MID areas resulting from a disaster. Accordingly, the CDBG-MIT Main Notice provides grantees with flexibility on the

percentages related to a CDBG-MIT grant's overall benefit requirement and MID expenditure requirement. As with CDBG-DR, HUD encourages CDBG-MIT grantees to consider a wide range of community development objectives related to recovery and economic resilience. The CDBG-MIT Main Notice provides a waiver and establishes an alternative requirement to include new urgent need national objective criteria that are applicable to CDBG-MIT funds only, as described in section V.A.13. of the CDBG-MIT Main Notice. This urgent need mitigation (UNM) national objective requires activities funded with the CDBG-MIT grant to result in measurable and verifiable reductions in the risk of loss of life and property from future disasters and yield community development benefits. The waiver and alternative requirement in section V.A.13. also explains that grantees shall not rely on the national objective criteria for elimination of slum and blighting conditions without approval from HUD, because this national objective generally is not appropriate in the context of mitigation activities.

CDBG-MIT funds are to be used for distinctly different purposes than CDBG-DR funds. The amount of funding provided through this CDBG-MIT allocation and the nature of the programs and projects that are likely to be funded requires that CDBG-MIT grantees and their subrecipients strengthen their program management capacity, financial management, and internal controls. Each grantee is required to strengthen its internal audit function, specify the criteria for subrecipient selection, increase subrecipient monitoring, and establish a process for promptly identifying and addressing conflicts under the grantee's conflict of interest policy. The Department also intends to establish special grant conditions for individual CDBG-MIT grants based upon the risks posed by the grantee, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. These conditions will be designed to provide additional assurances that mitigation programs are implemented in a manner to prevent waste, fraud, and abuse and that mitigation projects are effectively operated and maintained.

While CDBG-DR and CDBG-MIT funding are valuable resources for long-term recovery and mitigation in the wake of major disasters, HUD concurrently expects that grantees will take steps to set in place substantial governmental policies and infrastructure to enhance the impact of HUD-funded investments. In some instances, this goal may be achieved through the development and application of more stringent building and zoning codes which will help to limit damage from future severe weather events. It should be noted that these actions are eligible costs under CDBG-DR or CDBG-MIT funding.

Consistent with prior CDBG-DR notices, HUD restates that disaster recovery is a partnership between Federal, state, and local government and CDBG-MIT grantees should invest in their own recovery. To sustain CDBG-MIT physical investments in the future, it is imperative that grantees collect and apply sufficient revenues for operation and maintenance costs in the outyears. HUD expects grantees to contribute to their recovery through the use of reserve or "rainy day" funds, borrowing authority, or retargeting of existing resources. The ultimate value of this mitigation funding appropriation is not limited to the projects and activities implemented with the funds but will also encompass how state and local partners are motivated to improve many of their governmental functions to better position jurisdictions to be resilient in the face of future disasters. HUD will examine how grantees plan to achieve this broader benefit and will promote best practices to future CDBG-DR grantees.

It is the policy of the Administration that the first implementation of CDBG-MIT funding be implemented in a manner that mandates careful planning, adequate oversight, and increased reporting of anticipated and actual outcomes of the uses of the mitigation funds, to inform future Federal disaster mitigation efforts, to encourage private sector funding of mitigation projects, and to maximize the benefits of CDBG-MIT funding.

The Administration cannot emphasize strongly enough the need for grantees to fully and carefully evaluate the projects that will be assisted with CDBG-MIT funds. One of the goals of CDBG-MIT is to set a nationwide standard that will help guide not just future Federal investments in mitigation and resilience activities – to include the mitigation of community lifelines, but state and local investments as well. The level of CDBG-MIT funding available to most grantees cannot address the entire spectrum of known mitigation and resilience needs. Accordingly, HUD expects that grantees will rigorously evaluate proposed projects and

activities and view them through several lenses before arriving at funding decisions, including ensuring that already committed public or private resources are not supplanted by CDBG-MIT funds.

One such lens could be a thorough consideration of projects and activities encompassed within the applicable FEMA HMP and a judgment of whether those projects/activities represent targeted strategic investments for the grantee based on current or foreseeable risks. This judgment would stand in contrast to the funding of projects/activities identified in such plans where, for example, there has been no recent review of the risk reduction value of the investment or the project/activity has been carried in the plan for years but has limited risk reduction value.

A second lens could be a consideration of the status of necessary planning and permitting efforts. To ensure that CDBG-MIT investments have the highest possible impact on long-term mitigation and resilience needs, each grantee should conduct a careful status review of planning and permitting actions for proposed projects/activities and identify those that can move forward quickly. Concurrently, this exercise can help to identify Federal regulatory relief that is critical to helping clear the path for these projects/activities. In this vein, the Administration expects that grantees will conduct a review of and make necessary changes and exceptions to their own permitting and related processes to expedite funded projects/activities. In undertaking this analysis, grantees should not succumb to the urge to select projects/activities solely because they are the most advanced in the planning and permitting process but should focus on high impact investments and a thorough understanding of what will be necessary to move those investments forward rapidly.

The CDBG-MIT Main Notice includes several waivers and alternative requirements typically established in CDBG-DR **Federal Register** notices but modified as necessary to reflect the distinct purpose of CDBG-MIT funds. The Department cannot anticipate every type of mitigation project or program that will be proposed by grantees, but these activity-based waivers and alternative requirements are intended to provide grantees with continued flexibility in the design and implementation of comprehensive mitigation programs and projects.

For purposes of the CDBG-MIT Main Notice, HUD is using the terms CDBG-MIT programs and projects to refer to the means by which grantees implement CDBG eligible activities. The CDBG-MIT Main Notice also references the general categories of infrastructure and public facilities, housing, planning and administration, public services, and economic development that grantees often use to group activities in an action plan, in the DRGR action plan, and in quarterly performance reports.

II. Use of CDBG-MIT Funds

II.A. *Mitigation Definition*.

For the purposes of the CDBG-MIT Main 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.

II.B. *Action Plan, Substantial Amendments, and Amendments for Covered Projects.*

Before the Secretary obligates CDBG-MIT funds to a grantee, the Appropriations Act requires the grantee to submit a plan to HUD for approval detailing the proposed use of all funds. All or a portion of an action plan or substantial amendment will be substantially incomplete if the plan does not include the elements required by the CDBG-MIT Main Notice. A grantee's use of CDBG-MIT funds must be consistent with its action plan.

All CDBG-MIT activities must: (1) meet the definition of mitigation activities above; (2) address the current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed areas (described below); (3) be CDBG-eligible activities under title I of the Housing and Community Development Act of 1974 (HCDA) or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective, including additional criteria for mitigation activities and Covered Projects. The action plan must describe how funded activities satisfy these requirements.

As mentioned above, the action plan must include a risk-based Mitigation Needs Assessment that identifies and analyzes all significant current and future disaster risks and provides a substantive basis for the activities proposed. To complete this assessment, grantees must consult with other jurisdictions, the private sector and other government agencies, including State and local emergency management agencies that have primary responsibility for the administration of FEMA mitigation funds, including the State Hazard Mitigation Officer (SHMO), for HMGP alignment. Grantees must also use the most recent risk assessment completed or currently being updated through the FEMA HMP process to inform the use CDBG-MIT funds. Therefore, the grantee must use the risks identified in the FEMA approved HMP as the starting point for its Mitigation Needs Assessment unless the jurisdiction is in the process of updating the HMP. If a jurisdiction is currently updating an expired HMP, the grantee administering the CDBG-MIT funds must consult with the agency administering the HMP update to identify the risks that will be included in the Mitigation Needs Assessment. The action plan must describe proposed allocations of CDBG-MIT funds that meet all of the requirements listed above in this section.

To maximize the impact of all available funds, grantees must coordinate and align these CDBG-MIT funds with other mitigation projects funded by FEMA, the U.S. Army Corps of Engineers (USACE), the U.S. Forest Service, and other agencies as appropriate. For example, in wildland fire prone areas, this would include federal and state forestry and fire agencies that carry out activities related to fire risk reduction.

Grantees must describe in their action plan how they have coordinated and will continue to coordinate with other partners who manage FEMA and USACE funds and describe the actions that they have taken to align their planned CDBG-MIT activities with other federal, state, and local mitigation projects and planning processes.

To allow for a more detailed review of larger projects, the CDBG-MIT Main Notice requires that infrastructure projects that also meet the definition of a Covered Project be included in an action plan or a substantial action plan amendment. For purposes of the CDBG-MIT Main Notice, a Covered Project is defined as an infrastructure project having a total project cost of $100 million or more, with at least $50 million of CDBG funds (regardless of source (CDBG-DR, CDBG-National Disaster Resilience (NDR), CDBG-MIT, or CDBG)). For grantees that are considered by HUD to have "unmitigated high risks," that impact their ability to implement large scale projects, HUD may impose special grant conditions, including but not limited to a lower dollar threshold for the definition of a Covered Project.

As described in section V.A.2.h. of the CDBG-MIT Main Notice and this appendix, when a grantee proposes a Covered Project, the action plan or substantial amendment must include a description of the project and the information required for other CDBG-MIT activities (how it meets the definition of a mitigation activity, consistency with the Mitigation Needs Assessment provided in the grantee's action plan, eligibility under section 105(a) of the HCDA or a waiver or alternative requirement, and national objective, including additional criteria for mitigation activities). Additionally, the action plan must describe how the Covered Project meets additional criteria for national objectives for Covered Projects (described in V.A.13. of the CDBG-MIT Main Notice and this appendix) including: consistency with other mitigation activities in the same MID area; demonstrated long-term efficacy and sustainability of the project including its operations and maintenance; and a demonstration that the benefits of the Covered Project outweigh the costs (through the methods described in V.A.2.h of the CDBG-MIT Main Notice and this appendix.).

II.C. ***Most Impacted and Distressed Areas.***

The Appropriations Act made CDBG-MIT funds available for eligible activities related to the mitigation of risks within the MID areas. The CDBG-MIT Main Notice lists the HUD-identified MID areas for each CDBG-DR grantee receiving an allocation of CDBG-MIT funds. The HUD-identified MID areas for each CDBG-MIT grant are those identified by HUD in the following **Federal Register** notices for the grantee's 2015, 2016, or 2017 CDBG-DR grants (collectively, the "Prior Notices"):

- 2015 Disasters: 81 FR 39687; 82 FR 36812;

- 2016 Disasters: 81 FR 83254; 82 FR 5591; 82 FR 36812; and
- 2017 Disasters: 82 FR 61320; 83 FR 5844; 83 FR 40314.

The amount of CDBG-MIT funding grantees must expend to mitigate risks within the HUD-identified MID areas is listed in Table 1 of the CDBG-MIT Main Notice. In some instances, HUD previously identified the entire jurisdiction of a grantee as the MID area. For all other CDBG-MIT grantees, HUD is requiring that at least 50 percent of all CDBG-MIT funds must be used for mitigation activities that address identified risks within the HUD-identified MID areas. HUD will include 50 percent of a grantee's expenditures for grant administration in its determination that 50 percent of the total award has been expended in the HUD-identified MID areas. Additionally, expenditures for planning activities may be counted towards a grantee's 50 percent MID expenditure requirement, provided that the grantee describes in its action plan how those planning activities benefit the HUD-identified MID areas.

HUD may approve a grantee's request to add other areas to the HUD-identified MID areas based upon the grantee's submission of 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. As the HUD-identified MID areas for CDBG-MIT funds are the same as those identified for each grantee in the Prior Notices, a grantee seeking to amend its HUD-identified MID area for purposes of its CDBG-MIT grant, must also amend the HUD-identified MID area for its corresponding 2015, 2016, or 2017 CDBG-DR grant. Grantees proposing to add to the HUD-identified MID area for their existing CDBG-DR grant shall do so through a substantial amendment that includes a consideration of unmet housing recovery needs. The grantee must also undertake a substantial amendment to its CDBG-MIT action plan so that the HUD-identified MID areas are the same across both grants. The grantee may submit the substantial amendments for both grants simultaneously.

Grantees may determine where to use the remaining 50 percent of the CDBG-MIT grant (the grantee-identified MID areas), but that portion of the grant must be used for mitigation activities that address identified risks within those areas that the grantee determines are most impacted and distressed resulting from the major disasters identified by the disaster numbers listed in Table 1 of the CDBG-MIT Main Notice. The grantee-identified MID areas must be determined through the use of quantifiable and verifiable data.

Grantee expenditures for eligible mitigation activities outside of the HUD-identified or grantee-identified MID area may be counted toward the MID area expenditure requirements provided that the grantee can demonstrate how the expenditure of CDBG-MIT funds outside of this area will measurably mitigate risks identified within the HUD-identified or grantee-identified MID area (e.g., upstream water retention projects to reduce downstream flooding in the HUD-identified MID area).

III. Allocations: TABLE 1 – ALLOCATIONS FOR MITIGATION ACTIVITIES

Disaster No.	State	Grantee	CDBG-MIT Allocation	Minimum amount that must be expended in the HUD-identified "most impacted and distressed" areas listed herein	HUD-identified "most impacted and distressed" areas
4344; 4353	California	State of California	$88,219,000.00	$44,109,500.00	Sonoma and Ventura counties; 93108, 94558, 95422, 95470, and 95901 Zip Codes.
4280; 4283; 4337; 4341	Florida	State of Florida	$633,485,000.00	$316,742,500.00	Brevard, Broward, Clay, Collier, Duval, Hillsborough, Lee, Miami Dade, Monroe, Orange, Osceola, Palm Beach, Polk, St. Johns, St. Lucie, and Volusia counties; 32084, 32091, 32136, 32145, 32771, 33440, 33523, 33825, 33870, 32068, 33935, and 34266 Zip Codes.
4294; 4297; 4338	Georgia	State of Georgia	$26,961,000.00	$13,480,500.00	31520, 31548, and 31705 Zip Codes.
4263; 4277; 4272	Louisiana	State of Louisiana	$1,213,917,000.00	$606,958,500.00	East Baton Rouge, Livingston, Ascension, Tangipahoa, Ouachita, Lafayette, Vermilion, Acadia, Washington, and St. Tammany Parishes
4317	Missouri	State of Missouri	$41,592,000.00	$20,796,000.00	63935, 63965, 64850, 65616, and 65775 Zip Codes.
4285	North Carolina	State of North Carolina	$168,067,000.00	$84,033,500.00	Bladen, Columbus, Cumberland, Edgecombe, Robeson, and Wayne Counties.
4241;4286	South Carolina	State of South Carolina	$157,590,000.00	$50,978,000.00	Charleston, Clarendon, Dorchester, Florence, Georgetown, Horry, Marion, Sumter, and Williamsburg Counties.
4241		Columbia	$18,585,000.00	$18,585,000.00	Columbia.
4241		Lexington County (Urban County)	$15,185,000.00	$15,185,000.00	Lexington County Urban County Jurisdictions.
4241		Richland County (Urban County)	$21,864,000.00	$21,864,000.00	Richland County Urban County Jurisdictions.
4223; 4245; 4266; 4269; 4272; 4332	Texas	State of Texas	$4,297,189,000.00	$2,105,646,500.00	Aransas, Brazoria, Chambers, Fayette, Fort Bend, Galveston, Hardin, Harris, Hays, Hidalgo, Jasper, Jefferson, Liberty, Montgomery, Newton, Nueces, Orange, Refugio, San Jacinto, San Patricio, Travis, Victoria, and Wharton counties; 75979, 77320, 77335, 77351, 77414, 77423, 77482, 77493, 77979, 78934, 78945, 77612, 75956, 77632, and 78377 Zip Codes.
4223; 4245		Houston	$61,884,000.00	$61,884,000.00	Houston.
4223; 4245		San Marcos	$24,012,000.00	$24,012,000.00	San Marcos.
4273	West Virginia	State of West Virginia	$106,494,000.00	$53,247,000.00	Greenbrier, Clay, Kanawha and Nicholas Counties.
		Total*:	$6,875,044,000.00		

*The remaining $9,059,472,000 will be allocated at a later date.

In accordance with the Appropriations Act, HUD's allocation of CDBG-MIT funds is based on each grantee's proportional share of total CDBG-DR funds allocated for all eligible disasters in 2015, 2016, and 2017.

IV. Overview of Grant Process

The grant process outlined below aligns with the typical order employed for CDBG-DR grants. However, the Department recognizes the potentially broad range of mitigation activities that may be funded pursuant to the CDBG-MIT Main Notice and the critical importance of coordinating those investments across multiple jurisdictions. Accordingly, the Department is providing extended time frames and mechanisms for on-going citizen participation in the development and implementation of plans for mitigation activities funded pursuant to the CDBG-MIT Main Notice.

To begin expending CDBG-MIT funds, the following steps are necessary:

- Grantee develops or amends its citizen participation plan for disaster recovery per the requirements in section V.A.3 of the CDBG-MIT Main Notice to provide for the mitigation funding.
- Grantee consults with stakeholders, including required consultation with affected local governments, Indian Tribes, and public housing authorities (as identified in section V.A.7. of the CDBG-MIT Main Notice).
- In accordance with the requirements in section V.A.1.a. of the CDBG-MIT Main Notice, 60 days prior to the deadline for the submission of an action plan as prescribed in section V.A.2.e of the CDBG-MIT Main Notice, the grantee submits documentation for the certification of financial controls and procurement processes, and adequate procedures for grant management.
- Grantee publishes its action plan for mitigation on the grantee's required public website for no less than 45 calendar days to solicit public comment and convenes the required amount of public hearings on the proposed plan.
- Pursuant to the date prescribed in section V.A.2.e. of the CDBG-MIT Main Notice, grantee responds to public comment and submits its action plan (which includes Standard Form 424 (SF-424) and certifications), its implementation plan and capacity assessment submissions in accordance with the requirements in section V.A.1.b. of the CDBG-MIT Main Notice, and projection of expenditures and outcomes to HUD.
- Grantee requests and receives Disaster Recovery Grant Reporting (DRGR) system access (if the grantee does not already have DRGR access) and may enter activities into the DRGR system before or after submission of the action plan to HUD. Any activities that are changed as a result of HUD's review must be updated once HUD approves the action plan.
- HUD reviews (within 60 days from date of receipt) the action plan according to criteria identified for CDBG-MIT funds, and either approves or disapproves the plan. If the action plan is not approved, HUD will notify the grantee of the deficiencies. The grantee must then resubmit the action plan within 45 days of the notification.
- After the action plan is approved, HUD sends an action plan approval letter.
- Prior to transmittal of the grant agreement, HUD notifies grantees of its certification of the grantee's financial controls, procurement processes and grant management procedures and its acceptance of the implementation plan and capacity assessment.
- HUD send the grant agreement to the grantee.
- Grantee signs and returns the grant agreement to HUD.
- Grantee posts the final HUD-approved action plan on its official website.

- HUD establishes the grantee's line of credit.
- 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).
- The grantee must publish (on its website) policies for programs and activities implemented by the grantee with CDBG-MIT funds.
- The grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58 or as authorized by the Appropriations Act and, as applicable, receives from HUD the Authority to Use Grant Funds (AUGF) form and certification.
- Substantial amendments are subject to a 30-day public comment period, including posting to grantee's website, followed by a 60-day review period for HUD.

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

This section of the appendix describes the requirements in the CDBG-MIT Main Notice imposed by the Appropriations Act, as well as waivers and alternative requirements that apply to the CDBG-MIT funds provided in the Appropriations Act. The waivers and alternative requirements provide flexibility in program design and implementation to support the prudent implementation of mitigation activities to lessen the impact of future disasters, while ensuring that statutory requirements are met. For each waiver and alternative requirement, 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 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. HUD also has regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their mitigation activities. Grantee requests for waivers and alternative requirements must be accompanied by relevant data to support the request and must demonstrate to the satisfaction of the Department that there is good cause for the waiver or alternative requirement. Grantees must work with the assigned CPD representative to request any additional waivers or alternative requirements from HUD headquarters. Except where noted, the waivers and alternative requirements described below apply only to the CDBG-MIT funds. Under the requirements of the Appropriations Act, waivers and alternative requirements must be published in the **Federal Register** and are effective five days after publication. Considering the time necessary for the development and publication of **Federal Register** notices, grantees are advised to allow sufficient time for consideration, approval and publication of requests for waivers and alternative requirements.

Except as described for CDBG-MIT funds, statutory and regulatory provisions governing the State CDBG program apply to States receiving a CDBG-MIT grant, including but not limited to, the principle of maximum feasible deference as provided at 24 CFR 570.480. In addition, except as provided herein, the statutory and regulatory provisions governing the Entitlement CDBG program apply only to local governments receiving a CDBG-MIT grant. Statutory provisions (title I of the HCDA) can be found at 42 U.S.C. 5301 et seq. State and Entitlement CDBG regulations can be found at 24 CFR part 570. References to the action plan in these regulations refer to the action plan required by the CDBG-MIT Main Notice. All **Federal Register** notice references to timelines and/or deadlines are calendar days unless otherwise noted.

V.A. Grant Administration and Action Plan Requirements.

V.A.1. *Pre-award evaluation of management and oversight of funds.*

The Administration intends to closely monitor all aspects of the CDBG-MIT effort. This approach fits with the view that the CDBG-MIT initiative will require a high level of interaction between HUD and grantees to ensure performance and compliance across the implementation spectrum. Consistent with this approach, HUD will place great focus on the question of whether grantees have developed and submitted CDBG-MIT plans consistent with the requirements for CDBG-MIT funds, with particular attention to implementation plans and capacity assessments. The Department encourages grantees to identify in their plan any management and administrative reforms that have or will be implemented to improve accountability and outcomes associated with the use of CDBG-MIT funds.

Consistent with 2 CFR part 200, HUD will use grant conditions to the fullest extent possible to effectuate grantee policies that will contribute not only to improved outcomes in the use of CDBG-MIT funding but also help strengthen grantee management practices and long-term resilience. The Department may, if warranted, restrict the availability of funds until such time as various grant conditions are met by individual grantees. Grantees are reminded that HUD may, at any time, add new grant conditions based on performance or lack thereof or may pursue remedies based on performance consistent with subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570.

V.A.1.a. *Certification of financial controls and procurement processes, and adequate procedures for proper grant management.* The Appropriations Act requires that the Secretary certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5155, to ensure timely expenditure of funds, maintain a comprehensive website regarding all mitigation activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. To enable the Secretary to make this certification, each grantee must submit to HUD the certification documentation listed below. This information must be submitted 60 days prior to the deadline for the submission of an action plan. Grant agreements will not be executed until HUD has approved the grantee's certifications. Grantees must implement the CDBG-MIT grant consistent with the controls, processes and procedures as certified by HUD.

For each of the items (1) through (6) below, the grantee must also provide a table that clearly indicates which agency and personnel are responsible for each task along with contact information. All grantees must certify to the accuracy of its documentation and must submit this certification with its action plan, as required in section VI.1 of the CDBG-MIT Main Notice.

(1) Proficient financial management controls. The grantee must submit information upon which HUD can make the determination of proficient financial controls. A grantee has proficient financial management controls if each of the following criteria is satisfied:

(a) Single audit report and consolidated annual financial report. The grantee submits its most recent single audit and consolidated annual financial report (CAFR), which indicates, in HUD's determination, that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of the grant. If the grantee's most recent single audit or CAFR identified material weaknesses or deficiencies, the grantee must provide documentation satisfactory to HUD showing how those weaknesses have been removed or are being addressed; and

(b) Grantee assessment of its financial standards and completed P.L. 115-123 Financial Management and Grant Compliance Certification and supporting documentation. The grantee has assessed its financial standards and has submitted a completed P.L. 115-123 Financial Management and Grant Compliance Certification (Compliance Certification) available on the HUD Exchange website at https://www.hudexchange.info/CDBG-MIT/CDBG-MIT-laws-regulations-and-federal-register-notices/, together with all documentation required in the Compliance Certification to comply with the requirements and standards of the Compliance Certification. The grantee must identify which sections of its financial standards address applicable questions in the Compliance Certification and must continue to maintain such standards until grant closeout.

(2) Procurement processes/standards. HUD will determine whether the overall effect of the grantee's procurement processes/standards upholds the principles of full and open competition and whether the procurement processes/standards require an evaluation of the cost or price of the property or service. A grantee must submit its procurement policies and procedures and must demonstrate that the grantee will comply with the procurement requirements in section V.A.25. of the CDBG-MIT Main Notice. The grantee must also provide a legal opinion that it has proficient procurement policies and procedures.

A State has proficient procurement policies and processes if HUD determines that its procurement processes/standards uphold the principles of full and open competition and include an evaluation of the cost or price of the property or service, and if its procurement processes/standards either (a) adopted 2 CFR 200.318 through 200.326; or (b) follows its own procurement policies and procedures and establishes requirements for procurement policies and procedures for local governments and subrecipients based on full and open competition pursuant to 24 CFR 570.489(g), and the requirements applicable to the State, its local governments, and subrecipients include evaluation of the cost or price of the product or service; or (c) adopted 2 CFR 200.317, meaning that it will follow its own State procurement policies and procedures and will evaluate the cost or price of the product or service, but impose 2 CFR 200.318 through 200.326 on its subrecipients.

Local governments have proficient procurement policies and processes if those policies and processes are consistent with the specific applicable procurement standards identified in 2 CFR 200.318 through 200.326. When the grantee provides a copy of its procurement standards, it must indicate the sections of its procurement standards that incorporate these provisions.

(3) Duplication of benefits procedures. A grantee has adequate procedures to prevent the duplication of benefits if the grantee submits uniform processes that reflect the requirements of section V.A.24. of the CDBG-MIT Main Notice, including: (a) verifying all sources of assistance received by the grantee or applicant, as applicable, prior to the award of CDBG-MIT funds; (b) determining a grantee's or an applicant's remaining funding need(s) for CDBG-MIT 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-MIT award was provided. The grantee must identify a method to monitor compliance with the terms of the agreement for a reasonable period and must articulate this method in its written procedures, including the basis for the period of time in which the grantee will monitor for compliance. This agreement must also include the following language: "*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."

Policies and procedures of the grantee submitted to support the certification must provide that prior to the award of assistance, the grantee will use the best, 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. In developing these policies and procedures, grantees are directed to the **Federal Register** notice published on June 20, 2019 entitled, "Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees" (2019 DOB Notice)(84 FR 28836). A grantee's policies and procedures are adequate if they reflect the treatment of loans that is consistent with the requirements of the Declined Loans Provision and the Disaster Recovery Reform Act (P.L. 115-254, Division D, "DRRA ") as explained in section V.A.24. of the CDBG-MIT Main Notice and the 2019 DOB Notice.

(4) Timely expenditures. A grantee has adequate procedures to determine timely expenditures if it submits procedures that indicate the following to HUD: how the grantee will track expenditures each month; how it will monitor expenditures of its subrecipients; how it will account for and manage program income; how it will reprogram funds in a timely manner for activities that are stalled; how it will ensure that contracts and bills that require payment will be timely paid; how it will project expenditures of all CDBG-MIT funds within the period provided for in section V.A.26. of the CDBG-MIT Main Notice; how it will ensure that its actual and projected expenditure of funds is accurately reported to HUD in its DRGR Quarterly Performance

Report (QPR. The grantee shall also identify the personnel or organizational unit responsible for ensuring timely expenditures.

(5) Comprehensive mitigation website linked to the grantee's disaster recovery website. A grantee has adequate procedures to maintain a comprehensive website regarding all disaster recovery and mitigation activities funded under the Prior Notice and the CDBG-MIT Main Notice, if it submits procedures that indicate that the grantee will have a separate page dedicated to CDBG-MIT activities that includes the information described in section V.A.3.d. of the CDBG-MIT Main Notice and any additional information subsequently required by HUD. The procedures must also indicate the frequency of website updates. At a minimum, a grantee must update its website monthly and must link its CDBG-MIT website with the website required for its CDBG-DR grant. Additionally, HUD may require grantees to publish additional reports or dashboards on the grantee's website.

(6) Procedures to detect and prevent fraud, waste, and abuse. A grantee has adequate procedures to detect and prevent fraud, waste and abuse if it submits policies or procedures that enhance those previously certified by the Department for the grantee's CDBG-DR grant and if those policies or procedures include:

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

(ii) the frequency with which the grantee will monitor other agencies of the grantee that will administer CDBG-MIT funds, how it will enhance its monitoring of subrecipients, contractors and other program participants, how and why monitoring is to be conducted and which items are to be monitored;

(iii) enhancements to the internal auditor function established for the grantee's CDBG-DR grant; or if the CDBG-MIT grant is to be administered by an agency that does not administer the CDBG-DR grant, how the internal auditor function is to be established and resourced. The internal audit function must provide both programmatic and financial oversight of grantee activities and the submission must include a document signed by the internal auditor that describes his or her role in detecting fraud, waste, and abuse. Additionally, grantees may, as a special grant condition, be required to submit internal audit reports directly to HUD;

(iv) a conflict of interest policy and the process for promptly identifying and addressing such conflicts; and

(v) information on how the grantee will verify the accuracy of information provided by applicants.

Instances of fraud, waste, and abuse should be referred to the HUD OIG Fraud Hotline (phone: 1-800-347-3735 or email: hotline@hudoig.gov).

V.A.1.b. *Implementation plan and capacity assessment.* CDBG-MIT funds will typically require grantees to adopt new roles and responsibilities within their organization and to establish new working relationships with other entities external to the organization. Before signing a grant agreement, HUD requires each grantee to demonstrate that it has sufficient capacity to manage these funds and the associated risks. Evidence of grantee management capacity must be provided through the grantee's implementation plan and capacity assessment submissions. These submissions must meet the criteria in (1) and (2) below and must be submitted with the grantee's action plan. The grantee must certify to the accuracy of its documentation as required by section VI.1. of the CDBG-MIT Main Notice. Grantees must implement the CDBG-MIT grant consistent with the implementation plan and capacity assessment as approved by HUD pursuant to this paragraph.

A grantee has sufficient management capacity if it submits documentation showing that each of the following criteria are satisfied:

(1) Timely information on application status. A grantee has adequate procedures to enable applicants to determine the status of their applications for mitigation assistance, at all phases, if its procedures indicate methods for communication (i.e., website, telephone, case managers, letters, etc.), ensure the accessibility and privacy of individualized information for all applicants, indicate the frequency of applicant status updates, and identify which personnel or agency is responsible for informing applicants of the status of applications.

(2) Implementation plan. To enable HUD to assess risk as described in 2 CFR 200.205(c), the grantee must submit an implementation plan to the Department. The plan must describe the grantee's capacity to carry out mitigation activities, how it will address any capacity gaps, and how agency staff that administer CDBG-DR and CDBG-MIT funds will work with their counterparts who manage the grantee's FEMA-funding mitigation activities. If a grantee chooses to designate the agency that administers its FEMA funds as the entity for administration of its CDBG-MIT funds, the implementation plan must indicate how that agency will coordinate its activities with the agency that administers its CDBG-DR grant and will ensure compliance with all generally applicable CDBG requirements. HUD will determine a plan is adequate to reduce risk if, at a minimum it adequately addresses (a) through (e) below:

(a) Capacity assessment. The grantee has assessed its capacity to carry out mitigation activities 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. HUD may include additional requirements in the grantee's grant terms and conditions to prevent similar findings for this grant.

(b) Staffing. The plan shows that the grantee has accurately assessed staff capacity and identified adequate personnel who: have documented experience in the timely development and implementation of mitigation programs particularly as it relates to activities in infrastructure, housing, and economic development (if applicable); are responsible for procurement/contract management, compliance with the regulations implementing Section 3 of the Housing and Urban Development Act of 1968 (24 CFR part 135) (Section 3), fair housing compliance, and environmental compliance; and are responsible for monitoring and quality assurance, and financial management. An adequate plan must also describe the agency's internal audit function, including responsible audit staff reporting independently to the chief elected official or executive officer or governing board of the designated administering entity. To help complete this exercise, grantees may choose to use the "Staffing Analysis Worksheet" available on the HUD Exchange at https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-launch/#capacity.

(c) Internal and interagency coordination. The plan describes how the grantee will ensure effective communication and coordination between State and local departments and divisions involved in the design and implementation of mitigation planning and projects, including, but not limited to the following: departments responsible for developing the HMP for applicable jurisdictions; departments implementing the HMGP; subrecipients responsible for implementing the grantee's action plan; and local and regional planning departments to ensure consistency and the integration of CDBG-MIT activities with those planning efforts.

(d) Technical assistance. The grantee's implementation plan describes how it will procure and provide technical assistance for any personnel that the grantee does not employ at the time of action plan submission, and to fill gaps in knowledge or technical expertise required for successful and timely implementation where identified in the capacity assessment.

(e) Accountability. The grantee's plan identifies the lead agency responsible for implementation of the CDBG-MIT grant and indicates that the head of that agency will report directly to the chief executive officer of the jurisdiction.

During the course of the CDBG-MIT grant, HUD will continually monitor each grantee's use of funds to determine the grantee's adherence to and consistency with the plan, as well as meeting the performance and timeliness objectives therein. A material failure to comply with the grantee's implementation plan, as approved by HUD, will prompt HUD to exercise any of the corrective or remedial actions authorized pursuant to subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570.

V.A.2. *CDBG-MIT Action Plan waiver and alternative requirement.* Requirements for CDBG action plans, in 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 42 U.S.C. 5306(a)(1), 42 U.S.C. 12705(a)(2), 24 CFR 91.320, and 24 CFR 91.220, are waived for CDBG-MIT grants. Instead, grantees must submit to HUD an action plan for the use of CDBG-MIT funds which will describe programs and

projects that conform to applicable requirements as specified for CDBG-MIT funds. The Secretary may disapprove an action plan as substantially incomplete if it is determined that the plan does not satisfy some or all the required elements identified for CDBG-MIT funds. HUD will monitor the grantee's actions and use of funds to determine the grantee's adherence to and consistency with the plan, as well as meeting the performance and timeliness objectives therein.

V.A.2.a. *Action plan*. The action plan must identify how the proposed use of all funds: (1) meets the definition of mitigation activities; (2) addresses the current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed areas as defined in section II.C.; (3) will be CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) will meet a national objective, including additional criteria for mitigation activities and Covered Projects.

The action plan must describe the impacts of the use of CDBG-MIT funds geographically by type at the lowest level practicable (e.g., county level, zip code, neighborhood, or census tract). A grantee must also identify any CDBG-MIT projects that are to be used in combination with CDBG-DR funds allocated to the grantee to address unmet disaster recovery needs. This combination of funds is possible because a mitigation project or program that meets the requirements for CDBG-MIT funds, remains eligible for CDBG-MIT funding even if it also responds to a remaining unmet recovery need of the qualified disasters.

Several resources are available to grantees to assist in the development of the Mitigation Needs Assessment and corresponding proposed activities required in the action plan, as appropriate, including: the FEMA Hazard Mitigation Plan Resources website: https://www.fema.gov/hazard-mitigation-planning-resources; the FEMA State Mitigation Planning Resources website: https://www.fema.gov/state-mitigation-planning-resources;the FEMA State Mitigation Planning Key Topics Bulletins: https://www.fema.gov/media-library/assets/documents/115780; the FEMA Local Mitigation Planning Resources website: https://www.fema.gov/local-mitigation-planning-resources; the U.S. Forest Service's resources on wildland fire (https://www.fs.fed.us/managing-land/fire); and the National Interagency Coordination Center (NICC) which is the focal point for coordinating the mobilization of resources for wildland fire: https://www.nifc.gov/nicc/.

Grantees that have a FEMA-approved standard State HMP pursuant to 44 CFR 201.4, an enhanced HMP in accordance with 44 CFR 201.5 or other FEMA-approved mitigation plan, are required to use those plans and each plan's risk assessment to inform its response to the action plan requirements below. Grantees must reference these plans and indicate how the risks identified in the Mitigation Needs Assessment have been informed by the risks identified in the FEMA mitigation plan.

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.

In addition to the waiver and alternative requirement established for CDBG-MIT action plans in this section of the appendix, HUD is establishing an alternative requirement that grantees shall implement CDBG-MIT programs and projects in accordance with their action plan and with the descriptions provided by the grantee in the action plan in response to elements (1) through (12) below:

(1) A Mitigation Needs Assessment. 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, 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-MIT allocation must conduct a risk-based assessment to inform the use of CDBG-MIT funds to meet its mitigation needs, 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. The Mitigation Needs Assessment must quantitatively assess the significant potential impacts and risks of hazards affecting the following seven critical service areas, or community lifelines:

- Safety and Security
- Communications
- Food, Water, Sheltering
- Transportation
- Health and Medical
- Hazardous Material (Management)
- Energy (Power & Fuel)

CDBG-MIT funds activities that ensure that these critical areas are made more resilient and are able to reliably function during future disasters, can reduce the risk of loss of life, injury, and property damage and accelerate recovery following a disaster.

In the Mitigation Needs Assessment, each grantee must cite data sources and must at a minimum, use the risks identified in the current FEMA-approved state or local HMP. If a jurisdiction is currently updating an expired HMP, the grantee's agency administering the CDBG-MIT funds must consult with the agency administering the HMP update to identify the risks that will be included in the Mitigation Needs Assessment. A grantee may identify additional risks that are not included in its jurisdiction's HMP but must at a minimum address the risks included in its jurisdiction's HMP. Grantees must include citations from the State or local HMP as evidence that the Mitigation Needs Assessment is consistent with such plan.

In responding to this action plan requirement and presenting the required information, grantees must review and certify to HUD that they have considered, at a minimum, the following resources, as appropriate: FEMA Local Mitigation Planning Handbook: https://www.fema.gov/media-library-data/20130726-1910-25045-9160/fema_local_mitigation_handbook.pdf; DHS Office of Infrastructure Protection (https://www.dhs.gov/sites/default/files/publications/ip-fact-sheet-508.pdf); National Association of Counties, Improving Lifelines (2014): https://www.naco.org/sites/default/files/documents/NACo_ResilientCounties_Lifelines_Nov2014.pdf); the U.S. Forest Service's resources around wildland fire (https://www.fs.fed.us/managing-land/fire); the National Interagency Coordination Center (NICC) for coordinating the mobilization of resources for wildland fire: https://www.nifc.gov/nicc/; and HUD's CPD Mapping tool: https://egis.hud.gov/cpdmaps/).

(2) Long-term planning and risk mitigation considerations. The grantee must describe how it plans to: promote local and regional long-term planning and implementation informed by its Mitigation Needs Assessment, including through the development and enforcement of building codes and standards (such as wildland urban interface; and flood and all hazards, including ASCE-24 and ASCE-7, as may be applicable), vertical flood elevation protection, and revised land use and zoning policies; coordinate with other planning efforts by local and regional entities to ensure alignment of CDBG-MIT activities with those plans; and support actions to promote an increase in hazard insurance coverage.

For flood mitigation efforts: grantees must consider high wind and continued sea level rise and ensure responsible floodplain and wetland management based on the history of flood mitigation efforts and the frequency and intensity of precipitation events. For wildfire mitigation efforts: grantees must consider land-use plans that address density and quantity of development, as well as emergency access, landscaping, and water supply considerations. For tornado mitigation efforts: grantees must consider promoting the construction and use of safe rooms and require or encourage wind engineering measures and construction techniques into building codes. CDBG-MIT funds may be used to reimburse planning and administrative costs

for developing the action plan, including the Mitigation Needs Assessment, for the preparation or update of a State, local or tribal FEMA HMPs, and for compliance with environmental review and citizen participation requirements.

(3) Connection of mitigation programs and projects to identified risks. For each proposed program or project in the action plan, the grantee must address how the program or project mitigates specific current and future risks identified in the Mitigation Needs Assessment.

(4) Low- and moderate-income priority. Proposed mitigation programs and projects must prioritize the protection of low-and-moderate income (LMI) individuals. Each grantee must describe in its action plan how it will prioritize programs and projects that will protect LMI persons in order to meet the overall benefit requirement pursuant to the CDBG-MIT Main Notice.

Additionally, if the grantee's programs or projects will increase the resiliency of housing, the grantee must describe how the programs or projects will do so for housing that typically serves vulnerable populations, including the following housing: transitional housing, permanent supportive housing, permanent housing serving individuals and families (including subpopulations) that are homeless and at-risk of homelessness, and public housing developments.

Grantees must also assess how the use of CDBG-MIT funds may affect members of protected classes under fair housing and civil rights laws, racially and ethnically concentrated areas, as well as concentrated areas of poverty; will promote more resilient affordable housing and will respond to natural hazard related impacts.

(5) Coordination of mitigation projects and leverage. Each grantee must propose mitigation programs or projects that advance long-term resilience to current and future hazards. Additionally, each grantee must align its CDBG-MIT programs or projects with other planned federal, state, regional, or local capital improvements. In order to meet these requirements, each grantee must describe how the proposed mitigation programs or projects will: (a) advance long-term resilience; (b) align with other planned capital improvements; and (c) promote community-level and regional (e.g. multiple local jurisdictions) planning for current and future disaster recovery efforts and additional mitigation investments.

Additionally, each grantee must describe how it will leverage CDBG-MIT funds with other funding provided through public-private partnerships and by other Federal, State, local, private, and nonprofit sources to generate more effective and comprehensive mitigation outcomes. Examples of other Federal sources are additional funding provided by HUD, FEMA (specifically the Public Assistance Program, Individual Assistance Program, and Hazard Mitigation Grant Program), SBA (specifically the Disaster Loans program), Economic Development Administration, U.S. Army Corps of Engineers (USACE), the Department of Transportation, and the Department of Agriculture including the U.S. Forest Service's Good Neighbor Authority (GNA), Stewardship Contracts, and Wildfire Resilience Treatments. The grantee must describe how it will seek to maximize the outcomes of investments and the degree to which CDBG-MIT funds are effectively leveraged, including through public-private partnerships and a commitment of funding by the grantee. Grantees shall identify any leveraged funds for each activity in the DRGR system.

(6) Plans to minimize displacement and ensure accessibility. Each grantee must describe how it plans to minimize displacement of persons or entities, and assist any persons or entities displaced through its mitigation activities (except for mitigation through voluntary buyout activities that are designed to move households out of harm's way). This description shall focus on proposed activities that may directly or indirectly result in displacement and the assistance that shall be required for those displaced. Grantees are reminded that they must take into consideration the functional needs of persons with disabilities in the relocation process. Guidance on relocation considerations for persons with disabilities may be found in Chapter 3 of HUD's Relocation Handbook 1378.0 (available on the HUD Exchange website at: https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780.

(7) Maximum award amounts, necessary, and reasonable assistance. For each mitigation program providing a direct benefit to a person, household or business, the action plan must specify the maximum

amount of assistance available to a beneficiary under each of the grantee's mitigation 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 minimum, each grantee must indicate that it will adopt policies and procedures governing maximum award amounts, describe how it will communicate the maximum amounts and any exceptions, how it will analyze the circumstances under which an exception is needed and how it will demonstrate that cost of providing assistance is necessary and reasonable. Each grantee must also indicate 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.

(8) Natural infrastructure. Grantees are encouraged to develop a process to incorporate nature-based solutions and natural or green infrastructure in the selection and/or design of CDBG-MIT projects. Each grantee is encouraged to describe how it will consider natural infrastructure during the project selection process (e.g., alternatives and benefit-cost analysis); or propose projects and programs in the action plan that incorporate natural infrastructure. Natural or green infrastructure is defined as the integration of natural processes or systems (such as wetlands or land barriers) or engineered systems that mimic natural systems and processes into investments in resilient infrastructure, including, for example, using permeable pavements and amended soils to improve infiltration and pollutant removal.

(9) Construction standards. Each grantee must describe how it will: (a) emphasize quality, durability, energy efficiency, sustainability, and mold resistance, as applicable; (b) consider application of the Green Building Standards as amended from the Prior Notices and as explained in section V.B.1.a. of the CDBG-MIT Main Notice; and (c) adhere to the advanced elevation requirements established in section V.B.1.d. of the CDBG-MIT Main Notice, if applicable. For grantees addressing flood risks, the grantee must describe how it will document its decision to elevate structures and how it evaluated and determined the elevation to be cost reasonable relative to other alternatives or strategies, such as the demolition of substantially-damaged structures with reconstruction of an elevated structure on the same site, property buyouts, or infrastructure improvements to reduce the risk of loss of life and property.

(10) Operation and maintenance plans. Each grantee must plan for the long-term operation and maintenance of infrastructure and public facility projects funded with CDBG-MIT funds. The grantee must describe in its action plan how it will fund long-term operation and maintenance for CDBG-MIT projects. Funding options might include State or local resources, borrowing authority or retargeting of existing financial resources. If operations and maintenance plans are reliant on any proposed changes to existing taxation policies or tax collection practices, those changes and relevant milestones should be expressly included in the action plan. Additionally, the grantee must describe any State or local resources that have been identified for the operation and maintenance costs of projects assisted with CDBG-MIT funds.

(11) Cost verification. Each grantee must describe its controls for assuring that construction costs are reasonable and consistent with market costs at the time and place of construction. Grantees are encouraged to consider the use of an independent, qualified third-party architect, construction manager, or other professional (e.g., a cost estimator) to verify the planned project costs and cost changes to the contract (e.g. change orders) during implementation are reasonable. The method and degree of analysis may vary dependent upon the circumstances surrounding a particular project (e.g., project type, risk, costs), but the description, at a minimum, must address controls for CDBG-MIT infrastructure projects above a certain total project cost threshold identified by the grantee and for Covered Projects as defined for CDBG-MIT funds. More detailed cost verification requirements for Covered Projects are provided in section V.A.2.h. of the CDBG-MIT Main Notice.

(12) Building code and hazard mitigation planning. Grantees are encouraged to propose an allocation of CDBG-MIT funds for building code development and implementation, land use planning and/or hazard mitigation planning activities that may include but need not be limited to: (a) the development and implementation of modern and resilient building codes consistent with an identified model or standard, such as ASCE 24 and ASCE 7 as may be applicable, in order to mitigate against current and future hazards; (b) the

development and implementation of land use plans to address natural hazards identified in the grantee's Mitigation Needs Assessment; (c) the update of State, local, or tribal FEMA HMPs, if necessary; (d) for states choosing to do so, the development of a FEMA-approved enhanced mitigation plan; or (e) the integration of mitigation plans with parallel CDBG-MIT planning efforts. If a grantee chooses to not allocate CDBG-MIT funds for these activities, the grantee must describe other sources of funding identified for such activities. The grantee shall describe the specific building code, land use planning, hazard mitigation planning, or other activities to be funded with the CDBG-MIT grant or from other sources.

V.A.2.b. *Funds awarded directly to a State*. For State grantees that choose to allocate funds directly to a local government or Indian tribe, the action plan shall describe the method of distribution of funds and/or descriptions of specific mitigation programs or projects the grantee will carry out directly. If the State will carry out activities directly, the description must include the requirements at (1) through (6) below:

(1) How the Mitigation Needs Assessment will inform the grantee's funding determinations.

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

(3) The projected uses for the CDBG-MIT funds, by responsible organization, activity, and geographic area, when the grantee carries out an activity directly.

(4) For each proposed mitigation activity carried out directly, its respective CDBG activity eligibility category (or categories) and associated national objective(s), including additional criteria.

(5) When funds are subgranted to local governments or Indian tribes, all criteria to be used to distribute funds to local governments or Indian tribes, including the relative importance of each criterion.

(6) When applications are solicited for programs to be carried out directly, all criteria used to select applications for funding, including the relative importance of each criterion.

V.A.2.c. *Clarification of basic requirements for mitigation activities*. Unlike CDBG-DR funds where grantees must demonstrate that their disaster recovery activities "tie-back" to the specific disaster and address a specific unmet recovery need for which the CDBG-DR funds were appropriated, CDBG-MIT funds do not require such a "tie-back" to the specific qualified disaster that has served as the basis for the grantee's allocation of CDBG-MIT funds. Grantees must instead demonstrate that CDBG-MIT activities: (1) meet the definition of mitigation activities; (2) address the current and future risks as identified in the grantee's Mitigation Needs Assessment in the most impacted and distressed areas; (3) are CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and (4) meet a national objective, including additional criteria for mitigation activities and Covered Projects. The grantee can use CDBG-MIT funds for activities that meet these criteria even when it also responds to a remaining unmet recovery need arising from a qualified disaster that served as the basis for the grantee's CDBG-MIT allocation. Grantees may continue to categorize CDBG-MIT funds, to the extent appropriate, using the broader categories of activities that are associated with CDBG-DR awards: infrastructure, economic development, housing, planning and administration, and public services.

(1) Infrastructure. Typical infrastructure mitigation programs may include regional investments in risk reduction for flood, fire, wind and other hazards to develop disaster-resistant infrastructure; upgrading of water, sewer, solid waste, communications, energy, transportation, health and medical, and other public infrastructure to address specific, identified risks; financing multi-use infrastructure; and green or natural mitigation infrastructure development.

(2) Economic development. Examples of eligible programs include assistance to businesses for the installation of disaster mitigation improvements and technologies; financing to support the development of technologies, systems and other measures to mitigate future disaster impacts; "hardening" of commercial areas and facilities; and financing critical infrastructure sectors to allow continued commercial operations during and after disasters. Grantees are also strongly encouraged to leverage CDBG-MIT funds in economic development through coordination with Opportunity Zones established within the grantee's jurisdiction.

(3) Housing. Typical housing mitigation programs may include buyouts (potentially accompanied by additional housing or homeownership assistance for relocated families); elevation (which may be accompanied by rehabilitation, reconstruction, or new construction activities to support resilient housing); flood proofing; and wind, water, fire, earthquake retrofitting or "hardening" of single- and multi-family units to withstand future disasters.

(4) Planning, administration and public services. As noted in section V.A.2.a.(12) of the CDBG-MIT Main Notice, CDBG-MIT funds may be used for the development of modernized and resilient building codes and land use plans, for the development and updating of FEMA-approved HMPs and for the development of State enhanced mitigation plans. Grantees may also use the CDBG-MIT funds for planning activities that include the integration of mitigation planning with other local and regional mitigation community development, land use and other plans. CDBG-MIT funds may also be used to upgrade mapping, data and other capabilities to better understand evolving potential disaster risks.

Grantees may also fund planning and public service activities necessary to reduce flood insurance premiums in the NFIP voluntary Community Rating System's (CRS) incentive program (https://www.fema.gov/national-flood-insurance-program-community-rating-system).

Additional public service activities may include education and outreach campaigns designed to alert communities and beneficiaries to opportunities to further mitigate identified risks through insurance, best practices and other strategies.

(5) Use of CDBG-MIT as match. As provided by the HCDA, CDBG-MIT funds may be used to meet a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-MIT activity. This includes mitigation grants administered by FEMA or USACE. By law, (codified in the HCDA as a note to 105(a)), the maximum amount of CDBG-MIT funds that may be contributed to a USACE project is $250,000. Note that the Appropriations Act prohibits the use of CDBG-MIT funds for any activity reimbursable by, or for which funds are also made available by FEMA or USACE. Grantees may only use CDBG-MIT funds to meet the match requirement of a program or project that meets the definition of a mitigation activity and other requirements of the CDBG-MIT Main Notice and meet the eligibility requirements for a mitigation activity under the other federal program.

V.A.2.d. *Clarity of action plan*. Every grantee must include sufficient information so that all interested parties will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the grantee. The action plan (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).

V.A.2.e. *Submission, review, and approval of action plan*. The action plan (including SF–424 and certifications) must be submitted to HUD for review and approval. To ensure that grantees have adequate time to address the planning requirements of the CDBG-MIT Main Notice and to ensure a comprehensive and effective review of initial CDBG-MIT action plans, HUD is assigning each grantee to a cohort and will stagger the submission dates for those cohorts. Each of these grantees is in the early stage of implementing their long-term recovery efforts using CDBG-DR unmet needs funding and the extended timeframe will partially reduce the burden of developing a CDBG-MIT action plan while still launching broad recovery efforts. State grantees that are administering a CDBG-DR grant for a 2015 or 2016 disaster are viewed as having a greater amount of experience with both CDBG-DR requirements and aligning mitigation programs and projects with FEMA HMGP requirements. Local government CDBG-MIT grantees may need additional time to build capacity in order to ensure the alignment of CDBG-DR and FEMA HMGP funds. State grantees in receipt of CDBG-DR funds for only 2017 disasters are properly focused on the timely implementation of recovery efforts in response to those disasters. HUD's capacity to assist grantees in the development of CDBG-MIT action plans and to review those plans in a timely manner also requires rolling dates for the submission of action plans. Accordingly, HUD will accept an action plan from cohorts no later than the dates identified below, unless the grantee has requested, and HUD has approved an extension of its target submission deadline:

- State CDBG-MIT grantees that currently administer CDBG-DR grants provided in response to a 2015 or 2016 disaster shall submit no later than February 3, 2020: Florida; Louisiana; North Carolina, South Carolina; Texas; and West Virginia.
- Local government CDBG-MIT grantees shall submit on no later than March 2, 2020: Columbia, SC; Lexington County, SC; Richland County, SC; Houston, TX; and San Marcos, TX.
- State CDBG-MIT grantees that currently administer only a CDBG-DR grant provided in response to a 2017 disaster shall submit no later than ln April 6, 2020: California; Georgia; and Missouri.

HUD will review each action plan within 60 days from the date of receipt. HUD may disapprove an action plan as substantially incomplete if the action plan does not meet the requirements of the CDBG-MIT Main Notice, including grant requirements imposed by applicable waivers and alternative requirements to address the Administration's policy priorities.

V.A.2.f. *Obligation and expenditure of funds*. After HUD makes the required certifications and approves the action plan, a grant agreement obligating allocated funds to the grantee must be entered into between HUD and the grantee. Subsequently, HUD will establish the line of credit and the grantee will receive DRGR system access (if it does not already have DRGR system access). The grantee must also enter its action plan activities into the DRGR system in order to draw funds for those activities. HUD will provide clarifying guidance as to the content and format of the DRGR action plan, which will help reflect the unique qualities and requirements of CDBG-MIT activities and ensure clear and transparent communication to the public.

Each activity must meet the applicable environmental requirements before any funds are committed to the activity, consistent with 24 CFR 58.22. The grantee may not draw down funds from the line of credit for an activity until after the Responsible Entity (usually the grantee):

(1) Completes required environmental review(s) pursuant to 24 CFR part 58 or adopts the environmental review performed by another federal agency, as authorized by the Appropriations Act; and

(2) Receives from HUD or the Responsible Entity (as applicable) an approved Request for Release of Funds and certification.

V.A.2.g. *Amending the action plan*. The grantee must amend its action plan to update its Mitigation Needs Assessment, modify or create new activities, or reprogram funds. Each amendment must be highlighted, or otherwise identified, within the context of the entire action plan. The beginning of every action plan amendment must include: (1) a section that identifies exactly what content is being added, deleted, or changed; (2) a chart or table that clearly illustrates where funds are coming from and where they are moving to; (3) a revised budget allocation table that reflects the entirety of all funds, as amended; and (4) a description of how the amendment is consistent with a grantee's Mitigation Needs Assessment. A grantee's current version of its entire action plan must be accessible for viewing as a single document at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments.

(1) Substantial amendment. The grantee must provide a 30-day public comment period and reasonable method(s) (including electronic submission) for receiving comments on substantial amendments. In its action plan, each grantee must specify criteria for determining what changes in the grantee's plan constitute a substantial amendment to the plan. At a minimum, the following modifications will constitute a substantial amendment: the addition of a CDBG-MIT Covered Project; a change in program benefit or eligibility criteria; the addition or deletion of an activity; or the allocation or reallocation of a monetary threshold specified by the grantee in its action plan. The grantee may substantially amend the action plan if it follows the same procedures required for CDBG-MIT funds for the preparation and submission of an action plan, provided, however, that a substantial action plan amendment shall require a 30-day public comment period.

(2) Nonsubstantial amendment. The grantee must notify HUD, but is not required to seek public comment, when it makes any plan amendment that is not substantial. HUD must be notified at least 5 business

days before the amendment becomes effective. However, every amendment to the action plan (substantial and nonsubstantial) must be numbered sequentially and posted on the grantee's website. The Department will acknowledge receipt of the notification of nonsubstantial amendments via email within 5 business days. Nonsubstantial amendments shall be numbered in sequence with other nonsubstantial and substantial amendments and incorporated into the action plan.

V.A.2.h. *Additional action plan requirements for CDBG-MIT Covered Projects.*

Large-scale infrastructure projects that meet the definition of Covered Projects must be included in an action plan or substantial amendment. A Covered Project is an infrastructure project (as defined in V.A.2.h.(1) of the CDBG-MIT Main Notice) having a total project cost of $100 million or more, with at least $50 million of CDBG funds (regardless of source (CDBG-DR, CDBG-NDR, CDBG-MIT, or CDBG)).

The Department recognizes that grantees may seek to use CDBG-MIT grants to implement large, transformative infrastructure projects that will provide long-term benefits and strengthen a community's resilience to future hazards. To support the successful implementation and operation of these large-scale projects, the Department is establishing alternative requirements that impose additional criteria for all CDBG-MIT Covered Projects. All CDBG-MIT Covered Projects must meet the additional criteria to meet a national objective.

(1) Definition of an infrastructure project. This section defines an infrastructure project as it relates to Covered Projects only. For purposes of this section of the appendix, an infrastructure project is defined as an activity or group of related activities that develop 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 fossil, renewable, nuclear, and hydro sources; electricity transmission; broadband; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; and other sectors as may be determined by the Federal Permitting Improvement Steering Council. Further, consistent with HUD's NEPA implementing requirements at 24 CFR 58.32(a), in responding to the requirements of the CDBG-MIT Main Notice, a grantee must group together and evaluate as a single infrastructure project all individual activities which are related to one another, either on a geographical or functional basis, or are logical parts of a composite of contemplated infrastructure-related actions. Infrastructure improvements on private lands as authorized pursuant to section V.C.3 of the CDBG-MIT Main Notice and that also meet the definition of a Covered Project shall also be subject to the Covered Project requirements of the CDBG-MIT Main Notice.

(2) Covered Project action plan or substantial amendment requirements.

The following must be provided for each Covered Project proposed in an action plan or a substantial amendment:

(a) Project description and eligibility. A description of the Covered Project and how it meets the definition of a mitigation activity, including: total project cost (including the CDBG–MIT grant as well as other federal resources for the project, such as funding provided by the Department of Transportation or FEMA); and CDBG eligibility under the HCDA or a waiver and alternative requirement (i.e., a citation to the paragraph in section 105 of the HCDA, applicable **Federal Register** notice, or a CDBG regulation).

(b) Consistency with the Mitigation Needs Assessment. A description of how the Covered Project addresses the current and future risks in the MID areas as identified in the grantee's Mitigation Needs Assessment.

(c) National objective, including additional criteria. The action plan must describe how the Covered Project will meet a national objective, including additional criteria for mitigation activities and Covered Projects. The national objectives for CDBG-MIT projects are described in section V.A.13 of the CDBG-MIT Main Notice. HUD has established additional criteria for Covered Projects that require a plan for long-term efficacy and fiscal sustainability, a demonstration that benefits of the project outweigh the costs, and a

demonstration that the Covered Project is consistent with other mitigation activities in the same MID area, as described below in (i) through (iii):

(i) Long-term efficacy and fiscal sustainability. A description of how the grantee plans to monitor and evaluate the efficacy and sustainability of the Covered Project, including its operation and maintenance of the Covered Project, how it will maintain documentation for the measurable outcomes or reduction in risk as discussed in section V.A.2.i. of the CDBG-MIT Main Notice, and how it will reflect changing environmental conditions (such as sea level rise or development patterns) with risk management tools, and/or alter funding sources if necessary.

(ii) Demonstration of benefits.

(ii.a.) Demonstration of benefits through benefit cost analysis. The action plan or substantial amendment must describe how the benefits of the Covered Project outweigh the costs of the Covered Project. Benefits outweigh costs if the Benefit Cost Analysis (BCA) results in a benefit-to-cost ratio greater than 1.0 (which aligns with FEMA's BCA ratio).

The action plan or substantial amendment must include a description of the methodology and the results of the BCA that has been conducted for the Covered Project. The grantee must indicate whether another Federal agency has rejected a BCA for the Covered Project (including any BCA for an earlier version of the current proposed Covered Project).

Grantees and subrecipients may use FEMA-approved methodologies and tools to demonstrate the cost-effectiveness of their projects. FEMA has developed the BCA Toolkit to facilitate the process of preparing a BCA. Using the BCA Toolkit will ensure that the calculations are prepared in accordance with OMB Circular A-94 and FEMA's standardized methodologies. It is imperative to conduct a BCA early in the project development process to ensure the likelihood of meeting the cost-effectiveness eligibility requirement.

A non-FEMA BCA methodology may be used when: (1) a BCA has already been completed or is in progress pursuant to BCA guidelines issued by other Federal agencies such as the Army Corps or the Department of Transportation; (2) it addresses a non-correctable flaw in the FEMA-approved BCA methodology; or (3) it proposes a new approach that is unavailable using the FEMA BCA Toolkit. In order for HUD to accept any BCA completed or in progress pursuant to another Federal agency's requirements, that BCA must account for economic development, community development and other social/community benefits or costs and the CDBG-MIT project must be substantially the same as the project analyzed in the other agency's BCA.

(ii.b.) Alternate demonstration of benefits. Alternatively, for a Covered Project that serves low- and moderate-income persons or other persons that are less able to mitigate risks or respond to and recover from disasters, the grantee may demonstrate that benefits outweigh costs if the grantee completes a BCA as described above and provides HUD with a benefit-to-cost ratio (which may be less than one) and a qualitative description of benefits that cannot be quantified but sufficiently demonstrate unique and concrete benefits of the Covered Project for low- and moderate-income persons or other persons that are less able to mitigate risks, or respond to and recover from disasters. This qualitative description may include a description of how the Covered Project will provide benefits such as enhancing a community's economic development potential, improving public health and or expanding recreational opportunities.

The grantee shall include the BCA for a Covered Project, together with any qualitative description of benefits for projects benefitting low- and moderate-income persons and other persons that are less able to mitigate risks, or respond to and recover from disasters, as an appendix to the action plan or substantial amendment that proposes the project.

(iii) Consistency with other mitigation activities. The grantee's action plan must demonstrate that the project is consistent with the other mitigation activities that the grantee will carry out with CDBG-MIT funds in the MID area. To be consistent, the Covered Project must not increase the risk of loss of life or property in a way that undermines the benefits from other uses of CDBG-MIT funds in the MID.

(3) HUD review of action plans and substantial amendments for Covered Projects. HUD will determine that a portion of an action plan or substantial amendment that proposes a Covered Project to be substantially incomplete if it does not meet the above criteria. In the course of reviewing an action plan or substantial amendment, HUD will advise a grantee of each deficiency and the grantee must revise the plan or amendment to address the deficiency in order for HUD to resume consideration of this submission.

(4) Implementation of Covered Projects. Prior to the grantee's execution of a contract for the construction, rehabilitation, or reconstruction of an approved Covered Project the grantee shall have:

(a) engaged an independent, third-party entity (e.g., a cost estimator) to verify the planned project costs and cost changes to the contract during implementation to determine the costs of the contract and any changes to the contract are reasonable;

(b) secured the certification of a licensed design professional stating that the project design or redesign meets a nationally recognized design and performance standard applicable to the project, including, if applicable, criteria recognized by FEMA for a project of its type, pursuant to FEMA's Hazard Mitigation Assistance Guidance and Hazard Mitigation Assistance Guidance Addendum; and

(c) established a plan for financing the operation and maintenance of the project during its useful life.

V.A.2.i. *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 quarter funds are available to the grantee and continuing each quarter until all funds are expended. The projections will enable HUD, the public, and the grantee to track proposed versus actual performance. The projections must also be clearly and conspicuously displayed on the grantee's website. If a grantee's performance indicates a pattern of deviation from projected expenditures and outcomes, HUD may review the grantee's capacity assessment and implementation plan and require an update to that plan or impose corrective actions to mitigate the risks associated with failure to meet projections. The published action plan must be amended for any subsequent changes, updates, or revision of the projections. Guidance on the preparation of projections is available on the HUD website: https://www.hudexchange.info/resource/3685/cdbg-dr-grantee-projections-of-expenditures-and-outcomes/

V.A.3. *Citizen participation waiver and alternative requirement.* To permit a more robust process and ensure mitigation activities are developed through methods that allow all stakeholders to participate, and because citizens recovering from disasters are best suited to ensure that grantees will be advised of any missed opportunities and additional risks that need to be addressed, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 § 91.105(b) and (c) , and 24 CFR 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. These revised requirements mandate public hearings (the number of which is based upon the amount of a grantee's CDBG-MIT allocation) across the HUD-identified MID areas and require the grantee to provide a reasonable opportunity (at least 45 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The revised citizen participation requirements for CDBG-MIT grantees are:

V.A.3.a. *Publication of the action plan and opportunity for public comment.* HUD continues to emphasize the importance of a robust citizen participation process, which shall include public hearings on the proposed action plan. Each grantee must either amend its existing citizen participation plan or adopt a new plan that incorporates the CDBG-MIT specific citizen participation requirements outlined in this section. The number of public hearings to be convened by a grantee shall be determined based upon the amount of the grantee's CDBG-MIT allocation: (1) CDBG-MIT grantees with allocations under $500 million, are required to hold at least two public hearings in the HUD-identified MID areas in order to obtain citizens' views and to respond to proposals and questions. At least one of these public hearings is to occur prior to a grantee's publication for public comment of its action plan on its website, and all hearings are to be convened at different locations within the MID area in locations that ensure geographic balance and maximum accessibility, (2) CDBG-MIT grantees with allocations of $500 million or more shall convene at least three public hearings in the HUD-identified MID areas to obtain citizens' views and to respond to proposals and

questions. At least one of these public hearings is to occur prior to a grantee's publication for public comment of its action plan on its website, and all hearings are to be convened in different locations within the MID area in locations that ensure geographic balance and maximum accessibility, (3) CDBG-MIT grantees with allocations of $1 billion or more shall hold at least four public hearings in the HUD-identified MID area to obtain citizens' views and to respond to proposals and questions. At least two of these public hearings are to occur prior to a grantee's publication for public comment of its action plan on its website, and the hearings shall be held in different locations within the MID area in locations that ensure geographic balance and maximum accessibility. Public hearings must be held in facilities that are physically accessible to persons with disabilities. Existing federal requirements 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 under HUD's implementing regulations for Section 504 of the Rehabilitation Act (See 24 CFR part 8, subpart C).

In addition to the above public hearings, before the grantee submits the action plan for this grant or any substantial amendment to the action plan to HUD, the grantee will publish the proposed plan or amendment. The manner of publication must include prominent posting on the grantee's official website and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of disaster mitigation must be navigable by citizens from the grantee's (or relevant agency's) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations. Grantees should also consider recording public hearings and making them available online for live viewing and creating archival video of the public meetings on the grantee's website. Plan publication efforts and public hearings must comply with civil rights requirements, including meeting the effective communications requirements under Section 504 of the Rehabilitation Act (see, 24 CFR 8.6) and the Americans with Disabilities Act (see 28 CFR 35.160); and must provide meaningful access for persons with Limited English Proficiency (LEP) (see HUD's LEP Guidance, 72 FR 2732 (2007)).

Grantees are responsible for ensuring that all citizens have equal access to information about the CDBG-MIT programs, including persons with disabilities and persons with limited English proficiency (LEP). Each grantee must ensure that mitigation program information is available in the appropriate languages for the geographic areas to be served (see HUD's LEP Guidance, 72 FR 2732 (2007)) and take appropriate steps to ensure effective communications with persons with disabilities under Section 504 (see, 24 CFR 8.6) and the Americans with Disabilities Act (see 28 CFR 35.106). Since State grantees receiving CDBG-MIT funds may make grants throughout the State, including to Entitlement communities, States should carefully evaluate the needs of persons with disabilities and those with limited English proficiency. In assessing its language needs for translation of notices and other vital documents for non-English speaking residents, the grantee should consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,* published on January 22, 2007, in the **Federal Register** (72 FR 2732) and at: https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf.

V.A.3.b. *Consideration of public comments.* The grantee must consider all comments, received orally or in writing, on the action plan or any substantial amendment. A summary of these comments or views, and the grantee's response to each must be submitted to HUD with the action plan or substantial amendment.

V.A.3.c. *Availability and accessibility of the action plan and the use of citizen advisory groups.* The grantee must make the action plan, any substantial amendments, and all performance reports available to the public on its website and on request. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and those with limited English proficiency. During the term of the grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the action plan and to the grantee's use of grant funds.

Following approval of the action plan, each grantee shall form one or more citizen advisory committees that shall meet in an open forum not less than twice annually in order to provide increased

transparency in the implementation of CDBG-MIT funds, to solicit and respond to public comment and input regarding the grantee's mitigation activities and to serve as an on-going public forum to continuously inform the grantee's CDBG-MIT projects and programs. The grantee may also choose to form one or more of these committees as part of its process for preparing the initial CDBG-MIT action plan submission to HUD.

V.A.3.d. *Public website.* HUD is requiring grantees to maintain a public website which provides information accounting for how all CDBG-MIT funds are used, managed and administered, including links to all action plans, action plan amendments, performance reports, CDBG-MIT citizen participation requirements, and activity/program information for activities described in the action plan, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must make the following items available on its website: the action plan (including all amendments); each QPR (as created using the DRGR system); procurement policies and procedures; all executed contracts that will be paid with CDBG-MIT funds; and the status of services or goods currently being procured (e.g., phase of the procurement, requirements for proposals, etc.).

V.A.3.e. *Application status and transparency*. For applications received for CDBG-MIT assistance, the grantee must provide multiple methods of communication, such as websites, toll-free numbers, or other means that provide applicants with timely information to determine the status of their application for assistance, as provided for section V.A.1.b.(1) of the CDBG-MIT Main Notice.

When a grantee seeks to competitively award CDBG-MIT funds, the grantee must publish on its CDBG-MIT website the eligibility requirements for such funding, all criteria to be used by the grantee in its selection of applications for funding (including the relative importance of each criterion) and the time frame for consideration of applications. The grantee shall maintain documentation to demonstrate that each funded and unfunded application was reviewed and acted upon by the grantee in accordance with the published eligibility requirements and funding criteria.

V.A.3.f. *Citizen complaints.* The grantee will provide a timely written response to every citizen complaint. The response must be provided within 15 working days of the receipt of the complaint. 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).

V.A.4. *HUD performance review authorities and grantee reporting requirements in the Disaster Recovery Grant Reporting (DRGR) System.*

V.A.4.a. *Performance review authorities.* 42 U.S.C. 5304(e) requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out its activities in a timely manner, whether the grantee's activities and certifications are carried out in accordance with the requirements and the primary objectives of the HCDA and other applicable laws, and whether the grantee has the continuing capacity to carry out those activities in a timely manner.

The CDBG-MIT Main Notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708(a), 24 CFR 91.520, and 24 CFR 1003.506. Alternatively, HUD is requiring that grantees enter information in the DRGR system in sufficient detail to permit the Department's review of grantee performance on a quarterly basis through the QPR and to enable remote review of grantee data to allow HUD to assess compliance and risk. HUD-issued general and appropriation-specific guidance for DRGR reporting requirements can be found on the HUD exchange at: https://www.hudexchange.info/programs/drgr/.

V.A.4.b. *DRGR action plan*. Each grantee must enter its action plan for mitigation, including performance measures, into HUD's DRGR system. As more detailed information about uses of funds is identified by the grantee, it must be entered into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports and permits HUD review of compliance requirements. HUD will provide clarifying guidance as to the content and format of the DRGR action plan, which will help reflect the unique qualities and requirements of CDBG-MIT activities and ensure clear communication to the public.

The action plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG-MIT funds. The grantee may enter activities into the DRGR system before or after submission of the written action plan to HUD but will not be able to budget grant funds to these activities until after the grant agreement has been executed. To enter an activity into the DRGR system, the grantee must know the activity type, national objective, and the organization that will be responsible for the activity. In addition, a Data Universal Numbering System (DUNS) number must be entered into the system for each Responsible Organization identified in DRGR as carrying out a CDBG–MIT funded activity.

A grantee will gain access to its line of credit upon review and approval of the initial DRGR action plan. Each activity entered into the DRGR system must also be categorized under a "project." Typically, projects are based on groups of activities that accomplish a similar, broad purpose (e.g., housing, infrastructure, or economic development) or are based on an area of service (e.g., Community A). If a grantee describes just one program within a broader category (e.g., single family rehabilitation), that program is entered as a project in the DRGR system. Further, the budget of the program would be identified as the project's budget. If a grantee has only identified the Method of Distribution (MOD) upon HUD's approval of the published action plan, the MOD categories typically serve as the projects in the DRGR system, rather than activity groupings. Activities are added to MOD projects as specific CDBG-MIT programs and projects are identified for funding.

V.A.4.c. *Tracking oversight activities in the DRGR system; use of DRGR data for HUD review and dissemination.* Each grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its mitigation programs. The grantee's QPR will include a summary indicating the number of grantee oversight visits and reports (see subparagraph e. for more information on the QPR). HUD will use data entered into the DRGR action plan and the QPR, transactional data from the DRGR system, and other information provided by the grantee, to provide reports to Congress and the public, as well as to: (1) monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department's monitoring. Grantees must establish internal controls to ensure that no personally identifiable information shall be reported in DRGR.

V.A.4.d. *Tracking program income in the DRGR system*. Grantees must use the DRGR system to draw grant funds. Grantees must also use the DRGR system to track program income receipts, disbursements, revolving loan funds, and leveraged funds (if applicable). If a State provides CDBG-MIT funds to a local government and permits local governments to retain program income, or a State permits subrecipients to retain program income prior to grant closeout, the grantee must establish program income accounts in the DRGR system. The DRGR system requires grantees to use program income before drawing additional grant funds and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

V.A.4.e. *DRGR system Quarterly Performance Report (QPR).* Each grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee's official website. In the event the QPR is rejected by HUD, the grantee must post the revised version, as approved by HUD, within 3 days of HUD approval. The grantee's first QPR is due after the first full quarter after HUD signs the grant agreement. For example, a grant agreement signed in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until all funds have been expended and all expenditures and accomplishments have been reported. If a satisfactory report is not submitted in a timely manner, HUD may suspend access to CDBG-MIT 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.

Each QPR will include information about the uses of funds in activities identified in the DRGR action plan during the applicable quarter. This includes, but is not limited to, the project name, activity, location, and

national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-MIT funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as number of housing units completed or number of low- and moderate-income persons served; and the race and ethnicity of persons assisted under direct-benefit activities. For all housing and economic development activities, the address of each CDBG-MIT assisted property must be recorded in the QPR. Grantees must not include such addresses in its public QPR; when entering addresses in the QPR, grantees must select "Not Visible on PDF" to exclude them from the report required to be posted on its website. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed in the QPR. Each grantee must include a description of actions taken in that quarter to affirmatively further fair housing, within the section titled "Overall Progress Narrative" in the DRGR system.

V.A.5. *Direct grant administration and means of carrying out eligible activities-applicable to State grantees only*. Requirements at 42 U.S.C. 5306(d) are waived to the extent necessary to allow a State to use its CDBG-MIT grant allocation directly to carry out State-administered CDBG-MIT eligible activities, rather than distribute all funds to local governments. Pursuant to this waiver, 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. Eligible CDBG-MIT activities may be carried out by the 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 civil rights, labor standards, and environmental protection requirements, for compliance with 24 CFR 570.489 (g) and (h) relating to conflicts of interest and for compliance with 24 CFR 570.489(m) relating to monitoring and management of subrecipients.

A State grantee may also carry out activities in tribal areas. The State shall coordinate with the Indian tribe with jurisdiction over the tribal area when providing CDBG-MIT assistance to beneficiaries in tribal areas. A State grantee carrying out projects in tribal areas, either directly or through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients, must obtain the consent of the Indian tribe with jurisdiction over the tribal area to allow the State to carry out or to fund CDBG-MIT projects in the area. Indian tribes that receive CDBG-MIT funding from a State grantee must comply with applicable nondiscrimination requirements (see 24 CFR 1003.601).

For activities carried out by entities eligible under section 105(a)(15) of the HCDA, such entities will be subject to the description of a nonprofit under that section rather than the description located in 24 CFR 570.204, even in a case in which the entity is receiving assistance through a local government that is an entitlement grantee.

V.A.5.a. *Use of administrative funds across multiple grants*

The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (P.L. 116-20) approved June 6, 2019, authorizes special treatment of grant administrative funds for grantees that received awards under certain CDBG-DR grants (this includes CDBG-MIT grants). Accordingly, grantees that received funds under Public Laws 114–113, 114–223, 114-254, 115–31, 115–56, 115–123, and 115– 254, or any future act may use eligible administrative funds (up to 5 percent of each grant award plus up to 5 percent of program income generated by the grant) appropriated by these acts without regard to the particular disaster appropriation from which such funds originated. If the grantee chooses to exercise this authority, the grantee must ensure that it has appropriate financial controls to ensure that the amount of grant administration expenditures for each of the aforementioned grants will not exceed 5 percent of the total grant award for each grant (plus 5 percent of program income), 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 V.A.1.a.(1).b. of the CDBG-MIT Main Notice. Grantees are reminded that all costs incurred for administration must still qualify as an eligible administration expense. HUD will issue additional guidance

on this provision that grantees will be required to follow to ensure compliance and maintain proper financial controls.

V.A.5.b. *Use of funds in response to Hurricane Matthew and Hurricane Florence (State of North Carolina and South Carolina only*). P.L. 116-20 provides that grantees that received an allocation for mitigation funding provided by P.L. 115–123 in response to Hurricane Matthew may use the CDBG-MIT funds for the same activities, consistent with the requirements of the CDBG-MIT grant, in the most impacted and distressed areas related to Hurricane Florence. Expenditures in the HUD-identified MID areas for Hurricane Florence count toward the 50 percent expenditure requirement for HUD-identified MID areas outlined in section II.C. of the CDBG-MIT Main Notice.

V.A.6. *Consolidated plan waiver.* HUD is temporarily waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5) and 91.225(a)(5)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. However, this waiver applies only until the grantee submits its next full (3–5 year) consolidated plan, or for 24 months after the applicability date of the CDBG-MIT Main Notice, whichever is sooner. If the grantee has not already updated its Analysis of Impediments to Fair Housing Choice or accepted Assessment of Fair Housing (AFH) in coordination with its post-waiver consolidated plan update, HUD strongly encourages the grantee do so to more accurately reflect housing conditions following the qualifying disaster(s) that served as the basis for the CDBG-MIT allocation.

V.A.7. *Requirement for consultation during plan preparation.* Currently, the HCDA and HUD 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 instituting the alternative requirement that States receiving a CDBG-MIT allocation consult with all disaster-affected local governments (including any CDBG Entitlement grantees), Indian tribes, and local public housing authorities in determining the use of funds. This ensures that State grantees sufficiently assess the impacts of all areas affected by the disaster. Additional guidance on consultation with local stakeholders can be found in the National Disaster Recovery Framework and its discussion of pre- and post-disaster planning at https://www.fema.gov/national-disaster-recovery-framework.

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 to ensure consistency of the action plan with applicable regional redevelopment plans. As provided in sections V.A.1.b.(c) and V.A.2.a.(5) of the CDBG-MIT Main Notice, agencies that administer CDBG-MIT funds are required to consult with any separate agency of the jurisdiction that is responsible for development of the FEMA HMP for the grantee's jurisdiction, including coordinating with the State Hazard Mitigation Officer (SHMO).

Grantees are advised to maintain documentation of all consultations required by this paragraph to demonstrate compliance with this requirement.

V.A.8. *Grant administration responsibilities and general administration cap.*

V.A.8.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 funds provided for CDBG-MIT funds.

V.A.8.b. *General administration cap*. For all CDBG-MIT grantees, the CDBG program administration requirements must be modified to be consistent with the Appropriations Act. Accordingly, 5 percent of the grant and 5 percent of program income generated by the grant may be used for administrative costs by the grantee, units of general local government, or by subrecipients. Thus, the total of all costs classified as administrative for any CDBG-MIT grantee must be less than or equal to the 5 percent cap.

(1) *Combined technical assistance and administrative expenditures cap for States only*. The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap administration and technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding $100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for administrative and technical assistance expenditures must not exceed 5 percent of the grant amount plus 5 percent of program income generated by the grant. Under this alternative requirement, a State is limited to spending a maximum of 15 percent of its total grant amount or $750 million, whichever is less, on planning costs. Planning costs subject to this cap are those defined in 42 U.S.C. 5305(a)(12).

V.A.9. *Operation and maintenance waiver for CDBG-MIT program income.* The provision of 24 CFR 570.207(b)(2) generally prohibits the use of CDBG funds for the repair, operation or maintenance of public facilities, improvements or services. With this first-time allocation of mitigation-only funds to CDBG-DR grantees, HUD seeks to help local government CDBG-MIT grantees to fulfill their commitment to fund the operation and maintenance of innovative projects financed with CDBG-MIT funds and to encourage new operating partnerships. HUD has determined that good cause exists for a waiver that will allow the limited use of CDBG-MIT program income to be used by CDBG-MIT grantees who are units of local government, for the operation and maintenance of CDBG-MIT projects. Accordingly, HUD is waiving 24 CFR 570.207(b)(2) to the extent necessary to allow CDBG-MIT local government grantees to use program income generated by CDBG-MIT funds for the repair, operation, and maintenance of publicly owned projects financed with CDBG-MIT funds, as provided in section V.A.19.d. of the CDBG-MIT Main Notice. This waiver shall apply **only** to program income generated by CDBG-MIT funds, and shall not apply to the initial disbursement of CDBG-MIT funds or to any CDBG-DR or CDBG funded activities or resulting CDBG-DR or CDBG program income.

V.A.10. *Planning-only activities-applicable to State grantees only*. The Department notes that effective mitigation relies on some form of area-wide or comprehensive planning activity independent of the ultimate source of implementation funds. To assist State grantees, the Department is waiving the requirements at 24 CFR 570.483(b)(5) or (c)(3), which limit the circumstances under which the planning activity can meet a low- and moderate-income national objective. Instead, States must comply with 24 CFR 570.208(d)(4) when funding mitigation, planning-only grants, or directly administering planning activities that guide mitigation in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or undertake are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205, which may include support for local and regional functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, resilience plans, development of building codes, zoning ordinances, and neighborhood plans. Such planning activities are strongly encouraged to be undertaken in partnership with local governments and regional planning entities, as these policies have critical impacts on long-term mitigation goals and objectives. Grantees are encouraged to fund planning activities that align and integrate with FEMA's pre-disaster mitigation grant program (PDM or BRIC) and to upgrade mapping, data, and other capabilities to better understand evolving disaster risks. Grantees may use CDBG-MIT funds to enhance and update real property registration and land information systems at the state and local level. Grantees are expected to have land information systems which are sufficient to track requirements on the use of CDBG-MIT funds that run with the land.

State grantees are also encouraged to use CDBG-MIT planning funds to establish programs and policies that would allow them to perform at an enhanced level as defined by FEMA requirements, as well as to meet the documentation requirements for a FEMA Enhanced Hazard Mitigation Plan. Grantees may also partner with agency staff responsible for community floodplain management activities to participate in the National Flood Insurance Program's (NFIP) Community Rating System (CRS), which is a voluntary incentive program that recognizes floodplain management activities that exceed minimum NFIP requirements. Exceeding these requirements can result in discounted flood insurance premium rates which reflect a community's reduced flood risk. Plans shall include the required Mitigation Needs Assessment of disaster

risks, including anticipated effects of future extreme weather events and other hazards, as described in section V.A.2.a.(1) of the CDBG-MIT Main Notice. Additional resources to assist in this process are available on the HUD exchange website: https://www.hudexchange.info/programs/CDBG-MIT/resources/#natural-hazard-risk-and-resilience-tools.

V.A.11. *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)). This target is likely to be difficult to reach when grantees are pursuing community-wide or regional mitigation measures to protect entire regions or communities regardless of income. Therefore, the CDBG-MIT Main Notice waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3), that 70 percent of funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of CDBG-MIT funds must benefit low- and moderate-income persons. However, as provided in section V.A.2.a.(4) of the CDBG-MIT Main Notice, all grantees must prioritize the protection of LMI individuals, and describe in the action plan how their proposed programs and projects will reflect that priority.

V.A.12. *Use of the "upper quartile" or "exception criteria" for low- and moderate-income area benefit activities.* Section 101(c) of the HCDA requires each funded activity to meet a national objective of the CDBG program, including the national objective of benefiting low- and moderate-income persons. Grantees may meet this national objective on an area basis, through an activity which is available to benefit all the residents of an area where at least 51 percent of the residents are low- and moderate income. In some cases, HUD permits an exception to the low- and moderate-income area benefit requirement that an area contain at least 51 percent low- and moderate-income residents. This exception applies to entitlement communities that have few, if any, areas within their jurisdiction that have 51 percent or more low- and moderate-income residents. These communities are allowed to use a percentage less than 51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the "exception criteria" or the "upper quartile." A grantee qualifies for this exception when fewer than one quarter of the populated-block groups in its jurisdiction contain 51 percent or more low- and moderate-income persons. In such a community, activities must serve an area that contains a percentage of low- and moderate-income residents that is within the upper quartile of all census-block groups within its jurisdiction in terms of the degree of concentration of low- and moderate-income residents. HUD assesses each grantee's census-block groups to determine whether a grantee qualifies to use this exception and identifies the alternative percentage the grantee may use instead of 51 percent for the purpose of qualifying activities under the low- and moderate-income area benefit. HUD determines the lowest proportion a grantee may use to qualify an area for this purpose and advises the grantee, accordingly. CDBG-MIT grantees are required to use the most recent data available in implementing the exception criteria at https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-exception-grantees. The "exception criteria" apply to mitigation activities funded pursuant to the CDBG-MIT Main Notice in jurisdictions covered by such criteria, including jurisdictions that receive mitigation funds from a State.V.A.13. *National objective waivers and alternative requirements applicable to CDBG-MIT funds.* The following waivers and alternative requirements modify national objective criteria to ensure that the use of CDBG-MIT funds is consistent with mitigation purposes required by the Appropriations Act.

V.A.13.a. *Additional criteria applicable to all mitigation activities funded with CDBG-MIT funds.* The provisions of 24 C.F.R. 570.483(e) and 570.208(d) are modified by an alternative requirement to add the following additional criteria for all mitigation activities funded with CDBG-MIT funds. To meet a national objective, all CDBG-MIT activities must:

(i) Demonstrate the ability to operate for the useful life of the project. Each grantee must plan for the long-term operation and maintenance of infrastructure and public facility projects funded with CDBG-MIT funds. The grantee must have a plan to fund the long-term operation and maintenance for CDBG-MIT projects. Funding options might include State or local resources, borrowing authority, or retargeting of existing financial resources.

(ii) Be consistent with other mitigation activities. The CDBG-MIT activity must be consistent with the other mitigation activities that the grantee will carry out with CDBG-MIT funds in the MID area. To be consistent, the CDBG-MIT activity must not increase the risk of loss of life or property in a way that undermines the benefits from other uses of CDBG-MIT funds in the MID.

V.A.13.b. *Additional criteria applicable to Covered Projects funded with CDBG-MIT funds.* The provisions of 24 C.F.R. 570.483(e) and 570.208(d) are modified by an alternative requirement to add the following additional criteria for Covered Projects funded with CDBG-MIT funds. To meet a national objective, all Covered Projects must:

(i) Demonstrate long-term efficacy and fiscal sustainability. The grantee must demonstrate the long-term efficacy and sustainability of the Covered Project by documenting measurable outcomes or reduction in risk as discussed in section V.A.2.i. of the CDBG-MIT Main Notice, and documenting how the Covered Project will reflect changing environmental conditions (such as sea level rise or development patterns) with risk management tools, and alter funding sources if necessary. The grantee also must establish a plan for the long-term operation and maintenance of the Covered Project and include a description of this plan in its action plan, as required by V.A.2.a.(10) of the CDBG-MIT Main Notice and the additional criteria applicable to all CDBG-MIT activities.

(ii) Demonstrably benefit the MID area. The benefits of the Covered Project must outweigh the costs of the Covered Project. Benefits outweigh costs if the BCA results in a benefit-to-cost ratio greater than 1.0. Alternatively, for a Covered Project that serves low- and moderate-income persons or other persons that are less able to mitigate risks or respond to and recover from disasters, benefits outweigh costs if the grantee supplements its BCA with a qualitative description of benefits that cannot be quantified but sufficiently demonstrate unique and concrete benefits of the Covered Project for low- and moderate-income persons or other persons that are less able to mitigate risks, or respond to and recover from disasters. This qualitative description may include a description of how the Covered Project will provide benefits such as enhancing a community's economic development potential, improving public health and or expanding recreational opportunities. BCAs must be completed consistent with the requirements of paragraph V.A.2.h.(2)(c)(ii) of the CDBG-MIT Main Notice.

V.A.13.*c. Additional urgent need national objective criteria for CDBG-MIT Activities.* In the context of disaster recovery and the allocation of CDBG-DR funds, the Department has historically provided waivers and established an alternative requirement to the urgent need national objective of the CDBG program as one means of helping communities to recover quickly. Specifically, the Department has waived the certification requirements for the documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), recognizing that in the context of disaster recovery those requirements have proven burdensome and redundant.

The Appropriations Act directs the Department to allocate CDBG-MIT funds to grantees that received CDBG-DR funds to assist in recovery from major federally declared disasters occurring in 2015, 2016 and 2017. To reflect the direction of the Appropriations Act to allocate funds to grantees recovering from recent disasters and to address the demonstrable need for significant mitigation improvements by those grantees, the Department is waiving the criteria for the urgent national objective as provided at 24 CFR 570.208(c) and 24 CFR 570.483(d) and is establishing an alternative requirement to include new urgent need national objective criteria for CDBG-MIT activities.

To meet the alternative criteria for the urgent need mitigation (UNM) national objective, each grantee must document that the activity: (i) addresses the current and future risks as identified in the grantee's Mitigation Needs Assessment of most impacted and distressed areas; and (ii) will result in a measurable and verifiable reduction in the risk of loss of life and property.

To meet the UNM national objective criteria, grantees must reference in their action plan the risk identified in the Mitigation Needs Assessment that is addressed by the activity. Grantees must maintain documentation of the measurable and verifiable reduction in risk that will be achieved upon completion of the activity. Action

plans must be amended, as necessary, to ensure that this information is included for each activity undertaken with CDBG-MIT funds.

V.A.13.d. *Additional LMI national objective criteria for CDBG-MIT activities.* In addition to other applicable criteria, CDBG-MIT activities can also meet an LMI national objective if they meet the criteria established in an alternative requirement in section V.B.5. of the CDBG-MIT Main Notice applicable to buyout activities (LMB) and housing incentives (LMHI).

V.A.13.e. The UNM national objective and additional criteria for mitigation activities and Covered Projects shall be applicable only to funds allocated by the CDBG-MIT Main Notice. Similarly, the alternative urgent need national objective criteria in the Prior Notices does not apply to CDBG-MIT funds.

V.A.13.f. Unless a grantee has received prior approval from HUD, CDBG-MIT activities cannot meet the CDBG national objective for the elimination of slum and blight as provided at 24 CFR 570.208(b) and 24 CFR 570.483(c). Grantees shall not rely on the national objective criteria for elimination of slum and blighting conditions without approval from HUD because this national objective generally is not appropriate in the context of mitigation activities.

V.A.14. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties-applicable to State grantees only*. 42 U.S.C. 5302(a)(7) (definition of ''nonentitlement area'') and provisions of 24 CFR part 570, including 24 CFR 570.480, are waived to permit a State to distribute CDBG-MIT funds to units of local government and Indian tribes.

V.A.15. *Use of subrecipients—applicable to State grantees only.* The State CDBG program rule does not make specific provision for the treatment of entities that the CDBG Entitlement program calls ''subrecipients.'' The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, for States taking advantage of the waiver to carry out activities directly, the requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply.

V.A.16. *Recordkeeping.* When a State carries out activities directly, 24 CFR 570.490(b) is waived, and the following alternative provision shall apply: The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG-MIT funds, under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: (1) enable HUD to make the applicable determinations described at 24 CFR 570.493; (2) make compliance determinations for activities carried out directly by the State; and (3) 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 (FHEO) purposes, 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. All grantees must report FHEO data in the DRGR system at the activity level.

V.A.17. *Change of use of real property, applicable to 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 this program, all references to "unit of general local government" in 24 CFR 570.489(j), shall be read as ''State, unit of general local government (UGLG) or State subrecipient.''

V.A.18. *Responsibility for review and handling of noncompliance-applicable to State grantees only*. This change is in conformance with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies for any State receiving a direct CDBG-MIT grant: the State shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and local governments, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCDA, as amended, as modified by the CDBG-MIT Main Notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The

State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or local governments.

Each CDBG-MIT grantee shall attend and require subrecipients to attend fraud related training provided by HUD OIG to assist in the proper management of CDBG-MIT grant funds. Additional information about this training will be posted on the HUD website.

V.A.19. *Program income alternative requirement*. The Department is waiving applicable program income rules at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), 570.500 and 570.504 only to the extent necessary to provide additional flexibility to State and local government as described below. The alternative requirements provide guidance regarding the use of program income received before and after grant close out and address revolving loan funds.

V.A.19.a. *Definition of program income.*

(1) For purposes of the CDBG-MIT Main Notice, ''program income'' is defined as gross income generated from the use of CDBG-MIT funds received by a State, local government, or a subrecipient of a State or local government, except as provided in subparagraph (d) of this paragraph. When income is generated by an activity that is only partially assisted with CDBG-MIT funds, the income shall be prorated to reflect the percentage of CDBG-MIT funds used (e.g., a single loan supported by CDBG-MIT funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

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

(b) Proceeds from the disposition of equipment purchased with CDBG-MIT funds.

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

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

(e) Payments of principal and interest on loans made using CDBG-MIT funds.

(f) Proceeds from the sale of loans made with CDBG-MIT funds.

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

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

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

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

(2) ''Program income'' does not include the following:

(a) 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.

(b) 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.

V.A.19.b. *Retention of program income.* State grantees may permit a local government or Indian tribe that receives or will receive program income to retain the program income but are not required to do so.

V.A.19.c. *Program income—use, close out, and transfer*.

(1) Program income received (and retained, if applicable) before or after close out of the CDBG-MIT grant that generated the program income, and used to continue mitigation activities, is treated as additional CDBG-MIT funds subject to the requirements of the CDBG-MIT Main Notice and must be used for mitigation activities in accordance with the grantee's action plan. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in sections V.A.19.d. and e. of the CDBG-MIT Main Notice.

(2) In addition to the regulations addressing program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: A State grantee may transfer program income to its annual CDBG program before close out of the grant that generated the program income. In addition, a State grantee may transfer program income before close out to any annual CDBG-funded activities carried out by a local government within the State. Program income received by a grantee after close out of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. In all cases, any program income received that is *not* used to continue the mitigation activity will not be subject to the waivers and alternative requirements of the CDBG-MIT Main Notice. Rather, those funds will be subject to the grantee's regular CDBG program rules.

V.A.19.d. *Repair, operation and maintenance of certain CDBG-MIT projects.*

Local government CDBG-MIT grantees may use program income to reimburse its agencies for the repair, operation and maintenance of publicly owned and operated projects funded with CDBG-MIT funds, provided that: (1) the agency that owns and operates the project has entered into a written agreement with the grantee that commits the agency to providing not less than fifty percent of funds necessary for the annual repair, operating and maintenance costs of the project; and (2) the grantee adopts policies and procedures to provide for the grantee's regular, on-site inspection of the project in order to ensure its proper repair, operation and maintenance. State grantees may request a waiver from the Department for the use of program income for this purpose.

V.A.19.e. *Revolving loan funds.* State grantees and local governments may establish revolving funds to carry out specific, identified mitigation activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific mitigation activities. These activities generate payments used to support other mitigation activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional CDBG-MIT grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities.

State grantees may also establish a revolving fund to distribute funds to local governments to carry out specific, identified mitigation activities. The same requirements, outlined above, apply to this type of revolving loan fund.

A revolving fund established by a grantee or local government shall not be directly funded or capitalized with grant funds.

V.A.20. *Limitation on reimbursement.* The provisions of 24 CFR 570.489(b) are applied to permit a State grantee to charge to the grant eligible pre-award costs incurred by itself, its recipients or subrecipients (including public housing authorities (PHAs)) that are associated with CDBG-MIT funds and comply with grant requirements. A local government grantee is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for eligible pre-award costs that are associated with CDBG-MIT funds and comply with grant requirements. Section 24 CFR 570.200(h)(1)(i) will not apply to the extent that it requires pre-award activities to be included in a consolidated plan. Each grantee must include all pre-award activities in its action plan.

Under the Prior Notices, grantees were permitted to charge to grants the pre-award and preapplication costs of homeowners, businesses, and other qualifying entities for certain eligible recovery costs they incurred within one year of a qualified disaster. Because the one-year period has passed for all grantees receiving an allocation pursuant to the CDBG-MIT Main Notice and because CDBG-MIT funds are provided in order to reduce risks from future disasters, CDBG-MIT funds shall not be used to reimburse homeowners, businesses or entities (other than grantees, local governments, and subrecipients described above) for mitigation activities completed prior to the applicability date of the CDBG-MIT Main Notice.

V.A.21. *Prohibition on forced mortgage payoff.* In some instances, mortgage agreement terms require homeowners to repay the balance of the mortgage loan with assistance received to rehabilitate, reconstruct or elevate the home in order to make the home more resilient. CDBG-MIT funds, however, may not be used to repay a mortgage loan in whole or in part under this type of "forced mortgage payoff" provision. The ineligibility of a forced mortgage payoff with CDBG-MIT 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.

V.A.22. *One-for-one replacement housing, relocation, and real property acquisition Requirements.* Activities and projects undertaken with CDBG-MIT funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 et seq.) ("URA") and section 104(d) of the HCDA (42 U.S.C. 5304(d)) (Section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for section 104(d) are at 24 CFR part 42, subpart C. For the purpose of promoting the availability of decent, safe, and sanitary housing, HUD is waiving the following URA and section 104(d) requirements with respect to the use of CDBG-MIT funds:

V.A.22.a. *Section 104(d) one-for-one replacement.* One-for-one replacement requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) of the HCDA and 24 CFR 42.375 are waived in connection with CDBG-MIT funds for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable lower-income dwelling units. This waiver exempts disaster-damaged units that meet the grantee's definition of "not suitable for rehabilitation" from the one-for-one replacement requirements. Before carrying out activities that may be subject to the one-for-one replacement requirements, the grantee must define "not suitable for rehabilitation" in its action plan or in policies and procedures governing these activities. A grantee with questions about one-for-one replacement requirements is encouraged to contact the HUD regional relocation specialist responsible for its jurisdiction.

HUD is waiving the section 104(d) one-for-one replacement requirement for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation because it does not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Further, the requirement may discourage grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and to economic development. Grantees must reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note that the demolition and/or disposition of PHA-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

V.A.22.b. *Relocation assistance.* The relocation assistance requirements at section 104(d)(2)(A) of the HCDA and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by the CDBG-MIT Main Notice, for activities related to mitigation. 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. The URA provides at 49 CFR 24.402(b) that a displaced person is eligible to receive a rental assistance payment that is calculated to cover a period of 42 months. By contrast, section 104(d) allows a lower-income

displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the section 104(d) relocation assistance requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance for CDBG-MIT funds.

V.A.22.c. *Tenant-based rental assistance.* The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(vii), 24.2(a)(6)(ix), and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing payment obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that comparable replacement dwellings are made available to the tenant in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede the grantee's actions whenever TBRA 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.

V.A.22.d. *Arm's length voluntary purchase.* The requirements at 49 CFR 24.101(b)(2)(i) and (ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who was allocated CDBG-MIT funds and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often-large-scale acquisition needs of grantees, this waiver is necessary to reduce burdensome administrative requirements to implement mitigation activities. Grantees are reminded that tenants occupying real property acquired through voluntary purchase may be eligible for relocation assistance.

V.A.22.e. *Optional relocation policies.* The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee level. Unlike the regular CDBG program, States may carry out mitigation activities directly or through subrecipients, but 24 CFR 570.606(d) does not account for this distinction. This waiver makes clear that grantees receiving CDBG-MIT funds may establish optional relocation policies or permit their subrecipients to establish separate optional relocation policies. This waiver is intended to provide grantees with maximum flexibility in developing optional relocation policies with CDBG-MIT funds.

V.A.22.f. *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 because of the identified disaster 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 (including its implementing regulation at 49 CFR 24.403(d)(1)), is waived to the extent that it would apply to real property acquisition, rehabilitation or demolition of real property for a CDBG-MIT funded project commencing more than one year after the Presidentially declared disaster undertaken by the grantees, or subrecipients, provided that the project was not planned, approved, or otherwise underway prior to the disaster. For purposes of this paragraph, a CDBG-MIT funded project shall be determined to have commenced on the earliest of: 1) the date of an approved Request for Release of Funds and certification, or 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 Department has surveyed other federal agencies' interpretation and implementation of Section 414 and found varying views and strategies for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. The Secretary has the authority to waive provisions of the Stafford Act and its implementing regulations that the Secretary administers in connection with the obligation of funds made available by the CDBG-MIT Main Notice, or the grantees' use

of these funds. The Department has determined that good cause exists for a waiver and that such waiver is not inconsistent with the overall purposes of title I of the HCDA.

(1) The waiver will simplify the administration of mitigation programs and projects 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.

(2) 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.

V.A.23. *Environmental requirements.*

V.A.23.a. *Clarifying note on the process for environmental release of funds when a State carries out activities directly.* Usually, a State distributes CDBG funds to local governments and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD will allow a State grantee to also carry out activities directly, in addition to distributing funds to subrecipients. Thus, per 24 CFR 58.4, when a State carries out activities directly, the State must submit the Certification and Request for Release of Funds to HUD for approval.

V.A.23.b. *Adoption of another agency's environmental review*. In accordance with the Appropriations Act, grant recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, 408(c)(4) or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the HCDA. The grant recipient must notify HUD in writing of its decision to adopt another agency's environmental review. The grant recipient must retain a copy of the review in the grantee's environmental records.

V.A.23.c. *Unified federal review*. Section 1106 of the Sandy Recovery Improvement Act (Div. B of P.L. 113-2, enacted January 29, 2013) directed the establishment of an "expedited and unified interagency review process to ensure compliance with environmental and historic requirements under Federal law relating to disaster recovery projects, in order to expedite the recovery process, consistent with applicable law." The process aims to coordinate environmental and historic preservation reviews to expedite planning and decision-making for disaster recovery projects, including mitigation projects undertaken to avert the impact of future disasters. Grantees receiving an allocation of CDBG-MIT funds are encouraged to participate in this process as one means of expediting the implementation of mitigation projects that will assist in recovery from future disasters. Tools for the unified federal review process (UFR) process can be found here: http://www.fema.gov/unified-federal-environmental-and-historic-preservation-review-presidentially-declared-disasters.

V.A.23.d. *Release of funds.* In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a Request for Release of Funds and Certification, immediately approve the release of funds for an activity or project assisted with CDBG-MIT funds if the recipient has adopted an environmental review, approval, or permit under section V.A.23.b. of the CDBG-MIT Main Notice, or the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

V.A.23.e. *Historic preservation reviews*. To facilitate expedited historic preservation reviews under section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. Section 306108), HUD strongly encourages grantees to allocate general administration funds to retain a qualified historic preservation professional and support the capacity of the State Historic Preservation Officer /Tribal Historic Preservation Officer to review CDBG-MIT projects. For more information on qualified historic preservation professional qualifications standards see https://www.nps.gov/history/local-law/arch_stnds_9.htm.

V.A.23.f. *Tiered environmental reviews.* HUD encourages grantees as Responsible Entities to develop a Tiered approach to streamline the environmental review process for whenever the action plan contains a program with multiple, similar activities that will result in similar impacts (e.g. single-family housing programs). Tiering, as defined in 40 CFR 1508.28, is a means of making the environmental review process more efficient by allowing parties to "eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review" (40 CFR 1502.20). In addition, "tiering is appropriate when there is a requirement to evaluate a policy of proposal in the early stages of development a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date" (24 CFR 58.15). Tiering is appropriate when a Responsible Entity is evaluating a single-family housing program with similar activities within a defined local geographic area and timeframe (e.g., rehabilitating single-family homes within a city district or county over the course of 1 to 5 years) but where the specific sites and activities are not yet known.

A tiered review consists of two stages: a broad-level review and subsequent site-specific reviews. The broad-level review will identify and evaluate the issues that can be fully addressed and resolved, notwithstanding possible limited knowledge of the project. In addition, it must establish the standards, constraints, and processes to be followed in the site-specific reviews. An 8-Step Decision Making Process for Floodplains and Wetlands, including early and final public notices can be completed on a county-wide basis for single-family housing programs funded with CDBG-MIT funds. As individual sites are selected for review, the site-specific reviews evaluate the remaining issues based on the policies established in the broad-level review. Together, the broad-level review and all site-specific reviews will collectively comprise a complete environmental review addressing all required elements. Public notice and the Request for Release of Funds (HUD-Form 7015.15) are processed at the broad-level, unless there are unanticipated impacts or impacts not adequately addressed in the prior review, eliminating the need for publication at the site-specific level. However, funds cannot be spent or committed on a specific site or activity until the site-specific review have been completed for the site.

V.A.23.g. *Discipline and accountability in the environmental review and permitting of infrastructure projects.* Executive Order 13807, signed by the President on August 15, 2017, establishes a coordinated, predictable and transparent process for the review and permitting of infrastructure projects. E.O. 13807 requires Federal agencies to process environmental reviews and authorization decisions for "major infrastructure projects" as One Federal Decision (OFD). As CDBG-MIT grantees assume authority to conduct environmental reviews, they should implement the following elements of the OFD policy set forth in E.O. 13807 for major infrastructure projects, and further clarified in M-19-20 Guidance on the Applicability of E.O. 13807 to Responsible Entities Assuming Department of Housing and Urban Development Environmental Review Responsibilities [https://www.whitehouse.gov/wp-content/uploads/2019/06/M-19-20.pdf]. CDBG-MIT grantees should: (1) Seek to complete environmental reviews and authorization decisions for major infrastructure projects in not more than an average of two years, measured from the appendix of Intent (NOI) to prepare an Environmental Impact Statement (EIS) to the issuance of the Record of Decision (ROD); (2) Develop a Permitting Timetable that includes milestones for applicable environmental reviews and authorizations and is updated at least quarterly on the Permitting Dashboard (www.permits.performance.gov); (3) Coordinate with cooperating and participating Federal agencies, to develop a single EIS and coordinate a single ROD; (4) Seek to ensure that all necessary authorization decisions for the construction of the project are completed within 90 days of issuance of the ROD; and (5) Seek to ensure that there is an effective process in place to elevate instances in which a Permitting Timetable milestone is missed or extended, or is anticipated to be missed or extended, to higher officials (including senior responsible entity leadership) for timely resolution, and that if follow such process..

V.A.24. *Duplication of benefits.* Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster 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 and

the requirement that all costs are necessary and reasonable, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has a mitigation need that has not been fully met.

Accordingly, grantees must comply with the requirements of the 2019 DOB Notice. Requirements on CDBG-DR funds and CDBG-DR grants in the 2019 DOB Notice shall apply equally to CDBG-MIT funds and CDBG-MIT grants. As described in the 2019 DOB Notice, all CDBG-MIT grants are subject to the requirement under the tenth proviso following the Community Development Fund heading of Public Law 115-123 (Declined Loans Provision) and the requirements for its implementation in the 2019 DOB Notice. The Declined Loan Provision states: "Provided further, That with respect to any such duplication of benefits, the Secretary and any grantee under this section shall not take into consideration or reduce the amount provided to any applicant for assistance from the grantee where such applicant applied for and was approved, but declined assistance related to such major disasters that occurred in 2014, 2015, 2016, and 2017 from the Small Business Administration under section 7(b) of the Small Business Act (15 U.S.C. 636(b))."

The 2019 DOB Notice also implements requirements resulting from recent amendments to section 312 of the Stafford Act that only apply to CDBG-MIT grantees receiving an allocation as a result of disasters occurring in 2016 and 2017. FEMA, the agency that administers the Stafford Act, has advised that pursuant to recent amendments to Section 312 of the Stafford Act in the DRRA, for disasters occurring between 2016 and 2021, a loan is not a duplication of other forms of financial assistance, provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency. The most common source of loans for physical and economic disaster recovery losses and related mitigation measures that have historically constituted a duplication of benefits are loans offered by the U.S. Small Business Administration (SBA). CDBG-MIT grantees receiving an allocation as a result of a 2015 disaster are not subject to the provisions of DRRA.

V.A.25. *Procurement.* State grantees must comply with the procurement requirements at 24 CFR 570.489(g) and evaluate the cost or price of the product or service. State grantees shall establish requirements for procurement policies and procedures for local governments and subrecipients based on full and open competition consistent with the requirements of 24 CFR 570.489(g), and shall require an evaluation of the cost or price of the product or service (including professional services like legal services or case management). Additionally, if the State agency designated as the administering agency chooses to provide funding to another State agency, the administering agency may specify in its procurement policies and procedures whether the agency implementing the program must follow the procurement policies and procedures that the administering agency is subject to, or whether the agency must follow the same policies and procedures to which other local governments and subrecipients are subject.

Local government grantees in direct receipt of CDBG-MIT funds must comply with the specific applicable procurement standards identified in 2 CFR 200.318 through 200.326 (subject to 2 CFR 200.110, as applicable).

HUD may request periodic updates from any grantee that uses contractors. A contractor is a third-party person or organization from which the grantee acquires goods or services through a procurement process, consistent with the procurement requirements in the CDBG program regulations. HUD is establishing an additional alternative requirement for <u>all</u> contracts with contractors used to provide discrete services or deliverables only, as follows:

- The grantee (or procuring entity) is required to clearly state the period of performance or date of completion in all contracts;
- The grantee (or procuring entity) must incorporate performance requirements and liquidated damages or, for administrative and consultant contracts, penalties, into each procured contract. Contracts that describe work performed by general management consulting services need not adhere to this requirement; and

- The grantee (or procuring entity) may contract for administrative support but may not delegate or contract to any other party any inherently governmental responsibilities related to management of the grant, such as oversight, policy development, monitoring, internal auditing, and financial management.

Technical assistance resources for procurement are available to grantees either through HUD staff or through technical assistance providers engaged by HUD or a grantee.

V.A.26. *Timely distribution of funds.* The Appropriations Act, as amended, requires that funds provided under the Act be expended within two years of the date that HUD obligates funds to a grantee and authorizes the Office of Management and Budget (OMB) to provide a waiver of this requirement. OMB has provided HUD with a waiver of this two-year expenditure requirement. HUD is also waiving the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution and expenditure of funds and establishing an alternative requirement, providing that each grantee must expend fifty percent of its allocation of CDBG-MIT funds on eligible activities within six years of HUD's execution of the grant agreement and one hundred percent of its allocation within twelve years of HUD's execution of the grant agreement absent a waiver and alternative requirement as requested by the grantee and approved by HUD. A grantee request for a waiver of an expenditure deadline must document the grantee's progress in the implementation of the grant; outline the long-term nature and complexity of the mitigation programs and projects that have yet to be fully implemented; and propose an alternative deadline for the expenditure of the funds.

V.A.27. *Review of continuing capacity to carry out CDBG-funded activities in a timely manner.* If HUD determines that the grantee has not carried out its CDBG-MIT activities and certifications in accordance with the requirements for CDBG-MIT funds, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the nature and extent of the recipient's performance deficiencies, types of corrective actions the recipient has undertaken, and the success or likely success of such actions, and apply the corrective and remedial actions specified in section V.A.28. of the CDBG-MIT Main Notice.

V.A.28. *Corrective and remedial actions.* To ensure compliance with the requirements of the Appropriations Act and to effectively administer CDBG-MIT grants in a manner that facilitates resilience, 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 applicable to entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. 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 a grantee receiving CDBG-MIT funds.

V.A.29. *Noncompliance and grant conditions.* Failure to implement a CDBG-MIT grant in accordance with a grantee's approved financial certification, the capacity and implementation plan, the action plan, as well as grant conditions established by the Department or other applicable requirements, shall constitute a performance deficiency. To correct that deficiency, the Department may exercise any of the corrective and remedial actions authorized in subpart O of the CDBG regulations (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. Grantees are advised that such remedies may include suspension of administrative funds as well as a reduction of the grantee's CDBG-MIT grant, its CDBG-DR grants, or its annual CDBG grant.

The Department may also establish special grant conditions for individual CDBG-MIT grants to mitigate the risks posed by the grantee, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. These conditions will be designed to provide additional assurances that mitigation programs are implemented in a manner to prevent waste, fraud, and abuse and that mitigation projects are effectively operated and maintained.

V.A.30. *Reduction, withdrawal, or adjustment of a grant, or other appropriate action.*

Prior to a reduction, withdrawal, or adjustment of a CDBG-MIT 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 for CDBG-MIT funds, the Department may adjust, reduce, or withdraw the CDBG-MIT grant or take other actions as appropriate, except for funds that have been expended for eligible, approved activities.

V.A.31. *Federal accessibility requirements*. Grantees are reminded that the use of CDBG-MIT funds must meet accessibility standards, including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act, and Titles II and III of the Americans with Disabilities Act. Grantees should review the Fair Housing Act Accessibility Guidelines at https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/fhefhag, the Uniform Federal Accessibility Standards (UFAS) at https://www.hudexchange.info/resource/796/ufas-accessibility-checklist/, and the 2010 ADA Standards. The HUD notice on "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities," 79 FR 29671 (May 23, 2014), explains when HUD recipients can use 2010 ADA Standards with exceptions, as an alternative to UFAS to comply with Section 504.

The following portion of the appendix details the waivers and alternative requirements typically established in CDBG-DR **Federal Register** notices, modified as necessary to reflect the distinct purpose of CDBG-MIT funds. The Department continues to authorize these modified waivers and alternative requirements as the CDBG-MIT Main Notice cannot anticipate every type of mitigation project that will be proposed by grantees. These activity-based waivers and alternative requirements are intended to provide grantees with continued flexibility in the design and implementation of comprehensive mitigation programs and projects. A program or project that meets these criteria is eligible for mitigation funding even when it also responds to a remaining unmet recovery need arising from a qualified disaster that served as the basis for its CDBG-MIT allocation.

V.B. Housing and Related Floodplain Issues.

V.B.1. *Housing-related eligibility waivers*. The broadening of eligible activities under the HCDA is necessary in the context of mitigation activities, to address the current and future risks arising from the disaster that qualified grantees for CDBG-MIT funds. As described in section II of the CDBG-MIT Main Notice, all housing activities implemented with CDBG-MIT funds must include mitigation measures that address the current and future disaster risks as identified in the grantee's Mitigation Needs Assessment.

Therefore, 42 U.S.C. 5305(a)(24)(A) and (D) is waived to the extent necessary to allow: (1) homeownership assistance for households earning up to 120 percent of the area median income; and (2) down payment assistance for up to 100 percent of the down payment. While homeownership assistance may be provided to households earning up to 120 percent of the area median income, only those funds used for households with up to 80 percent of the area median income may qualify as meeting the low- and moderate-income person benefit national objective.

In addition, 42 U.S.C. 5305(a) and 24 CFR 570.207(b)(3) is waived and alternative requirements adopted to the extent necessary to permit new housing construction that addresses disaster risks identified in the grantee's Mitigation Needs Assessment and to require the following construction standards on structures constructed, reconstructed, or rehabilitated with CDBG-MIT funds as part of activities eligible under 42 U.S.C. 5305(a). All references to "substantial damage" and "substantial improvement" shall be as defined in 44 CFR 59.1 unless otherwise noted.

V.B.1.a. *Green building standard for replacement and new construction of residential housing*. Grantees are encouraged to meet the Green Building Standard in this subparagraph for: (i) all new construction of residential buildings and (ii) all replacement of substantially damaged residential buildings. Replacement of residential buildings may include reconstruction (i.e., demolishing and rebuilding a housing unit on the same lot in substantially the same manner) and may include changes to structural elements such as flooring systems, columns, or load-bearing interior or exterior walls.

V.B.1.b. *Implementation of green building standard.* For purposes of the CDBG-MIT Main Notice, the Green Building Standard means that the grantee will consider meeting one of the following industry recognized standards for all construction covered by section V.B.1.a. above through implementation of one or more of the following programs: (i) ENERGY STAR (Certified Homes and Multifamily High-Rise), (ii) Enterprise Green Communities, (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development), (iv) ICC-700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite) or (iv) any other equivalent comprehensive green building program acceptable to HUD. Grantees should identify, in each project file, which Green Building Standard will be used, if any, on any building covered by section V.B.1.a of the CDBG-MIT Main Notice.

V.B.1.c. *Standards for rehabilitation of nonsubstantially damaged residential buildings.* For rehabilitation activities undertaken to address risks identified in the grantee's Mitigation Needs Assessment (other than that described in V.B.1.a of the CDBG-MIT Main Notice) grantees are encouraged to consider guidelines specified in the HUD CPD Green Building Retrofit Checklist, available at https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-building-checklist/. Grantees are encouraged to incorporate these guidelines on the rehabilitation work undertaken, including the use of mold resistant products when replacing surfaces such as drywall. When older or obsolete products are replaced as part of the rehabilitation work, it is encouraged that rehabilitation use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances. For example, if the furnace, air conditioner, windows, and appliances are replaced, it is encouraged that the replacements be ENERGY STAR-labeled or FEMP-designated products; WaterSense-labeled products (e.g., faucets, toilets, showerheads) are recommended to be used when water products are replaced. Rehabilitated housing may also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).

V.B.1.d. *Elevation standards for new construction, repair of substantial damage, or substantial improvement.* The following elevation standards apply to new construction, repair of substantial damage, or substantial improvement of structures to mitigate risks identified in a grantee's Mitigation Needs Assessment, when those structures are located in an area delineated as a flood hazard area or equivalent in FEMA's data source identified in 24 CFR 55.2(b)(1). All structures, defined at 44 CFR 59.1, designed principally for residential use and located in the 100-year (or 1 percent annual chance) floodplain that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the base flood elevation. Alternatively, grantees may choose to adopt the design flood elevation standards of ASCE-24 if it results in an elevation higher than two feet above 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)(3)(ii) 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 (0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain 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. Critical Actions are defined as an "activity for which even a slight 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, police stations, fire stations and principal utility lines.

For elevation activities, grantees are reminded that the elevation of structures must comply with all applicable federal accessibility standards outlined in section V.A.31. of the CDBG-MIT Main Notice.

Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, must be followed.

V.B.1.e. *Broadband infrastructure in housing.* Any substantial rehabilitation, as defined by 24 CFR 5.100, or new construction of a building with more than four rental units must include installation of broadband infrastructure, except where the grantee documents that: (a) the location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible; (b) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (c) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

V.B.2. *Housing incentives in at-risk communities.* Incentive payments are generally offered in addition to other programs or funding (such as insurance), to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan. For example, a grantee may offer an incentive payment (possibly in addition to a buyout payment) for households that volunteer to relocate outside of a floodplain or to a lower-risk area.

Therefore, 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to allow the provision of housing incentives. Each grantee must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable, and the incentives must be in accordance with the grantee's approved action plan and published program design(s). This waiver does not permit a compensation program. Additionally, a grantee may require the housing incentive to be used for a particular purpose by the household receiving the assistance.

In undertaking a large-scale migration or relocation recovery effort that is intended to move households out of high-risk areas, the grantee must consider how it can protect and sustain the impacted community and its assets. Grantees must also weigh the benefits and costs, including anticipated insurance costs, of redeveloping high-risk areas that were impacted by a disaster. Accordingly, grantees are prohibited from offering incentives to return households to disaster-impacted floodplains.

When undertaking housing incentive activities, to demonstrate that an incentive meets the low- and moderate-income housing national objective and the LMI national objective, grantees must meet all requirements of the HCDA and the criteria for the Low/Mod Housing Incentive (LMHI) national objectives for the use of housing incentives as described in section V.B.5. of the CDBG-MIT Main Notice.

V.B.3. *Limitation on emergency grant payments—interim mortgage assistance.* 42 U.S.C. 5305(a)(8), 24 CFR 570.207(b)(4), and 24 CFR 1003.207(b)(4) are modified to the extent necessary to extend interim mortgage assistance to qualified individuals from 3 months to up to 20 months. Interim mortgage assistance is typically used in conjunction with a buyout program, or when the rehabilitation or reconstruction to enhance the resiliency of single-family housing extends beyond 3 months, during which mortgage payments may be due but the home is uninhabitable. Thus, this interim assistance will be critical for many households facing financial hardship during this period. Grantees may use interim housing mortgage assistance payments along with rehabilitation/reconstruction assistance to expedite mitigation assistance to homeowners but must establish performance milestones for the rehabilitation/reconstruction that are to be met by the homeowner to receive the interim mortgage assistance payments. A grantee using this alternative requirement must document, in its policies and procedures, how it will determine the amount of assistance to be provided is necessary and reasonable.

V.B.4. *Acquisition of real property; flood and other buyouts.* CDBG-MIT grantees may carry out property acquisition for a variety of purposes. However, the term "buyouts" for CDBG-MIT funds refers to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding or the acquisition of properties in Disaster Risk Reduction Areas as designated by the grantee and defined below. HUD is providing alternative requirements for consistency with the application of other Federal resources commonly used for this type of activity.

Grantees are encouraged to use buyouts strategically, as a means of acquiring contiguous parcels of land for uses compatible with open space, recreational, natural floodplain functions, other ecosystem restoration, or wetlands management practices. To the maximum extent practicable, a grantee should avoid circumstances in which parcels that could not be acquired through a buyout remain alongside parcels that have been acquired through the grantee's buyout program. Grantees are reminded that real property acquisition with CDBG-MIT funding, including buyout, is subject to the URA, including the real property acquisitions requirements at 49 CFR part 24, subpart B, as modified at section V.A.22.b. of the CDBG-MIT Main Notice.

V.B.4.a. *Clarification of ''buyout'' and ''real property acquisition'' activities.*

Grantees that choose to undertake a buyout program have the discretion to determine the appropriate valuation method, including paying either pre-disaster or post-disaster fair market value (FMV). In most cases, a program that provides pre-disaster FMV to buyout applicants provides compensation at an amount greater than the post-disaster FMV. When the purchase price exceeds the current FMV, any CDBG–MIT funds in excess of the FMV are considered assistance to the seller, thus making the seller a beneficiary of CDBG-MIT assistance. If the seller receives assistance as part of the purchase price, this may have implications for duplication of benefits calculations or for demonstrating national objective criteria, as discussed below. However, a program that provides *post*-disaster FMV to buyout applicants merely provides the actual value of the property; thus, the seller is not considered a beneficiary of CDBG–DR assistance.

Regardless of purchase price, all buyout activities are a type of acquisition of real property (as permitted by 42 U.S.C. 5305(a)(1)). However, only acquisitions that meet the definition of a ''buyout'' are subject to the post-acquisition land use restrictions imposed by the CDBG-MIT Main Notice (section V.B.4.b.). The key factor in determining whether the acquisition is a buyout is whether the intent of the purchase is to reduce risk of property damage in a floodplain or a Disaster Risk Reduction Area. To conduct a buyout in a Disaster Risk Reduction Area, the grantee must establish criteria in its policies and procedures to designate the area subject to the buyout, pursuant to the following requirements: (1) the hazard must have been caused or exacerbated by the Presidentially declared disaster for which the grantee received its CDBG-MIT allocation; (2) the hazard must be a predictable environmental threat to the safety and well-being of program beneficiaries, as evidenced by best available data (e.g. FEMA Repetitive Loss Data) and science; and (3) the Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.

Real property acquisitions, including buyouts, undertaken with CDBG-DR and CDBG-MIT funds (even if funds are used only for acquisition costs other than the purchase price) are generally subject to the requirements in URA regulations at 49 CFR part 24, subpart B, unless they satisfy an exception at 49 CFR 24.101(b)(1)-(5). For acquiring entities with eminent domain authority, the most relevant exception is commonly 49 CFR 24.101(b)(1), which requires that the acquisition satisfy a four-part test. HUD is clarifying how the four-part test applies to buyouts conducted with CDBG-DR and CDBG-MIT funds. With respect to the buyout of properties, an "intended, planned, or designated project area," as referenced at 49 CFR 24.101(b)(1)(ii), shall be an area for which a clearly defined end use has been determined at the time that the property is acquired, in which all or substantially all of the properties within the area must be acquired within an established time period as determined by the grantee or acquiring entity for the project to move forward. Where moving forward with a project does not depend upon acquiring specific sites within established timeframes for a clearly defined end use, there is not an "intended, planned or designated project area." To illustrate this point, a grantee or acquiring entity's buyout would satisfy the criteria in 49 CFR 24.101(b)(1)(ii) with respect to the acquisition of property in the following examples: (1) a broad buyout eligibility area is identified by the need to reduce risk, but no specific property must be acquired or (2) a clearly defined end use (i.e., more specific than the categories of open space, recreational, or floodplain and wetlands management practices – see V.B.4.b. of the CDBG-MIT Main Notice) has not been determined at the time of acquisition.

Grantees are reminded that the distinction between buyouts and other types of acquisitions is important, because grantees may only redevelop an acquired property if the property is <u>not</u> acquired through a

buyout program (i.e., the purpose of acquisition was something other than risk reduction). When properties are not acquired through a buyout program, the purchase price must be consistent with applicable uniform cost principles (and the pre-disaster FMV may not be used).

V.B.4.b. *Buyout requirements*:

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

(2) No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than: (a) a public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (b) a rest room; or (c) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream and that the local floodplain manager approves, in writing, before the commencement of the construction of the structure.

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

The entity acquiring the property may lease it to adjacent property owners or other parties, including nonprofit land conservation organizations, for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may also be sold.

In all cases, a deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses in perpetuity.

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

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

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

(7) When undertaking buyout activities, to demonstrate that a buyout meets the low- and moderate-income housing national objective, grantees must meet all requirements of the HCDA, and applicable regulatory criteria described below. Grantees are encouraged to consult with HUD prior to undertaking a buyout program with the intent of using the low- and moderate-income housing (LMH) national objective. 42 U.S.C. 5305(c)(3) provides that any assisted activity that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low- and moderate-income only to the extent such housing will, upon completion, be occupied by such persons. In addition, the State CDBG regulations at 24 CFR 570.483(b)(3), entitlement CDBG regulations at 24 CFR 570.208(a)(3), and Indian CDBG regulations at 24 CFR 1003.208(c) 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 low- and moderate-income households. Therefore, a buyout program that merely pays homeowners to leave their existing homes does not result in a low- and moderate-income household occupying a residential structure and, thus, cannot meet the requirements of the LMH national objective. Buyout programs that assist low- and moderate-income persons can be structured in one of the following ways:

(a) The buyout program combines the acquisition of properties with another direct benefit—Low- and Moderate-Income housing activity, such as down payment assistance—that results in occupancy and otherwise meets the applicable LMH national objective criteria;

(b) The program meets the low- and moderate-income area (LMA) benefit criteria as defined for CDBG-MIT funds, to demonstrate national objective compliance, provided that the grantee can document that the properties acquired through buyouts will be used in a way that benefits all of the residents in a particular area where at least 51 percent of the residents are low- and moderate-income persons. When using the area benefit approach, a grantee must define the service area based on the end use of the buyout properties; or

(c) The program meets the criteria for the low- and moderate-income limited clientele national objective (LMC) and does not provide benefits that are available to all residents of the area. A buyout program could meet the national objective criteria for the limited clientele national objective if it restricts buyout program eligibility to exclusively low- and moderate-income persons, and the buyout provides an actual benefit to the low- and moderate-income sellers by providing pre-disaster valuation uniformly to those who participate in the program.

(d) The program meets the criteria for the Low/Mod Buyout (LMB) or Low/Mod Housing Incentive (LMHI) national objectives for buyouts and the use of housing incentives as authorized in the Department's August 7, 2017 **Federal Register** notice at 82 FR 36825 and described in section V.B.5. of the CBDG-MIT Main Notice.

V.B.4.c. *Redevelopment of acquired properties.*

(1) A grantee may redevelop an acquired property as part of a mitigation activity if the property is not acquired through a buyout program and the purchase price is based on the property's post-disaster value, consistent with applicable cost principles (the pre-disaster value may not be used). In addition to the purchase price, grantees may opt to provide relocation assistance or housing incentives to the owner of a property that will be redeveloped if the property is purchased by a grantee or subrecipient through voluntary acquisition, and the owner's need for additional assistance is documented.

(2) In carrying out acquisition activities, grantees must ensure they are in compliance with their long-term redevelopment plans and hazard mitigation plans.

V.B.5. *Additional LMI national objective criteria for buyouts and housing incentives.* For CDBG-MIT funds, HUD is continuing its establishment of an alternative requirement to clarify the criteria under which buyout activities and housing incentives can meet an LMI national objective. Grantees authorized to use housing incentives for CDBG-MIT funds must follow guidelines outlined in section V.B.2. of the CDBG-MIT Main Notice. The CDBG regulations limit activities that meet the LMI national objective to only the activities meeting the four established criteria in 24 CFR 570.208(a)(1) through (4) and 570.483(b)(1) through (4). Prior **Federal Register** notices have advised grantees of the criteria under which a buyout activity can meet an LMI housing (LMH) national objective (80 FR 72102). Notwithstanding that guidance, however, HUD has determined that providing CDBG-MIT grantees with an additional method to demonstrate how buyouts and housing incentives can assist LMI households, beyond those described in the previous notices, will ensure that grantees and HUD can account for and assess the benefit that CDBG–MIT assistance may have on LMI households when buyouts and housing incentives are used in long term recovery. Given the primary objective of the HCDA to assist low- and moderate- income persons, the Secretary has determined that there is good cause to establish an alternative requirement under which CDBG-MIT grantees are authorized to qualify the assistance provided to LMI persons through buyout and housing incentive programs. This alternative requirement recognizes that the benefits received by those individuals that accept buyout and housing incentive awards allow them to move from areas that are likely to be affected by future disasters.

In addition to the existing criteria at 24 CFR 570.208(a)(1)–(4) and 570.483(b)(1)–(4), HUD is establishing an alternative requirement to include the two new LMI national objective criteria for buyouts (LMB) and housing incentives (LMHI) that benefit LMI households that use CDBG–MIT funding provided pursuant to CDBG-MIT requirements.

For a buyout award or housing incentive to meet the new LMB and LMHI national objectives, grantees must demonstrate the following:

(1) The CDBG–MIT funds have been provided for an eligible activity that benefits LMI households supporting their move from high risk areas. The following activities shall qualify under this criterion, and must also meet the eligibility criteria of the appendixs governing the use of the CDBG-MIT funds:

(a) Low/Mod buyout (LMB). When CDBG–MIT funds are used for a buyout award to acquire housing owned by a qualifying LMI household, where the award amount (including optional relocation assistance) is greater than the post-disaster (current) fair market value of that property.

(b) Low/Mod housing incentive (LMHI). When CDBG–MIT funds are used for a housing incentive award, tied to the voluntary buyout or other voluntary acquisition of housing owned by a qualifying LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.

(2) Activities that meet the above criteria will be considered to benefit low and moderate-income persons unless there is substantial evidence to the contrary. Any activities that meet the newly established national objective criteria described above will count towards the calculation of a CDBG–MIT grantee's overall LMI benefit.

V.B.6. *Alternative requirement for housing rehabilitation — assistance for second homes.* The Department is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a)(4) as follows: properties that serve as second homes are not eligible for rehabilitation assistance or housing incentives provided through a CDBG-MIT program. For CDBG-MIT funds, a second home is defined as a home that is not the primary residence of the owner, a tenant, or any occupant at the time of the storm or at the time of application for 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.

V.B.7. *Flood insurance.* Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, prior to providing assistance. For additional information, please consult with the field environmental officer in the local HUD field office or review the guidance on flood insurance requirements on HUD's website.

V.B.7.a. *Flood insurance purchase requirements.* HUD does not prohibit the use of CDBG-MIT funds for existing residential buildings in a Special Flood Hazard Area (or 100-year floodplain). However, Federal, State, local, and tribal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner of 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. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for HUD-assisted property within a Special Flood Hazard Area, when HUD assistance is used to finance acquisition or construction, including rehabilitation. HUD strongly recommends the purchase of flood insurance <u>outside</u> of a Special Flood Hazard Area for properties that have been damaged by a flood, to better protect property owners from the economic risks of future floods and reduce dependence on Federal disaster assistance in the future, but this is not a requirement.

V.B.7.b. *Federal assistance to owners remaining in a floodplain.*

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for "repair, replacement, or restoration" for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law

on such property. This means that a grantee may not provide CDBG-MIT assistance for the repair, replacement, or restoration of a property to a person who has failed to meet this requirement and must implement a process to check and monitor for compliance.

(2) The Department is instituting an alternative requirement to 42 U.S.C. 5305(a)(4) as follows: Grantees receiving CDBG-MIT funds are prohibited from providing CDBG-MIT assistance for the rehabilitation/reconstruction of a house, if (a) the combined household income is greater than 120 percent AMI or the national median, (b) the property was located in a floodplain at the time of the disaster, and (c) 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. 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. HUD is establishing this alternative requirement 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. Higher income homeowners who reside in a floodplain, but who failed to secure or decided to not maintain their flood insurance, should not be assisted at the expense of those lower income households. Therefore, a grantee may only provide assistance for the rehabilitation or reconstruction of a house located in a floodplain if: a) the homeowner had flood insurance at the time of the qualifying disaster and still has unmet recovery needs; or b) the household earns less than the greater of 120 percent AMI or the national median and has unmet recovery needs.

(3) Section 582 also imposes a responsibility on a grantee that receives CDBG-MIT funds or that designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance in writing and to maintain such written notification in the documents evidencing the transfer of the property, and that the transferring owner may be liable if he or she fails to do so. These requirements are enumerated at http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section5154a&num=0&edition=prelim.

V.C. Infrastructure and Other Nonresidential Structures

V.C.1. *Elevation of nonresidential structures.* Nonresidential structures 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)(ii) or successor standard, up to at least two feet above the 100-year (or 1 percent annual chance) floodplain and may include using structural or nonstructural methods to reduce or prevent damage; or, designing it to adapt to, withstand and rapidly recover flood a flood event. 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 the FEMA standards) 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. Critical Actions are defined as an "activity for which even a slight 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, police stations, fire stations and principal utility lines. Grantees are reminded that the elevation of structures must comply with all applicable federal accessibility standards outlined in section V.A.31. of the CDBG-MIT Main Notice.

Non-structural infrastructure must be resilient to flooding. The vertical flood elevation establishes the level to which a facility must be resilient. This may include using structural or nonstructural methods to reduce or prevent damage; or, designing it to withstand and rapidly recover from a flood event. In selecting the appropriate resilience approach, grantees should consider several factors such as flood depth, velocity, rate of rise of floodwater, duration of floodwater, erosion, subsidence, the function or use and type of facility, and other factors.

Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, will be followed.

V.C.2. *Requirements for flood control structures.* Grantees that use CDBG-MIT funds to assist flood control structures (i.e., dams and levees) are prohibited from using CDBG-MIT funds to enlarge a dam or levee beyond the original footprint of the structure that existed prior to the disaster event. Grantees that use CDBG-MIT funds for levees and dams are required to: (1) register and maintain entries regarding such structures with the U.S. Army Corps of Engineers National Levee Database or National Inventory of Dams; (2) ensure that the structure is admitted in the U.S. Army Corps of Engineers PL 84-99 Rehabilitation Program (Rehabilitation Assistance for Non-Federal Flood Control Projects); (3) ensure the structure is accredited under the FEMA National Flood Insurance Program; (4) enter into the DRGR system the exact location of the structure and the area served and protected by the structure; and (5) maintain file documentation demonstrating that the grantee has conducted a risk assessment prior to funding the flood control structure and documentation that the investment includes risk reduction measures. CDBG-MIT funds may be used on the construction or demolition of a dam, levee or other flood control structure provided that construction or demolition shall be demonstrated to be an eligible mitigation activity pursuant to the requirements of the CDBG-MIT Main Notice. Rehabilitation of dams, levees or flood control structures are also eligible, provided that the rehabilitation is demonstrated to be an eligible mitigation activity and for dams and levees, that the rehabilitation may not exceed the original footprint of the structure as provided herein.

V.C.3. *Waiver and alternative requirement to permit certain improvements on private lands.* The Department recognizes that in order to achieve broad based and regional mitigation outcomes, it may be necessary to fund certain improvements on private lands that will yield public mitigation benefits. For instance, a grantee may seek to fund improvements and implement stormwater management practices on mostly privately-owned land to prevent or minimize the impact of downstream flooding. Under the Department's regulations and the HCDA, however, not all of these activities may be eligible under section 105(a)(2) of the HCDA, which permits the acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements. However, HUD recognizes that these improvements and management practices to be installed or applied on private lands can provide public benefits that are similar to the public benefits derived from public works, facilities, and other improvements generally eligible under section 105(a)(2). Accordingly, the Department is establishing a waiver and alternative requirement to expand section 105(a)(2) of the HCDA and to waive the provisions of 24 CFR 570.201(c) and 24 CFR 570.202(a)(1) to the extent necessary to permit CDBG-MIT grantees to carry out activities that provide for improvements on private lands that can be demonstrated to have a measurable public mitigation benefit. This eligible activity includes the expenditure of CDBG-MIT funds for actions necessary to obtain mandatory environmental permits (if approved by the permitting agency). CDBG-MIT grantees must demonstrate at a program level that such payments are necessary and reasonable and are required to secure the permits needed to implement its CDBG-MIT project.

V.C.4. *Prohibiting assistance to private utilities.* Funds made available under the CDBG-MIT Main Notice may not be used to assist privately-owned utilities. A CDBG-MIT grantee that prioritizes a mitigation project where assistance to a privately-owned utility is necessary, may request a waiver of this prohibition.

V.C.5. *Prohibition on emergency response services.* CDBG-MIT funds shall not be used for programs and projects to provide emergency response services. Emergency response services shall mean those services that are carried out in the immediate response to a disaster or other emergency in order to limit the loss of life and damage to assets by State and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities. However, CDBG-MIT funds may be used for mitigation activities to enhance the resilience of facilities used to provide emergency response services, provided that such assistance is not used for buildings for the general conduct of government as defined at 24 CFR 570.3.

V.D. Economic Development.

V.D.1. *National objective documentation for economic development activities.* 24 CFR 570.483(b)(4)(i), 24 CFR 570.506(b)(5), and 24 CFR 1003.208(d) are waived to allow the grantees receiving CDBG-MIT funds to identify the low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement—in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (i.e., the number of persons). Thus, it streamlines the documentation process because it allows the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

V.D.2. *Public benefit for certain economic development activities.* The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds were set two decades ago and can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity.

The CDBG-MIT Main Notice waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f), 24 CFR 570.209(b) and (d), and 24 CFR 1003.302(c) for only those economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects). However, grantees shall collect and maintain documentation in the project file on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; and the types of jobs. Additionally, grantees shall report the total number of jobs created and retained and the applicable national objective in the DRGR system. Paragraph (g) of 24 CFR 570.482 is also waived to the extent these provisions are related to public benefit.

V.D.3. *Clarifying note on Section 3 resident eligibility and documentation requirements.* The definition of "low-income persons" in 12 U.S.C. 1701u and 24 CFR 135.5 is the basis for eligibility as a section 3 resident. A section 3 resident means: (1) a public housing resident; or (2) an individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is: (i) a low-income person or (ii) a very-low-income person. Grantees should determine that an individual is eligible to be considered a section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction —which is eighty percent of the median income for the area. This authority does not impact other section 3 resident eligibility requirements in 24 CFR 135.5. All direct recipients of CDBG-MIT funding must submit form HUD-60002 annually through the Section 3 Performance Evaluation and Registry System (SPEARS) which can be found on HUD's website: https://www.hud.gov/program_offices/fair_housing_equal_opp/section3/section3/spears

V.D.4. *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 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, 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 a labor market area within the same State to continue business.

V.D.5. *Prioritizing small businesses.* To target assistance to small businesses, the Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) to require grantees to prioritize assisting businesses that meet the definition of a small business as defined by SBA at 13 CFR part 121 or, for

businesses engaged in "farming operations" as defined at 7 CFR 1400.3, and that meet the United States Department of Agriculture Farm Service Agency (FSA), criteria that are described at 7 CFR 1400.500, which are used by the FSA to determine eligibility for certain assistance programs. HUD advises grantees to pursue sources of assistance other than CDBG-MIT funds in order to address needs arising from crop loss or other agricultural losses attributable to the disaster.

V.D.6. *Underwriting.* Notwithstanding section 105(e)(1) of the HCDA, no CDBG-MIT funds may be provided to a for-profit entity for an economic development project under section 105(a)(17) unless such project has been evaluated and selected in accordance with guidelines developed by HUD pursuant to section 105(e)(2) for evaluating and selecting economic development projects. States 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 Part 570. https://www.ecfr.gov/cgi-bin/text-idx?SID=88dced3d630ad9fd8ab91268dd829f1e&mc=true&node=ap24.3.570_1913.a&rgn=div9

V.D.7. *Limitation on use of funds for eminent domain.* No CDBG-MIT funds may 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. Any use of funds for mass transit, railroad, airport, seaport or highway projects, as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water related and wastewater-related infrastructure), 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 projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfields Revitalization Act (P. L. 107–118) shall be considered a public use for purposes of eminent domain.

VI. Certifications and Collection of Information.

VI.1. *Certifications waiver and alternative requirement*. 24 CFR 91.225 and 91.325 are waived. Each grantee receiving a direct allocation of CDBG-MIT funds 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 in connection with any activity assisted with CDBG-MIT funding.

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 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–MIT funds, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and the CDBG-MIT Main Notice. The grantee certifies that activities to be undertaken with CDBG-MIT funds are consistent with its action plan.

d. The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for CDBG-MIT funds.

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

f. 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 notices providing waivers and alternative requirements for this grant). 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 notices providing waivers and alternative requirements for this grant).

g. State grantee certifies that it has consulted with affected local governments in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the uses of funds, including the method of distribution of funding, or activities carried out directly by the State.

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

(1) Funds will be used solely for necessary expenses related to mitigation activities, as applicable, in the most impacted and distressed areas for which the President declared a major disaster in 2015, 2016, or 2017 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-MIT funds, the relevant action plan has been developed to give priority to activities that will benefit low- and moderate-income families.

(3) The aggregate use of CDBG-MIT funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent (or another percentage permitted by HUD in a waiver published in an applicable **Federal Register** notice) of the CDBG-MIT grant amount is expended for activities that benefit such persons.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG-MIT 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) CDBG-MIT funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (a).

i. The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601-3619), and implementing regulations, and that it will affirmatively further fair housing.

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

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

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

k. The grantee certifies that it (and any subrecipient or administering entity) currently has or will develop and maintain the capacity to carry out mitigation activities, as applicable, in a timely manner and that the grantee has reviewed the respective requirements of the CDBG-MIT Main Notice. The grantee certifies to the accuracy of its P.L. 115-123 Financial Management and Grant Compliance certification checklist, or other recent certification submission, if approved by HUD, and related supporting documentation referenced at section V.A.1.a of the CDBG-MIT Main Notice and its implementation plan and capacity assessment and related submissions to HUD referenced at section V.A.1.b. of the CDBG-MIT Main Notice.

l. The grantee certifies that it considered the following resources in the preparation of its action plan, as appropriate: FEMA Local Mitigation Planning Handbook: https://www.fema.gov/media-library-data/20130726-1910-25045-9160/fema_local_mitigation_handbook.pdf ; DHS Office of Infrastructure

Protection: https://www.dhs.gov/sites/default/files/publications/ip-fact-sheet-508.pdf; National Association of Counties, Improving Lifelines (2014): https://www.naco.org/sites/default/files/documents/NACo_ResilientCounties_Lifelines_Nov2014.pdf; the National Interagency Coordination Center (NICC) for coordinating the mobilization of resources for wildland fire: https://www.nifc.gov/nicc/); the U.S. Forest Service's resources around wildland fire (https://www.fs.fed.us/managing-land/fire); and HUD's CPD Mapping tool: https://egis.hud.gov/cpdmaps/.

m. The grantee certifies that it will not use CDBG-MIT 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.

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

o. The grantee certifies that it will comply with environmental requirements at 24 CFR Part 58.

p. The grantee certifies that it will comply with 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.

VII. Duration of Funding

The CDBG-MIT Main Notice requires each grantee to expend fifty percent of its CDBG-MIT grant on eligible activities within six years of HUD's execution of the grant agreement and one hundred percent of its grant within twelve years of HUD's execution of the agreement absent a waiver and alternative requirement as requested by the grantee and approved by HUD.

VIII. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the grants under the CDBG-MIT Main Notice are as follows: 14.218 for Entitlement CDBG grantees and 14.228 for State CDBG grantees.

IX. Finding of No Significant Impact

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