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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6316-N-01]

Waivers and Alternative Requirements for Community Development Block Grant Disaster Recovery (CDBG-DR) and Community Development Block Grant Mitigation (CDBG-MIT) Grantees

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

ACTION: Notice.

SUMMARY: This notice governs Community Development Block Grant disaster recovery (CDBG-DR) and Community Development Block Grant mitigation (CDBG-MIT) funds awarded under several appropriations acts identified in the Table of Contents. Specifically, this notice provides waivers and establishes alternative requirements for certain CDBG-DR grantees that have submitted waiver requests for grants provided under the public laws cited in this notice.

DATES: Applicability Date: **[Insert date five days after date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Office of Block Grant Assistance, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Ms. Kome at 202-708-0033. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to disaster_recovery@hud.gov.

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I. Authority to Grant Waivers

Each of the appropriations acts cited in the Table of Contents authorize 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 grant funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD may also exercise its regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

All waivers and alternative requirements authorized in this notice are based upon a determination by the Secretary that good cause exists, and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCDA). The good cause for each waiver and alternative requirement is summarized in this notice.

II. Pub. L. 107–38, 107–73, 107–117, 107–206 Waivers and Alternative Requirements:

Waiver to Allow the Lower Manhattan Development Corporation (LMDC) To Transfer Remaining Property Acquired and Cleared With CDBG–DR Funds in Exchange for Other Property Interests.

Provisions of four public laws (the 9/11 Appropriations Acts) govern the CDBG-DR funds provided in response to the terrorist attacks of September 11, 2001: Pub. L. 107–38, 107–73, 107–117, and 107–206. These 9/11 Appropriations Acts have funded three CDBG-DR grants: \$700 million awarded to the New York State Development Corporation d/b/a Empire State Development (ESD); and two grants of \$2.0 billion and \$783 million, respectively, awarded to LMDC. ESD is a political subdivision and public benefit corporation of the State of New York and LMDC is a subsidiary of ESD. LMDC administers CDBG-DR funds allocated to the organization for emergency expenses and economic revitalization in response to the September 11, 2001, terrorist attacks in New York City. LMDC is charged with assisting New York City in recovering from the terrorist attacks on the World Trade Center (WTC), in part by working with the Port Authority of New York and New Jersey (Port Authority).

Previously, in the January 17, 2017 *Federal Register* notice (82 FR 4911), the Department granted a waiver of 24 CFR 570.489(j) for good cause and established an alternative requirement “to the extent necessary to allow LMDC to transfer the portions of 130 and 140 Liberty Street necessary to finalize the WTC Vehicle Security Center, Liberty Park, and the St. Nicholas National Shrine at the World Trade Center to the Port Authority without reimbursing the CDBG–DR program for the fair market value of the properties . . . [and] to permit LMDC to acquire from the Port Authority property on the World Trade Center site, via long-term lease and purchase, sufficient to carry out the memorial and cultural facilities on the World Trade Center site that are contemplated in the GPP and LMDC’s applicable Action Plan, as amended.” (82 FR

4913).

The January 2017 waiver and alternative requirement contemplated several property exchanges that were consistent with LMDC's approved CDBG-DR action plan and amendments. LMDC used CDBG-DR funds to acquire and clear real property identified in the World Trade Center Memorial and Cultural Program General Project Plan (GPP) as 130 Liberty Street and 140 Liberty Street. Specifically, to enable LMDC to fully implement its Memorial Program and to enable the Port Authority to pursue its Redevelopment Program, LMDC and the Port Authority would exchange real property interests. The Port Authority would provide LMDC or its designee with a lease (up to 99 years) and purchase option for Port Authority-owned property that would be used for memorial and cultural facilities that are part of LMDC's Memorial Program. The overall exchange would allow the LMDC to facilitate use of what was originally Port Authority property for the Memorial Museum and a performing arts center.

The January 2017 waiver and alternative requirement permitted an exchange for the portion of the 130 and 140 Liberty Street necessary for the WTC Vehicle Security Center, and it also contemplated that HUD would need to extend the waiver for additional activities. It provided that "HUD must waive certain regulations applicable to the reuse of 130 and 140 Liberty Street to facilitate the current exchange between LMDC and the Port Authority *and future development of the rest of the 130 Liberty Street site*. The current transfer of property to the Port Authority explicitly excludes that portion of 130 Liberty Street that is labeled as "Tower 5" on Attachment 1 to the GPP as LMDC will retain the Tower 5 site for future transfer and redevelopment." (82 FR 4912).

Since January 2017, LMDC and the Port Authority have solidified their plans for the second phase of the property transfer. Therefore, for the reasons described in this notice and in

the January 2017 notice, the Department has determined that good cause exists to extend the January 2017 waiver and alternative requirement modifying 24 CFR 570.489(j) to encompass the second phase of the proposed property exchanges between LMDC and the Port Authority for the remainder of 130 and 140 Liberty Street (the Tower 5 site). LMDC and its designees will receive the Port Authority-owned properties to be used for memorial and cultural facilities that are part of LMDC's Memorial Program (as described in the January 2017 waiver and alternative requirement). Specifically, LMDC's designee, the National September 11 Memorial & Museum (further known as The World Trade Center Memorial Foundation, Inc.) will obtain a lease and purchase option for the Memorial Museum site and a different LMDC designee received a similar lease (up to 99 years) and purchase option for the site of a performing arts center.

To complete the property transfer, LMDC will transfer fee title of the Tower 5 site to the ESD, and ESD will facilitate payment of compensation to the Port Authority for land that the Port Authority provided for the memorial and cultural facilities. ESD will lease the Tower 5 site to a developer. The Port Authority will receive compensation in the form of rent paid under a 99-year ground lease for the Tower 5 site by a developer (equal to the value of the originally planned commercial use of the Tower 5 site plus 25 percent of any rent paid in excess of that amount) and the remainder interest at the end of the lease term.

As outlined in the January 2017 waiver and alternative requirement, the Department finds that the properties involved in this transfer present unique valuation difficulties. A restricted appraisal report and opinion letter by an appraiser engaged by LMDC estimates that the parcels subject to the exchange are of proximate value. The restricted appraisal report and opinion letter nonetheless also notes the difficulties in establishing current fair market valuations of the various parts of this transaction. In addition, the strong desire of all parties (including HUD) to facilitate

and conclude redevelopment progress on and adjacent to the World Trade Center site more than twenty years after the events of September 11, 2001, creates a situation in which this waiver and alternative requirement represent the most practical and feasible path forward.

For the reasons described in this notice and in the January 2017 notice, HUD finds that good cause exists to waive 24 CFR 570.489(j) and to expand the alternative requirement previously given to the extent necessary to permit LMDC to transfer fee title to the Tower 5 site to ESD and to permit ESD to compensate the Port Authority as described above. As a condition of this waiver and alternative requirement, if the rental income from the Tower 5 site's development exceeds the value of the originally planned commercial use of the Tower 5 site, 75 percent of the excess will be paid to LMDC and designated as program income and 25 percent of the excess will be paid to the Port Authority. Following closeout of LMDC's grant, LMDC's share will be paid to the City in accordance with 67 FR 36017. For purposes of this waiver and alternative requirement, HUD has determined that amounts paid to the Port Authority do not constitute program income to the CDBG-DR grant.

Additionally, the property acquired by LMDC or its designees on the World Trade Center site will be subject to CDBG-DR programmatic requirements upon transfer to LMDC or its designee. HUD recognizes the phased nature of the transactions contemplated by various parties pursuant to this alternative requirement. However, as part of this alternative requirement, if LMDC does not acquire property that is sufficient to carry out the memorial and cultural facilities on the World Trade Center site as contemplated in the GPP and LMDC's applicable action plan, as amended, before LMDC closes out its grants, HUD may pursue appropriate remedial actions. This expanded waiver and alternative requirement are necessary to facilitate and conclude LMDC's use of CDBG-DR funds for its Memorial Program.

III. Pub. L. 113-2 Waivers and Alternative Requirements

Clarification on Citizen participation waiver and alternative requirement (CDBG-DR grantees only).

This waiver applies to certain grantees that received an allocation of funds appropriated under the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), which ultimately made available \$15.2 billion in CDBG-DR funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The Department's *Federal Register* notices for Pub. L. 113-2 included requirements for CDBG-DR grantees that must be followed for substantial amendments to a CDBG-DR action plan. Section VI.4. of the November 18, 2013 notice (78 FR 69104) and Section V.5 of the June 3, 2014 notice (79 FR 31964) require grantees to hold a public hearing on a substantial action plan amendment and to also publish the substantial action plan amendment for public comment for 30 days prior to submission to HUD. For recent allocations, HUD has not required grantees to hold public hearings for substantial action plan amendments, and this additional requirement adds administrative burden on grantees that have expended most of the funds allocated under Pub. L. 113-2. For these reasons, HUD has determined there is good cause to remove the requirement from both Section VI.4. of the November 18, 2013 notice and Section V.5. of the June 3, 2014 notice that requires public hearings on substantial action plan amendments. Grantees are still required to follow the remaining requirements for citizen participation and public comment for substantial action plan amendments in Section VI.4. of the November 18, 2013 notice, and Section V.5. of the June 3, 2014 notice, including posting the amendments for 30 days for public comment.

IV. Pub. L. 115-254 and 116-20 Waivers and Alternative Requirements:

IV.A. Base Flood Elevation Requirement and Reimbursement in the “Homeowner Reimbursement Program” (State of Texas only).

The Department has awarded the State of Texas \$46,400,000 of CDBG-DR funds under Pub. L. 115-254 and \$26,513,000 of CDBG-DR funds under Pub. L. 116-20, for recovery from disasters occurring in 2018; and \$227,510,000 of CDBG-DR funds under Pub. L. 116-20 for recovery from disasters occurring in 2019. These funds have been provided for necessary expenses related to disaster relief, long term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation due to a qualified disaster. This waiver and alternative requirement modifies the requirements for CDBG-DR funds awarded to the State of Texas under Public Laws 115-254 and 116-20. The State of Texas has submitted a request and justification for the waiver and alternative requirements provided herein to facilitate the use of the funds.

The state is implementing a Homeowner Reimbursement Program designed to assist homeowners in recovering up to \$50,000 in out-of-pocket expenses paid by the homeowner for residential rehabilitation due to the disasters occurring in 2018 and 2019. To be eligible for this program, the state’s rules require the home be the owner’s primary residence and the eligible rehabilitation must have been completed prior to the program’s application launch date of April 24, 2021. Because the state’s response and recovery efforts commenced on the dates of the disasters and before CDBG-DR assistance was available, some homeowners participating in the state’s Homeowner Reimbursement Program may have rehabilitated their homes to meet FEMA program requirements and local elevation requirements, rather than the CDBG-DR program requirements.

Some homeowners seeking assistance from the state’s Homeowner Reimbursement

Program elevated their homes to meet the requirements of their municipalities but did not elevate their homes to meet HUD's requirement that residential structures be elevated to at least two feet above base flood elevation . Because these homeowners did not anticipate receiving CDBG-DR assistance, the state is requesting a waiver to reimburse homeowners that are otherwise eligible for assistance but elevated their homes to comply with FEMA program requirements and the local jurisdiction's elevation requirements, which may be lower than the HUD-mandated standard to elevate to base flood elevation plus two feet.

HUD's February 9, 2018 *Federal Register* notice provides that: "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." (83 FR 5861).

Based on the reasons stated above, HUD finds that good cause exists to waive the provision of the *Federal Register* notice requiring the two feet above base flood elevation for homeowners seeking reimbursement in the state's Homeowner Reimbursement Program, and to establish an alternative requirement to permit the state to reimburse those homeowners for costs of rehabilitation completed before the program's application launch date, subject to the following requirements:

- The homeowner complied with applicable FEMA requirements and the elevation requirement of the local jurisdiction.
- The activity is eligible under title I of the HCDA or by waiver and is consistent with all other requirements of CPD notice 15-07: Guidance for Charging Pre-Application Costs

of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants.

- The activity meets a CDBG-DR national objective and otherwise complies with CDBG-DR requirements not waived by this section.
- For each grant, the state uses not less than 70 percent of the aggregate CDBG-DR grant for activities that benefit low- and moderate-income persons.

The state must ensure that all costs charged to this program and to the CDBG-DR grants are necessary and reasonable expenses related to disaster recovery.

IV.B. Requirement to Primarily Consider and Address Unmet Housing Recovery Needs (The Northern Mariana Islands only).

The Department has awarded \$188,652,000 of CDBG-DR funds under Pub. L. 115-254 and \$65,672,000 under Pub. L. 116-20, for a combined allocation of \$254,324,000 to the Commonwealth of the Northern Mariana Islands (CNMI) for recovery from 2018 disasters.

The CNMI has requested that HUD ease restrictions in existing notices to allow for the use of CDBG-DR funds for the rehabilitation and reconstruction of the Northern Marianas College (NMC) by modifying the requirements in the February 9, 2018 notice at 83 FR 5844, August 14, 2018 notice at 83 FR 40314, and then re-stated in the January 27, 2020 notice at 85 FR 4682, that each grantee primarily consider and address its unmet housing recovery needs. Specifically, the January 27, 2020, notice states that, “Pursuant to the Prior Notices, each grantee receiving an allocation for a 2018 or 2019 disaster is required to primarily consider and address its unmet housing recovery needs. These grantees may, however, propose the use of funds for unmet economic revitalization and infrastructure needs unrelated to the grantee’s unmet housing needs if the grantee demonstrates in its needs assessment that there is no remaining unmet

housing need or that the remaining unmet housing need will be addressed by other sources of funds.”

NMC lost 37 out of its 39 classrooms as a result of Super Typhoon Yutu in 2018. The college offers a number of degrees, as well as Adult Basic Education, Workforce Development and Certificate Training. A number of other federal agencies are also providing funding for NMC campus projects, including a Student Center funded through the U.S. Department of Education, a Workforce Development and Training Center and a Center for Research Extension and Development funded through the Economic Development Authority, and a Gymnasium and Collateral Equipment/Content funded by FEMA. The construction of NMC’s classrooms, as a public college, would otherwise be CDBG-DR eligible and is critical to the CNMI and its residents for many reasons. As the only public college on the island, the improvements will encourage enrollment growth, prevent outmigration, improve access to quality education on the island, and strengthen the position of the college for purposes of accreditation. CNMI also indicates any loss of NMC students would adversely impact the CNMI economy and community.

Based on these reasons, HUD has determined that good cause exists to modify the provisions in the February 9, 2018 notice (83 FR 5849), the August 14, 2018 notice (83 FR 40314), and re-stated in the January 27, 2020 notice at 85 FR 4682, that require a grantee to primarily consider and address its unmet housing recovery needs with its CDBG-DR funds or demonstrate there is no remaining unmet housing need or that the remaining unmet housing need will be addressed by other sources of funds. HUD is modifying those provisions for CNMI only, so that the grantee is subject to the following requirements: without regard to the housing priority identified in the notices cited above, CNMI may use amounts consistent with the amount in the CNMI’s action plan and substantial amendments submitted to and approved by HUD to

rehabilitate and reconstruct buildings for classrooms at NMC and complement the already significant other Federal investments in the reconstruction of the college. These amounts are subject to other applicable requirements, including the requirement that CDBG-DR funds may not be used for activities reimbursable by or for which funds are made available by FEMA or the US Army Corps of Engineers (USACE). As with other activities, the grantee must verify whether FEMA or USACE funds are available prior to awarding CDBG-DR funds to this activity. The housing priority remains in place for all other activities carried out by CNMI.

IV.C. Extension of Waiver and Alternative Requirement Related to Tourism and Business Marketing (The Northern Marianas only)

The Commonwealth of the Northern Marianas (CNMI) has submitted a request for an extension of HUD's previously granted waiver and alternative requirement authorizing activities related to tourism and business marketing, to revise the expiration date for the waiver and alternative requirement to December 31, 2023. The previously granted waiver and alternative requirement would expire January 11, 2023. Accordingly, HUD hereby grants the waiver and alternative requirement described in this notice for a revised expiration date of December 31, 2023.

In section VIII.A. of the *Federal Register* notice published on September 28, 2020 (85 FR 60821), the Department granted CNMI a waiver of 42 U.S.C. 5305(a) to the extent necessary to create a new eligible activity and use up to \$10,000,000 of CDBG-DR funds for tourism and marketing activities to promote travel and to attract new businesses to disaster-impacted areas (without regard to housing need), consistent with the amount in CNMI's action plan and substantial amendments submitted to and approved by HUD. HUD required the waiver and alternative requirement to expire two years after CNMI's first draw of its CDBG-DR funds

allocated in the *Federal Register* notice published on January 27, 2020 (85 FR 4681).

Tourism is a significant part of CNMI's economy and was severely impacted by Super Typhoon Yutu and further impacted by the COVID-19 pandemic. The current expiration date of the waiver and alternative requirements limits the ability of CNMI to use the CDBG-DR funds during its peak tourism season in 2023, interrupting economic development gains made by CNMI in its use of CDBG-DR funds for disaster recovery. As a result, the Secretary has determined that good cause exists to extend the waiver and alternative requirement described above, so that CNMI may continue to carry out tourism and marketing activities permitted by the waiver and alternative requirement until December 31, 2023. The cap on the activity costs remains unchanged. The grantee can expend no more than \$10,000,000 on activities authorized by the extended waiver and alternative requirement. HUD may further extend the waiver and alternative requirements administratively, if requested by CNMI, for good cause.

V. Pub. L. 115-123 and 116-20 Waivers and Alternative Requirements:

Amendment to the One-for-One Replacement Housing Alternative Requirements for CDBG-MIT Grants.

The Department's August 30, 2019 *Federal Register* notice (84 FR 45838) and its January 6, 2021 notice (86 FR 561) included waivers and alternative requirements for grantees that received a CDBG-MIT allocation under Public Laws 115-123 or 116-20. The August 30, 2019 notice included a one-for-one replacement housing waiver and alternative requirement for CDBG-MIT grantees and this notice modifies that requirement. Section V.A.22.a. of the notice (84 FR 45859) waives the 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 in connection with CDBG-MIT funds for lower income dwelling units that are damaged by the disaster and not suitable for rehabilitation, as

defined by the grantee. This waiver and alternative requirement was limited to only disaster-damaged lower-income units that are demolished or converted and not suitable for rehabilitation. The Department, however, recognizes that the purposes of the CDBG-MIT grants are forward looking and are generally not for purposes of recovery from a previous disaster. CDBG-MIT funds are instead to be used to address current and future risks to lessen the impact of future disasters. With that purpose in mind, grantees are not required to demonstrate that their CDBG-MIT activities “tie-back” to the specific disaster and address a specific unmet recovery need for which funds were allocated. CDBG-MIT grantees therefore may be undertaking activities that remove housing units that are not damaged by a previous disaster but still constitute an eligible use of CDBG-MIT funds, because those activities must meet the requirement that they are moving people or property out of harm’s way or otherwise lessening the impact of future disasters on residents of those units.

CDBG-MIT grantees are required to document how all activities funded by their CDBG-MIT grant meet the definition of mitigation activities, which as stated in the August 30, 2019 notice means 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. Grantees are prohibited from funding activities with CDBG-MIT funds that fail to meet the definition of mitigation activities in the August 30, 2019 notice. Based on the goals and requirements of the CDBG-MIT funds and articulated in the August 30, 2019 notice, there is good cause to amend the one-for-one replacement alternative requirements for CDBG-MIT grants. Accordingly, HUD is deleting the provisions of the previous waiver and alternative requirement and replacing the paragraph at V.A.22.a. in its

entirety. This new language will not apply retroactively and will only apply to the eligible CDBG-MIT activities identified below, as of the applicability date of this notice.

V.A.22.a. Section 104(d) one-for-one replacement.

One-for-one replacement housing requirements at section 104(d)(2)(A)(i) and (ii) and (d)(3) of the Housing and Community Development Act of 1974 (HCDA) and 24 CFR 42.375 are waived for all demolished or converted lower-income dwelling units that are CDBG-MIT eligible to permanently move people and/or property out of harm's way as part of a housing mitigation activity, such as a buyout, that addresses a risk identified in a grantee's risk-based Mitigation Needs Assessment. This waiver exempts lower-income dwelling units that meet the grantee's definition of "not suitable for replacement" from the one-for-one replacement requirements, since CDBG-MIT grantees may be undertaking activities that remove housing units that are not damaged by a previous disaster but still are necessary to address mitigation risk. Before carrying out activities that may be subject to the one-for-one replacement requirements, the grantee must define "not suitable for replacement" in its action plan or in policies and procedures governing these activities. When working to move people and/or property out of harm's way, requiring replacement housing units to be located within the same neighborhood can be inconsistent with the purposes of the CDBG-MIT grants and is not always feasible because these areas have been identified to have current and future disaster risks, as described in the grantee's Mitigation Needs Assessment. HUD is providing this waiver in recognition that grantees are using CDBG-MIT funds for mitigation needs based on a Mitigation Needs Assessment that identifies and analyzes all significant current and future disaster risks as the basis for undertaking the proposed demolition or conversion activities consistent with the goals of the CDBG-MIT funds.

Even when using CDBG-MIT funds, grantees must reassess post-disaster population and housing needs relative to the Mitigation Needs Assessment to determine the appropriate type and amount of lower-income dwelling units to rehabilitate or reconstruct. Grantees must include this analysis in their program files with a description of how CDBG-MIT funds or other sources, including CDBG-DR funds, will be used to address housing and mitigation needs for residents of lower-income dwelling units. Grantees should note that the demolition and/or disposition of public housing units continue to be subject to section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970.

VI. Pub. L. 115-56, 115-123, 115-254, and 116-20 Grant Requirements

Certification and Supporting Documentation for CDBG-DR and CDBG-MIT Grants for Disasters Occurring in 2015 through 2019.

Typically, appropriations acts require the Secretary to certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, 42 U.S.C. 5155, to ensure timely expenditure of funds, maintain a comprehensive website regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. To enable the Secretary to make this certification, each grantee must submit to HUD the certification documentation described in the applicable *Federal Register* notice governing the funds.

Over the life of a grant, HUD expects a grantee to modify and update its policies and procedures to implement effective recovery programs. In *Federal Register* notices published on February 9, 2018 at 83 FR 5844, August 14, 2018 at 83 FR 40314, August 30, 2019 at 84 FR 47528, January 27, 2020 at 85 FR 4681, and January 6, 2021 at 86 FR 561 and 86 FR 569, HUD

describes the necessary steps each grantee must complete for the Secretary's certification for CDBG-DR and CDBG-MIT funds provided in response to qualifying disasters occurring in 2015 through 2019. For all CDBG-DR funds subject to the February 9, 2018 notice, HUD requires grantees to "adhere to the controls, processes, and procedures described in the grantee's financial controls and procurement processes documentation submitted in response to the certification, unless amended with HUD's approval" (83 FR 5846). Additionally, the January 27, 2020 notice requires grantees to "implement the CDBG-DR grant consistent with the controls, processes, and procedures as certified by HUD" (85 FR 4686). For all CDBG-MIT funds subject to the August 30, 2019 notice, HUD states that "failure to implement a CDBG-MIT grant in accordance with a grantee's approved financial certification... shall constitute a performance deficiency" (84 FR 45863).

HUD has determined that it is not necessary nor prudent for the agency to approve every change made to the supporting documentation submitted to support the Secretary's certification during the life of the grant or to require the grantee to implement funds per the initial submission. Instead, HUD is now establishing a modified requirement for all CDBG-DR and CDBG-MIT grantees subject to the notices cited in the previous paragraph. In lieu of submitting all changes for approval, a grantee must notify HUD of any substantial changes made to the supporting documentation submitted to support the Secretary's certification after the grant agreement has been signed by HUD and the grantee. Over the life of the grant, HUD will monitor the grantee for compliance with its submission and any updates made by the grantee. All updates must be retained and identified in the grantee's files, together with dates of applicability, so that HUD can determine which policies and procedures the grantee was following at any point in time. The grantee is required to adhere to its supporting documentation, as amended, until the closeout of

the grant. HUD finds this change to be necessary to expedite recovery once the Secretary has completed a certification based on the grantee's supporting documentation, and a grant agreement has been signed by both parties.

VII. Pub. L. 115–56 and 115–123 Waivers and Alternative Requirements

Base Flood Elevation Requirement and Reimbursement in the “Homeowner Reimbursement Program” (State of Texas – Harris County and City of Houston Only).

The Department awarded \$5,024,215,000 under Pub. L. 115-56 and \$652,175,000 under Pub. L. 115-123 to the State of Texas for recovery from Hurricane Harvey for necessary expenses related to disaster relief, long term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation. This section of the notice specifies waivers and alternative requirements and modifies requirements for CDBG-DR funds awarded to the State of Texas under Public Laws 115-56 and 115-123. In the *Federal Register* notice published on September 28, 2020 at 85 FR 60825, the Department provided a waiver and alternative requirement permitting the State of Texas to reimburse homeowners that are otherwise eligible for assistance but who elevated their homes to comply with the local jurisdiction's freeboard requirements, which may be lower than the HUD-mandated standard to elevate to base flood elevation plus 2 feet (the “September 2020 waiver”). The State of Texas has submitted a request to extend the September 2020 waiver to also include two local governments awarded funds by the state: Harris County and the City of Houston, as described below.

The state awarded funds to Harris County and the City of Houston to develop their own disaster recovery programs. Both Harris County and the City of Houston are implementing homeowner reimbursement programs: Harris County's Homeowner Reimbursement Program and the City of Houston's Reimbursement Option in their Harvey Homeowner Assistance

Program. These programs are designed to assist homeowners in recovering out-of-pocket expenses paid by the homeowner for residential rehabilitation due to Hurricane Harvey. Both programs' eligibility requirements require that the home be the owner's primary residence and the eligible rehabilitation costs must have been incurred prior to the owner's application to the program or December 31, 2020, whichever is earlier. Because the state, county, and city's Hurricane Harvey response and recovery efforts commenced on the date of the disaster and before CDBG-DR assistance was available, some homeowners participating in these homeowner reimbursement programs may have repaired their homes to meet FEMA's program requirements and the local jurisdiction's elevation requirements, rather than HUD's *Federal Register* notice requirements. The elevation requirements in the *Federal Register* notice require that residential structures be elevated to at least 2 feet above base flood elevation. Because the homeowners did not anticipate receiving CDBG-DR assistance, the state is requesting that HUD extend the September 28, 2020 waiver to include its subrecipients' reimbursement programs.

Based on the reasons cited above, HUD finds that good cause exists to modify the September 2020 waiver to include homeowners seeking reimbursement in the Harris County and City of Houston's homeowner reimbursement programs and permit the city and county to reimburse those homeowners for costs of rehabilitation incurred before application of the homeowner to the program or December 31, 2020, whichever is earlier, subject to the following requirements:

- The homeowner's reimbursed rehabilitation costs complied with the elevation requirement of the local jurisdiction.
- The activity is eligible under title I of the HCDA or by waiver and is consistent with CPD-15-07: Guidance for Charging Pre-Application Costs of Homeowners, Businesses,

and Other Qualifying Entities to CDBG Disaster Recovery Grants.

- The activity meets a CDBG-DR national objective and otherwise complies with CDBG-DR requirements not waived by this section.
- The state uses not less than 70 percent of the aggregate CDBG-DR grant for activities that benefit low- and moderate-income persons.

The state must ensure that all costs charged to this program and to the CDBG-DR grant are necessary and reasonable expenses related to disaster recovery.

VIII. Pub. L. 115-56, 115-123, and 116-20 Waivers and Alternative Requirements

Buildings for the General Conduct of Government Waiver and Alternative Requirement (Commonwealth of Puerto Rico only).

The Department awarded \$1,507,179,000 of CDBG-DR funds under Pub. L. 115-56, \$8,220,783,000 of CDBG-DR funds and \$8,285,284,000 of CDBG-MIT funds under Pub. L. 115-123, and \$277,853,230 of CDBG-DR funds under Pub. L. 116-20 to the Commonwealth of Puerto Rico for recovery from Hurricanes Irma and Maria for necessary expenses related to disaster relief, long term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation.

With these funds, Puerto Rico is implementing its Non-Federal Match Program (NFMP) designed to assist in the local non-Federal cost share of infrastructure projects across all 78 municipalities that are eligible under FEMA Public Assistance Category of Work E (buildings). Puerto Rico is also implementing a Community Revitalization Program (CRP) to reinvigorate its urban centers and key community programs. Included in both programs is a group of projects that are considered buildings for the general conduct of government, as defined in 42 U.S.C. § 5302(a)(21). The subject buildings often function as both city halls and government centers,

which provide important recovery-related services, such as permit evaluation and coordination and may also include facilities that are designed to detect public health threats and support local and regional emergency response that primarily serves low- and moderate-income areas.

To implement the above programs and to assist in the recovery of its 78 municipalities, Puerto Rico has requested a waiver of 42 U.S.C. 5305(a)(2), which prohibits acquisition, construction, reconstruction, or installation of buildings for the general conduct of government as eligible public facilities activities. The Secretary has determined that there is good cause to grant this waiver as these buildings are necessary for these municipalities to adequately address critical infrastructure needs created by the disaster, help disaster recovery by reinvigorating its urban centers and key community programs, and help coordinate resilience and mitigation efforts across Puerto Rico. Therefore, HUD is waiving the prohibition on buildings for the general conduct of government at 42 U.S.C. 5305(a)(2) and associated regulations at 24 CFR 570.207(a) to permit the Commonwealth of Puerto Rico to carry out the construction, reconstruction, and rehabilitation of public improvements or facilities on buildings for the general conduct of government within the NFMP or CRP programs, subject to the following requirements. All CDBG-DR funded activities must address a direct or indirect impact from the major disaster in a most impacted and distressed area resulting from the major disaster. The grantee is prohibited from using CDBG-DR or CDBG-MIT funds for buildings that do not provide services all year around and is prohibited from using funds for buildings that are used exclusively as emergency operations centers.

IX. Pub. L. 116-20 Waivers and Alternative Requirements for the Commonwealth of Puerto Rico

Aligning requirements for the Commonwealth of Puerto Rico's 2019 CDBG-DR

allocation with the requirements of its 2020 CDBG-DR allocation (Commonwealth of Puerto Rico only)

The Department allocated the Commonwealth of Puerto Rico \$36,424,000 under Pub. L. 116-20 for recovery from earthquakes (“2019 CDBG-DR Grant”) and \$184,626,000 under Pub. L. 117-43 for recovery from earthquakes and Tropical Storm Isaias (“2020 CDBG-DR Grant”) for necessary expenses related to disaster relief, long term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation.

HUD has described the relevant statutory and regulatory requirements, including all applicable waivers and alternative requirements, that apply to Puerto Rico’s 2019 CDBG-DR Grant in the following *Federal Register* notices (“PR’s Prior Notices”): February 9, 2018 at 83 FR 5844, August 14, 2018 at 83 FR 40314, February 19, 2019 at 84 FR 4836, June 20, 2019 at 84 FR 28848, January 27, 2020 at 85 FR 4681,1 August 17, 2020 at 85 FR 50041, and September 28, 2020 at 85 FR 60821, and January 6, 2021 at 86 FR 569.

Though HUD allocated some of the 2020 CDBG-DR funds for the same major disaster assisted by the 2019 CDBG-DR Grant, HUD established different requirements for the use of the 2020 CDBG-DR Grant in the February 3, 2022 *Federal Register* notice at 87 FR 6364, which includes a CDBG-DR Consolidated Notice as Appendix B (the “Consolidated Notice”). The February 3, 2022 notice (including the Consolidated Notice) describes the waivers and alternative requirements, applicable statutory and regulatory requirements, the grant award process, criteria for action plan approval, and eligible disaster recovery activities for the use of the 2020 CDBG-DR Grant funds.

To ease the administrative burden of managing two grants that are tied to the same disaster, HUD has determined that there is good cause to allow Puerto Rico to manage these

grants under a single action plan and a single set of requirements (to the extent permitted by governing appropriations acts). Implementing this change will allow the grantee to follow a single set of requirements and submit a single action plan for the uses of both the existing 2019 CDBG-DR Grant under Pub. L. 116-20 and the new 2020 CDBG-DR Grant under Pub. L. 117-43, while each grant remains separate, with separate financial controls, and some other distinctions.

To do this, HUD is imposing the following modifications of the requirements of PR's Prior Notices for the 2019 CDBG-DR grant:

1. Puerto Rico must submit its action plan for the 2020 CDBG-DR Grant in accordance with the Consolidated Notice at section III.C.1. (87 FR 6379) using the Public Action Plan in the Disaster Recovery Grant Reporting (DRGR) system. Even though section III.C.1. is written for the 2020 CDBG-DR grant, under the terms of the waiver and alternative requirement, the Grantee's Public Action Plan shall also describe the use of all grant funds for the 2019 CDBG-DR grant in its Public Action Plan required by section III.C.1. of the Consolidated Notice. Together, the description of the use of funds allocated for 2020 disasters and the use of funds under the 2019 CDBG-DR Grant shall be described in a single action plan (the Public Action Plan) that substantially amends the 2019 CDBG-DR action plan. Puerto Rico will then be able to download the single action plan and post it for public comment on its disaster recovery website to meet the public comment requirements for 2019 and 2020 disasters. The deadline for that submission is 120 days after the applicability date of the February 3, 2022 notice. Based on the requirements in the February 3, 2022 notice, Puerto Rico may submit its Public Action Plan (a single document that describes the use of 2020 CDBG-DR Grant and 2019 CDBG-DR Grant), earlier than that date or may request an extension of the submission deadline to submit at a later

date, if HUD approves the request.

2. Once the Public Action Plan that contains a description of all 2019 and 2020 CDBG-DR funds is approved, Puerto Rico's use of all grant funds must be consistent with the Public Action Plan. Upon HUD's approval of the Public Action Plan, the action plan that described the use of the 2019 CDBG-DR grant shall only be relevant to costs charged to the 2019 CDBG grant before the date of approval of the Public Action Plan.

3. Once the Public Action Plan is approved, except as identified below, Puerto Rico's 2019 CDBG-DR grant will no longer be subject to any provisions in PR's Prior Notices and the use of 2019 and 2020 CDBG-DR Grants shall be subject to the requirements of February 3, 2022 notice (including the Consolidated Notice) provisions, as may be amended from time to time. The exceptions are as follows:

a. The 2019 CDBG-DR Grant is not subject to the following provisions of the February 3, 2022 Notice (including the Consolidated Notice) that implement statutory authorities specific to Pub. L. 117-43 or are related to requirements that were previously met: Section I (Allocations), requirements in section II (Use of Funds) related to the CDBG-DR mitigation set-aside, III. (Requirements Related to Administrative Funds), IV.A.2. (CDBG-DR mitigation set-aside), IV.A.3. (Interchangeability of Disaster Funds), and the provisions of the Consolidated Notice that direct grantees to make pre-award submissions (section III.A. "Pre-Award Evaluation of Management and Oversight of Funds" of the Consolidated Notice (87 FR 6376).

b. PR's Prior Notices (as modified by section VII of this notice) continue to govern all requirements for the 2017 Unmet Infrastructure Needs Grant and the following requirements for the 2019 CDBG-DR grant: HUD's allocations for 2019 disasters and allocation methodology, the requirements that governed the grantee's pre-grant submissions to support the Secretary's

certifications, the grantee's submissions describing its implementation plan and capacity assessment, the identified major disasters and MID areas for the 2019 CDBG-DR Grant, and the use of administrative funds across multiple grants (section IV.B.3. of the notice published Jan. 27, 2020).

X. Flexibilities for Grants Under Recent Appropriations Acts (Affects Multiple Grantees)

Recent appropriations acts have provided CDBG-DR grantees with additional flexibilities. This section notifies grantees, the public, and oversight entities of these flexibilities. The new statutory authorities supersede any requirements to the contrary in *Federal Register* notices or grant agreements governing awards that are subject to the new statutory provisions.

Public Law 117-43 authorizes the Secretary to permit grantees that received funds under Pub. L. 117-43 and under prior or future appropriations for activities related to unmet recovery needs in the MID areas resulting from a major disaster to use those funds interchangeably and without limitation for the same activities related to unmet recovery needs in the MID areas resulting from another major disaster in Pub. L. 117-43 or in prior or future appropriation acts, when the MID areas overlap and when the use of the funds will address unmet recovery needs of both major disasters. The Secretary authorized this use of funds and implemented this requirement for all grantees that received a grant under Pub. L. 117-43. This authorization is published in section IV.A.3. of the *Federal Register* notice published on February 3, 2022 at 87 FR 6368 and in section IV.A.3. of the *Federal Register* notice published on May 24, 2022 at 87 FR 31643.

Under these authorizations, grantees may use CDBG-DR funds that they were awarded under Pub. L. 117-43 and under prior and future appropriations acts interchangeably and without limitation for eligible activities authorized by title I of the HCDA, as modified by applicable

waivers and alternative requirements, if:

(a) The activities support recovery in the overlapping portions of MID areas resulting from major disasters assisted under both appropriations (if applicable *Federal Register* notices do not specify MID areas for a major disaster, the MID areas are those areas covered by the President's major disaster declaration); and

(b) The use of the funds will address unmet recovery needs of both major disasters.

Consistent with Congressional intent to increase the speed of recovery and ease administrative burdens, HUD will evaluate whether the use of funds in the overlapping MID areas will address unmet recovery needs of both major disasters at the highest reasonable level. For CDBG-DR grants, this will be evaluated at the action plan level (not by evaluating unmet needs of individual beneficiaries). Accordingly, before using funds for a disaster other than the major disaster for which the funds were awarded, a CDBG-DR grantee must describe in its action plan that governs the use of the funds how the combined use of all funds under both appropriations will address unmet recovery needs of both major disasters.

Public Law 117-43 also provides flexibility for grantees receiving funds under Pub. L. 117-43 and under prior or future acts to use grant funds for administrative costs across multiple grants. HUD implemented this requirement for all grantees affected by the provision in section III.A.2. of the *Federal Register* notice published on February 3, 2022, at 87 FR 6367 and in section III.A.2. of the *Federal Register* notice published on May 24, 2022, at 87 FR 31642.

Public Law 116-20 authorized grantees that received grants under Public Laws 114-113, 114-223, 114-254, 115-31, 115-56, 115-123, 115-254, and 116-20 or any future act to use eligible administrative funds (up to 5 percent of each grant plus up to 5 percent of program income generated by the grant) appropriated by these acts for the cost of administering any of

