

# STATE OF ALASKA INFORMAL REQUEST FOR PROPOSALS



## COMMUNITY DEVELOPMENT BLOCK GRANT-MITIGATION ACTION PLAN CONSULTANT SERVICES

**IRFP 220000125**

ISSUED MONDAY, MAY 9, 2021

THE STATE OF ALASKA, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, DIVISION OF COMMUNITY AND REGIONAL AFFAIRS IS SEEKING PROPOSALS FROM QUALIFIED OFFERORS WHO CAN PROVIDE COMMUNITY DEVELOPMENT BLOCK GRANT MITIGATION ACTION PLAN CONSULTANT SERVICES.

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ISSUED BY:

DEPARTMENT OF COMMERCE, COMMUNITY, AND  
ECONOMIC DEVELOPMENT  
DIVISION OF ADMINISTRATIVE SERVICES

PRIMARY CONTACT:

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**OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.**

**IMPORTANT NOTICE:** IF YOU RECEIVED THIS SOLICITATION FROM THE STATE OF ALASKA'S "ONLINE PUBLIC NOTICE" WEB SITE, YOU MUST REGISTER WITH THE PROCUREMENT OFFICER LISTED IN THIS DOCUMENT TO RECEIVE NOTIFICATION OF SUBSEQUENT AMENDMENTS. FAILURE TO CONTACT THE PROCUREMENT OFFICER MAY RESULT IN THE REJECTION OF YOUR OFFER.

# TABLE OF CONTENTS

<b>SECTION 1. INTRODUCTION &amp; INSTRUCTIONS.....</b>	<b>3</b>
SEC. 1.01 PURPOSE OF THE IRFP.....	3
SEC. 1.02 BUDGET .....	4
SEC. 1.03 DEADLINE FOR RECEIPT OF PROPOSALS .....	4
SEC. 1.04 PRIOR EXPERIENCE .....	4
SEC. 1.05 REQUIRED REVIEW .....	4
SEC. 1.06 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS.....	4
SEC. 1.07 RETURN INSTRUCTIONS.....	4
SEC. 1.08 ASSISTANCE TO OFFERORS WITH A DISABILITY .....	5
SEC. 1.09 AMENDMENTS TO PROPOSALS .....	5
SEC. 1.10 AMENDMENTS TO THE IRFP .....	5
SEC. 1.11 IRFP SCHEDULE .....	5
SEC. 1.12 PREPROPOSAL CONFERENCE .....	5
SEC. 1.13 ALTERNATE PROPOSALS .....	6
SEC. 1.14 NEWS RELEASES.....	6
<b>SECTION 2. BACKGROUND INFORMATION .....</b>	<b>7</b>
SEC. 2.01 BACKGROUND INFORMATION .....	7
<b>SECTION 3. SCOPE OF WORK &amp; CONTRACT INFORMATION.....</b>	<b>8</b>
SEC. 3.01 SCOPE OF WORK.....	8
SEC. 3.02 CONTRACT TERM AND WORK SCHEDULE .....	11
SEC. 3.03 CONTRACT TYPE .....	11
SEC. 3.04 PROPOSED PAYMENT PROCEDURES .....	11
SEC. 3.05 PROMPT PAYMENT FOR STATE PURCHASES .....	11
SEC. 3.06 CONTRACT PAYMENT.....	11
SEC. 3.07 CONTRACT PRICE ADJUSTMENTS.....	12
SEC. 3.08 MANDATORY REPORTING .....	12
SEC. 3.09 LOCATION OF WORK.....	12
SEC. 3.10 THIRD-PARTY SERVICE PROVIDERS.....	12
SEC. 3.11 SUBCONTRACTORS.....	12
SEC. 3.12 JOINT VENTURES.....	12
SEC. 3.13 RIGHT TO INSPECT PLACE OF BUSINESS.....	13
SEC. 3.14 F.O.B. POINT.....	13
SEC. 3.15 CONTRACT PERSONNEL .....	13
SEC. 3.16 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES.....	13
SEC. 3.17 LIQUIDATED DAMAGES .....	13
SEC. 3.18 CONTRACT CHANGES - UNANTICIPATED AMENDMENTS.....	13
SEC. 3.19 NONDISCLOSURE AND CONFIDENTIALITY .....	14
SEC. 3.20 INDEMNIFICATION .....	14
SEC. 3.21 INSURANCE REQUIREMENTS .....	15
SEC. 3.22 TERMINATION FOR DEFAULT .....	15
<b>SECTION 4. PROPOSAL FORMAT AND CONTENT .....</b>	<b>16</b>
SEC. 4.01 IRFP SUBMITTAL FORMS.....	16
SEC. 4.02 SPECIAL FORMATTING REQUIREMENTS .....	16
SEC. 4.03 OFFEROR INFORMATION AND CERTIFICATIONS (ATTACHMENT 4: SUBMITTAL FORM A).....	16
SEC. 4.04 EXPERIENCE AND QUALIFICATIONS (ATTACHMENT 6: SUBMITTAL FORM B) .....	17
SEC. 4.05 UNDERSTANDING OF THE PROJECT (ATTACHMENT 7: SUBMITTAL FORM C).....	18
SEC. 4.06 METHODOLOGY USED FOR THE PROJECT (ATTACHMENT 8: SUBMITTAL FORM D).....	18
SEC. 4.07 MANAGEMENT PLAN FOR THE PROJECT (ATTACHMENT 9: SUBMITTAL FORM E) .....	18

SEC. 4.08 SUBCONTRACTORS.....**ERROR! BOOKMARK NOT DEFINED.**

SEC. 4.09 COST PROPOSAL (ATTACHMENT 10: SUBMITTAL FORM F) ..... 18

SEC. 4.10 BID BOND – PERFORMANCE BOND – SURETY DEPOSIT ..... 18

**SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION .....19**

SEC. 5.01 SUMMARY OF EVALUATION PROCESS..... 19

SEC. 5.02 EVALUATION CRITERIA ..... 19

SEC. 5.03 SCORING METHOD AND CALCULATION ..... 20

SEC. 5.04 EXPERIENCE AND QUALIFICATIONS ..... 21

SEC. 5.05 UNDERSTANDING OF THE PROJECT ..... 21

SEC. 5.06 METHODOLOGY USED FOR THE PROJECT ..... 21

SEC. 5.07 MANAGEMENT PLAN FOR THE PROJECT..... 21

SEC. 5.08 CONTRACT COST (COST PROPOSAL)..... 21

SEC. 5.09 APPLICATION OF PREFERENCES ..... 22

SEC. 5.10 ALASKA BIDDER PREFERENCE..... 23

SEC. 5.11 ALASKA VETERAN PREFERENCE ..... 23

SEC. 5.12 ALASKA OFFEROR PREFERENCE ..... 23

SEC. 5.13 OFFEROR NOTIFICATION OF SELECTION ..... 24

**SECTION 6. GENERAL PROCESS AND LEGAL INFORMATION.....25**

SEC. 6.01 INFORMAL DEBRIEFING ..... 25

SEC. 6.02 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES..... 25

SEC. 6.03 STANDARD CONTRACT PROVISIONS ..... 25

SEC. 6.04 QUALIFIED OFFERORS ..... 26

SEC. 6.05 PROPOSAL AS PART OF THE CONTRACT..... 26

SEC. 6.06 ADDITIONAL TERMS AND CONDITIONS ..... 26

SEC. 6.07 HUMAN TRAFFICKING ..... 26

SEC. 6.08 RIGHT OF REJECTION ..... 26

SEC. 6.09 STATE NOT RESPONSIBLE FOR PREPARATION COSTS..... 27

SEC. 6.10 DISCLOSURE OF PROPOSAL CONTENTS ..... 27

SEC. 6.11 ASSIGNMENT ..... 27

SEC. 6.12 DISPUTES ..... 27

SEC. 6.13 SEVERABILITY ..... 27

SEC. 6.14 SUPPLEMENTAL TERMS AND CONDITIONS..... 28

SEC. 6.15 SOLICITATION ADVERTISING ..... 28

SEC. 6.16 SITE INSPECTION ..... 28

SEC. 6.17 CLARIFICATION OF OFFERS ..... 28

SEC. 6.18 DISCUSSIONS WITH OFFERORS..... 28

SEC. 6.19 CONTRACT NEGOTIATION ..... 29

SEC. 6.20 FAILURE TO NEGOTIATE..... 29

SEC. 6.21 FEDERALLY IMPOSED TARIFFS ..... 29

SEC. 6.22 PROTEST ..... 30

**SECTION 7. ATTACHMENTS.....31**

SEC. 7.01 ATTACHMENTS..... 31

## **SECTION 1. INTRODUCTION & INSTRUCTIONS**

### **SEC. 1.01 PURPOSE OF THE IRFP**

The Division of Administrative Services of the Department of Commerce, Community, and Economic Development (DCCED) on the behalf of the Division of Community and Regional Affairs (DCRA), is soliciting proposals from

qualified offerors who can provide Community Development Block Grant Mitigation Action Plan (CDBG-MIT) consultant services.

## **SEC. 1.02 BUDGET**

The Department estimates a budget of no more than \$100,000 for completion of this project. Proposals priced at more than \$100,000 will be considered non-responsive.

Payment for the contract is subject to funds already appropriated and identified.

## **SEC. 1.03 DEADLINE FOR RECEIPT OF PROPOSALS**

Proposals must be received no later than 4:00 PM prevailing Alaska Time on Thursday, May 19, 2022. Proposals may only be submitted by email.

## **SEC. 1.04 PRIOR EXPERIENCE**

Pre-selected vendors have been selected to receive this solicitation, as such no specific minimums have been set for this IRFP.

## **SEC. 1.05 REQUIRED REVIEW**

Offerors should carefully review this solicitation for defects and questionable or objectionable material. Comments concerning defects and questionable or objectionable material should be made in writing and received by the procurement officer at least ten days before the deadline for receipt of proposals. This will allow time for the issuance of any necessary amendments. It will also help prevent the opening of a defective proposal and exposure of offeror's proposals upon which award could not be made.

## **SEC. 1.06 QUESTIONS PRIOR TO DEADLINE FOR RECEIPT OF PROPOSALS**

All questions must be in writing and directed to the procurement officer. The interested party must confirm telephone conversations in writing.

Two types of questions generally arise. One may be answered by directing the questioner to a specific section of the IRFP. These questions may be answered over the telephone. Other questions may be more complex and may require a written amendment to the IRFP. The procurement officer will make that decision.

Procurement Officer: Rob Roys – Phone 907-465-2519 - Fax 907-465-2563 - Phone (TTY): 711 for Alaska Relay

## **SEC. 1.07 RETURN INSTRUCTIONS**

Offerors must submit one hard copy of their proposal, in writing, to the procurement officer via email, the submittal forms must be saved as separate PDF documents and emailed to [CED.Procurement@alaska.gov](mailto:CED.Procurement@alaska.gov) as separate, clearly labeled attachments, such as "Vendor A – Submittal Form A.pdf" (Vendor A is the name of the offeror). The email must contain the IRFP number in the subject line.

The **maximum** size of a single email (including all text and attachments) that can be received by the state is **20mb (megabytes)**. If the email containing the proposal exceeds this size, the proposal must be sent in multiple emails that are each less than 20 megabytes and each email must comply with the requirements described above.

Please note that email transmission is not instantaneous. Similar to sending a hard copy proposal, if you are emailing your proposal, the state recommends sending it enough ahead of time to ensure the email is delivered by the deadline for receipt of proposals.

It is the offeror's responsibility to contact the issuing agency at (907) 465-2519 to confirm that the proposal has been received. The state is not responsible for unreadable, corrupt, or missing attachments.

### **SEC. 1.08 ASSISTANCE TO OFFERORS WITH A DISABILITY**

Offerors with a disability may receive accommodation regarding the means of communicating this IRFP or participating in the procurement process. For more information, contact the procurement officer no later than ten days prior to the deadline for receipt of proposals.

### **SEC. 1.09 AMENDMENTS TO PROPOSALS**

Amendments to or withdrawals of proposals will only be allowed if acceptable requests are received prior to the deadline that is set for receipt of proposals. No amendments or withdrawals will be accepted after the deadline unless they are in response to the state's request in accordance with 2 AAC 12.290.

### **SEC. 1.10 AMENDMENTS TO THE IRFP**

If an amendment is issued before the deadline for receipt of proposals, it will be provided to all who were notified of the IRFP and to those who have registered with the procurement officer after receiving the IRFP from the State of Alaska Online Public Notice website.

After receipt of proposals, if there is a need for any substantial clarification or material change in the IRFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

### **SEC. 1.11 IRFP SCHEDULE**

IRFP schedule set out herein represents the state's best estimate of the schedule that will be followed. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule may be shifted accordingly. All times are Alaska Time.

- Issue IRFP **Monday, May 9, 2022,**
- Deadline for Receipt of Proposals **4:00 PM on Thursday, May 19, 2022**
- Proposal Evaluation Committee complete evaluation by **Thursday, May 26, 2022,**
- State of Alaska issues Notice of Award **Friday, May 27, 2022,**
- State of Alaska issues contract **Tuesday, May 31, 2022,**
- Contract start **Wednesday, June 1, 2022.**

This IRFP does not, by itself, obligate the state. The state's obligation will commence when the contract is approved by the Commissioner of the Department of Commerce, Community, and Economic Development, or the Commissioner's designee. Upon written notice to the contractor, the state may set a different starting date for the contract. The state will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the state.

### **SEC. 1.12 PREPROPOSAL CONFERENCE**

Not applicable to this IRFP.

### **SEC. 1.13 ALTERNATE PROPOSALS**

Offerors may only submit one proposal for evaluation. In accordance with 2 AAC 12.830 alternate proposals (proposals that offer something different than what is asked for) will be rejected.

### **SEC. 1.14 NEWS RELEASES**

News releases related to this IRFP will not be made without prior approval of the project director.

## SECTION 2. BACKGROUND INFORMATION

### SEC. 2.01 BACKGROUND INFORMATION

On November 30, 2018, at 8:29 AM a 7.1 magnitude earthquake located seven miles north of Anchorage caused severe, widespread damage to Southcentral Alaska. Damage was primarily located within the Municipality of Anchorage, the Matanuska-Susitna Borough, and the Kenai Peninsula Borough. The earthquake and subsequent aftershocks caused damage to major highways and important public roads, bridges and other transportation infrastructure; undermining of road embankments and railroad tracks, and loss of track base; widespread power, water and communication disruption; structural collapse and resulting fires to several buildings; and severe damage to private homes, personal property, and businesses. The designation from FEMA for the Cook Inlet Earthquake on November 30, 2018 and the Major Disaster Declaration declared on January 31, 2019, is: Disaster Recovery Event-4413 (FEMA-4413-AK).

The State of Alaska has received a Community Development Block Grant for Mitigation (CDBG-MIT) from the U.S. Department of Housing and Urban Development (HUD) in the amount of \$2,288,000 to fund mitigation activities and projects that will reduce the natural disaster risk to Community Lifelines.

The State of Alaska, Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs, Grants Section is responsible for the administration of the CDBG- Mitigation funding, allocated in the Disaster Recovery supplemental appropriation awarded by Congress on June 6, 2019, following the 2018 Cook Inlet Earthquake. The State of Alaska must comply with the terms provided in the applicable Federal Register Notices (See Attachments 1 and 2). States must conform to all Housing and Urban Development, Community Development Block Grant Mitigation (CDBG-MIT), Federal Register notice, and cross-cutting federal requirements in the design of their program, in the development of their plan for allocating funds received, and in the implementation of projects funded with CDBG-MIT. As a recipient of an allocation of CDBG-MIT funds, the State is required to develop and publish an Action Plan, which is a plan that specifies the identification of unmet need resulting from the disaster and a series of strategies to address that need, including a method of allocating the funds. CDBG-MIT funds represent a unique and significant opportunity for HUD 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 HUD grantees to mitigate against disaster risks, while at the same time allowing grantees the opportunity to transform State and local planning.

#### **Informational Document Links:**

- FEMA Region X, Risk Assessment for the Kenai Peninsula Borough, December 2017  
Link: [https://www.commerce.alaska.gov/web/Portals/4/pub/Risk\\_Report\\_Kenai\\_Final.pdf](https://www.commerce.alaska.gov/web/Portals/4/pub/Risk_Report_Kenai_Final.pdf)
- State of Alaska Hazard Mitigation Plan 2018  
Link: <https://ready.alaska.gov/Plans/Documents/MPChapters/>
- Municipality of Anchorage Hazard Mitigation Plan  
Link: [https://www.muni.org/Departments/project\\_management/Pages/AllHazardsMitigationPlanUpdate.aspx](https://www.muni.org/Departments/project_management/Pages/AllHazardsMitigationPlanUpdate.aspx)
- Kenai Peninsula Hazard Mitigation Plan  
Link: <https://www.kpb.us/emergency-mgmt/plans/ahmp>
- Matanuska-Susitna Borough Hazard Mitigation Plan  
Link: <https://www.matsugov.us/plans/msb-hazard-mitigation-plan-2020>
- State of Alaska Plan for Disaster Recovery #4413: Cook Inlet Earthquake, November 1, 2021  
Link [https://www.commerce.alaska.gov/web/Portals/4/pub/CDBG-DR/Substantial\\_Amendment\\_1.pdf](https://www.commerce.alaska.gov/web/Portals/4/pub/CDBG-DR/Substantial_Amendment_1.pdf)

## **SECTION 3. SCOPE OF WORK & CONTRACT INFORMATION**

### **SEC. 3.01 SCOPE OF WORK**

#### **3.01.1 General Requirements§**

1.1 The contractor shall provide Community Development Block Grant Mitigation (CDBG-MIT) Action Plan consultant services for the State of Alaska, Department of Commerce, Community and Economic Development, Division of Community and Regional Affairs (hereinafter referred to as the state agency).

The contractor's consultant services shall include, but is not necessarily limited to, the following:

- a. Identify requirements for financial and organizational certifications;
- b. Prepare CDBG-MIT Action Plan development work plan with timeline; and
- c. Prepare CDBG-MIT Action Plan and Certifications consistent with the following activities and deliverables:
  - 1) Drive and support the state agency's public engagement efforts related to the CDBG-MIT Action Plan and any CDBG-MIT Action Plan Amendments for disaster-impacted areas. This will include meeting scheduling, public outreach, logistical support, translation services in Other Asian & Pacific Languages, Tagalog, Spanish, Korean, Slavic Language and the American Sign Language (ASL), development of presentations and handouts in English, Other Asian & Pacific Languages, Tagalog, Spanish, Korean, Slavic Language and Spanish, and documenting comments and questions from meeting attendees. Refer to Attachments 1 and 2;
  - 2) Work with the state agency to modify the current Citizen Participation Plan to reflect the specific requirements outlined in the Federal Register notices (Attachments 1 and 2);
  - 3) Coordination and evaluation of Risk-Based Mitigation Needs Assessment;
  - 4) Based on the needs described in the Risk-Based Mitigation Needs Assessment, work directly with state agency staff to design programs, activities, and/or projects to meet the needs in the Mitigation Needs Assessment;
  - 5) Assist the state agency in planning the method of distribution for funding;
  - 6) Develop a budget for the CDBG-MIT Action Plan reflective of the method of distribution of funds to each proposed program, activity, or project, as the case may be, which will outline the program delivery costs and administrative costs for the grant. The method of distribution will also describe the method of implementing the programs, activities, or projects, whether it will be at the state or borough level, or through grantees/subrecipients, municipalities, or other entities;
  - 7) Work with state agency to ensure the method of distribution meets the needs of the communities and aligns with the mitigation needs assessment and that projected expenditures are reflective of the overall benefit requirement;
  - 8) Coordinate with the state agency to compile all policies and procedures related to the certifications, and, draft or update program policies needed for submission to HUD; and
  - 9) The CDBG-MIT Action Plan must outline how it aligns and coordinates with resilience or planning initiatives currently in place or underway at the State and local level.

1.2 The contractor shall perform all services in accordance with the provisions and requirements stated herein and to the sole satisfaction of the state agency.

1.3 Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to perform the services required herein.

#### **3.01.2 Performance Requirements:**

##### **2.1 Final Work Plan**



By no later than fifteen (15) business days after the state agency's authorization to proceed with services, the contractor shall create and submit a final work plan for state agency approval. The contractor's final work plan shall include a timeline of the following items. In addition, the contractor's final work plan shall furnish a brief narrative description of the subject matter encompassed by the topic or subtopic. The state agency shall have the right to edit, modify, and/or rearrange the organizational structure, topics, and subtopics as it deems necessary to ensure the inclusion of all work required by the contract.

- a. Development and implementation of the citizen participation requirements, as outlined in Attachments 1 and 2;
- b. Development of the Risk-Based Mitigation Needs Assessment;
- c. Design of the program to address the Mitigation Needs Assessment; and
- d. Draft the CDBG-MIT Action Plan.

## 2.2 Citizen Participation

The contractor must develop and implement the citizen participation requirements as outlined in Attachments 1 and 2. The contractor's involvement must include, but is not limited to, the following:

- a. Consulting with affected citizens, stakeholders, local governments, other state agencies, Regional Planning Commissions, Federation of Community Councils, and public housing authorities to develop a needs assessment.
- b. Ensuring that the CDBG-MIT Action Plan is made available for posting on the Community Development Block Grant Mitigation (CDBG-MIT) Website at least sixty (60) calendar days prior to submission to HUD. The contractor must ensure that there is a reasonable opportunity for citizen comment and ongoing citizen access to information about the use of grant funds. The comment period is a minimum forty-five (45) calendar days. To ensure that there is adequate time to respond to citizen comment, an additional fifteen (15) calendar days is to be considered in addition to the minimum forty-five (45) calendar day comment period.
- c. Planning publication efforts that must meet the effective communication requirements, as outlined in Attachments 1 and 2, and ensure that all citizens have equal access to information about the CDBG-MIT programs outlined in the CDBG-MIT Action Plan, including persons with disabilities and limited English proficiency (LEP).
- d. Documentation and compilation of public comments received orally at all public meetings, together with all written comments received during the public comment period.
- e. Responses to all public comments made in consultation with the state agency.

## 2.3 Determining the criteria used for changes in the CDBG-MIT Action Plan that would constitute a substantial amendment that must be outlined in the CDBG-MIT Action Plan and subject to public comment as outlined in Attachments 1 and 2.

## 2.4 Risk-Based Mitigation Needs Assessment

The contractor shall identify the best available data and develop a risk based "needs assessment" that identifies and analyzes all significant current and future disaster risks and provides a substantive basis for the activities proposed. The most recent risk assessment completed or currently being updated through the FEMA Hazardous Mitigation Plan (HMP) process to inform the use of CDBG-MIT funds.

- a. All CDBG-MIT activities must address the current and future risks identified in the Mitigation Needs Assessment of the most impacted and distressed area being the Municipality of Anchorage, identified by HUD as the most impacted and distressed area (MID). Fifty percent (50%) of the CDBG-MIT allocation must be expended within the Municipality of Anchorage.

- b. The remaining 50% of the CDBG-MIT grant must be used for mitigation activities that address identified risks within the Matanuska-Susitna Borough and the Kenai Peninsula Borough resulting from DR-4413.
- c. A discussion of how mitigation needs correspond to the State of Alaska's CDBG-MIT funding allocation plan, when developed, and a description of the underlying rationale for the plan where not aligned specifically with needs.

## 2.5 Program to Address Risk-Based Mitigation Needs Assessment

The contractor must work with the state agency to design a program for the use of funds and a funding allocation plan to deliver the program to address the risk-based mitigation needs analysis. The contractor shall provide technical assistance, policy expertise, and advice to the state agency on program design elements including, but not limited to:

- a. Eligible CDBG activities that may be undertaken with the state agency's CDBG-MIT funds to address the current and future risks identified in the Mitigation Needs Assessment both for the MID and other areas determined by the state agency in response to the needs assessment;
- b. HUD recognizes the potentially broad range of mitigation activities that may be funded pursuant to the CDBG-MIT Federal Register notices and the critical importance of coordinating those investments across multiple jurisdictions;
- c. The HUD national objectives, including the new National Objective for Unmet Need, being met by various activities included in the program design;
- d. Potential waivers that may be used to fund activities otherwise not eligible for CDBG funding;
- e. Alternatives for distributing funds (i.e. using a HUD Method of Distribution or implementing direct activities);
- f. Development of other HUD-required program elements; and
- g. Strategies for implementing the CDBG- MIT program in a manner that ensures 100% compliance with all applicable HUD, CDBG, Federal Register, and cross-cutting federal requirements.
- h. Identification of opportunities to leverage other federal funds, such as those provided through FEMA, to fund the activities defined in the Action Plan.

## 2.6 CDBG-MIT Action Plan

In consultation with the state agency, the contractor must develop a draft CDBG-MIT Action Plan in accordance with the published Federal Register notices (see Attachments 1 and 2), other applicable HUD requirements, any specific requirements contained in the CDBG-MIT Federal Register notice, and any other requirements related to the State of Alaska's CDBG-MIT allocation. As sections of the CDBG-MIT Action Plan are developed, the contractor shall submit preliminary drafts of the CDBG-MIT Action Plan to the state agency for review. The contractor's CDBG-MIT Action Plan must contain all of the elements required by HUD.

- a. Within five (5) business days of the receipt of the drafts of the sections, the state agency shall have the sole right to approve or reject, in whole or in part, the contractor's draft of the sections completed. The state agency reserves the right to require the contractor to modify the draft of the sections completed. The final action plan must be submitted and approved by HUD.
  - 1) The contractor shall make any such changes and shall submit the revised sections within two (2) business days following receipt of the state agency's requested changes.
- b. After completing all revisions to the draft as specified above, the contractor shall provide the state agency with the following quantities/formats of the final approved CDBG-MIT Action Plan as specified below:
  - 1) One bound copy of the final approved CDBG-MIT Action Plan;

- 2) One electronic copy of the final CDBG-MIT Action Plan in Microsoft compatible format and Adobe PDF; and
- 3) One unbound camera-ready copy of the final approved CDBG-MIT Action Plan.
- c. In addition, upon request by the state agency, the contractor shall make at least one (1) oral presentation of the final approved CDBG-MIT Action Plan in Anchorage, AK, at least one (1) oral presentation of the final approved CDBG-MIT Action Plan in Palmer, AK, and at least one (1) oral presentation of the final approved CDBG-MIT Action Plan in Soldotna, AK to persons or organizations as deemed necessary by the state agency. Upon prior approval these meetings may be completed virtually.
- d. Upon the state agency's approval of the CDBG-MIT Action Plan, the contractor shall submit such to HUD by no later than April 15, 2022. Upon acceptance of the contractor's CDBG-MIT Action Plan by HUD, the contractor shall assist the state agency in

### **SEC. 3.02 CONTRACT TERM AND WORK SCHEDULE**

The length of the contract will be from the date of award, Wednesday, June 1, 2022, for approximately 90 days until completion, approximately Wednesday, August 31, 2022. The state may extend the end of the contract through June 30, 2023 under the same terms and conditions with a maximum contract amount of \$100,000.

Unless otherwise provided in this IRFP, the State and the successful offeror/contractor agree: (1) that any extension of the contract excluding any exercised renewal options, will be considered as a month-to-month extension, and all other terms and conditions shall remain in full force and effect and (2) the procurement officer will provide notice to the contractor of the intent to cancel such month-to-month extension at least 30 days before the desired date of cancellation. A month-to-month extension may only be executed by the procurement officer via a written contract amendment.

### **SEC. 3.03 CONTRACT TYPE**

This contract is a **Firm Fixed Price** contract.

### **SEC. 3.04 PROPOSED PAYMENT PROCEDURES**

The state will make payments based on a negotiated payment schedule. Each billing must consist of an invoice and progress report. No payment will be made until the progress report and invoice has been approved by the project director.

### **SEC. 3.05 PROMPT PAYMENT FOR STATE PURCHASES**

Not applicable to this IRFP.

### **SEC. 3.06 CONTRACT PAYMENT**

No payment will be made until the contract is approved by the Commissioner of the Department of Commerce, Community, and Economic Development or the Commissioner's designee. Under no conditions will the state be liable for the payment of any interest charges associated with the cost of the contract. The state is not responsible for and will not pay local, state, or federal taxes. All costs associated with the contract must be stated in U.S. currency.

Any single contract payment of \$1 million or higher must be accepted by the contractor via Electronic Funds Transfer (EFT).

### **SEC. 3.07 CONTRACT PRICE ADJUSTMENTS**

Not applicable to this IRFP.

### **SEC. 3.08 MANDATORY REPORTING**

Not applicable to this IRFP.

### **SEC. 3.09 LOCATION OF WORK**

The state will not provide workspace for the contractor. The contractor must provide its own workspace.

The contractor should include in their price proposal: transportation, lodging, and per diem costs sufficient to pay for the required personal to make the presentations required in §3.01.2.3.c. Travel to other locations will not be required.

By signature on their proposal, the offeror certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States.

If the offeror cannot certify that all work will be performed in the United States, the offeror must contact the procurement officer in writing to request a waiver at least 10 days prior to the deadline for receipt of proposals.

The request must include a detailed description of the portion of work that will be performed outside the United States, where, by whom, and the reason the waiver is necessary.

Failure to comply with these requirements may cause the state to reject the proposal as non-responsive, or cancel the contract.

### **SEC. 3.10 THIRD-PARTY SERVICE PROVIDERS**

Not applicable to this IRFP.

### **SEC. 3.11 SUBCONTRACTORS**

Subcontractors may be used to perform work under this contract. If an offeror intends to use subcontractors, the offeror must complete Submittal Form G identified in Section 4.02 of this IRFP.

An offeror's failure to provide this information with their proposal may cause the state to consider their proposal non-responsive and reject it.

Subcontractor experience SHALL NOT be considered in determining whether the offeror meets the requirements set forth in SEC. 1.04 PRIOR EXPERIENCE.

If a proposal with subcontractors is selected, the state may require a signed written statement from each subcontractor that clearly verifies the subcontractor is committed to provide the good or services required by the contract.

The substitution of one subcontractor for another may be made only at the discretion and prior written approval of the project director or procurement officer.

Note that if the subcontractor will not be performing work within Alaska, they will not be required to hold an Alaska business license.

### **SEC. 3.12 JOINT VENTURES**

Joint ventures will not be allowed.

### **SEC. 3.13 RIGHT TO INSPECT PLACE OF BUSINESS**

At reasonable times, the state may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the state makes such an inspection, the contractor must provide reasonable assistance.

### **SEC. 3.14 F.O.B. POINT**

Not applicable to this IRFP.

### **SEC. 3.15 CONTRACT PERSONNEL**

Any change of the project team members or subcontractors named in the proposal must be approved, in advance and in writing, by the project director or procurement officer. Changes that are not approved by the state may be grounds for the state to terminate the contract.

### **SEC. 3.16 INSPECTION & MODIFICATION - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES**

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project director. The state may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. The project director or procurement officer may instruct the contractor to make corrections or modifications if needed in order to accomplish the contract's intent. The contractor will not unreasonably withhold such changes.

Substantial failure of the contractor to perform the contract may cause the state to terminate the contract. In this event, the state may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

### **SEC. 3.17 LIQUIDATED DAMAGES**

Not Applicable to this IRFP.

### **SEC. 3.18 CONTRACT CHANGES - UNANTICIPATED AMENDMENTS**

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the project director will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of such amendments per AS 36.30.400.

The contractor will not commence additional work until the procurement officer has secured any required state approvals necessary for the amendment and issued a written contract amendment, approved by the Commissioner of the Department of Commerce, Community, and Economic Development or the Commissioner's designee.

### **SEC. 3.19 NONDISCLOSURE AND CONFIDENTIALITY**

Contractor agrees that all confidential information shall be used only for purposes of providing the deliverables and performing the services specified herein and shall not disseminate or allow dissemination of confidential information except as provided for in this section. The contractor shall hold as confidential and will use reasonable care (including both facility physical security and electronic security) to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, the confidential information. “Reasonable care” means compliance by the contractor with all applicable federal and state law, including the Social Security Act and HIPAA. The contractor must promptly notify the state in writing if it becomes aware of any storage, disclosure, loss, unauthorized access to or use of the confidential information.

Confidential information, as used herein, means any data, files, software, information or materials (whether prepared by the state or its agents or advisors) in oral, electronic, tangible or intangible form and however stored, compiled or memorialized that is classified confidential as defined by State of Alaska classification and categorization guidelines provided by the state to the contractor or a contractor agent or otherwise made available to the contractor or a contractor agent in connection with this contract, or acquired, obtained or learned by the contractor or a contractor agent in the performance of this contract. Examples of confidential information include, but are not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data (infrastructure, architecture, operating systems, security tools, IP addresses, etc).

If confidential information is requested to be disclosed by the contractor pursuant to a request received by a third party and such disclosure of the confidential information is required under applicable state or federal law, regulation, governmental or regulatory authority, the contractor may disclose the confidential information after providing the state with written notice of the requested disclosure ( to the extent such notice to the state is permitted by applicable law) and giving the state opportunity to review the request. If the contractor receives no objection from the state, it may release the confidential information within 30 days. Notice of the requested disclosure of confidential information by the contractor must be provided to the state within a reasonable time after the contractor’s receipt of notice of the requested disclosure and, upon request of the state, shall seek to obtain legal protection from the release of the confidential information.

The following information shall not be considered confidential information: information previously known to be public information when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach of confidentiality hereof; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

### **SEC. 3.20 INDEMNIFICATION**

The contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the contractor under this agreement. The contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the contractor and the independent negligence of the contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. “Contractor” and “contracting agency”, as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term “independent negligence” is negligence other than in the contracting agency’s selection, administration, monitoring, or controlling of the contractor and in approving or accepting the contractor’s work.

### **SEC. 3.21 INSURANCE REQUIREMENTS**

Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits.

Certificates of Insurance must be furnished to the procurement officer prior to beginning work and must provide for a notice of cancellation, non-renewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services. All insurance policies shall comply with and be issued by insurers licensed to transact the business of insurance under AS 21.

**Workers' Compensation Insurance:** The contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

**Commercial General Liability Insurance:** covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

**Commercial Automobile Liability Insurance:** covering all vehicles used by the contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

### **SEC. 3.22 TERMINATION FOR DEFAULT**

If the project director or procurement officer determines that the contractor has refused to perform the work or has failed to perform the work with such diligence as to ensure its timely and accurate completion, the state may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the state's termination rights under the contract provisions of Appendix A, attached in **SECTION 7. ATTACHMENTS**.

## SECTION 4. PROPOSAL FORMAT AND CONTENT

### SEC. 4.01 IRFP SUBMITTAL FORMS

This IRFP contains Submittal Forms, which must be completed by the offeror and submitted as their proposal. An electronic copy of the forms is posted along with this IRFP. Offerors shall not re-create these forms, create their own forms, or edit the format structure of the forms unless permitted to do so.

Unless otherwise specified in this IRFP, the Submittal Forms shall be the offeror’s entire proposal. Do not include any marketing information in the proposal.

**Any proposal that does not follow these requirements may be deemed non-responsive and rejected.**

### SEC. 4.02 SPECIAL FORMATTING REQUIREMENTS

The offeror must ensure that their proposal meets all special formatting requirements identified in this section.

**Documents and Text:** All attachment documents must be written in the English language, be single sided, and be single spaced with a minimum font size of 10. Pictures or graphics may be used if the offeror feels it is necessary to communicate their information, however, be aware of the below requirements for page limits.

**Page Limits:** Some Submittal Forms listed below have maximum page limit requirements. Offerors must not exceed the maximum page limits. Note, the page limit applies to the front side of a page only (for example, ‘1 Page’ implies that the offeror can only provide a response on one side of a piece of paper).

Submittal Form	Maximum Page Limits
Submittal Form A – Offeror Information and Certifications	
<b>Submittal Form B – Experience and Qualifications</b>	<b>5</b>
<b>Submittal Form C – Understanding of the Project</b>	<b>5</b>
<b>Submittal Form D – Methodology Used for the Project</b>	<b>5</b>
<b>Submittal Form E – Management Plan for the Project</b>	<b>5</b>
Submittal Form F – Cost Proposal	

Any Submittal Form that is being evaluated and does not follow these instructions may receive a ‘1’ score for the evaluated Submittal Form, or the entire response may be deemed non-responsive and rejected. Failure to submit any of the Submittal Forms will result in the proposal being deemed non-responsive and rejected.

### SEC. 4.03 OFFEROR INFORMATION AND CERTIFICATIONS (ATTACHMENT 4: SUBMITTAL FORM A)

The offeror must complete and submit this Submittal Form. The form must be signed by an individual authorized to bind the offeror to the provisions of the IRFP.

By signature on the form, the offeror certifies they comply with the following:

- a) the laws of the State of Alaska;
- b) the applicable portion of the Federal Civil Rights Act of 1964;
- c) the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;



- d) the Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government;
- e) all terms and conditions set out in this IRFP;
- f) a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
- g) that the offers will remain open and valid for at least 90 days.

If any offeror fails to comply with [a] through [g] of this paragraph, the state reserves the right to disregard the proposal, terminate the contract, or consider the contractor in default.

The Submittal Form also requests the following information:

- h) The complete name and address of offeror's firm along with the offeror's Tax ID.
- i) Information on the person the state should contact regarding the proposal.
- j) Names of critical team members/personnel.
- k) Addenda acknowledgement.
- l) Conflict of interest statement.
- m) Federal requirements.
- n) Alaska preference qualifications.

An offeror's failure to address/respond/include these items may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

#### **SEC. 4.04 EXPERIENCE AND QUALIFICATIONS (ATTACHMENT 5: SUBMITTAL FORM B)**

Offerors must provide detail on the personnel assigned to accomplish the work called for in this IRFP; illustrate the lines of authority; designate the individual responsible and accountable for the completion of each component and deliverable of the IRFP.

Offerors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract along with their titles and location(s) where work will be performed.

##### Letters of Reference

Letters of reference do not count against the maximum page count of Submittal Form B.

Offerors must also provide at least one but no more than three letters of reference with names, email, and phone numbers for similar projects the offeror's firm has completed. Each letter of refence may not exceed one page.

##### Resumes

Resumes of the Lead Service Manager and other critical team members identified on Submittal Form A of no more than two pages each must be included with this form. These resumes do not count against the maximum page count of Submittal Form B.

**SPECIAL NOTE:** The offeror shall not disclose their costs in this Submittal Form. This Submittal Form cannot exceed the page limit (as described in §4.02), however, the resume of the Lead Service Manager and letters of reference do not count towards the maximum page count.

#### **SEC. 4.05 UNDERSTANDING OF THE PROJECT (ATTACHMENT 6: SUBMITTAL FORM C)**

Offerors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project and the project schedule.

**SPECIAL NOTE:** The offeror shall not disclose their costs in this Submittal Form and cannot exceed the page limit (as described in §4.02).

#### **SEC. 4.06 METHODOLOGY USED FOR THE PROJECT (ATTACHMENT 7: SUBMITTAL FORM D)**

Offerors must provide comprehensive narrative statements that set out the methodology they intend to employ and illustrate how the methodology will serve to accomplish the work and meet the state's project schedule.

**SPECIAL NOTE:** The offeror shall not disclose their costs in this Submittal Form and cannot exceed the page limit (as described in §4.02).

#### **SEC. 4.07 MANAGEMENT PLAN FOR THE PROJECT (ATTACHMENT 8: SUBMITTAL FORM E)**

Offerors must provide comprehensive narrative statements that set out the management plan they intend to follow and illustrate how the plan will serve to accomplish the work and meet the state's project schedule.

**SPECIAL NOTE:** The offeror shall not disclose their costs in this Submittal Form and cannot exceed the page limit (as described in §4.02).

#### **SEC. 4.08 COST PROPOSAL (ATTACHMENT 9: SUBMITTAL FORM F)**

Offerors must complete and submit this Submittal Form. Proposed costs must all direct and indirect costs associated with the performance of the contract, including, but not limited to, total number of hours at various hourly rates, direct expenses, payroll, supplies, overhead assigned to each person working on the project, percentage of each person's time devoted to the project, and profit. The costs identified on the cost proposal are the total amount of costs to be paid by the state. No additional charges shall be allowed.

#### **SEC. 4.09 SUBCONTRACTORS (ATTACHMENT 10: SUBMITTAL FORM G)**

If using subcontractors, the offeror must complete and submit this Submittal Form.

#### **SEC. 4.10 BID BOND – PERFORMANCE BOND – SURETY DEPOSIT**

Not applicable to this IRFP.

## SECTION 5. EVALUATION CRITERIA AND CONTRACTOR SELECTION

### SEC. 5.01 SUMMARY OF EVALUATION PROCESS

The state will use the following steps to evaluate and prioritize proposals:

- 1) Proposals will be assessed for overall responsiveness. Proposals deemed non-responsive will be eliminated from further consideration.
- 2) A proposal evaluation committee (PEC), made up of at least three state employees or public officials, will evaluate specific parts of the responsive proposals.
- 3) The Submittal Forms, from each responsive proposal, will be sent to the PEC. No cost information will be shared or provided to the PEC.
- 4) The PEC will independently evaluate and score the documents based on the degree to which they meet the stated evaluation criteria.
- 5) After independent scoring, the PEC will have a meeting, chaired by the procurement officer, where the PEC may have a group discussion prior to finalizing their scores.
- 6) The evaluators will submit their final individual scores to the procurement officer, who will then compile the scores and calculate awarded points as set out in Section 5.03.
- 7) The procurement officer will calculate scores for cost proposals as set out in Section 5.08 and add those scores to the awarded points along with factoring in any Alaska preferences.
- 8) The procurement officer may ask for best and final offers from offerors susceptible for award and revise the cost scores accordingly.
- 9) The state will then conduct any necessary negotiations with the highest scoring offeror and award a contract if the negotiations are successful.

### SEC. 5.02 EVALUATION CRITERIA

Proposals will be evaluated based on their overall value to state, considering both cost and non-cost factors as described below. Note: An evaluation may not be based on discrimination due to the race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, disability, or political affiliation of the offeror.

Overall Criteria	Weight
Responsiveness	Pass/Fail

Qualifications Criteria		Weight
Experience and Qualifications	(Submittal Form B)	20
Understanding of the Project	(Submittal Form C)	10
Methodology Used for the Project	(Submittal Form D)	10
Management Plan for the Project	(Submittal Form E)	10
	Total	50

Cost Criteria		Weight
Cost Proposal	(Submittal Form F)	40
	Total	40

Preference Criteria	Weight
Alaska Offeror Preference (if applicable)	10
Total	10

**TOTAL EVALUATION POINTS AVAILABLE: 100**

### SEC. 5.03 SCORING METHOD AND CALCULATION

The PEC will evaluate responses against the questions set out in Sections 5.04 through 5.07 and assign a single score for each section. Offerors’ responses for each section will be rated comparatively against one another with each PEC member assigning a score of 1, 5, or 10 (with 10 representing the highest score, 5 representing the average score, and 1 representing the lowest score). Responses that are similar or lack dominant information to differentiate the offerors from each other will receive the same score. Therefore, it is the offeror’s responsibility to provide dominant information and differentiate themselves from their competitors.

After the PEC has scored each section, the scores for each section will be totaled and the following formula will be used to calculate the amount of points awarded for that section:

$$\frac{\text{Offeror Total Score}}{\text{Highest Total Score Possible}} \times \text{Max Points} = \text{Points Awarded}$$

**Example (Max Points for the Section = 100):**

	PEC Member 1 Score	PEC Member 2 Score	PEC Member 3 Score	PEC Member 4 Score	Combined Total Score	Points Awarded
<b>Offeror 1</b>	10	5	5	10	30	75
<b>Offeror 2</b>	5	5	5	5	20	50
<b>Offeror 3</b>	10	10	10	10	40	100

**Offeror 1** was awarded 75 points:

$$\frac{\text{Offeror Total Score (30)}}{\text{Highest Total Score Possible (40)}} \times \text{Max Points (100)} = \text{Points Awarded (75)}$$

**Offeror 2** was awarded 50 points:

$$\frac{\text{Offeror Total Score (20)}}{\text{Highest Total Score Possible (40)}} \times \text{Max Points (100)} = \text{Points Awarded (50)}$$

**Offeror 3** was awarded 100 points:

$$\frac{\text{Offeror Total Score (40)}}{\text{Highest Total Score Possible (40)}} \times \text{Max Points (100)} = \text{Points Awarded (100)}$$

Highest Total Score Possible (40)

#### **SEC. 5.04 EXPERIENCE AND QUALIFICATIONS**

This portion of the offeror’s proposal will be evaluated against the following questions:

**1) Questions regarding the personnel:**

- a) How extensive is the applicable education and experience of the personnel designated to work on the project?

**2) Questions regarding the firm and subcontractor(s):**

- a) How well has the firm demonstrated experience in completing similar projects on time and within budget?
- b) If (a) subcontractor(s) will perform work on the contract, how well do they measure up to the evaluation used for the offeror?

Note: offerors who do not utilize subcontractors will receive the maximum score for this criteria.

#### **SEC. 5.05 UNDERSTANDING OF THE PROJECT**

This portion of the offeror’s proposal will be evaluated against the following questions:

- 1) How well has the offeror demonstrated a thorough understanding of the purpose and scope of the project?

#### **SEC. 5.06 METHODOLOGY USED FOR THE PROJECT**

This portion of the offeror’s proposal will be evaluated against the following questions:

- 1) How comprehensive is the methodology and does it depict a logical approach to fulfilling the requirements of the IRFP?

#### **SEC. 5.07 MANAGEMENT PLAN FOR THE PROJECT**

This portion of the offeror’s proposal will be evaluated against the following questions:

- 1) How well does the management plan support all of the project requirements and logically lead to the deliverables required in the IRFP?

#### **SEC. 5.08 CONTRACT COST (COST PROPOSAL)**

Overall, a maximum of 40% of the total evaluation points will be assigned to cost. After the procurement officer applies any applicable preferences, the offeror with the lowest total cost will receive the maximum number of points allocated to cost per 2 AAC 12.260(c). The point allocations for cost on the other proposals will be determined using the following formula:

$$[(\text{Price of Lowest Cost Proposal}) \times (\text{Maximum Points for Cost})] \div (\text{Cost of Each Higher Priced Proposal})$$

**Example (Max Points for Contract Cost = 40):**

**Step 1**

List all proposal prices, adjusted where appropriate by the application of applicable preferences claimed by the offeror.

Offeror #1	\$40,000
Offeror #2	\$42,750
Offeror #3	\$47,500

**Step 2**

In this example, the IRFP allotted 40% of the available 100 points to cost. This means that the lowest cost will receive the maximum number of points.

**Offeror #1 receives 40 points.**

The reason they receive that amount is because the lowest cost proposal, in this case \$40,000, receives the maximum number of points allocated to cost, 40 points.

**Offeror #2 receives 37.43 points.**

*\$40,000 lowest cost x 40 maximum points for cost = 1,600,000 ÷ \$42,750 cost of Offeror #2's proposal = 37.43*

**Offeror #3 receives 33.68 points.**

*\$40,000 lowest cost x 40 maximum points for cost = 1,600,000 ÷ \$47,500 cost of Offeror #3's proposal = 33.68*

**SEC. 5.09 APPLICATION OF PREFERENCES**

Certain preferences apply to all state contracts, regardless of their dollar value. The Alaska Bidder, Alaska Veteran, and Alaska Offeror preferences are the most common preferences involved in the IRFP process. Additional preferences that may apply to this procurement are listed below. Guides that contain excerpts from the relevant statutes and codes, explain when the preferences apply and provide examples of how to calculate the preferences are available at the following website:

<http://doa.alaska.gov/dgs/pdf/pref1.pdf>

- Alaska Products Preference - AS 36.30.332
- Recycled Products Preference - AS 36.30.337
- Local Agriculture and Fisheries Products Preference - AS 36.15.050
- Employment Program Preference - AS 36.30.321(b)
- Alaskans with Disabilities Preference - AS 36.30.321(d)
- Alaska Veteran's Preference - AS 36.30.321(f)

The Division of Vocational Rehabilitation in the Department of Labor and Workforce Development keeps a list of qualified employment programs and individuals who qualify as persons with a disability. As evidence of a business' or an individual's right to the Employment Program or Alaskans with Disabilities preferences, the Division of Vocational Rehabilitation will issue a certification letter. To take advantage of these preferences, a business or individual must be on the appropriate Division of Vocational Rehabilitation list prior to the time designated for receipt of proposals. Offerors must attach a copy of their certification letter to the proposal. **An offeror's failure to provide this certification letter with their proposal will cause the state to disallow the preference.**

## **SEC. 5.10 ALASKA BIDDER PREFERENCE**

An Alaska Bidder Preference of 5% will be applied to the price in the proposal. The preference will be given to an offeror who:

- 1) holds a current Alaska business license prior to the deadline for receipt of proposals;
- 2) submits a proposal for goods or services under the name appearing on the offeror's current Alaska business license;
- 3) has maintained a place of business within the state staffed by the offeror, or an employee of the offeror, for a period of six months immediately preceding the date of the proposal;
- 4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship and the proprietor is a resident of the state, is a limited liability company (LLC) organized under AS 10.50 and all members are residents of the state, or is a partnership under AS 32.06 or AS 32.11 and all partners are residents of the state; and
- 5) if a joint venture, is composed entirely of ventures that qualify under (1)-(4) of this subsection.

### **Alaska Bidder Preference Certification Form**

In order to receive the Alaska Bidder Preference, the proposal must include the Alaska Bidder Preference Certification Form attached to this IRFP. An offeror does not need to complete the Alaska Veteran Preference questions on the form if not claiming the Alaska Veteran Preference. An offeror's failure to provide this completed form with their proposal will cause the state to disallow the preference.

## **SEC. 5.11 ALASKA VETERAN PREFERENCE**

An Alaska Veteran Preference of 5%, not to exceed \$5,000, will be applied to the price in the proposal. The preference will be given to an offeror who qualifies under AS 36.30.990(2) as an Alaska bidder and is a:

- A. sole proprietorship owned by an Alaska veteran;
- B. partnership under AS 32.06 or AS 32.11 if a majority of the partners are Alaska veterans;
- C. limited liability company organized under AS 10.50 if a majority of the members are Alaska veterans; or
- D. corporation that is wholly owned by individuals, and a majority of the individuals are Alaska veterans.

In accordance with AS 36.30.321(i), the bidder must also add value by actually performing, controlling, managing, and supervising the services provided, or for supplies, the bidder must have sold supplies of the general nature solicited to other state agencies, other government, or the general public.

### **Alaska Veteran Preference Certification**

In order to receive the Alaska Veteran Preference, the proposal must include the Alaska Bidder Preference Certification Form attached to this IRFP. An offeror's failure to provide this completed form with their proposal will cause the state to disallow the preference.

## **SEC. 5.12 ALASKA OFFEROR PREFERENCE**

Per 2 AAC 12.260, if an offeror qualifies for the Alaska Bidder Preference, the offeror will receive an Alaska Offeror Preference. The preference will be 10% of the total available points, which will be added to the offeror's overall evaluation score.

**Example:**

**Step 1**

Determine the number of points available to qualifying offerors under this preference:

100 Total Points Available in IRFP x 10% Alaska Offeror preference = 10 Points for the preference

**Step 2**

Determine which offerors qualify as Alaska bidders and thus, are eligible for the Alaska Offeror preference. For the purpose of this example, presume that all proposals have been completely evaluated based on the evaluation criteria in the IRFP. The scores at this point are:

Offeror #1	83 points	No Preference	0 points
Offeror #2	74 points	Alaska Offeror Preference	10 points
Offeror #3	80 points	Alaska Offeror Preference	10 points

**Step 3**

Add the applicable Alaska Offeror preference amounts to the offerors’ scores:

Offeror #1	83 points	
Offeror #2	84 points	(74 points + 10 points)
<b>Offeror #3</b>	<b>90 points</b>	<b>(80 points + 10 points)</b>

**Offeror #3** is the most advantageous proposal.

**SEC. 5.13 OFFEROR NOTIFICATION OF SELECTION**

After the completion of contract negotiation, the procurement officer will issue a written Notice of Award and send copies of that notice to all offerors who submitted proposals. The notice will list the names of all offerors and identify the offeror selected for award.



## **SECTION 6. GENERAL PROCESS AND LEGAL INFORMATION**

### **SEC. 6.01 INFORMAL DEBRIEFING**

When the contract is completed, an informal debriefing may be performed at the discretion of the project director or procurement officer. If performed, the scope of the debriefing will be limited to the work performed by the contractor.

### **SEC. 6.02 ALASKA BUSINESS LICENSE AND OTHER REQUIRED LICENSES**

Prior to the award of a contract, an offeror must hold a valid Alaska business license. However, in order to receive the Alaska Bidder Preference and other related preferences, such as the Alaska Veteran Preference and Alaska Offeror Preference, an offeror must hold a valid Alaska business license prior to the deadline for receipt of proposals. Offerors should contact the **Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing** for information on these licenses. Acceptable evidence that the offeror possesses a valid Alaska business license may consist of any one of the following:

- copy of an Alaska business license;
- certification on the proposal that the offeror has a valid Alaska business license and has included the license number in the proposal;
- a canceled check for the Alaska business license fee;
- a copy of the Alaska business license application with a receipt stamp from the state's occupational licensing office; or
- a sworn and notarized statement that the offeror has applied and paid for the Alaska business license.

You are not required to hold a valid Alaska business license at the time proposals are opened if you possess one of the following licenses and are offering services or supplies under that specific line of business:

- fisheries business licenses issued by Alaska Department of Revenue or Alaska Department of Fish and Game,
- liquor licenses issued by Alaska Department of Revenue for alcohol sales only,
- insurance licenses issued by Alaska Department of Commerce, Community and Economic Development, Division of Insurance, or
- Mining licenses issued by Alaska Department of Revenue.

Prior the deadline for receipt of proposals, all offerors must hold any other necessary applicable professional licenses required by Alaska Statute.

### **SEC. 6.03 STANDARD CONTRACT PROVISIONS**

The contractor will be required to sign the state's Standard Agreement Form for Professional Services Contracts (form SAF.DOC/Appendix A). This form is attached with the IRFP for your review as Attachment 4. The contractor must comply with the contract provisions set out in this attachment. No alteration of these provisions will be permitted without prior written approval from the Department of Law, and the state reserves the right to reject a proposal that is non-compliant or takes exception with the contract terms and conditions stated in the Agreement. Any requests to change language in this document (adjust, modify, add, delete, etc.), must be set out

in the offeror’s proposal in a separate document. Please include the following information with any change that you are proposing:

- 1) Identify the provision that the offeror takes exception with.
- 2) Identify why the provision is unjust, unreasonable, etc.
- 3) Identify exactly what suggested changes should be made.

#### **SEC. 6.04 QUALIFIED OFFERORS**

Per 2 AAC 12.875, unless provided for otherwise in the IRFP, to qualify as an offeror for award of a contract issued under AS 36.30, the offeror must:

- 1) Add value in the contract by actually performing, controlling, managing, or supervising the services to be provided; or
- 2) Be in the business of selling and have actually sold on a regular basis the supplies that are the subject of the IRFP.

If the offeror leases services or supplies or acts as a broker or agency in providing the services or supplies in order to meet these requirements, the procurement officer may not accept the offeror as a qualified offeror under AS 36.30.

#### **SEC. 6.05 PROPOSAL AS PART OF THE CONTRACT**

Part of all of this RF and the successful proposal may be incorporated into the contract.

#### **SEC. 6.06 ADDITIONAL TERMS AND CONDITIONS**

The state reserves the right to add terms and conditions during contract negotiations. These terms and conditions will be within the scope of the IRFP and will not affect the proposal evaluations.

#### **SEC. 6.07 HUMAN TRAFFICKING**

By signature on their proposal, the offeror certifies that the offeror is not established and headquartered or incorporated and headquartered in a country recognized as Tier 3 in the most recent United States Department of State’s Trafficking in Persons Report.

The most recent United States Department of State’s Trafficking in Persons Report can be found at the following website: <https://www.state.gov/trafficking-in-persons-report/>

Failure to comply with this requirement will cause the state to reject the proposal as non-responsive or cancel the contract.

#### **SEC. 6.08 RIGHT OF REJECTION**

Offerors must comply with all of the terms of the IRFP, the State Procurement Code (AS 36.30), and all applicable local, state, and federal laws, codes, and regulations. The procurement

officer may reject any proposal that does not comply with all of the material and substantial terms, conditions, and performance requirements of the IRFP.

Offerors may not qualify the proposal nor restrict the rights of the state. If an offeror does so, the procurement officer may determine the proposal to be a non-responsive counter-offer and the proposal may be rejected.

Minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the IRFP;
- are trivial, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision;

may be waived by the procurement officer.

The state reserves the right to refrain from making an award if it determines that to be in its best interest. **A proposal from a debarred or suspended offeror shall be rejected.**

### **SEC. 6.09 STATE NOT RESPONSIBLE FOR PREPARATION COSTS**

The state will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

### **SEC. 6.10 DISCLOSURE OF PROPOSAL CONTENTS**

All proposals and other material submitted become the property of the State of Alaska and may be returned only at the state's option. AS 40.25.110 requires public records to be open to reasonable inspection. All proposal information, including detailed price and cost information, will be held in confidence during the evaluation process and prior to the time a Notice of Award is issued. Thereafter, proposals will become public information.

Trade secrets and other proprietary data contained in proposals may be held confidential if the offeror requests, in writing, that the contracting officer does so, and if the contracting officer agrees, in writing, to do so. The offeror's request must be included with the proposal, must clearly identify the information they wish to be held confidential, and include a statement that sets out the reasons for confidentiality. Unless the contracting officer agrees in writing to hold the requested information confidential, that information will also become public after the Notice of Award is issued.

### **SEC. 6.11 ASSIGNMENT**

Per 2 AAC 12.480, the contractor may not transfer or assign any portion of the contract without prior written approval from the procurement officer.

### **SEC. 6.12 DISPUTES**

A contract resulting from this IRFP is governed by the laws of the State of Alaska. If the contractor has a claim arising in connection with the agreement that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – AS 36.30.632. To the extent not otherwise governed by the preceding, the claim shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

### **SEC. 6.13 SEVERABILITY**

If any provision of the contract or agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

## **SEC. 6.14 SUPPLEMENTAL TERMS AND CONDITIONS**

Proposals must comply with Section 6.08 Right of Rejection. However, if the state fails to identify or detect supplemental terms or conditions that conflict with those contained in this IRFP or that diminish the state's rights under any contract resulting from the IRFP, the term(s) or condition(s) will be considered null and void. After award of contract:

If conflict arises between a supplemental term or condition included in the proposal and a term or condition of the IRFP, the term or condition of the IRFP will prevail; and

If the state's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

## **SEC. 6.15 SOLICITATION ADVERTISING**

Public notice has been provided in accordance with 2 AAC 12.220.

## **SEC. 6.16 SITE INSPECTION**

The state may conduct on-site visits to evaluate the offeror's capacity to perform the contract. An offeror must agree, at risk of being found non-responsive and having its proposal rejected, to provide the state reasonable access to relevant portions of its work sites. Individuals designated by the procurement officer at the state's expense will make site inspection.

## **SEC. 6.17 CLARIFICATION OF OFFERS**

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee (PEC) are permitted with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Clarifications may not result in a material or substantive change to the proposal. The evaluation by the procurement officer or the PEC may be adjusted as a result of a clarification under this section.

## **SEC. 6.18 DISCUSSIONS WITH OFFERORS**

The state may conduct discussions with offerors in accordance with AS 36.30.240 and 2 AAC 12.290. The purpose of these discussions will be to ensure full understanding of the requirements of the IRFP and proposal. Discussions will be limited to specific sections of the IRFP or proposal identified by the procurement officer. Discussions will only be held with offerors who have submitted a proposal deemed reasonably susceptible for award by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the procurement officer or the PEC. If modifications are made as a result of these discussions they will be put in writing. Following discussions, the procurement officer may set a time for best and final proposal submissions from those offerors with whom discussions were held. Proposals may be reevaluated after receipt of best and final proposal submissions.

If an offeror does not submit a best and final proposal or a notice of withdrawal, the offeror's immediate previous proposal is considered the offeror's best and final proposal.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that reasonable accommodation can be made. Any oral modification of a proposal must be reduced to writing by the offeror.

## SEC. 6.19 CONTRACT NEGOTIATION

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, shall be within the scope of the request for proposals and limited to those items which would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the state may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal. If contract negotiations are commenced, they may be held in a conference room on the 9th floor of the State Office Building in Juneau, Alaska.

If the contract negotiations take place in JUNEAU, Alaska, the offeror will be responsible for their travel and per diem expenses.

## SEC. 6.20 FAILURE TO NEGOTIATE

If the selected offeror

- fails to provide the information required to begin negotiations in a timely manner; or
- fails to negotiate in good faith; or
- indicates they cannot perform the contract within the budgeted funds available for the project; or
- if the offeror and the state, after a good faith effort, simply cannot come to terms,

the state may terminate negotiations with the offeror initially selected and commence negotiations with the next highest ranked offeror.

## SEC. 6.21 FEDERALLY IMPOSED TARIFFS

Changes in price (increase or decrease) resulting directly from a new or updated federal tariff, excise tax, or duty, imposed after contract award may be adjusted during the contract period or before delivery into the United States via contract amendment.

- **Notification of Changes:** The contractor must promptly notify the procurement officer in writing of any new, increased, or decreased federal excise tax or duty that may result in either an increase or decrease in the contract price and shall take appropriate action as directed by the procurement officer.
- **After-imposed or Increased Taxes and Duties:** Any federal excise tax or duty for goods or services covered by this contract that was exempted or excluded on the contract award date but later imposed on the contractor during the contract period, as the result of legislative, judicial, or administrative action may result in a price increase provided:
  - a) The tax or duty takes effect after the contract award date and isn't otherwise addressed by the contract;
  - b) The contractor warrants, in writing, that no amount of the newly imposed federal excise tax or duty or rate increase was included in the contract price, as a contingency or otherwise.
- **After-relieved or Decreased Taxes and Duties:** The contract price shall be decreased by the amount of any decrease in federal excise tax or duty for goods or services under the contract, except social security or other employment [taxes](#), that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the procurement officer.

- **State’s Ability to Make Changes:** The state reserves the right to request verification of federal excise tax or duty amounts on goods or services covered by this contract and increase or decrease the contract price accordingly.
- **Price Change Threshold:** No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

## SEC. 6.22 PROTEST

2 AAC 12.695 provides that an interested party may protest the content of the IRFP or the award of a contract.

An interested party is defined in 2 AAC 12.990(a)(7) as “an actual or prospective bidder or offeror whose economic interest might be affected substantially and directly the issuance of a contract solicitation, the award of a contract, or the failure to award a contract.”

Per 2 AAC 12.695, an interested party must first attempt to informally resolve the dispute with the procurement officer. If that attempt is unsuccessful, the interested party may file a written protest to the solicitation or the award of the contract. The protest must be filed with the Commissioner of the purchasing agency or the Commissioner’s designee. The protester must also file a copy of the protest with the procurement officer. The protest must include the following information:

- the name, address, and telephone number of the protester;
- the signature of the protester or the protester's representative;
- identification of the contracting agency and the solicitation or contract at issue;
- a detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- the form of relief requested.

If an interested party wishes to protest the content of a solicitation, the protest must be filed before the date and time that proposals are due.

If an offeror wishes to protest the award of a contract not greater than \$50,000, the protest must be filed within 10 days from the date of the solicitation or award, whichever is later.

If an offeror wishes to protest the award of a contract greater than \$50,000, the protest must be filed within 10 days from the date that notice of award is made.

A protester must have submitted a proposal in order to have sufficient standing to protest the award of a contract.

The procurement officer shall immediately give notice of the protest to the contractor or, if no award has been made, to all offerors who submitted proposals.

If the protestor agrees, the Commissioner of the purchasing department or the Commissioner’s designee may assign the protest to the procurement officer or other state official for alternate dispute resolution. In other cases, the Commissioner or the Commissioner’s designee may issue a decision denying the protest and stating the reasons for denial, issue a decision sustaining the protest, in whole or in part, and instruct the procurement officer to implement an appropriate remedy, or conduct a hearing using procedures set out in AS 36.30.670(b).

## **SECTION 7. ATTACHMENTS**

### **SEC. 7.01 ATTACHMENTS**

**Attachments:**

- 1) Attachment 01 84 FR 45847, August 30, 2019
- 2) Attachment 02 86 FR 561, January 6, 2021
- 3) Attachment 03 Sample Contract
- 4) Attachment 04 Submittal Form A Offeror Certifications
- 5) Attachment 05 Submittal Form B Experience and Qualifications
- 6) Attachment 06 Submittal Form C Understanding of the Project
- 7) Attachment 07 Submittal Form D Methodology Used for the Project
- 8) Attachment 08 Submittal Form E Management Plan
- 9) Attachment 09 Submittal Form F Cost
- 10) Attachment 10 Submittal Form G Subcontractors

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-6109-N-02]

RIN 2506-ZA02

**Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees**

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

**ACTION:** Notice.

**SUMMARY:** This notice allocates \$6.875 billion in Community Development Block Grant Mitigation (CDBG-MIT) funds to grantees recovering from qualifying 2015, 2016, and 2017 disasters. Funds allocated by this notice were made available by the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (approved February 9, 2018) (the “Appropriations Act”). This notice describes grant requirements and procedures, including waivers and alternative requirements, applicable to CDBG-MIT funds only. The Department acknowledges the governance and financial management challenges of the Commonwealth of Puerto Rico and the on-going capacity considerations in the U.S. Virgin Islands. Accordingly, the allocation of funds to the Commonwealth of Puerto Rico and the U.S. Virgin Islands for mitigation and electrical power system improvements shall be governed by subsequent notices in order to provide additional time to Puerto Rico and the U.S. Virgin Islands to work with the Department to address these issues.

**DATES:** *Applicability Date:* September 4, 2019.

**FOR FURTHER INFORMATION CONTACT:** Jessie Handforth Kome, Acting Director, Office of Block Grant Assistance, Community Planning and Development, 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 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](mailto:disaster_recovery@hud.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Overview and Policy Objectives
- II. Use of CDBG-MIT Funds

- A. Mitigation Definition
- B. Action Plan, Substantial Amendments, and Covered Projects
- C. Most Impacted and Distressed Areas
- III. Allocations
- IV. Overview of Grant Process
  - V. Applicable Rules, Statutes, Waivers, and Alternative Requirements
    - A. Grant Administration and Action Plan Requirements
    - B. Housing and Related Floodplain Issues
    - C. Infrastructure
    - D. Economic Development
  - VI. Certifications and Collection of Information
  - VII. Duration of Funding
  - VIII. Catalog of Federal Domestic Assistance
  - IX. Finding of No Significant Impact

**I. Overview and 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. This 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 this 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, grantee 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 this 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 this 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 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 this 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 *enhanced* 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 this 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, this 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. This 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 this 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 this 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 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 this notice, HUD is using the terms CDBG–MIT programs and projects to refer to the means by which grantees implement CDBG eligible activities. This 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 this notice, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

### 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 this 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 of 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, this 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 this 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. below, 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. below) 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.).

### *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. This 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. 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. 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).

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### 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	Arañas, 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.

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 this 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 this 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 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.).
- In accordance with the requirements in section V.A.1.a., 60 days prior to the deadline for the submission of an action plan as prescribed in section V.A.2.e, 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., 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., 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 sends 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 notice describes requirements 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 this 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.

(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 Public Law 115–123 Financial Management and Grant Compliance Certification and supporting documentation. The grantee has assessed its financial standards and has submitted a completed Public Law 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 this 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 this 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 (Pub. L. 115–254, Division D, “DRRA”) as explained in section V.A.24. of this 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 this 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 Notices and this 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 this 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](mailto: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 this 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-funded 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 notice, 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](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](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 this 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](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 this notice; and (c) adhere to the advanced elevation requirements established in section V.B.1.d. of this 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 this 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 this 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 this 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 this 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 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 this 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) below) 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 notice, 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 this 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 and that also meet the definition of a Covered Project shall also be subject to the Covered Project requirements of this 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. 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 this 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.

(i.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.

(i.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](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 this 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](mailto: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.

This 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 received, 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 (Pub. 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. 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)*. Public Law 116-20 provides that grantees that received an allocation for mitigation funding provided by Public Law 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 this 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 this 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), 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 this 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 this 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, this notice waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3), that 70 percent of funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of CDBG-MIT funds must benefit low- and moderate-income persons. However, as provided in section V.A.2.a.(4), 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 this 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 CFR 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 CFR 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 this 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) 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).

*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 this 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 this 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 blight 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 this notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or 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 this 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 this 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.

(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 this 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 this 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 this 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 this 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 this 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 Pub. 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. above, or the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

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](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 Notice 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](http://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 it 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 DRRRA, 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 DRRRA.

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 *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 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. below.

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/fhfhag](https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/fhfhag), 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 notice 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 this 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 this 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 this 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 (vi) 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 above.

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 above) 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.

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 this 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 this 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 this notice (section V.B.4.b. below). 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., below) 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 *not* 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 this 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 this 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 (LMHI) 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 notices 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 *outside* 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:U.S.C.-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.

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 Public Law 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 this 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 this 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.

This 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](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-id?SID=88dced3d630ad9fd8ab91268dd829f1e&mc=true&node=ap24.3.570\\_1913.a&rgn=div9](https://www.ecfr.gov/cgi-bin/text-id?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 (Pub. 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 this 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 this notice. The grantee certifies to the accuracy of its Public Law 115–56 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 this notice and its implementation plan and capacity assessment and related submissions to HUD referenced at section V.A.1.b.

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](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](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

This 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 this 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).



Dated: August 23, 2019.

**Benjamin Carson, Sr.,**

*Secretary.*

[FR Doc. 2019-18607 Filed 8-29-19; 8:45 am]

**BILLING CODE 4210-67-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR–6239–N–01]

**Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees (CDBG Mitigation)**

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

**ACTION:** Notice.

**SUMMARY:** This notice allocates over \$186 million in Community Development Block Grant Mitigation (CDBG–MIT) funds to grantees recovering from qualifying 2018 disasters. Funds allocated by this notice were made available by the Additional Supplemental Appropriations for Disaster Relief Act, 2019. This notice describes grant requirements and procedures, including waivers and alternative requirements, applicable to CDBG–MIT funds only. Funds allocated pursuant to this notice shall be subject only to the provisions of this notice and the applicable prior notices, unless otherwise provided herein. This notice also clarifies the applicability of certain previous waivers and alternative requirements provided for CDBG–MIT grantees.

**DATES:** *Applicability Date:* January 11, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jessie Handforth Kome, Director, Office of Block Grant Assistance, 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 Federal Information 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*.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Allocations
- II. Use of CDBG–MIT Funds
  - A. Action Plan, Substantial Amendments, and Amendments for Covered Projects
  - B. Most Impacted and Distressed Areas
- III. Overview of Grant Process
  - A. Action Plan Process for New CDBG–MIT Grantees Under the Appropriations Act (Pub. L. 116–20)
  - B. Substantial Action Plan Amendment Process for Existing Grantees Under Prior Appropriations (Pub. L. 115–123)

- IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements
- V. Duration of Funding
- VI. Catalog of Federal Domestic Assistance
- VII. Finding of No Significant Impact

**I. Allocations**

The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. 116–20, approved June 6, 2019) (Appropriations Act) made \$2,431,000,000 in Community Development Block Grant disaster recovery (CDBG–DR) funds available for major disasters occurring in 2017, 2018, or 2019, of which \$431,000,000 was for grantees that received funds in response to disasters occurring in 2017. On January 27, 2020, HUD allocated \$2,153,928,000 in CDBG–DR funds in accordance with the Appropriations Act, to address unmet disaster recovery needs through activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCDA) related to disaster relief, long term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation in the “most impacted and distressed” (MID) areas resulting from a qualifying major disaster in 2018 and 2019, which included the \$431,000,000 for unmet infrastructure needs for 2017 disasters. In a notice published concurrently with this notice, HUD has allocated an additional \$85,291,000 of CDBG–DR funds from the Appropriations Act for remaining unmet needs for disasters occurring in 2018 and 2019. Of amounts made available for 2018 and 2019 disasters, the Appropriations Act requires that HUD first allocate funds to address unmet disaster recovery needs for 2018 and 2019 disasters. Any funds remaining after addressing unmet disaster recovery needs for 2018 and 2019 disasters must be allocated for mitigation activities in the MID areas resulting from a major disaster that occurred in 2018, in an amount proportional to the amount of funds each grantee received from all CDBG–DR allocations for 2018 disasters (including allocations of funds made available by Pub. L. 115–254).

HUD has determined that its CDBG–DR allocations pursuant to the Appropriations Act are sufficient to address unmet disaster recovery needs in MID areas arising from 2018 and 2019 disasters. Therefore, this notice allocates the remaining \$186,781,000 in funds made available in the Appropriations Act as CDBG–MIT funds to grantees recovering from qualifying 2018 disasters.

HUD described the grant requirements and procedures, including waivers and

alternative requirements applicable to CDBG–MIT funds, for CDBG–MIT grantees in the following **Federal Register** notices (collectively, the “Prior Notices”):

- 84 FR 45838, published August 30, 2019 (the “Main CDBG–MIT Notice”); and
- 85 FR 60821, published September 28, 2020 (the “2020 Omni Notice”).

CDBG–MIT funds allocated in the Prior Notices are made available by the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Pub. L. 115–123). Pursuant to that appropriation, HUD allocated \$6.875 billion in CDBG–MIT funds in the Main CDBG–MIT Notice to grantees recovering from a qualifying 2015, 2016, and 2017 disaster for mitigation activities.

In the Main CDBG–MIT Notice, HUD recognized that CDBG–MIT funds are to be used for distinctly different purposes than CDBG–DR funds. In that notice, HUD defined “mitigation activities” to mean 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.

The nature of programs and projects that are likely to be funded require all CDBG–MIT grantees and their subrecipients to strengthen their program management capacity, financial management, and internal controls. The Main CDBG–MIT Notice also states the Department’s intent 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 are designed to provide additional assurances that oversight of CDBG–MIT funds addresses grantee-specific risks, such as the potential for waste, fraud, and abuse, or the potential failure to effectively operate and maintain mitigation projects.

This notice imposes the requirements of the Prior Notices as amended by provisions in this notice or by subsequent notices, to the CDBG–MIT grants allocated by this notice.<sup>1</sup> The requirements of the Appropriations Act apply in lieu of the requirements of Public Law 115–123, which is referenced in the Prior Notices. The amount of CDBG–MIT funding grantees must expend to mitigate risks within the HUD-identified MID areas is listed in

<sup>1</sup> This notice is only applicable to grantees receiving a CDBG–MIT grant under Public Law 116–20 in response to a 2018 disaster.

Table 1 (below). In accordance with the Appropriations Act, HUD's allocation of CDBG-MIT funds in Table 1 is based on each grantee's proportional share of total CDBG-DR funds allocated for all eligible disasters in 2018. Table 2 contains the total mitigation allocations for 2015 through 2018 disasters under Public Laws 115-123 and 116-20.

TABLE 1—TOTAL ALLOCATION FOR MITIGATION ACTIVITIES UNDER PUBLIC LAW 116-20

Disaster No.	Grantee	Total allocation for CDBG-MIT for 2018 disasters under Public Law 116-20	Minimum amount that must be expended in the HUD-identified "most impacted and distressed" areas listed herein	HUD-identified "most impacted and distressed" areas
4413	State of Alaska	\$2,288,000	\$1,144,000	Anchorage, Borough.
4357	American Samoa	1,470,000	1,470,000	All components of American Samoa.
4407; 4382	State of California	64,907,000	32,453,500	Butte, Lake, Los Angeles, and Shasta Counties.
4399	State of Florida	46,926,000	23,463,000	Bay, Calhoun, Gulf and Jackson Counties; 32321 (Liberty), 32327 (Wakulla), 32328 (Franklin), 32346 (Wakulla and Franklin), 32351 (Gadsden), and 32428 (Washington) Zip Codes.
4400	State of Georgia	2,669,000	1,334,500	39845 (Seminole) Zip Code.
4366	Hawaii County, HI	6,862,000	6,862,000	Hawaii County.
4365	Kauai County, HI	585,000	292,500	96714 (Kauai) Zip Code.
4393	State of North Carolina	34,619,000	17,309,500	Brunswick, Carteret, Columbus, Craven, Duplin, Jones, New Hanover, Onslow, Plender, and Robeson Counties; 28352 (Scotland), 28390 (Cumberland), 28433 (Bladen), and 28571 (Pamlico) Zip Codes.
4396 & 4404	The Commonwealth of the Northern Mariana Islands.	16,225,000	8,112,500	Saipan and Tinian Municipalities.
4394	State of South Carolina	4,598,000	2,299,000	Horry and Marion Counties; 29536 (Dillion) Zip Code.
4377	State of Texas	4,652,000	2,326,000	Hidalgo County.
4402	State of Wisconsin	980,000	490,000	53560 (Dane) Zip Code.
Total		186,781,000	97,556,500	

\* This table is intended to reflect 2018 CDBG-MIT awards. To view previous CDBG-MIT grantees, see Table 2.

TABLE 2—TOTAL ALLOCATIONS FOR MITIGATION ACTIVITIES FOR 2015 THROUGH 2018 DISASTERS UNDER PUBLIC LAWS 115-123 AND 116-20

Disasters	2015, 2016, and 2017 disasters	2015, 2016, and 2017 disasters	2015, 2016, and 2017 disasters	2018 disasters	Totals
Appropriations Act	Public Law 115-123	Public Law 115-123	Public Law 115-123	Public Law 116-20.	
Date of Enactment	February 09, 2018	February 09, 2018	February 09, 2018	June 06, 2019.	
Date of Applicable Notice.	August 30, 2019	September 10, 2019	January 27, 2020.		
Federal Register Notice Reference Number.	85 FR 45838	84 FR 47528	85 FR 4676.		
Mitigation grantees					
State of Alaska	\$0	\$0	\$0	\$2,288,000	\$2,288,000
American Samoa	0	0	0	1,470,000	1,470,000
State of California	88,219,000	0	0	64,907,000	153,126,000
State of Florida	633,485,000	0	0	46,926,000	680,411,000
State of Georgia	26,961,000	0	0	2,669,000	29,630,000
Hawaii County, HI	0	0	0	6,862,000	6,862,000
Kauai County, HI	0	0	0	585,000	585,000
State of Louisiana	1,213,917,000	0	0	0	1,213,917,000
State of Missouri	41,592,000	0	0	0	41,592,000
State of North Carolina	168,067,000	0	0	34,619,000	202,686,000
State of South Carolina	157,590,000	0	0	4,598,000	162,188,000
Columbia, SC	18,585,000	0	0	0	18,585,000
Lexington County, SC (Urban County)	15,185,000	0	0	0	15,185,000
Richland County, SC (Urban County)	21,864,000	0	0	0	21,864,000
State of Texas	4,297,189,000	0	0	4,652,000	4,301,841,000
Houston, TX	61,884,000	0	0	0	61,884,000
San Marcos, TX	24,012,000	0	0	0	24,012,000
The Commonwealth of the Northern Mariana Islands.	0	0	0	16,225,000	16,225,000
The Commonwealth of Puerto Rico	0	0	8,285,284,000	0	8,285,284,000
State of West Virginia	106,494,000	0	0	0	106,494,000
State of Wisconsin	0	0	0	980,000	980,000
U.S. Virgin Islands	0	774,188,000	0	0	774,188,000
Totals	6,875,044,000	774,188,000	8,285,284,000	186,781,000	16,121,297,000

II. Use of CDBG-MIT Funds

Funds allocated under this notice are subject to the requirements of the Prior

Notices, as amended by this notice or subsequent notices. This notice outlines additional requirements imposed by the

Appropriations Act that apply to funds allocated under this notice.

HUD recognizes that grantees receiving an allocation of CDBG–MIT funds of less than \$5,000,000 may realize meaningful mitigation outcomes and minimize associated administrative costs by using these funds for a limited number of targeted mitigation activities and projects. HUD will provide technical assistance, when appropriate, for grantees receiving an allocation of less than \$5 million in CDBG–MIT funds and who adopt this targeted approach. Like all uses of CDBG–MIT funds, use of funds for a targeted number of activities must mitigate specific current and future risks identified in the grantee's Mitigation Needs Assessment and benefit MID areas. All grantees should also maximize the impact of available funds by encouraging leverage, private-public partnerships, and coordination with other Federal programs.

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

*Action plan.* 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. The plan must include the required elements of the action plan described in section V.A.2. of the Main CDBG–MIT Notice. For example, the plan must include a risk-based Mitigation Needs Assessment that identifies and analyzes all significant current and future disaster risks and provide a substantive basis for the activities proposed, pursuant to this notice and section V.A.2.a.(1) of the Main CDBG–MIT Notice (84 FR 45847). The action plan must describe how funded activities satisfy the requirements of the Main CDBG–MIT Notice, including how all proposed activities meet the definition of mitigation activities as defined in section II.A. of the Main CDBG–MIT Notice. As described in section II.B. of the Main CDBG–MIT Notice, 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 proposed activities with other federal, state, and local mitigation projects and planning processes.

*Covered Projects.* To allow for a more detailed review of larger projects, the Main CDBG–MIT 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. The Main CDBG–MIT Notice defines a

Covered Project 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)). Covered Projects proposed by a grantee receiving funds pursuant to this notice are subject to the requirements for Covered Projects, which are primarily located in sections V.A.2.h. and V.A.13.b. of the Main CDBG–MIT Notice.

*Amendments.* A grantee must amend its action plan to update its Mitigation Needs Assessment, modify or create new activities, or reprogram funds, as appropriate. Each amendment must be highlighted, or otherwise identified within the context of the entire action plan. The beginning of every substantial amendment must include a: (1) Section that identifies exactly what content is being added, deleted, or changed; (2) chart or table that clearly illustrates where funds are coming from and where they are moving to; (3) revised budget allocation table that reflects the entirety of all funds, as amended; and (4) a description of how the amendment is consistent with the grantee's Mitigation Needs Assessment. A grantee must amend its action plan in accordance with section V.A.2.g. of the Main CDBG–MIT Notice, as amended by the 2020 Omni Notice, as further modified by this notice. In the 2020 Omni Notice, HUD clarified that a substantial amendment is not subject to the public hearing requirements for the initial action plan that are described in section V.A.3.a. of the Main CDBG–MIT Notice.

As discussed in section III.B. of this notice, grantees that received a CDBG–MIT allocation pursuant to Public Law 115–123 must submit a substantial amendment to its approved CDBG–MIT action plan.

#### *II.B. 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 resulting from 2018 disasters. Table 1 identifies the HUD-identified MID areas for CDBG–MIT funds under this notice only. The amount of funding grantees must expend to mitigate risks within the HUD-identified MID areas under this notice is also listed in Table 1. In some instances, HUD has identified the entire jurisdiction of a grantee as the HUD-identified 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.

Note that if HUD designates a ZIP Code for 2018 disasters as a MID area for purposes of allocating funds, the grantee may expand program operations to the whole county (county is indicated in parentheses next to the ZIP Code) as a MID area. For CDBG–MIT funds under this notice only, a grantee should indicate its decision to expand eligibility to the whole county in its action plan.

A grantee may use up to 5 percent of the total grant award (plus 5 percent of program income generated by the grant) for grant administration and no more than 15 percent of its total grant amount on planning costs. 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 2018 disaster. A grantee seeking to amend its HUD-identified MID area for purposes of its CDBG–MIT grant for 2018 disasters must also amend the HUD-identified MID area for its corresponding CDBG–DR grant(s) for 2018 disasters. Grantees proposing to add to the HUD-identified MID area for their existing CDBG–DR grant 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 (*i.e.*, the grantee-identified MID areas for 2018 disasters), 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. 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 areas for 2018 disasters 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 for 2018 disasters (e.g., upstream water retention projects to reduce downstream flooding in the HUD-identified MID area).

### III. Overview of Grant Process

#### III.A. Action Plan Process for New CDBG-MIT Grantees Under the Appropriations Act (Pub. L. 116-20)

Grantees that have not received a previous CDBG-MIT allocation (Alaska, American Samoa, Hawaii County, Kauai County, the Commonwealth of the Northern Mariana Islands, and Wisconsin) must submit an action plan pursuant to the requirements in section V.A.2 of the Main CDBG-MIT Notice, as superseded by section IV.A.3.b. of this notice (i.e., within 270 days after the applicability date of this notice). Since March 2020, HUD has authorized extensions for action plan submissions for CDBG-DR and CDBG-MIT grants due to the coronavirus (COVID-19) pandemic. The ongoing challenges of the pandemic continue to warrant longer submission time frames for grants allocated under this notice. Therefore, the deadlines for submitting an action plan in the Main CDBG-MIT Notice are superseded by the extended submission time frame in section IV.A.3.b. of this notice.

Grantees that received allocations under the January 2020 Notice for 2018 and 2019 disasters submitted information described in section VI.A.1. of the February 9, 2018 notice (as amended and updated by section IV.B.1. of the January 27, 2020 notice). These submissions supported the Secretary's evaluation of grantee capacity and the Secretary's certification of proficient financial controls and procurement processes and adequate procedures for proper grant management required by the Appropriations Act. Rather than resubmit the same information for allocations under this notice, grantees are required to update those submissions to reflect any material changes. This includes updates to the information required by section VI.A.1.a. of the February 9, 2018 notice (83 FR 5847), paragraphs (1)–(6), as updated and amended by section IV.B.1.

of the January 2020 Notice (85 FR 4686). HUD will consider these updates before granting funds allocated by this notice. The submission deadlines in the notices referenced in the previous two paragraphs are superseded by deadlines set by this notice. HUD will direct grantees to checklists for submitting information required by this paragraph.

Grantees must also submit additional information that the Main CDBG-MIT Notice requires of grantees that do not apply to CDBG-DR grants. The required information must be submitted by completing the checklist on HUD's website titled "CDBG-MIT Certification Addendum C to the Public Law 116-20 and 115-254 CDBG-DR Financial Management and Grant Compliance Certification Checklist." In the checklist, a CDBG-MIT grantee must: Indicate how it will strengthen its internal audit function; specify the criteria for subrecipient selection and its plans to increase subrecipient monitoring, and establish a process for promptly identifying and addressing conflicts under the grantee's conflict of interest policy.

If the CDBG-MIT grant is to be administered by an agency that does not administer a grantee's corresponding CDBG-DR grant, the administering agency for the CDBG-MIT grant must submit the documentation for the certification of financial controls and procurement processes, and adequate procedures for proper grant management as described in section V.A.1.a. of the Main CDBG-MIT 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 Main CDBG-MIT Notice.

- Grantee consults with stakeholders, including required consultation with affected local governments, Indian Tribes, and public housing authorities (as required by section V.A.7 of the Main CDBG-MIT Notice).

- Within 210 days of the applicability date of this notice, the grantee must submit material updates to documentation for the certification of financial controls and procurement processes, and adequate procedures for grant management and the Addendum C added to Public Law 116-20 and 115-254 CDBG-DR Financial Management and Grant Compliance Certification Checklist, as described above.

- 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 number of public hearings on the proposed plan as

required by the Main CDBG-MIT Notice. The grantee may convene virtual hearings in lieu of in-person hearings, pursuant to the authorization provided below in section IV.A.3.d. of this notice.

- Within 270 days of the applicability date of this notice, the 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. and V.A.2. of the Main CDBG-MIT Notice, and projection of expenditures and outcomes to HUD as described in section IV.A.3.b. and IV.A.3.c. of this notice.

- Grantee requests and receives Disaster Recovery Grant Reporting (DRGR) system 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 as described in section IV.A.2 of this notice.

- 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 sends the grant agreement to the grantee.

- Grantee signs and returns the grant agreement to HUD.

- HUD will sign the grant agreement and establish the grantee's line of credit to reflect the amount of available funds.

- Grantee posts the final HUD approved action plan on its official website.

- 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, consistent with the applicable draw down requirements, 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 or the state the Authority to Use Grant Funds (AUGF) form and certification.

- Substantial amendments are subject to a 30-day public comment period, including posting to the grantee's website, followed by a 60-day review period for HUD.

### *III.B. Substantial Action Plan Amendment Process for Existing Grantees Under Prior Appropriations (Pub. L. 115–123)*

A single CDBG–MIT action plan will be used to describe the uses of both the existing CDBG–MIT grant under Public Law 115–123 and the new CDBG–MIT grant under Public Law 116–20. While each grant remains separate, with separate purposes, financial controls, and some other distinctions, this combined administrative approach should ease grantee burden. Each grantee that previously received a CDBG–MIT allocation under the Main CDBG–MIT Notice pursuant to Public Law 115–123 (California, Florida, Georgia, North and South Carolina, and Texas) is required to submit a substantial amendment to its approved CDBG–MIT action plan. The substantial amendment must be submitted not later than 180 days after HUD's full or partial approval of the Public Law 115–123 CDBG–MIT action plan or not later than 180 days after the applicability date of this notice, whichever is later, unless the grantee has requested, and HUD has approved an extension of this submission deadline. The substantial amendment must include the CDBG–MIT funds allocated under this notice and address the requirements of the Prior Notices and this notice.

Grantees that received a CDBG–MIT allocation under the Main CDBG–MIT Notice have submitted documentation for the certification of financial controls and procurement processes, and adequate procedures for grant management in section V.A.1.a of the Main CDBG–MIT Notice entitled, "Certification of financial controls and procurement processes, and adequate procedures for proper grant management." A grantee may request that HUD rely on this CDBG–MIT Financial Management and Grant Compliance Certification Checklist and supporting documentation for the purposes of this mitigation allocation, provided, however, that the grantee

must update its submissions as described in section V.A.1.a. (1)–(6) of the Main CDBG–MIT Notice to reflect any material changes in the submissions.

Additionally, each grantee that received an allocation under the Main CDBG–MIT Notice must meet the following requirements to amend its approved CDBG–MIT action plan. These steps are only applicable to the substantial amendment process to add the CDBG–MIT funds allocated under this notice.

- Grantee must consult with stakeholders, including required consultation with affected local governments, Indian Tribes, and public housing authorities to update its Mitigation Needs Assessment as required by section V.A.7. of the Main CDBG–MIT Notice.

- Within 120 days of the applicability date of this notice, the grantee updates its submissions for the certification of financial controls and procurement processes, and adequate procedures for grant management described in section V.A.1.a. of the Main CDBG–MIT Notice to reflect any material changes in the submissions.

- Grantee must amend its CDBG–MIT action plan to update its Mitigation Needs Assessment in accordance with the requirements described in section IV.A.3.a. of this notice. At a minimum, this must include the HUD-identified MID areas under this notice in addition to those identified in the Main CDBG–MIT Notice and to add in the new grant funds allocated by this notice. The grantee may also modify or create new activities from its existing CDBG–MIT grant.

- Grantee must publish the substantial amendment to its current approved CDBG–MIT action plan on the grantee's required public website in a manner that affords citizens, affected local governments, Indian Tribes, public housing authorities, and other interested parties a reasonable opportunity to examine the amendment's contents and provide feedback. The manner of publication must include, at a minimum, prominent posting on the grantee's official website for no less than 30 calendar days to solicit public comment and convene one public hearing on the proposed amendment. 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).

- Grantee must respond to public comment and submit its substantial amendment to HUD (together with SF–424 and the certifications in paragraph VI.1. of the Main CDBG–MIT Notice) no later than 180 days after the applicability date of this notice.

- HUD will review the substantial amendment within 60 days from date of receipt as described in section of IV.A.2. of this notice and determine whether to approve the substantial amendment per criteria identified in this notice and the Prior Notices.

- HUD will send a substantial amendment approval letter, and a new grant agreement to the grantee. If the substantial amendment is not approved, a letter will be sent identifying its deficiencies and the grantee must then re-submit the substantial amendment within 45 days of the notification letter.

- Grantee may enter activities into the DRGR system before or after submission of the substantial amendment to HUD. Note that, while the action plan is consolidated, the DRGR system will maintain the necessary and appropriate separations between the two distinct CDBG–MIT grants. Any activities that are changed as a result of HUD's review must be updated once HUD approves the substantial amendment.

- Grantee must ensure that the HUD-approved substantial amendment and currently approved CDBG–MIT action plan are posted prominently on its official website. Each 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.

- Grantee must enter the activities from its published substantial amendment into the Disaster Recovery Grant Reporting (DRGR) system and submit the updated DRGR action plan (revised to reflect the substantial amendment) to HUD within the DRGR system.

- Grantee must sign and return the grant agreement to HUD.

- HUD will sign the grant agreement and will establish the grantee's line of credit to reflect the amount of funds made available under Public Law 116–20.

- The grantee may draw down funds from the line of credit, consistent with the applicable draw down requirements, 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

or the state the Authority to Use Grant Funds (AUGF) form and certification.

- Grantee must amend and submit its projection of CDBG–MIT expenditures and performance outcomes with the substantial amendment.

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

This section of the notice describes rules, statutes, waivers, and alternative requirements that apply to each grantee receiving an allocation under this notice. The Secretary has determined that good cause exists to apply each waiver and alternative requirement established in the Prior Notices, as amended by this notice, to the use of funds under this notice and that such waivers and alternative requirements are 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 HUD’s obligation or use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Regulatory waiver authority is also provided by 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.

The following requirements apply only to the CDBG–MIT funds appropriated under the Appropriations Act (unless otherwise noted) and not to funds provided under the annual formula State or Entitlement CDBG programs, the Indian Community Development Block Grant program, or those provided under any other component of the CDBG program, such as the Section 108 Loan Guarantee Program, or any previous CDBG–MIT appropriations, unless otherwise noted. Pursuant to the requirements of the Appropriations Acts, waivers and alternative requirements are effective five days after they are published in the **Federal Register**.

Except as described in this notice or the Prior Notices, statutory and regulatory provisions governing the State CDBG program shall apply to State grantees receiving a CDBG–MIT grant and statutory and regulatory provisions governing the entitlement CDBG program shall apply to any local government receiving a CDBG–MIT grant. The provisions of 24 CFR part 570, subpart F are waived to authorize American Samoa and the Commonwealth of the Northern Mariana Islands to administer its CDBG–MIT allocation in accordance with the regulatory and statutory provisions governing the State CDBG program, as modified by rules, statutes, waivers, and alternative requirements made applicable by **Federal Register** notices. This includes the requirement that the aggregate total for administrative and technical assistance expenditures by the Commonwealth of the Northern Mariana Islands must not exceed 5 percent of any CDBG–MIT grant made pursuant to the Appropriations Act, plus 5 percent

of program income generated by the grant. 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. State and Entitlement CDBG regulations can be found at 24 CFR part 570. References to the action plan in these regulations shall refer to the action plan that covers the use of the CDBG–MIT grants allocated by this notice that is required by section V.A. of the Main CDBG–MIT Notice (as made applicable by this notice). All references in this notice pertaining to timelines and/or deadlines are in terms of calendar days unless otherwise noted. The date of this notice shall mean the applicability date of this notice unless otherwise noted.

**IV.A. Grant Administration and Action Plan Requirements**

*IV.A.1. Applicability of waivers, alternative requirements, and other requirements.* The Prior Notices establish the waivers and alternative requirements applicable to grantees receiving funds under this notice. For convenience, some of these rules, waivers, and alternative requirements are described below in Table 3. In addition, this notice extends the waivers and alternative requirements in the Prior Notices to Hawaii County and Kauai County, which are subject to requirements imposed in 24 CFR part 570, subpart F. However, because the Prior Notices do not include waivers and alternative requirements to the provisions in 24 CFR part 570, subpart F, this notice amends the Prior Notices by also waiving 24 CFR 570.420(c), 24 CFR 570.431(a), and 24 CFR 570.431(b). 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.

**TABLE 3—RULES, WAIVERS, AND ALTERNATIVE REQUIREMENTS ESTABLISHED IN THE PRIOR NOTICES**

Citation	Rules, waivers, and alternative requirement
<b>The Main CDBG–MIT Notice</b>	
84 FR 45844 .....	Pre-award evaluation of management and oversight of funds.
84 FR 45846 .....	CDBG–MIT Action Plan waiver and alternative requirement.
84 FR 45852 .....	Citizen participation waiver and alternative requirement.
84 FR 45853 .....	HUD performance review authorities and grantee reporting requirements in the Disaster Recovery Grant Reporting (DRGR) System.
84 FR 45854 .....	Direct grant administration and means of carrying out eligible activities-applicable to State grantees only.
84 FR 45855 .....	Consolidated plan waiver.
84 FR 45855 .....	Requirement for consultation during plan preparation.
84 FR 45855 .....	Grant administration responsibilities, combined technical assistance and administration expenditures cap.
84 FR 45855 .....	Operation and maintenance waiver for CDBG–MIT program income.
84 FR 45856 .....	Planning-only activities applicable to State grantees only.
84 FR 45856 .....	Overall benefit requirement.
84 FR 45856 .....	Use of the “upper quartile” or “exception criteria” for low- and moderate-income area benefit activities.
84 FR 45856 .....	National objective waivers and alternative requirements applicable to CDBG–MIT funds.
84 FR 45857 .....	Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties applicable to State grantees only.

TABLE 3—RULES, WAIVERS, AND ALTERNATIVE REQUIREMENTS ESTABLISHED IN THE PRIOR NOTICES—Continued

Citation	Rules, waivers, and alternative requirement
84 FR 45857 .....	Use of subrecipients-applicable to State grantees only.
84 FR 45857 .....	Recordkeeping.
84 FR 45858 .....	Change of use of real property, applicable to State grantees only.
84 FR 45858 .....	Responsibility for review and handling of noncompliance-applicable to State grantees only.
84 FR 45858 .....	Program income alternative requirement.
84 FR 45859 .....	Limitation on reimbursement.
84 FR 45859 .....	Prohibition on forced mortgage payoff.
84 FR 45859 .....	One-for-one replacement housing, relocation, and real property acquisition Requirements.
84 FR 45860 .....	Environmental requirements.
84 FR 45861 .....	Duplication of benefits.
84 FR 45862 .....	Procurement.
84 FR 45862 .....	Timely distribution of funds.
84 FR 45862 .....	Review of continuing capacity to carry out CDBG-funded activities in a timely manner.
84 FR 45862 .....	Corrective and remedial actions.
84 FR 45863 .....	Noncompliance and grant conditions.
84 FR 45863 .....	Reduction, withdrawal, or adjustment of a grant, or other appropriate action.
84 FR 45863 .....	Federal accessibility requirements.
84 FR 45863 .....	Housing-related eligibility waivers.
84 FR 45864 .....	Housing incentives in at-risk communities.
84 FR 45864 .....	Limitation on emergency grant payments—interim mortgage assistance.
84 FR 45864 .....	Acquisition of real property; flood and other buyouts.
84 FR 45866 .....	Additional LMI national objective criteria for buyouts and housing incentives.
84 FR 45867 .....	Alternative requirement for housing rehabilitation—assistance for second homes.
84 FR 45867 .....	Flood insurance.
84 FR 45867 .....	Elevation of nonresidential structures.
84 FR 45868 .....	Requirements for flood control structure.
84 FR 45868 .....	Waiver and alternative requirement to permit certain improvements on private lands.
84 FR 45868 .....	National objective documentation for economic development activities.
84 FR 45868 .....	Public benefit for certain economic development activities.
84 FR 45869 .....	Clarifying note on Section 3 resident eligibility and documentation requirements.
84 FR 45869 .....	Waiver and modification of the job relocation clause to permit assistance to help a business return.
84 FR 45869 .....	Prioritizing small businesses.
84 FR 45869 .....	Underwriting.
84 FR 45869 .....	Limitation on use of funds for eminent domain.
<b>The 2020 Omni Notice</b>	
85 FR 60822 .....	Waiver and Alternative Requirements for Use of FEMA-Approved Elevation Standards for Nonresidential Structures.
85 FR 60825 .....	Substantial Action Plan Amendment Requirements for CDBG-MIT Grants.
85 FR 60827 .....	Financial Certification Requirements under Public Laws 115–254 and 116–20.

*IV.A.2. Waiver of 45-day Review Period for CDBG-MIT Action Plan and Substantial Action Plan Amendments.* The unique qualities and requirements of CDBG-MIT are well established in the Main CDBG-MIT Notice. CDBG-MIT funds represent an opportunity for grantees to use this assistance in areas impacted by recent disasters to carry out strategic and high-impact activities to mitigate disaster risk and reduce future losses.

HUD may disapprove an action plan or substantial action plan amendment if it is incomplete. HUD works with grantees to resolve or provide additional information during the review period to avoid the need to disapprove an action plan or substantial action plan amendments. There are several issues related to the action plan or substantial action plan amendments as submitted that can be fully resolved via further discussion and revision during an extended review period, rather than through HUD disapproval of the

amendments which in turn would require grantees to take additional time to revise and resubmit their respective amendments. As such, the Secretary has determined that good cause exists to waive 24 CFR 91.500(a) to extend HUD's action plan review period from 45 days to 60 days.

*IV.A.3. Additional requirements and modifications of requirements in the Main CDBG-MIT Notice.* The following clarifications or modifications apply to all grantees receiving an allocation under this notice:

*IV.A.3.a. Substantial amendments for grantees receiving an allocation of funds under the Main CDBG-MIT Notice.* Grantees that received a CDBG-MIT allocation under the Main CDBG-MIT Notice (California, Florida, Georgia, North and South Carolina, and Texas) must submit a substantial amendment to its CDBG-MIT action plan, including an updated Mitigation Needs Assessment, per the requirements outlined in this notice, in addition to meeting the

requirements for substantial amendments under the Main CDBG-MIT Notice and the 2020 Omni Notice (85 FR 60825). In particular, the substantial amendment must update the risk-based Mitigation Needs Assessment to:

(1) Identify and analyze the significant current and future disaster risks in the MID areas for 2018 disasters and provide a substantive basis for the activities proposed in those MID areas. HUD notes that a grantee's action plan and Mitigation Needs Assessment in response to the Main CDBG-MIT Notice may already include MID areas for 2018 disasters (if those areas overlap with previous disasters). In that case, the grantee must update its needs assessment. Mitigation needs evolve over time and grantees are to amend the Mitigation Needs Assessment and action plan as conditions change, additional mitigation needs are identified, and additional resources become available.



As a reminder, the agency administering the CDBG–MIT funds must consult with other jurisdictions, the private sector and other government agencies, as identified above in section III.A. and III.B. of this notice. For more information on the consultation requirements, a grantee should refer to section V.A.7. of the Main CDBG–MIT Notice.

As required by section III.A., the grantee must update its submissions for the certification of financial controls and procurement processes, and adequate procedures for grant management as described in section V.A.1.a. of the Main CDBG–MIT Notice to reflect any material changes in the submissions within 120 days of the applicability date of this notice.

*IV.A.3.b. Action plans and other submission requirements for grantees receiving their first CDBG–MIT allocation under this notice.* Grantees receiving their first allocation of CDBG–MIT funds (Alaska, American Samoa, Hawaii County, Kauai County, the Commonwealth of the Northern Mariana Islands, and Wisconsin) shall be subject to the deadlines for submission of implementation plans and capacity assessments, projection of expenditures and outcomes, and action plans, as established by this paragraph and paragraph IV.A.3.c. (which supersedes the deadlines in the Main CDBG–MIT Notice). These grantees must submit projection of expenditures and outcomes and an action plan not later than 270 days after the applicability date of this notice. As required by section III.A. of this notice, the grantee must submit material updates to documentation for the certification of financial controls and procurement processes, and adequate procedures for grant management and the Addendum C added to Public Law 116–20 and 115–254 CDBG–DR Financial Management and Grant Compliance Certification Checklist, within 210 days of the applicability date of this notice.

*IV.A.3.c. Implementation plan and capacity assessment.* Grantees receiving their first allocation of CDBG–MIT funds under this notice (Alaska, American Samoa, Hawaii County, Kauai County, the Commonwealth of the Northern Mariana Islands, and Wisconsin) must submit the Implementation Plan and Capacity Assessment pursuant to section V.A.1.b., including the criteria in V.A.1.b.(1) and V.A.1.b.(2), of the Main CDBG–MIT Notice within 270 days of the applicability date of this notice.

*IV.A.3.d. Public Hearing Clarification.* On March 20, 2020 and in response to the COVID–19 pandemic, HUD clarified

its requirements for public hearings as provided in the Main CDBG–MIT Notice, to include virtual public hearings (alone, or in concert with an in-person hearing) if the virtual hearings allow questions in real time, with answers coming directly from the elected representatives to all “attendees.” HUD is extending this flexibility to grantees receiving CDBG–MIT funds pursuant to this notice to facilitate social distancing during the public health emergency. CDBG–MIT grantees subject to this notice may hold virtual hearings in lieu of in-person public hearings to fulfill the public hearing requirements required by section V.A.3.a. of the Main CDBG–MIT Notice. Grantees that hold virtual hearings must update their citizen participation plans to describe procedures for virtual hearings, including how it shall take appropriate steps to ensure effective communication as required by 24 CFR 8.6 and provide meaningful access for individuals with limited English proficiency.

For each virtual hearing, the grantee shall provide reasonable notification and access for citizens in accordance with the grantee’s certifications, timely responses to all citizen questions and issues, and public access to all questions and responses.

*IV.A.3.e. Consolidated Plan Waiver.* The Main CDBG–MIT Notice imposes a deadline for grantees to update their consolidated plans. To allow grantees receiving allocations under Public Law 116–20 a similar extension to revise their consolidated plans for consistency with their CDBG–MIT action plans, the following language is added to the waiver and alternative requirement provided in section V.A.6. of the Main CDBG–MIT Notice to include the CDBG–MIT funds allocated under this notice: “This timeframe to update the consolidated plan shall not apply to grantees receiving CDBG–MIT funds under Public Law 116–20 for 2018 disasters. For a grantee allocated CDBG–MIT funds under Public Law 116–20, this waiver applies only until a grantee submits its next full (3–5 year) consolidated plan, or no later than its Fiscal Year 2022.”

*IV.A.3.f. Use of funds in response to Hurricane Matthew and Hurricane Florence (State of North Carolina and South Carolina only).* The Appropriations Act provides that grantees that received an allocation for mitigation activities in response to Hurricane Florence 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 Matthew. Additionally, as explained in the Main CDBG–MIT Notice in paragraph V.A.5.b., grantees that received an allocation for mitigation funding provided by Public Law 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 both Hurricanes Matthew and Florence may count toward the 50 percent expenditure requirement for HUD-identified MID areas outlined in Table 1 of this notice. In total, South Carolina and North Carolina must expend 50 percent of the combined total of both CDBG–MIT grants in HUD-identified MID areas resulting from Hurricanes Matthew and Florence.

## V. Duration of Funding

The Appropriations Act makes funds available for obligation by HUD until expended. This notice requires each grantee to expend 50 percent of its CDBG–MIT grant for 2018 disasters on eligible activities within six years of HUD’s execution of the grant agreement and 100 percent of its CDBG–MIT grant for 2018 disasters within twelve years of HUD’s execution of the grant agreement. HUD may extend the period of performance administratively, if good cause for such an extension exists at that time, as requested by the grantee and approved by HUD. When the period of performance has ended, HUD will close out the grant and any remaining funds not expended by the grantee on appropriate programmatic purposes will be recaptured by HUD.

## VI. Catalog of Federal Domestic Assistance

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

## VII. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection on HUD’s website and in-person 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 Information Relay

Service at 800-877-8339 (this is a toll-free number).

**John Gibbs,**  
Principal Deputy Assistant Secretary for  
Community Planning and Development.

**Appendix A—Detailed Methodology**

**Allocation of CDBG-MIT Funds to Most Impacted and Distressed Areas Due to 2018 Federally Declared Disasters**

According to Public Law 116-20: Provided further, That any funds made available under this heading and under the same heading in Public Law 115-254 that remain available, after the funds under such headings have been allocated for necessary expenses for activities authorized under such headings, shall be allocated to grantees, for

mitigation activities in the most impacted and distressed areas resulting from a major disaster that occurred in 2018: Provided further, That such allocations shall be made in the same proportion that the amount of funds each grantee received under this Act and the same heading in division I of Public Law 115-254 bears to the amount of all funds provided to all grantees that received allocations for disasters that occurred in 2018:

The Table below shows the total unmet needs for each 2018 grantee as calculated by HUD, each grantee's share of the unmet needs for all 2018 disasters, and the amounts allocated to each 2018 grantee which are proportional to the total amount each of the grantees has been allocated for unmet needs from the aggregate of Public Law 116-20 and Public Law 115-254.

FEMA disaster No.	Grantee	Combined allocation for unmet needs (Pub. L. 115-254 and Pub. L. 116-20)	Proportional share of 2018 unmet needs (%)	2018 Mitigation grants (Pub. L. 116-20)
4357	American Samoa	\$23,039,000	0.7869	\$1,470,000
4413	State of Alaska	35,856,000	1.2247	2,288,000
4407, 4382	State of California	1,017,399,000	34.7504	64,907,000
4399	State of Florida	735,553,000	25.1236	46,926,000
4400	State of Georgia	41,837,000	1.4290	2,669,000
4365	Kauai County, HI	9,176,000	0.3134	585,000
4366	Hawaii County, HI	107,561,000	3.6739	6,862,000
4396, 4404	Commonwealth of the Northern Mariana Islands	254,324,000	8.6867	16,225,000
4393	State of North Carolina	542,644,000	18.5346	34,619,000
4394	State of South Carolina	72,075,000	2.4618	4,598,000
4377	State of Texas	72,913,000	2.4904	4,652,000
4402	State of Wisconsin	15,355,000	0.5245	980,000
	2018 Disasters	2,927,732,000	100.0000	186,781,000

[FR Doc. 2020-29261 Filed 1-5-21; 8:45 am]  
BILLING CODE 4210-67-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-6182-N-02]

**Allocations, Common Application, Waivers, and Alternative Requirements for Disaster Community Development Block Grant Disaster Recovery Grantees; Second Allocation**

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

**SUMMARY:** This notice allocates a total of \$85,291,000 in Community Development Block Grant disaster recovery (CDBG-DR) funds appropriated by the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (the Act). The \$85,291,000 in CDBG-DR funds allocated by this notice is for the purpose of assisting in long-term recovery from major disasters that occurred in 2018 and 2019. The

allocations in this notice add to the funding previously allocated in the January 27, 2020 notice for these disasters. The Act requires HUD to allocate any funds not identified for long-term recovery from major disasters to be allocated for mitigation activities for 2018 disasters. Accordingly, under a separate notice, HUD will allocate the remaining \$185,730,000 of funds available under the Act for mitigation activities in the most impacted and distressed areas resulting from a major disaster that occurred in 2018. This notice also contains a waiver and alternative requirement addressing the income limits applicable to the Commonwealth of Puerto Rico for its CDBG-DR and CDBG-MIT grants. Additionally, this notice also provides additional flexibility to CDBG-DR grantees as they continue their disaster recovery efforts while also responding to the Coronavirus Disease 2019 (COVID-19) pandemic.

**DATES:** Applicability Date: January 11, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jessie Handforth Kome, Acting Director, Office of Block Grant Assistance,

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 Federal Information 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](mailto:disaster_recovery@hud.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Allocations
- II. Use of Funds
- III. Overview of Grant Process
  - A. Appropriations Act (Pub. L. 116-20) Action Plan Process
  - B. Action Plan Substantial Amendment Process To Incorporate Additional Funds
- IV. Applicable Rules, Statutes, Waivers, and Alternative Requirements
  - A. Grant Administration
  - B. Waiver and Alternative Requirement Related to Adjusted Income Limits for Grants Under Public Laws 115-56, 115-123, and 116-20 (Commonwealth of Puerto Rico only)

## STANDARD AGREEMENT FORM FOR PROFESSIONAL SERVICES

The parties' contract comprises this Standard Contract Form, as well as its referenced Articles and their associated Appendices

1. Agency Contract Number	2. Contract Title	3. Agency Funding Codes		
4. Vendor Number	5. Alaska Business License Number	6. Solicitation Number/Procurement Folder/Other IRIS Numbers		
<b>This contract is between the State of Alaska,</b>				
7. Department of COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT		Division of COMMUNITY AND REGIONAL AFFAIRS		hereafter the State, and
8. Contractor				hereafter the Contractor
Mailing Address	Street or P.O. Box	City	State	ZIP+4
<p>9.</p> <p><b>Article 1 Appendices:</b> Appendices referred to in this contract and attached to it are considered part of it.</p> <p><b>Article 2 Performance of Contract:</b></p> <p>2.1 Appendix A (General Conditions), Items 1 through 17, govern contract performance.</p> <p>2.2 Appendix B sets forth the liability and insurance provisions of this contract.</p> <p>2.3 Appendix C sets forth the services to be performed by the contractor.</p> <p>2.4 Appendix D sets forth the payment procedures for this contract.</p> <p>2.5 Appendix E sets forth the Contractor's Terms.</p> <p><b>Article 3 Period of Performance:</b> The period of performance for this contract begins upon final approval and ends XXXX. with XXXX renewal options of XXXX-years each to be exercised solely by the State.</p> <p><b>Article 4 Considerations:</b></p> <p>4.1 In full consideration of the contractor's performance under this contract, the State shall pay the contractor a sum not to exceed \$XXXX in accordance with the provisions of Appendix D.</p> <p>4.2 When billing the State, the contractor shall refer to the Agency Contract Number and send the billing to:</p>				
10. Department of COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT		Attention: Division of COMMUNITY AND REGIONAL AFFAIRS		
Mailing Address PO BOX 110809 JUNEAU AK 99811-0809		Attention: ADMINISTRATIVE OFFICER		
11. CONTRACTOR				
Name of Firm	Typed or Printed Name and Title of Authorized Representative	Signature of Authorized Representative	Date	
12. CONTRACTING AGENCY				
DCCED/DCRA				
Department/Division	Name and Title of Project Director	Signature of Project Director	Date	
<p>CERTIFICATION: I certify that the facts herein and on supporting documents are correct, that this voucher constitutes a legal charge against funds and appropriations cited, that sufficient funds are encumbered to pay this obligation, or that there is a sufficient balance in the appropriation cited to cover this obligation. I am aware that to knowingly make or allow false entries or alternations on a public record, or knowingly destroy, mutilate, suppress, conceal, remove or otherwise impair the verity, legibility or availability of a public record constitutes tampering with public records punishable under AS 11.56.815-.820. Other disciplinary action may be taken up to and including dismissal.</p>				
DCCED/ADMN				
Department/Division	Name and Title of Head of Contracting Agency or Designee	Signature of Head of Contracting Agency or Designee	Date	

**NOTICE: This contract has no effect until signed by the head of contracting agency or designee.**

## GENERAL PROVISIONS

**Article 1 Definitions.**

- 1.1 In this contract and appendices, "Project Director" or "Agency Head" or "Procurement Officer" means the person who signs this contract on behalf of the Requesting Agency and includes a successor or authorized representative.
- 1.2 "State Contracting Agency" means the department for which this contract is to be performed and for which the Commissioner or Authorized Designee acted in signing this contract.

**Article 2 Inspections and Reports.**

- 2.1 The department may inspect, in the manner and at reasonable times it considers appropriate, all the contractor's facilities and activities under this contract.
- 2.2 The contractor shall make progress and other reports in the manner and at the times the department reasonably requires.

**Article 3 Disputes.**

- 3.1 If the contractor has a claim arising in connection with the contract that it cannot resolve with the State by mutual agreement, it shall pursue the claim, if at all, in accordance with the provisions of AS 36.30.620 – 632.

**Article 4 Equal Employment Opportunity.**

- 4.1 The contractor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, or because of age, disability, sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position(s) do not require distinction on the basis of age, disability, sex, marital status, changes in marital status, pregnancy, or parenthood. The contractor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, disability, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.
- 4.2 The contractor shall state, in all solicitations or advertisements for employees to work on State of Alaska contract jobs, that it is an equal opportunity employer and that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age, disability, sex, marital status, changes in marital status, pregnancy or parenthood.
- 4.3 The contractor shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' compensation representative of the contractor's commitments under this article and post copies of the notice in conspicuous places available to all employees and applicants for employment.
- 4.4 The contractor shall include the provisions of this article in every contract, and shall require the inclusion of these provisions in every contract entered into by any of its subcontractors, so that those provisions will be binding upon each subcontractor. For the purpose of including those provisions in any contract or subcontract, as required by this contract, "contractor" and "subcontractor" may be changed to reflect appropriately the name or designation of the parties of the contract or subcontract.
- 4.5 The contractor shall cooperate fully with State efforts which seek to deal with the problem of unlawful discrimination, and with all other State efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.
- 4.6 Full cooperation in paragraph 4.5 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the contractor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the contractor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.
- 4.7 Failure to perform under this article constitutes a material breach of contract.

**Article 5 Termination.**

The Project Director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. In the absence of a breach of contract by the contractor, the State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

**Article 6 No Assignment or Delegation.**

The contractor may not assign or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the written consent of the Project Director and the Agency Head.

**Article 7 No Additional Work or Material.**

No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

**Article 8 Independent Contractor.**

The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

**Article 9 Payment of Taxes.**

As a condition of performance of this contract, the contractor shall pay all federal, State, and local taxes incurred by the contractor and shall require their payment by any Subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by the State under this contract.

**Article 10 Ownership of Documents.**

All designs, drawings, specifications, notes, artwork, and other work developed in the performance of this agreement are produced for hire and remain the sole property of the State of Alaska and may be used by the State for any other purpose without additional compensation to the contractor. The contractor agrees not to

assert any rights and not to establish any claim under the design patent or copyright laws. Nevertheless, if the contractor does mark such documents with a statement suggesting they are trademarked, copyrighted, or otherwise protected against the State's unencumbered use or distribution, the contractor agrees that this paragraph supersedes any such statement and renders it void. The contractor, for a period of three years after final payment under this contract, agrees to furnish and provide access to all retained materials at the request of the Project Director. Unless otherwise directed by the Project Director, the contractor may retain copies of all the materials.

**Article 11 Governing Law; Forum Selection**

This contract is governed by the laws of the State of Alaska. To the extent not otherwise governed by Article 3 of this Appendix, any claim concerning this contract shall be brought only in the Superior Court of the State of Alaska and not elsewhere.

**Article 12 Conflicting Provisions.**

Unless specifically amended and approved by the Department of Law, the terms of this contract supersede any provisions the contractor may seek to add. The contractor may not add additional or different terms to this contract; AS 45.02.207(b)(1). The contractor specifically acknowledges and agrees that, among other things, provisions in any documents it seeks to append hereto that purport to (1) waive the State of Alaska's sovereign immunity, (2) impose indemnification obligations on the State of Alaska, or (3) limit liability of the contractor for acts of contractor negligence, are expressly superseded by this contract and are void.

**Article 13 Officials Not to Benefit.**

Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

**Article 14 Covenant Against Contingent Fees.**

The contractor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except employees or agencies maintained by the contractor for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this contract without liability or in its discretion deduct from the contract price or consideration the full amount of the commission, percentage, brokerage or contingent fee.

**Article 15 Compliance.**

In the performance of this contract, the contractor must comply with all applicable federal, state, and borough regulations, codes, and laws, and be liable for all required insurance, licenses, permits and bonds.

**Article 16 Force Majeure:**

The parties to this contract are not liable for the consequences of any failure to perform, or default in performing, any of their obligations under this Agreement, if that failure or default is caused by any unforeseeable Force Majeure, beyond the control of, and without the fault or negligence of, the respective party. For the purposes of this Agreement, Force Majeure will mean war (whether declared or not); revolution; invasion; insurrection; riot; civil commotion; sabotage; military or usurped power; lightning; explosion; fire; storm; drought; flood; earthquake; epidemic; quarantine; strikes; acts or restraints of governmental authorities affecting the project or directly or indirectly prohibiting or restricting the furnishing or use of materials or labor required; inability to secure materials, machinery, equipment or labor because of priority, allocation or other regulations of any governmental authorities.

Conflicting Provisions.

**APPENDIX B<sup>1</sup>**  
**INDEMNITY AND INSURANCE**

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**Article 1. Indemnification**

The Contractor shall indemnify, hold harmless, and defend the contracting agency from and against any claim of, or liability for error, omission or negligent act of the Contractor under this agreement. The Contractor shall not be required to indemnify the contracting agency for a claim of, or liability for, the independent negligence of the contracting agency. If there is a claim of, or liability for, the joint negligent error or omission of the Contractor and the independent negligence of the Contracting agency, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Contracting agency", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Contracting agency's selection, administration, monitoring, or controlling of the Contractor and in approving or accepting the Contractor's work.

**Article 2. Insurance**

Without limiting Contractor's indemnification, it is agreed that Contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Contractor's policy contains higher limits, the state shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Contracting Officer prior to beginning work and must provide for a notice of cancellation, nonrenewal, or material change of conditions in accordance with policy provisions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the Contractor's services. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under AS 21.

**2.1 Workers' Compensation Insurance:** The Contractor shall provide and maintain, for all employees engaged in work under this contract, coverage as required by AS 23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must waive subrogation against the State.

**2.2 Commercial General Liability Insurance:** covering all business premises and operations used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000. combined single limit per occurrence.

**2.3 Commercial Automobile Liability Insurance:** covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000. combined single limit per occurrence.

**APPENDIX C**  
**SCOPE OF SERVICES**

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Article C1.      Conflicting Provisions

Unless specifically amended and approved by the Department of Law the General Provisions of this Agreement supersede any provisions in other appendices.

In the event a conflict exists among the following agreements and/or documents that have been dually accepted by the State and Contractor, the order of precedence for conflict resolution is as follows:

- (1) General Provisions (Appendix A) and Indemnity and Insurance (Appendix B)
- (2) Scope of Work (Appendix C)
- (3) RFP 220000016, issued February 16, 2022, and as amended
- (4) Consideration and Payment Schedule (Appendix D)
- (5) Contractor's response to RFP 220000016, issued February 16, 2022, and as amended
- (x) [Contractor's Terms] (Appendix E)

**APPENDIX D**  
**Payment Schedule**

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The department will reimburse the contractor for satisfactory completion of services identified in Appendix C and upon receipt of an original, signed invoice.

Payments will be made in the following manner:



# SUBMITTAL FORM A

## Offeror Information

### PROJECT INFORMATION

IRFP NUMBER: IRFP 220000125  
PROJECT NAME: COMMUNITY DEVELOPMENT BLOCK GRANT-MITIGATION  
ACTION PLAN CONSULTANT SERVICES

### OFFEROR INFORMATION

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_

### CONTACT INFORMATION

Provide contact information for the individual that can be contacted for clarification regarding this response:

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
Email \_\_\_\_\_  
Telephone \_\_\_\_\_

### CRITICAL TEAM MEMBERS

Provide the names of all critical team members that will be will support the project. Resumes for the person(s) named below must be attached to this response. A specified person for each Critical Team Member is required. One person may be assigned more than one role.

(Insert additional lines for additional Critical Team Members)

Lead Service Manager: \_\_\_\_\_

### ADDENDA ACKNOWLEDGEMENT

The offeror acknowledges receipt of the following amendments and has incorporated the requirements of such amendments into their proposal. Failure to identify and sign for all amendments may subject the offeror to disqualification. The offeror must list all amendments (by number), then initial and date to confirm that you have received and incorporated them into your proposal (add more rows as necessary).

Number	Initials & Date

Number	Initials & Date

Number	Initials & Date

## CERTIFICATIONS

No	Criteria	Response*
1	The offeror is presently engaged in the business of providing the services & work required in this IRFP.	True   False
2	The offeror confirms that it has the financial strength to perform and maintain the services required under this IRFP.	True   False
3	The offeror accepts the terms and conditions set out in the IRFP and agrees not to restrict the rights of the state.	True   False
4	The offeror confirms that they can obtain and maintain all necessary insurance as required on this project.	True   False
5	The offeror certifies that all services provided under this contract by the contractor and all subcontractors shall be performed in the United States.	True   False
6	The offeror is not established and headquartered or incorporated and headquartered, in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.	True   False
7	Offeror complies with the American with Disabilities Act of 1990 and the regulations issued thereunder by the federal government.	True   False
9	Offeror complies with the Equal Employment Opportunity Act and the regulations issued thereunder by the federal government.	True   False
10	Offeror complies with the applicable portion of the Federal Civil Rights Act of 1964.	True   False
11	The offeror can provide (if requested) financial records for the organization for the past three years.	True   False
12	The offeror has not had any contracts terminated by the State of Alaska (within the past five years).	True   False
13	The offeror certifies that it is not currently debarred, suspended, proposed for debarment, or declared ineligible for award by any public or federal entity.	True   False
14	The offeror certifies that they do not have any governmental or regulatory action against their organization that might have a bearing on their ability to provide services to the state.	True   False
15	The offeror certifies, within the last five years, they have not been convicted or had judgment rendered against them for: fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, or tax evasion.	True   False
16	The offeror does not have any judgments, claims, arbitrations or suits pending/outstanding against your company in which an adverse outcome would be material to the company.	True   False
17	The offeror is not (now or in the past) been involved in bankruptcy or reorganized proceeding.	True   False
18	Offeror certifies they comply with the laws of the State of Alaska.	True   False
19	Offeror confirms their proposal will remain valid and open for at least 90 days.	True   False

\* Failure to answer or answering "False" may be grounds for disqualification. For any "False" responses, provide clarification (up to 250 word maximum for each "False" clarification) below (add rows as necessary).

Section	Clarification

**CONFLICT OF INTEREST STATEMENT**

Indicate below whether or not the firm or any individuals that will work on the contract has a possible conflict of interest (e.g., currently employed by the State of Alaska or formerly employed by the State of Alaska within the past two years) and, if so, the nature of that conflict.

Does the offeror, or any individuals that will work on this contract, have a possible conflict of interest?

<input type="checkbox"/> Yes <input type="checkbox"/> No
--

*\* Failure to answer may be grounds for disqualification.*

If "Yes", please provide additional information regarding the nature of that conflict:

**SIGNATURE**

This response **must** be signed by a company officer empowered to answer for the company.

Printed Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Signature \_\_\_\_\_



# ALASKA BIDDER PREFERENCE CERTIFICATION

## [AS 36.30.321\(A\)](#) / [AS 36.30.990\(2\)](#)

BUSINESS NAME: [Click or tap here to enter text.](#)

<b>Alaska Bidder Preference:</b> Do you believe that your firm qualifies for the Alaska Bidder Preference?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Alaska Veteran Preference:</b> Do you believe that your firm qualifies for the Alaska Veteran Preference?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Please list any additional Alaska Preferences below that you believe your firm qualifies for.	
<b>1.</b>	<b>2.</b>
<b>3.</b>	<b>4.</b>
<b>5.</b>	<b>6.</b>

To qualify for and claim the Alaska Bidder Preference you must answer **YES** to all questions below in the Alaska Bidder Preference Questions section. To qualify for and claim the Alaska Veteran Preference, you must answer **YES** to these questions as well as answer **YES** to all the questions in the Alaska Veteran Preference section. A signed copy of this form must be included with your bid or proposal no later than the deadline set for receipt of bids or proposals.

If you are submitting a bid or proposal as a **JOINT VENTURE**, all members of the joint venture must complete and submit this form before the deadline set for receipt of bids or proposals. [AS 36.30.990\(2\)\(E\)](#)

**If the procuring agency is unable to verify a response, the preference may not be applied.** Knowingly or intentionally making false or misleading statements on this form, whether it succeeds in deceiving or misleading, constitutes misrepresentation per [AS 36.30.687](#) and may result in criminal penalties.

### Alaska Bidder Preference Questions:

- 1) Does your business hold a current Alaska business license per AS 36.30.990(2)(A)?  
 YES  NO  
 If YES, enter your current **Alaska business license number**: [Click or tap here to enter text.](#)
- 2) Is your business submitting a bid or proposal under the name appearing on the Alaska business license noted in **Question 1** per [AS 36.30.990\(2\)\(B\)](#)?  
 YES  NO
- 3) Has your business maintained a **place of business** within the state **staffed by the bidder or offeror** or an employee of the bidder or offeror for a period of six months immediately preceding the date of the bid or proposal per [AS 36.30.990\(2\)\(C\)](#)?  
 YES  NO  
 If YES, please complete the following information:
  - A. **Place of Business**

Street Address: [Click or tap here to enter text.](#)

City: [Click or tap here to enter text.](#)

ZIP: [Click or tap here to enter text.](#)

“Place of business” is defined as a location at which normal business activities are conducted, services are rendered, or goods are made, stored, or processed; a post office box, mail drop, telephone, or answering service does not, by itself, constitute a place of business per [2 AAC 12.990\(b\)\(3\)](#).

Do you certify that the **Place of Business** described in **Question 3A** meets this definition?

YES       NO

B. The bidder or offeror, or at least one employee of the bidder or offeror, must be a resident of the state under [AS 16.05.415\(a\)](#) per [2 AAC 12.990\(b\)\(7\)](#).

1) Do you certify that the bidder or offeror OR at least one employee of the bidder or offeror is physically present in the state with the intent to remain in Alaska indefinitely and to make a home in the state per [AS 16.05.415\(a\)\(1\)](#)?

YES       NO

2) Do you certify that that the resident(s) used to meet this requirement has maintained their domicile in Alaska for the 12 consecutive months immediately preceding the deadline set for receipt of bids or proposals per [AS 16.05.415\(a\)\(2\)](#)?

YES       NO

3) Do you certify that the resident(s) used to meet this requirement is claiming residency ONLY in the state of Alaska per [AS 16.05.415\(a\)\(3\)](#)?

YES       NO

4) Do you certify that the resident(s) used to meet this requirement is NOT obtaining benefits under a claim of residency in another state, territory, or country per [AS 16.05.415\(a\)\(4\)](#)?

YES       NO

4) Per [AS 36.30.990\(2\)\(D\)](#), is your business (**CHOOSE ONE**):

A. **Incorporated** or **qualified to do business under the laws of the state**?

YES       NO

If YES, enter your current **Alaska corporate entity number**: [Click or tap here to enter text.](#)

B. A **sole proprietorship** AND the proprietor is a resident of the state?

YES       NO

C. A **limited liability company** organized under AS 10.50 **AND** all members are residents of the state?

YES       NO

Please identify each member by name: [Click or tap here to enter text.](#)

D. A **partnership** under former AS 32.05, AS 32.06, or AS 32.11 **AND** all partners are residents of the state?

YES       NO

Please identify each member by name: [Click or tap here to enter text.](#)

### **Alaska Veteran Preference Questions:**

1) Per [AS 36.30.321\(F\)](#), is your business (**CHOOSE ONE**):

A. A **sole proprietorship** owned by an Alaska veteran?

YES       NO

B. A **partnership** under AS 32.06 or AS 32.11 **AND** a majority of the partners are Alaska veterans?

YES       NO

C. A **limited liability company** organized under AS 10.50 **AND** a majority of the members are Alaska veterans?

YES       NO

- D. A **corporation** that is wholly owned by individuals, **AND** a majority of the individuals are Alaska veterans?  
 YES       NO

Per [AS 36.30.321\(F\)\(3\)](#) “**Alaska veteran**” is defined as an individual who:

(A) Served in the

- (i) Armed forces of the United States, including a reserve unit of the United States armed forces; or
- (ii) Alaska Territorial Guard, the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia; and

(B) Was separated from service under a condition that was not dishonorable.

Do you certify that the individual(s) indicated in **Question 1A, 1B, 1C, or 1D** meet this definition and can provide documentation of their service and discharge if necessary?

YES       NO

### **SIGNATURE**

By signature below, I certify under penalty of law that I am an authorized representative of [Click or tap here to enter text.](#) and all information on this form is true and correct to the best of my knowledge.

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Signature \_\_\_\_\_

Note to Offeror: delete these instructions

Offerors must provide detail on the personnel assigned to accomplish the work called for in this RFP; illustrate the lines of authority; designate the individual responsible and accountable for the completion of each component and deliverable of the RFP.

Offerors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract along with their titles and location(s) where work will be performed.

#### Letters of Reference

Letters of reference do not count against the maximum page count of Submittal Form B.

Offerors must also provide at least one but no more than three letters of reference with names, email, and phone numbers for similar projects the offeror's firm has completed. Each letter of reference may not exceed one page.

#### Resumes

Resumes of the Lead Service Manager and other critical team members identified on Submittal Form A of no more than two pages each must be included with this form. These resumes do not count against the maximum page count of Submittal Form B.

**SPECIAL NOTE:** The offeror shall not disclose their costs in this Submittal Form. This Submittal Form cannot exceed the page limit (as described in §4.02), however, letters of reference and resumes required by the solicitation do not count towards the maximum page count.

Note to Offeror: delete these instructions

Offerors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project and the project schedule.

SPECIAL NOTE: The offeror shall not disclose their costs in this Submittal Form and cannot exceed the page limit (as described in §4.02).



Note to Offeror: delete these instructions

Offerors must provide comprehensive narrative statements that set out the methodology they intend to employ and illustrate how the methodology will serve to accomplish the work and meet the state's project schedule.

SPECIAL NOTE: The offeror shall not disclose their costs in this Submittal Form and cannot exceed the page limit (as described in Section 4.02).

Note to Offeror: delete these instructions

Offerors must provide comprehensive narrative statements that set out the methodology and business plan they intend to employ and illustrate how the methodology and management plan will serve to accomplish the services outlined in this RFP.

SPECIAL NOTE: The offeror shall not disclose their costs in this Submittal Form and cannot exceed the page limit (as described in Section 4.02).

**IRFP 220000125**  
**SUBMITTAL FORM F COST**  
version: original

DIRECTIONS:

Enter the name of the offeror in the orange cell (C6). Then enter the cost per hour and the number of hours to complete the Scope of Work in \$3.01 amounts for each required audit in the green cells (C9 and D9 respectively) . Calculated amount in Cell D11 will be used as the base cost for scoring \$5.08 Contract Cost. The maximum amount is \$100,000.

The hourly rate will be used for the work during the renewal option if it is exercised.

**These are the actual amounts if awarded a contract, that the offeror will be paid for completion of the work required in the RFP.**

OFFEROR NAME:

<u>Service</u>	<u>Deadline to Complete</u>	<u>Cost Per Hour</u>	<u>Number of Hours</u>
3.01 Scope of Work	Wednesday, August 31, 2022		

<b>AMOUNT FOR EVALUATION</b>	<b>\$0</b>
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