

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5051-N-01]

Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees Under the Department of Defense Appropriations Act, 2006

AGENCY: Office of the Secretary, HUD.
ACTION: Notice of allocations, waivers, and alternative requirements.

SUMMARY: This Notice advises the public of the allocations for grant funds for Community Development Block Grant (CDBG) disaster recovery grants for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, and Wilma in the Gulf of Mexico in 2005. As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantees. This Notice also describes the common application and reporting waivers and the common alternative requirements for the grants. Each State receiving an allocation may request additional waivers from the Department as needed to address the specific needs related to that State's recovery activities.

DATES: *Effective Date:* February 13, 2006.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., 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. FAX inquiries may be sent to Mr. Opper at (202) 401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense Appropriations Act, 2006 (Public Law 109-148, approved December 30, 2005) (Appropriations Act) appropriates \$11.5 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. 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 and grantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the State and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The following application and reporting waivers and alternative requirements are in response to requests from each of the States receiving an allocation under this Notice.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), regulatory waivers must be justified and published in the **Federal Register**.

Except as described in this Notice, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the appropriations act, HUD will reconsider every waiver in this Notice on the two-year anniversary of the day this Notice is published.

Additional Waivers

The Department will respond separately to each State's requests for waivers of provisions not covered in

this Notice, after working with the State to tailor the program to best meet the unique disaster recovery needs in its impacted areas.

Allocations

Public Law 109-148 (effective December 30, 2005) provides \$11.5 billion of supplemental appropriation for the CDBG program for:

Necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of hurricanes in the Gulf of Mexico in 2005.

The conference report (H.R. Rep. No. 109-359) echoes and expands on this direction, stating:

The conference agreement includes \$11,500,000,000 for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and mitigation in communities in any declared disaster area in Louisiana, Mississippi, Alabama, Florida, and Texas related to Hurricanes Katrina, Rita or Wilma. * * *

The conference agreement emphasizes the requirement that the States with the most impacted and distressed areas in connection with the Gulf of Mexico hurricanes receive priority consideration in the allocation of funds by HUD.

The law further notes:

That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each State. And that: No state shall receive more than 54 percent of the amount provided under this heading.

Funds allocated are intended by HUD to be used toward meeting unmet housing needs in areas of concentrated distress. "Unmet housing needs" is defined to include, but not be limited to, those of uninsured homeowners whose homes had major or severe damage. "Concentrated distress" is defined as the total number of housing units with major or severe housing damage in counties where 50 percent or more of units had major or severe damage. As provided for in Public Law 109-148, the funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency or the Army Corps of Engineers.

The allocations are as follows:

State	Disaster	Amount
Alabama	Hurricane Katrina (FEMA-1605-DR)	\$74,388,000
Florida	Hurricane Katrina (FEMA-1602-DR), Hurricane Wilma (FEMA-1609-DR)	82,904,000
Louisiana	Hurricane Katrina (FEMA-1603-DR), Hurricane Rita (FEMA-1607-DR)	6,210,000,000
Mississippi	Hurricane Katrina (FEMA-1604-DR)	5,058,185,000
Texas	Hurricane Rita (FEMA-1606-DR)	74,523,000

HUD will invite each grantee named above to submit an Action Plan for Disaster Recovery in accordance with this Notice.

The appropriations statute requires funds be used only for disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of hurricanes in the Gulf of Mexico in 2005. The statute directs that each grantee will describe in its Action Plan for Disaster Recovery how the use of the grant funds will address long-term recovery and infrastructure restoration. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds are not disaster-related, or funds allocated duplicate other benefits. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery or if they have any questions regarding meeting these requirements.

Prevention of Fraud, Abuse, and Duplication of Benefits

The statute also directs the Secretary to:

Establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading including duplication of benefits.

To meet this directive, HUD is pursuing four courses of action. First, this Notice includes specific reporting, written procedures, monitoring, and internal audit requirements for grantees. Second, to the extent its resources allow, HUD will institute risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds. Third, HUD will be extremely cautious in considering any waiver related to basic financial management requirements. The standard, time-tested CDBG financial requirements will continue to apply. Fourth, HUD is collaborating with the HUD Office of Inspector General to plan and implement oversight of these funds.

Waiver Justification

This section of the Notice briefly describes the basis for each waiver and related alternative requirements, if any.

The waivers, alternative requirements, and statutory changes described in this Notice apply only to the CDBG supplemental disaster recovery funds appropriated in Public Law 109-148, not to funds provided under the regular CDBG program. These actions provide

additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation.

Application for Allocation

These waivers and alternative requirements streamline the pre-grant process and set the guidelines for the State's application for its allocation. HUD encourages each of the five eligible grantees to submit an Action Plan for Disaster Recovery to HUD within 60 days of the publication date of this Notice.

Overall benefit to low- and moderate-income persons. Pursuant to explicit authority in the appropriations act, HUD is granting an overall benefit waiver that allows for up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums and blight national objectives, rather than the 30 percent allowed in the annual State CDBG program. The primary objective of Title I of the Housing and Community Development Act and of the funding program of each grantee is "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." The statute goes on to set the standard of performance for this primary objective at 70 percent of the aggregate of the funds used for support of activities producing benefit to low- and moderate-income persons. Since extensive damage to community development and housing affected those with varying incomes, and income-producing jobs are often lost for a period of time following a disaster, HUD is waiving the 70 percent overall benefit requirement, leaving the 50 percent requirement, to give grantees even greater flexibility to carry out recovery activities within the confines of the CDBG program national objectives. HUD may only provide additional waivers of this requirement if it makes a finding of compelling need. The requirement that each activity meet one of the three national objectives is not waived.

Expanded distribution and direct action. The waivers and alternative requirements allowing distribution of funds by a state to entitlement communities and Indian tribes, and to allow a state to carry out activities directly rather than distribute all funds to units of local government are consistent with waivers granted for previous similar disaster recovery cases. HUD believes that, in recommending the Lower Manhattan Development Corporation (LMDC) as a model and in

increasing the administrative cap, Congress is signaling its intent that the States under this appropriation also be able to carry out activities directly. Therefore, HUD is waiving program requirements to support this. HUD is also including in this Notice the necessary complementary waivers and alternative requirements related to subrecipients to ensure proper management and disposition of funds during the grant execution and at closeout.

Consistency with the consolidated plan. HUD is waiving the requirement for consistency with the consolidated plan because the effects of a major disaster usually alter a grantee's priorities for meeting housing, employment, and infrastructure needs. To emphasize that uses of grant funds must be consistent with the overall purposes of the Housing and Community Development Act of 1974, HUD is limiting the scope of the waiver for consistency with the consolidated plan; it applies only until the grantee first updates its consolidated plan priorities following the disaster.

Action Plan for Disaster Recovery. HUD is waiving the CDBG action plan requirements and substituting an Action Plan for Disaster Recovery. This will allow rapid implementation of disaster recovery grant programs and ensure conformance with provisions of the Appropriations Act. Where possible, the Action Plan for Disaster Recovery, including certifications, does not repeat common action plan elements the grantee has already committed to carry out as part of its annual CDBG submission. Although a State as the grantee may designate an entity or entities to administer the funds, the State is responsible for compliance with Federal requirements. During the course of the grant, HUD will monitor the State's use of funds and its actions for consistency with the Action Plan. The State may submit an initial partial Action Plan and amend it one or more times subsequently until the Action Plan describes uses for the total grant amount. The State may also amend activities in its Action Plan.

Citizen participation. The citizen participation waiver and alternative requirements will permit a more streamlined public process, but one that still provides for reasonable public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG disaster recovery grant funds. The waiver removes the requirement at both the grantee and state grant recipient levels for public hearings or meetings as the method for disseminating information or collecting

citizen comments. Instead, grantees are encouraged to employ innovative methods to communicate with citizens and solicit their views on proposed uses of disaster recovery funds, and to indicate in the Action Plan how it has addressed these views.

Administration limitation. State program administration requirements must be modified to be consistent with the appropriations act, which allows up to five percent of the grant to be used for the State's administrative costs. The provisions at 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 State administration expenditures and require a dollar for dollar match of State funds for administrative costs exceeding \$100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow the State to exceed the overall planning, management and administrative cap of 20 percent.

Use of Subrecipients

The State CDBG program rule does not make specific provision for the treatment of the entities called "subrecipients" in the CDBG entitlement program. The waiver allowing the state to carry out activities directly creates a situation in which the state may use subrecipients to carry out activities in a manner similar to entitlement communities. HUD and its Office of Inspector General have long identified the use of subrecipients as a practice that increases the risk of abuse of funds. HUD's experience is that this risk can be successfully managed by following the CDBG entitlement requirements and related guidance. Therefore, HUD is requiring that a state taking advantage of the waiver allowing it to carry out activities directly must follow the alternative requirements drawn from the CDBG entitlement rule and specified in this Notice when using subrecipients.

Reporting

HUD is waiving the annual reporting requirement because the Congress requires quarterly reports from the grantees and from HUD on various aspects of the uses of funds and of the activities funded with these grants. Many of the data elements the grantees will report to Congress quarterly are the same as those that HUD will use to exercise oversight for compliance with the requirements of this Notice and for prevention of fraud, abuse of funds, and duplication of benefits. To collect these data elements and to meet its reporting requirements, HUD is requiring each grantee to report to HUD quarterly using the online Disaster Recovery Grant

Reporting system, which has just converted to a streamlined, re-engineered, Internet-based format. HUD will use grantee reports to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; to reconcile budgets, obligations, fund draws, and expenditures; and to calculate applicable administrative and public service limitations and the overall percent of benefit to low- and moderate-income persons, and as a basis for risk analysis in determining a monitoring plan.

After HUD reviews each report and accepts a report, the grantee must post the report on a Web site for its citizens. If a grantee chooses, it may use this report, together with a statement regarding any sole source procurements, as its required quarterly submission to the Committees on Appropriations. Each quarter, HUD will submit to the Committees a summary description of its report reviews, other HUD monitoring and technical assistance activities undertaken during the quarter, and any significant conclusions related to fraud or abuse of funds or duplication of benefits.

Certifications

HUD is waiving the standard certifications and substituting alternative certifications. The alternative certifications are tailored to CDBG disaster recovery grants and remove certifications and references that are redundant or appropriate to the annual CDBG formula program.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

Pre-Grant Process

1. **General note.** Prerequisites to a grantee's receipt of CDBG disaster recovery assistance include adoption of a citizen participation plan; publication of its proposed Action Plan for Disaster Recovery; public notice and comment; and submission to HUD of an Action Plan for Disaster Recovery, including certifications. Except as described in this Notice, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570, shall apply to the use of these funds.

2. **Overall benefit waiver and alternative requirement.** The requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), and 24 CFR 570.484 that 70 percent of funds are for activities that benefit low- and moderate-income persons are waived to stipulate that at least 50 percent of

disaster recovery grant funds are for activities that principally benefit low- and moderate-income persons.

3. **Direct grant administration by States and means of carrying out eligible activities.** Requirements at 42 U.S.C. 5306 are waived to the extent necessary to allow the State to use its disaster recovery grant allocation directly to carry out state-administered activities eligible under this Notice. Activities eligible under this Notice may be undertaken, subject to State law, by the recipient through its employees, or through procurement contracts, or through loans or grants under agreements with subrecipients, or by one or more entities that are designated by the chief executive officer of the State. Activities made eligible under section 105(a)(15) of the Housing and Community Development Act of 1974, as amended, may only be undertaken by entities specified in that section, whether the assistance is provided to such an entity from the State or from a unit of general local government.

4. Consolidated Plan waiver.

Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(6), that housing activities undertaken with CDBG funds be consistent with the strategic plan, are waived. Further, 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. These waivers apply only until the time that the grantee first updates the consolidated plan priorities following the disaster.

5. **Citizen participation waiver and alternative requirement.** Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, and 24 CFR 91.115(b) with respect to citizen participation requirements are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at either the state or local government level, but do require providing a reasonable opportunity for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for this grant are:

a. Before the grantee adopts the action plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment (including the information required in this Notice for an Action Plan for Disaster Recovery). The manner of publication (including prominent posting on the state, local, or other relevant website) must afford citizens, affected local governments and other interested parties a reasonable opportunity to examine the plan or

amendment's contents. Subsequent to publication, the grantee must provide a reasonable time period and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. The grantee's plans to minimize displacement of persons or entities and to assist any persons or entities displaced must be published with the action plan.

b. In the action plan, each grantee will specify its criteria for determining what changes in the grantee's activities constitute a substantial amendment to the plan. At a minimum, adding or deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change. The grantee may modify or substantially amend the action plan if it follows the same procedures required in this Notice for the preparation and submission of an Action Plan for Disaster Recovery. The grantee must notify HUD, but is not required to notify the public, when it makes any plan amendment that is not substantial.

c. The grantee must consider all comments received on the action plan or any substantial amendment and submit to HUD a summary of those comments and the grantee's response with the action plan or substantial amendment.

d. The grantee must make the action plan, any substantial amendments, and all performance reports available to the public. HUD recommends posting them on the Internet. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons. During the term of this grant, the grantee will provide citizens, affected local governments, and other interested parties reasonable and timely access to information and records relating to the action plan and the grantee's use of this grant.

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

6. *Modify requirement for consultation with local governments.* Currently, the statute and regulations require consultation with affected units of local government in the non-entitlement area of the State regarding the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that the State consult with all disaster-affected units of general local government, including any CDBG entitlement communities, in determining the use of funds.

7. *Action Plan waiver and alternative requirement.* The requirements at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C.

5306(d)(2)(C)(iii), 24 CFR 1003.604, and 24 CFR 91.320 are waived for these disaster recovery grants. Each State must submit to HUD an Action Plan for Disaster Recovery that describes:

a. The effects of the covered disaster, especially in the most impacted areas and populations, and the greatest recovery needs resulting from the covered disaster that have not been addressed by insurance proceeds, other federal assistance or any other funding source;

b. The grantee's overall plan for disaster recovery including:

(i) How the State will promote sound short and long-term recovery planning at the state and local levels, especially land use decisions that reflect responsible flood plain management, removal of regulatory barriers to reconstruction, and prior coordination with planning requirements of other State and Federal programs and entities;

(ii) How the State will encourage construction methods that emphasize high quality, durability, energy efficiency, and mold resistance including how the State will promote enactment and enforcement of modern building codes and mitigation of flood risk where appropriate;

(iii) How the State will provide or encourage provision of adequate, flood-resistant housing for all income groups that lived in the disaster impacted areas prior to the incident date(s) of the applicable disaster(s), including a description of the activities it plans to undertake to address emergency shelter and transitional housing needs of homeless individuals and families (including subpopulations), to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, to help homeless persons make the transition to permanent housing and independent living, and to address the special needs of persons who are not homeless identified in accordance with 24 CFR 91.315(d);

c. Monitoring standards and procedures that are sufficient to ensure program requirements, including non-duplication of benefits, are met and that provide for continual quality assurance, investigation, and internal audit functions, with responsible staff reporting independently to the Governor of the State or, at a minimum, to the chief officer of the governing body of any designated administering entity;

d. A description of the steps the State will take to avoid or mitigate occurrences of fraud, abuse, and mismanagement, especially with respect to accounting, procurement, and accountability, with a description of how the State will provide for increasing the capacity for implementation and compliance of local governments, subrecipients, subgrantees, contractors, and any other entity responsible for administering activities under this grant; and

e. The state's method of distribution. The method of distribution shall include descriptions of the method of allocating funds to units of local government and of specific projects the state will carry out directly, as applicable. The descriptions will include:

(i) When funds are to be allocated to units of local government, all criteria used to select applications from local governments for funding, including the relative importance of each criterion, and including a description of how the disaster recovery grant resources will be allocated among all funding categories and the threshold factors and grant size limits that are to be applied; and

(ii) When the State will carry out activities directly, the projected uses for the CDBG disaster recovery funds by responsible entity, activity, and geographic area;

(iii) How the method of distribution or use of funds described in accordance with the above subparagraphs will result in eligible uses of grant funds related to long-term recovery from specific effects of the disaster(s) or restoration of infrastructure; and

(iv) Sufficient information so that citizens, units of general local government and other eligible subgrantees or subrecipients will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the State.

f. Required certifications (see the applicable Certifications section of this Notice); and

g. A completed and executed Federal form SF-424.

8. *Allow reimbursement for pre-agreement costs.* The provisions of 24 CFR 570.489(b) are applied to permit a grantee to reimburse itself for otherwise allowable costs incurred on or after the incident date of the covered disaster.

9. *Clarifying note on the process for environmental release of funds when a State carries out activities directly.* Usually, a State distributes CDBG funds to units of local government 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 instead of distributing them to other governments. According to the environmental regulations at 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.

10. *Duplication of benefits.* In general, 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source. The Appropriations Act stipulates that funds may not be used for activities reimbursable by or for which funds have been made available by the Federal Emergency Management Agency or by the Army Corps of Engineers.

11. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties.*

a. Section 5302(a)(7) of title 42, U.S.C. (definition of "nonentitlement area") and provisions of 24 CFR part 570 that would prohibit a state from distributing CDBG funds to units of general local government in entitlement communities and to Indian tribes, are waived, including 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in entitlement areas and to State or Federally recognized Indian tribes. The state is required instead to distribute funds to the most affected and impacted areas related to the consequences of the covered disaster(s) without regard to a local government or Indian tribe status under any other CDBG program.

b. Additionally, because a State grantee under this appropriation may carry out activities directly, HUD is applying the regulations at 24 CFR 570.480(c) with respect to the basis for HUD determining whether the State has failed to carry out its certifications so that such basis shall be that the State has failed to carry out its certifications in compliance with applicable program requirements. Also, 24 CFR 570.494 regarding timely distribution of funds is waived. However, HUD expects each State grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner.

12. *Note that use of grant funds must relate to the covered disaster(s).* In

addition to being eligible under 42 U.S.C. 5305(a) or this Notice and meeting a CDBG national objective, the Appropriations Act requires that activities funded under this Notice must also be for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of the hurricanes in communities included in Presidential disaster declarations.

13. *Note on change to administration limitation.* Up to five percent of the grant amount may be used for the State's administrative costs. 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 State administration expenditures and require a dollar for dollar match of State funds for administrative costs exceeding \$100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow the State to exceed the overall planning, management and administrative cap of 20 percent.

Reporting

14. *Waiver of performance report and alternative requirement.* The requirements for submission of a Performance Evaluation Report (PER) pursuant to 42 U.S.C. 12708 and 24 CFR 91.520 are waived. The alternative requirement is that—

a. Each grantee must submit its Action Plan for Disaster Recovery, including performance measures, into HUD's Web-based Disaster Recovery Grant Reporting (DRGR) system. (The signed certifications and the SF-424 must be submitted in hard copy.) As additional detail about uses of funds becomes available to the grantee, the grantee must enter this detail into DRGR, in sufficient detail to serve as the basis for acceptable performance reports.

b. Each grantee must submit a quarterly performance report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and all expenditures reported. Each quarterly report will include information about the uses of funds during the applicable quarter including (but 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 disaster funds; beginning and ending dates of activities; and performance measures such as numbers of low- and moderate-income persons or households benefiting. Quarterly reports

to HUD must be submitted using HUD's Web-based DRGR system.

15. *Use of subrecipients.* The following alternative requirement applies for any activity that a state carries out directly by funding a subrecipient:

a. 24 CFR 570.503, except that specific references to 24 CFR parts 84 and 85 need not be included in subrecipient agreements.

b. 570.502(b).

16. *Recordkeeping.* Recognizing that the State may carry out activities directly, 24 CFR 570.490(b) is waived in such a case and the following alternative provision shall apply: State records. 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 disaster recovery funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the state; and show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

17. *Change of use of real property.* This waiver 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, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), "unit of general local government" shall be read as "unit of general local government or State."

18. *Responsibility for State review and handling of noncompliance.* This change conforms the rule with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies: The State shall make reviews and audits including on-site reviews of any subrecipients, designated public agencies, and units of general local government as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the Housing and Community Development Act of 1974, 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 public agencies or units of general local governments and for its subrecipients.

19. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under OMB control number 2506–0165, which expires August 31, 2007. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information unless the collection displays a valid control number.

Certifications

20. *Certifications for state governments, waiver and alternative requirement.* Section 91.325 of title 24 Code of Federal Regulations is waived. Each state must make the following certifications prior to receiving a CDBG disaster recovery grant:

a. The state certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the state, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See 24 CFR 570.487(b)(2)(ii).)

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

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

d. The state certifies that the Action Plan for Disaster Recovery is authorized under state law and that the state, and any entity or entities designated by the State, possesses the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

e. The state certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for this grant.

f. The state 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.

g. The state certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant), and that each unit of general local government that is receiving assistance from the state is following 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).

h. The state certifies that it has consulted with affected units of local government in counties designated in covered major disaster declarations in the nonentitlement, entitlement and tribal areas of the state in determining the method of distribution of funding;

i. The state certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of the Gulf Coast hurricanes of 2005 in communities included in Presidential disaster declarations.

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

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

(4) The state will not attempt to recover any capital costs of public improvements assisted with CDBG disaster recovery grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (A) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (B) for purposes of assessing any amount against

properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (A).

j. The state 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) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

k. The state certifies that it has and that it will require units of general local government 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 non-violent 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 non-violent civil rights demonstrations within its jurisdiction.

l. The state certifies that each state grant recipient or administering entity has the capacity to carry out disaster recovery activities in a timely manner, or the state has a plan to increase the capacity of any state grant recipient or administering entity who lacks such capacity.

m. The state certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area 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.

n. The state certifies that it will comply with applicable laws.

Duration of Funding

Availability of funds provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510), limit the availability of certain appropriations for expenditure. This limitation may not be waived. However, the Appropriations Act for these grants directs that these funds be available until expended unless, in accordance with 31 U.S.C. 1555, the Department determines that the purposes for which the appropriation has been made have been carried out and no disbursement has been made against the appropriation for two consecutive fiscal years. In such

case, the Department shall close out the grant prior to expenditure of all funds.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

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). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk,

Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

Dated: February 3, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 06-1357 Filed 2-9-06; 2:51 pm]

BILLING CODE 4210-67-P

and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity.

c. Future federal assistance to owners remaining in floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154(a)) 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 flood disaster assistance that was conditional 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. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph d below, the transferor shall, not later than the date on which such

transfer occurs, notify the transferee in writing of the requirements to:

(a) Obtain flood insurance in accordance with applicable federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(b) Maintain flood insurance in accordance with applicable federal law with respect to such property.

(c) Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(a) The transferee fails to obtain or maintain flood insurance, in accordance with applicable federal law, with respect to the property;

(b) The property is damaged by a flood disaster; and

(c) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor must reimburse the federal government in an amount equal to the amount of the federal disaster relief assistance provided with respect to the property.

d. The notification requirements apply to personal, commercial, or residential property for which federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable federal law with respect to such property.

e. The term "Federal disaster relief assistance" applies to HUD or other Federal assistance for disaster relief in "flood disaster areas." The prohibition in subparagraph (1) above applies only when the new disaster relief assistance was given for a loss caused by flooding. It does not apply to disaster assistance caused by other sources (*i.e.*, earthquakes, fire, wind, etc.). The term "flood disaster area" is defined in section 582(d)(2) to include an area receiving a presidential declaration of a major disaster or emergency as a result of flood conditions.

8. *Non-Federal Cost Sharing of Army Corps of Engineers Projects.* Pub. L. 105-276, title II, Oct. 21, 1998, 112 Stat. 2478, provided in part that: "For any fiscal year, of the amounts made available as emergency funds under the heading 'Community Development Block Grants Fund' and notwithstanding any other provision of

law, not more than \$250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers."

Finding of No Significant Impact

A Finding of No Significant Impact 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). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410-0500.

Dated: May 26, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 06-5381 Filed 6-9-06; 9:06 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5051-N-04]

Waivers Granted to and Alternative Requirements for the State of Louisiana's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers, alternative requirements, and statutory program requirements.

SUMMARY: This notice describes additional waivers and alternative requirements applicable to the Community Development Block Grant (CDBG) disaster recovery grant provided to the State of Louisiana for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina and Rita in 2005. On February 13, 2006, HUD published an allocation and application notice applicable to this grant and four others under the same appropriation. As described in the **SUPPLEMENTARY INFORMATION** section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantee. This notice

for the State of Louisiana also notes statutory provisions affecting program design and implementation.

DATES: *Effective Date:* June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number (202) 708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Fax inquiries may be sent to Mr. Opper at (202) 401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109-148, approved December 30, 2005) (the 2006 Act) appropriates \$11.5 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The State of Louisiana received an allocation of \$6,200,000,000 from this appropriation. The 2006 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 and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The following waivers and alternative requirements are in response to written requests from the State of Louisiana. The Secretary is still considering additional requests related to the state's pending action plan amendment; any granted waivers related to those requests will be published later.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of 42 U.S.C. 5301 *et seq.*, Title I of the Housing and Community Development Act of 1974, as amended (the 1974 Act); or of 42 U.S.C. 12704 *et seq.*, the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**. The Department is also using this notice to provide information about other ways in which the requirements for this grant vary from regular CDBG program rules. Therefore, HUD is using this notice to make public alternative requirements and to note the applicability of disaster recovery-related statutory provisions. Compiling this information in a single notice creates a helpful resource for Louisiana grant administrators and HUD field staff. Waivers and alternative requirements regarding the common application and reporting process for all grantees under this appropriation were published in a prior notice (71 FR 7666, published February 13, 2006).

Except as described in notices regarding this grant, the statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds.

Descriptions of Changes

This section of the notice briefly describes the basis for each waiver and provides an explanation of related alternative requirements, if additional explanation is necessary. This *Descriptions* section also highlights some of the statutory items and alternative requirements described in the sections that follow.

The waivers, alternative requirements, and statutory changes apply only to the CDBG supplemental disaster recovery funds appropriated in the 2006 Act and allocated to the State of Louisiana. These actions provide additional flexibility in program design and implementation and note statutory requirements unique to this appropriation.

Eligibility and National Objectives

Eligibility—buildings for the general conduct of government. The state requested a limited waiver of the prohibition on funding buildings for the general conduct of government. HUD considered the request and agreed that it is consistent with the overall purposes of the 1974 Act for the state to be able to use the grant funds under this notice to fund the local and state government match for critical FEMA Public-Assistance projects that the state has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery.

General planning activities use entitlement presumption. The annual state CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the state CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project specific plans such as functional land use plans, historic preservation plans, comprehensive plans, development of housing codes, and neighborhood plans related to guiding long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore the Department is removing the eligibility requirement that CDBG disaster recovery assisted planning only grants or state directly administered planning activities that will guide recovery in accordance with the appropriations act must comply with the state CDBG program rules at 24 CFR 570.483(b)(5) or (c)(3).

Special economic development job retention activities. Under the public benefit implementing regulations, CDBG grantees are limited to a specified annual amount of CDBG assistance per job retained or created or amount of CDBG assistance per low- and moderate-income person to whom goods or services are provided by the assisted activity. Grantees must maintain documentation to show that a job is a retained job or a created job and that the job was made available to or taken by a low- and moderate-income person. This policy and the specified documentation work well and are suitable for relatively small-scale economic development programs of hundreds of thousands or a few millions of dollars and tens or hundreds of businesses. The State of Louisiana plans to undertake a special economic development portfolio whose size will exceed \$200 million and serve thousands of businesses. The state has requested regulatory waivers related to public benefit documentation that will help it to implement the bridge loan

program's large-scale disaster recovery special economic development activities in a short timeframe.

Eligibility—housing related. The waiver that allows new housing construction and payment of up to 100 percent of a housing down payment is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disasters eligible under this notice.

Compensation for disaster-related losses or housing incentives to resettle in Louisiana. The state plans to provide compensation to certain homeowners whose homes were damaged during the covered disasters, if the homeowners agree to meet the stipulations of the published program design. The state may also offer disaster recovery or mitigation housing incentives to promote housing development or resettlement in particular geographic areas. The Department is waiving the 1974 Act and associated regulations to make these uses of grant funds eligible.

Eligibility—tourism. The state plans to provide disaster recovery grant assistance to support the tourism industry and promote travel to communities in the disaster-impacted areas and has requested an eligibility waiver for such activities. Tourism industry support, such as a national consumer awareness advertising campaign for an area in general, is ineligible for CDBG assistance. However, Congress did make such support eligible, within limits, for the CDBG disaster recovery funds appropriated for recovery of Lower Manhattan following the September 11, 2001, terrorist attacks, and HUD understands that such support can be a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues. However, because the State of Louisiana is proposing advertising and marketing activities rather than direct assistance to tourism-dependent businesses, and because the measures of long-term benefit from the proposed activities must be derived using regression analysis and other indirect means, the waiver will permit use of no more than \$30 million for assistance for the tourism industry, the assisted activities must be designed to support tourism to the most impacted and distressed areas related to the effects of Hurricanes Katrina and Rita, and the waiver will expire two years after the date of this notice, after which previously ineligible support for the tourism industry, such as marketing a community as a whole, will again be

ineligible for CDBG disaster recovery funding.

Anti-pirating. The limited waiver of the anti-pirating requirements allows the flexibility to provide assistance to a business located in another state or market area within the same state if the business was displaced from a declared area within the state by the disaster and the business wishes to return. This waiver is necessary to allow a grantee affected by a major disaster to rebuild its employment base.

Program Income

A combination of CDBG provisions limits the flexibility available to the state for the use of program income. Prior to 2002, program income earned on disaster grants has usually been program income in accordance with the rules of the regular CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The 1974 Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The 1974 Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the state, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Relocation Requirements

The state plans to carry out voluntary acquisition and optional relocation activities (partly in a form sometimes called "buyouts") and has requested waivers related to acquisition and

relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (the URA) and the replacement of housing and relocation assistance provisions under section 104(d) of the 1974 Act. The state asked that HUD permit the waivers to help promote the acquisition of property and the replacement of housing in a timely and efficient manner. The state believes that these waivers will have little impact on those persons whose property is voluntarily acquired or who are required to move permanently for a federally assisted project.

CDBG funds are Federal financial assistance so their use in projects that involve acquisition of property necessary for a federally assisted project, or that involve acquisition, demolition, or rehabilitation that force a person to move permanently, are subject to the URA and the government wide implementing regulations found at 49 CFR part 24. The URA provides assistance and protections to individuals and businesses affected by Federal or federally assisted projects. HUD is waiving the following URA requirements to help promote accessibility to suitable decent, safe, and sanitary housing for victims of Hurricanes Katrina and Rita:

- The acquisition requirements of the URA and implementing regulations so that they do not apply to an arm's length voluntary purchase carried out by a person that does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. According to the state, the failure to suspend these requirements would impede disaster recovery and may result in windfall payments.

- A limited waiver of the URA implementing regulations to the extent that they require grantees to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. The failure to suspend these one-size-fits-all requirements could impede disaster recovery. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required.

- The URA and implementing regulations to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental

housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate) provided that the renter is also provided referrals to suitable, available rental replacement dwellings 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 the waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. The change provides access to an additional relocation resource option.

- The URA and implementing regulations to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a "moving expense and dislocation allowance" based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Failure to suspend this provision would impede disaster recovery by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established moving expense and dislocation allowance.

In addition to the URA waivers, HUD is waiving requirements of section 104(d) of the 1974 Act dealing with one-for-one replacement of low- and moderate-income housing units demolished or converted in connection with a CDBG-assisted development project for housing units damaged by one or more disasters. HUD is waiving this requirement because it does not take into account the large, sudden changes a major disaster may cause to the local housing stock, population, or local economy. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage grantees from acquiring, converting, or demolishing disaster-damaged housing because of

excessive costs that would result from replacing all such units within the specified timeframe. HUD is also waiving the relocation assistance requirements contained in section 104(d) of the 1974 Act to the extent they differ from those of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*). This change will simplify implementation while preserving statutory protections for persons displaced by Federal projects.

The state has provided the following additional reason for these waivers related to its decision to administer policy for the funds under this notice and for FEMA mitigation funding through the same agencies. The statutory requirements of the URA are also applicable to the administration of FEMA assistance, and disparities in rental assistance payments for activities funded by HUD and that agency will thus be eliminated. FEMA is subject to the requirements of the URA. Pursuant to this authority, FEMA requires that rental assistance payments be calculated on the basis of the amount necessary to lease or rent comparable housing for a period of 42 months. HUD is also subject to these requirements, but is also covered by alternative relocation provisions authorized under 42 U.S.C. 5304(d)(2)(A)(iii) and (iv) and implementing regulations at 24 CFR 42.350. These alternative relocation benefits, available to low- and moderate-income displacees opting to receive them in certain HUD programs, require the calculation of similar rental assistance payments on the basis of 60 months, rather than 42 months, thereby creating a disparity between the available benefits offered by HUD and FEMA (although not always an actual cash difference). The waiver assures uniform and equitable treatment by allowing the URA benefits requirements to be the standard for assistance under this notice.

Timely Distribution of Funds

The state CDBG program regulation regarding timely distribution of funds is at 24 CFR 570.494. This provision is designed to work in the context of an annual program in which almost all grant funds are distributed to units of general local government. Because the state may use disaster recovery grant funds to carry out activities directly, and because Congress expressly allowed this grant to be available until expended, HUD is waiving this requirement. However, HUD expects the State of Louisiana to expeditiously obligate and expend all funds, including any recaptured funds or program

income, in carrying out activities in a timely manner.

Waivers and Alternative Requirements

1. *Program income alternative requirement.* 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent that they conflict with the rules stated in the program income alternative requirement below. The following alternative requirement applies instead.

a. Program income. (1) For the purposes of this subpart, "program income" is defined as gross income received by a state, a unit of general local government, a Tribe or a subrecipient of a unit of general local government or a Tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG 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:

- (i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
- (ii) Proceeds from the disposition of equipment purchased with CDBG funds;
- (iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe or a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;
- (iv) Gross income from the use or rental of real property owned by a state, tribe or the unit of general local government or a subrecipient of a state, tribe or unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;
- (v) Payments of principal and interest on loans made using CDBG funds;
- (vi) Proceeds from the sale of loans made with CDBG funds;
- (vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;
- (viii) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;
- (ix) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the special assessments are used to recover

all or part of the CDBG portion of a public improvement; and

(x) Gross income paid to a state, tribe or a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

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

(i) The total amount of funds which is less than \$25,000 received in a single year that is retained by a unit of general local government, tribe or subrecipient;

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

(3) The state may permit the unit of general local government or tribe which receives or will receive program income to retain the program income, subject to the requirements of paragraph (a)(3)(ii) of this section, or the state may require the unit of general local government or tribe to pay the program income to the state.

(i) Program income paid to the state. Program income that is paid to the state or received by the state is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used by the state or distributed to units of general local government in accordance with the state's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the Treasury, except as provided in paragraph (b) of this section.

(ii) Program income retained by a unit of general local government or Tribe.

(A) Program income that is received and retained by the unit of general local government or Tribe before closeout of the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this notice.

(B) Program income that is received and retained by the unit of general local government or Tribe after closeout of the grant that generated the program income, but that is used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of this notice.

(C) All other program income is subject to the requirements of 42 U.S.C. 5304(j) and subpart I of 24 CFR part 570.

(D) The state shall require units of general local government or Tribes, to the maximum extent feasible, to disburse program income that is subject to the requirements of this notice before

requesting additional funds from the state for activities, except as provided in paragraph (b) of this section.

(b) Revolving funds.

(1) The state may establish or permit units of general local government or Tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

(2) The state may also establish a revolving fund to distribute funds to units of general local government or Tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the state or unit of general local government shall not be directly funded or capitalized with grant funds.

(c) Transfer of program income. Notwithstanding other provisions of this notice, the state may transfer program income before closeout of the grant that generated the program income to its own annual CDBG program or to any annual CDBG-funded activities administered by a unit of general local government or Indian Tribe within the state.

(d) Program income on hand at the state or its subrecipients at the time of grant closeout by HUD and program income received by the state after such grant closeout shall be program income to the most recent annual CDBG program grant of the state.

2. *Housing-related eligibility waivers.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow down payment assistance for up to 100 percent of the down payment (42 U.S.C.

5305(a)(24)(D)) and to allow new housing construction.

3. *Compensation for loss of housing or incentives to resettle in Louisiana.* 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible incentives to resettle in Louisiana or compensation for loss of housing caused by the disaster and in accordance with the state's approved Action Plan and published program design.

4. *Planning requirements.* For CDBG disaster recovery assisted planning activities that will guide recovery in accordance with the 2006 Act, the state CDBG program rules at 24 CFR 570.483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies.

5. *Waiver to permit some activities in support of the tourism industry.* 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived to the extent necessary to make eligible use of no more than \$30 million for assistance for the tourism industry, including promotion of a community or communities in general, provided the assisted activities are designed to support tourism to the most impacted and distressed areas related to the effects of Hurricanes Katrina and Rita. This waiver will expire two years after the date of this notice, after which previously ineligible support for the tourism industry, such as promotion of a community in general, will again be ineligible for CDBG funding.

6. *Waiver and modification of the anti-pirating clause to permit assistance to help a business return.* 42 U.S.C. 5305(h) and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of Hurricane Katrina or Rita, as applicable, 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.

7. *Waiver of one-for-one replacement of units damaged by disaster.* a. One-for-one replacement requirements at 42 U.S.C. 5304(d)(2) and (d)(3), and 24 CFR 42.375(a) are waived for low- and moderate-income dwelling units (1) damaged by the disaster, (2) for which CDBG funds are used for demolition, and (3) which are not suitable for rehabilitation.

b. Relocation assistance requirements at 42 U.S.C. 5304(d)(2)(A), and 24 CFR 42.359 are waived to the extent they differ from those of the URA and its implementing regulations at 49 CFR part 24.

8. *Uniform Relocation Act requirements.* The state may apply the

following waivers to activities involving buyouts and other activities covered by the URA and related to disaster recovery housing activities assisted by the funds covered by this notice and included in an approved Action Plan.

a. The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person that does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person.

b. The requirements at 49 CFR 24.2, 24.402(b)(2) and 24.404 are waived to the extent that they require the state to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required. Before using this waiver, the state must establish a definition of "demonstrable hardship."

c. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate) provided that the renter is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months.

d. The requirements of section 202(b) of the URA and 49 CFR 24.302 are waived to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a "moving expense and dislocation allowance" based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

9. *Public benefit for the bridge loan activities.* For the state's bridge loan activities included in an approved

Action Plan for Disaster Recovery and governed by the provisions of 24 CFR 570.482 and 483, public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), (6) are waived, with the following alternative requirements. The grantee shall report and maintain documentation on the bridge-loan-assisted creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, and (c) types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

10. *Waiver of State CDBG requirement for timely distribution of funds.* 24 CFR 570.494 regarding timely distribution of funds is waived.

11. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) and 24 CFR 507.207(a)(1) are waived to the extent necessary to allow the state to use the grant funds under this notice to fund the local and state government match for critical FEMA Public-Assistance projects that the state has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the State has determined have substantial value in promoting disaster recovery.

Notes on Applicable Statutory Requirements

12. *Note on the eligibility of providing funds to Enterprise and LISC for certain purposes.* The appropriations statute provides that the States of Louisiana and Mississippi may each use up to \$20,000,000 (with up to \$400,000 each for technical assistance) from funds made available under this heading for LISC and the Enterprise Foundation for activities authorized by section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, and for activities authorized under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 42 U.S.C. 12805 note), including demolition, site clearance and remediation, and program administration.

13. *Notes on rules applicable to flood buyouts activities:*

a. Payment of pre-flood values for buyouts. HUD disaster recovery entitlement communities, state grant recipients, and Indian tribes have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or floodplain. In using CDBG disaster recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for Federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity.

c. Future Federal assistance to owners remaining in floodplain. (1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154(a)) (Section 582) 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 flood disaster assistance that was conditional 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. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to

notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph d below, the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(a) Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(b) Maintain flood insurance in accordance with applicable Federal law with respect to such property.

Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(a) The transferee fails to obtain or maintain flood insurance, in accordance with applicable Federal law, with respect to the property;

(b) The property is damaged by a flood disaster; and

(c) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage. The transferor must reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

d. The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

e. The term "Federal disaster relief assistance" applies to HUD or other Federal assistance for disaster relief in "flood disaster areas." The prohibition in subparagraph (1) above applies only when the new disaster relief assistance was given for a loss caused by flooding. It does not apply to disaster assistance caused by other sources (*i.e.*, earthquakes, fire, wind, etc.). The term "flood disaster area" is defined in section 582(d)(2) to include an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

14. *Non-Federal Cost Sharing of Army Corps of Engineers Projects.* Public Law 105-276, title II, October 21, 1998, 112 Stat. 2478, provided in part that: "For any fiscal year, of the amounts made available as emergency funds under the heading 'Community Development Block Grants Fund' and notwithstanding any other provision of law, not more than \$250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers."

Finding of No Significant Impact

A Finding of No Significant Impact 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 Finding of No Significant Impact 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 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Dated: May 26, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 06-5383 Filed 6-9-06; 9:06 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5051-N-03]

Waivers Granted to and Alternative Requirements for the State of Mississippi's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers, alternative requirements, and statutory program requirements.

SUMMARY: This notice describes additional waivers and alternative requirements applicable to the Community Development Block Grants (CDBG) disaster recovery grant provided to the State of Mississippi for the

purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricane Katrina in 2005. HUD previously published an allocation and application notice on February 13, 2006 applicable to this grant and four others under the same appropriation. As described in the Supplementary Information section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantee. This notice for the State of Mississippi also notes statutory provisions affecting program design and implementation.

DATES: *Effective Date:* June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410-7000, telephone (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. Fax inquiries may be sent to Mr. Opper at (202) 401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109-148, approved December 30, 2005) (the 2006 Act) appropriates \$11.5 billion in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The State of Mississippi received an allocation of \$5,058,185,000 from this appropriation. The 2006 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 and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The law further provides that the Secretary may waive the requirement that activities benefit persons of low and moderate income,

Capital Advance: \$1,499,500
 Five-year rental subsidy: \$188,500
 Number of units 15
 Texas
 Dallas, TX
 Non-Profit Sponsor: CC Young Memorial Home Inc
 Capital Advance: \$4,216,500
 Five-year rental subsidy: \$806,000
 Number of units 54
 Houston, TX
 Five-year rental subsidy: \$1,012,000
 Number of units 67
 San Antonio, TX
 Non-Profit Sponsor: Retirement Housing Foundation
 Capital Advance: \$4,065,300
 Five-year rental subsidy: \$753,500
 Number of units 55
 Waco, TX
 Non-Profit Sponsor: Mercy Housing Inc
 Co-Sponsor: Mercy Housing Colorado
 Capital Advance: \$4,208,400
 Five-year rental subsidy: \$821,500
 Number of units 55
 Utah
 Price, UT
 Non-Profit Sponsor: Comm Hsg Ser Inc
 Capital Advance: \$3,516,000
 Five-year rental subsidy: \$466,000
 Number of units 33
 Project Description:
 The funds will be used for the new construction of two buildings for the very low-income elderly consisting of a total of 33 units. Some of the supportive services that will be provided are meals-on-wheels, housekeeping assistance, social activities and transportation.
 Virginia
 Kilmarnock, VA
 Non-Profit Sponsor: Bay Aging
 Capital Advance: \$1,515,900
 Five-year rental subsidy: \$299,500
 Number of units 19
 Vinton, VA
 Non-Profit Sponsor: Metropolitan Housing and CDC, Inc.
 Capital Advance: \$5,824,400
 Five-year rental subsidy: \$1,150,500
 Number of units 73
 Washington
 Buckley, WA
 Non-Profit Sponsor: Enumclaw Community Hospital
 Capital Advance: \$2,042,700
 Five-year rental subsidy: \$318,500
 Number of units 20
 Kennewick, WA
 Non-Profit Sponsor: Shalom Ecumenical Center
 Capital Advance: \$4,008,900
 Five-year rental subsidy: \$722,000
 Number of units 45
 Spokane, WA
 Non-Profit Sponsor: East Central Community Organization
 Capital Advance: \$2,157,200
 Five-year rental subsidy: \$394,000
 Number of units 25
 Vancouver, WA
 Non-Profit Sponsor: Columbia Non-Profit Housing

Capital Advance: \$5,479,700
 Five-year rental subsidy: \$866,500
 Number of units 56
 Yakima, WA
 Non-Profit Sponsor: Diocese of Yakima Housing Services
 Capital Advance: \$3,544,700
 Five-year rental subsidy: \$640,000
 Number of units 40
 Wisconsin
 Milwaukee, WI
 Non-Profit Sponsor: Eternal Life Church of God in Christ
 Capital Advance: \$2,799,900
 Five-year rental subsidy: \$380,000
 Number of units 24
 Town of Russell, WI
 Non-Profit Sponsor: Impact Seven INC
 Capital Advance: \$1,255,300
 Five-year rental subsidy: \$198,500
 Number of units 12
 [FR Doc. E6-18071 Filed 10-27-06; 8:45 am]
BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5089-N-01]

Allocations and Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees Under Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006

AGENCY: Office of the Secretary, HUD.
ACTION: Notice of allocation, waivers, and alternative requirements.

SUMMARY: This Notice advises the public of the allocations for grant funds for Community Development Block Grant (CDBG) disaster recovery grants for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, and Wilma in the Gulf of Mexico in 2005. As described in the Supplementary Information section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the State grantees. This notice also describes the application and reporting waivers and the common alternative requirements for the grants made under the subject appropriations act.

DATES: *Effective Date:* November 6, 2006.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451

Seventh Street, SW., Room 7286,
 Washington, DC 20410, telephone
 number (202) 708-3587. Persons with
 hearing or speech impairments may
 access this number via TTY by calling
 the Federal Information Relay Service at
 (800) 877-8339. FAX inquiries may be
 sent to Mr. Opper at (202) 401-2044.
 (Except for the "800" number, these
 telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109-234, approved June 15, 2006) (Public Law 109-234) appropriates \$5.2 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. Public Law 109-234 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 and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the State and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The following application and reporting waivers and alternative requirements are in response to requests from the States receiving an allocation under this notice.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**.

Except as described in this and other notices applicable to this grant, statutory and regulatory provisions governing the Community Development Block Grant program for States, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with Public Law 109-234, HUD will reconsider every waiver in this notice on the two-year anniversary of the day this notice is published.

Allocations

Public Law 109–234 (effective June 15, 2006) provides \$5.2 billion of supplemental appropriation for the CDBG program for:

necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, or Wilma.

The law further notes:

That funds provided under this heading shall be administered through an entity or entities designated by the Governor of

each State. And that: No State shall receive more than \$4.2 billion of the amount provided under this heading.

As provided for in Public Law 109–234, the funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency or the Army Corps of Engineers. Further, none of the funds made available under this heading may be used by a State or locality as a matching requirement, share, or contribution for any other Federal program.

Also as required by the law, not less than \$1.0 billion of the \$5.2 billion

appropriation less \$27.0 million in administrative set-asides (which computes to 19.3311 percent of any State’s allocation) shall be used for repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas. Therefore, HUD is requiring that not less than 19.3311 percent of each State’s grant be used for these activities.

From this supplemental appropriation, the Secretary is allocating funds as follows.

State	Disaster	Allocation amount (\$)
Alabama	Hurricane Katrina (FEMA–1605–DR)	\$21,225,574
Florida	Hurricane Katrina (FEMA–1602–DR), Hurricane Wilma (FEMA–1609–DR)	100,066,518
Louisiana	Hurricane Katrina (FEMA–1603–DR), Hurricane Rita (FEMA–1607–DR)	4,200,000,000
Mississippi	Hurricane Katrina (FEMA–1604–DR)	423,036,059
Texas	Hurricane Rita (FEMA–1606–DR)	428,671,849

State	Minimum amount for affordable rental housing (\$)
Alabama	\$4,103,146
Florida	19,344,001
Louisiana	811,907,984
Mississippi	81,777,703
Texas	82,867,166

The amounts in the table directly above are the minimum required for each State to use of its allocation from Public Law 109–234 for repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas.

In Louisiana, the Department has reviewed data chronicling the massive impact of the disasters on affordable rental housing, including public housing, in the areas of the State most affected by disasters. In light of the unprecedented housing needs resulting from the disasters, the Secretary is carrying out his statutory duty to ensure that priority has been given to identified affordable rental housing by providing an alternative requirement. HUD is requiring that, before the State of Louisiana expends any funds to meet the minimum requirement for affordable rental housing under this notice (*see* table above), the Governor of Louisiana shall demonstrate to the Secretary’s satisfaction that the State will provide funds or has identified dedicated resources sufficient to meet the key disaster recovery needs for repair, rehabilitation, and reconstruction of

affordable rental housing stock, including public housing, in the most impacted areas of the State.

HUD invites each State receiving an allocation to submit an Action Plan for Disaster Recovery in accordance with this notice.

The appropriations statute requires funds be used only for disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of hurricanes in the Gulf of Mexico in 2005. The statute directs that each grantee will describe in its Action Plan for Disaster Recovery how the use of the grant funds gives priority to infrastructure development and rehabilitation and the rehabilitation and reconstruction of the affordable rental housing stock including public and other HUD-assisted housing. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds are not disaster-related, or funds allocated duplicate other benefits.

For the State of Louisiana, which suffered major impacts from two different hurricanes, HUD estimates that over 85 percent of the major and severe damage due to those storms is in the New Orleans-Metairie-Bogalusa Metropolitan Area (Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany Parishes). HUD therefore expects that the State will target a substantial majority of its disaster recovery funds under Pub. L. 109–234 toward the disaster recovery needs in the New Orleans-Metairie-Bogalusa Metropolitan

Area, and has included an alternative requirement to that effect.

Prevention of Fraud, Abuse, and Duplication of Benefits

The statute also directs the Secretary to:

Establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading including duplication of benefits.

To meet this directive, HUD is pursuing five courses of action. First, this notice makes applicable specific reporting, written procedures, monitoring, and internal audit requirements for grantees. Second, to the extent its resources allow, HUD will institute risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds. Third, HUD will be extremely cautious in considering any waiver related to basic financial management requirements. The standard, time-tested CDBG financial requirements will continue to apply. Fourth, HUD is collaborating with the HUD Office of Inspector General to plan and implement oversight of these funds. Fifth, HUD will follow the direction of the conference report, 109–494, and apply \$6 million of funds appropriated for the Working Capital Fund for “immediate enhancement of the capabilities of the Disaster Recovery Grant Reporting system by building

additional electronic controls that will increase accountability while further decreasing the risk of fraud, waste, or abuse.”

Waiver Justification

In general, waivers already granted to the States and alternative requirements already specified for CDBG disaster recovery grant funds provided under the Department of Defense Appropriations Act, 2006 (Pub. L. 109–148, approved December 30, 2005) (Appropriations Act) will also apply to grant funds provided under Public Law 109–234. This eliminates unnecessary inconsistencies in administration of the two grants and thus reduces the opportunities for technical errors. The notices in which these prior waivers and alternative requirements appear are 71 FR 7666, published February 13, 2006 (all five States); 71 FR 34448 (for Alabama), 71 FR 34451 (for Mississippi), and 71 FR 34457 (for Louisiana), all published June 14, 2006; 71 FR 43622, published August 1, 2006 (for Texas); 71 FR 51678 (for Florida), published August 30, 2006; and 71 FR 62372 (for Mississippi), published October 24, 2006, except that the provisions of paragraph four of the latter notice do not apply to the funds allocated under Pub. L. 109–234.

In addition to making applicable the requirements cited above, this notice specifies and provides for differences in program rules, waivers, or alternative requirements that are necessary due to the provisions of Public Law 109–234.

The provisions of this notice do not apply to funds provided under the regular CDBG program. The provisions provide additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation.

Application for Allocation

The waivers and alternative requirements related to a State's application for its allocation are those delineated in a notice entitled, “Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees Under the Department of Defense Appropriations Act, 2006,” published February 13, 2006 71 (FR 7666), with the changes noted below. HUD encourages each State receiving an allocation to submit an Action Plan for Disaster Recovery to HUD within 60 days of the publication date of this notice.

New elements added to the State's Action Plan for Disaster Recovery include a description of how the State will give priority to infrastructure

development and rehabilitation and how the State will give priority to the rehabilitation and reconstruction of the affordable rental housing stock including public and other HUD-assisted housing. The State must also explain how its choices for fund use will result in the State meeting the requirement to use not less than 19.3311 percent of its allocation for repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas. The explanation should include how the State has considered the unique challenges that individuals with disabilities face in finding accessible and affordable housing.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

1. *General note.* Except as described in this notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are:

a. Those governing the funds appropriated under the Appropriations Act and already published in the **Federal Register**, including those in notices 71 FR 7666, published February 13, 2006 (for all five States); 71 FR 34448 (for Alabama), 71 FR 34451 (for Mississippi), and 71 FR 34457 (for Louisiana), all published June 14, 2006; 71 FR 43622 for Texas, published August 1, 2006; 71 FR 51678 (for Florida), published on August 30, 2006; and 71 FR 62372 (for Mississippi), published October 24, 2006, except that the provisions of paragraph four of the latter notice do not apply to the funds allocated under Public Law 109–234; and

b. Those governing the Community Development Block Grant program for States, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570.

2. *Action Plan additional elements.* a. In addition to the waivers and alternative requirements published in the “Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees Under the Department of Defense Appropriations Act, 2006” notice published February 13, 2006, the disaster recovery grantees receiving funding under Public Law 109–234 must add the items in paragraph b below to those described in paragraph number 7 on page 7669 of that notice regarding the information required in the State's overall plan for disaster recovery for use of funds under Public Law 109–234.

b. The grantee's overall plan for disaster recovery will also include:

(i) An explanation of how the State will give priority to the rehabilitation and reconstruction of the affordable rental housing stock including public and other HUD-assisted housing, a description of the activities the State plans to undertake with grant funds under this priority, and a description of the unique challenges that individuals with disabilities face in finding accessible and affordable housing;

(ii) An explanation of how the State will give priority to infrastructure development and rehabilitation, and a description of the infrastructure activities it plans to undertake with grant funds; and

(iii) An explanation of how the method of distribution or use of funds described in accordance with the applicable notices will result in the State meeting the requirement that at least 19.3311 percent of its allocation under this notice shall be used for repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas.

3. *Note that use of grant funds must relate to the covered disaster(s).* In addition to being eligible under 42 U.S.C. 5305(a) of this notice and meeting a CDBG national objective under the penultimate paragraph of 42 U.S.C. 5304(b)(3), Public Law 109–234 requires that activities funded under this notice must also be for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, and Wilma in communities included in Presidential disaster declarations.

4. *Alternative Requirements Regarding Targeting in Louisiana.* a. The State of Louisiana will target 70 percent of its disaster recovery funds under Pub. L. 109–234 towards the disaster recovery needs in the New Orleans-Metairie-Bogalusa Metropolitan Area; and

b. Before the State of Louisiana expends any funds to meet the minimum requirement for affordable rental housing under this notice, the Governor of Louisiana shall demonstrate to the Secretary's satisfaction that the State will provide funds or has identified dedicated resources sufficient to meet the key disaster recovery needs for repair, rehabilitation, and reconstruction of affordable rental housing stock, including public housing

disaster recovery in the most impacted areas of the State.

5. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under OMB control number 2506–0165, which expires August 31, 2007. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information unless the collection displays a valid control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.219; 14.228.

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). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Dated: October 25, 2006.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. 06–8978 Filed 10–26–06; 1:56 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5067–N–02]

Extension of Period of Submission for Notices of Intent and Fungibility Plans in Accordance With HUD's Implementation Guidance for Section 901 of the Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On July 28, 2006, HUD published a notice entitled, "Implementation Guidance for Section 901 of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006." This notice extends the period for eligible public housing agencies (PHAs) located within the most heavily impacted areas of Louisiana and Mississippi that are subject to a declaration by the President of a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in connection with Hurricanes Katrina or Rita to submit Notices of Intent and Fungibility Plans in accordance with the July 28, 2006, notice. Section 901 of the supplemental appropriations act authorizes PHAs to combine assistance provided under sections 9(d) and (e) of the United States Housing Act of 1937 (Act) and assistance provided under section 8(o) of the Act, for the purpose of facilitating the prompt, flexible, and efficient use of funds provided under these sections of the Act to assist families who were receiving housing assistance under the Act immediately prior to Hurricane Katrina or Rita and were displaced from their housing by the hurricanes. In addition to extending the PHA submission deadline, this notice removes the restriction that the combined funding may not be spent for uses under the housing choice voucher (HCV) program. If approved by HUD, the combined funding may now be used for eligible purposes under the HCV program. Any use of combined funds under the HCV program must also be in accordance with the requirement to assist those families who were receiving housing assistance under the public housing or HCV program immediately prior to Hurricane Katrina or Rita and were displaced from their housing by the hurricane. A PHA that already has an approved Fungibility Plan may request HUD approval to change the Plan in order to use the combined funds for HCV program eligible purposes. As provided in the July 28, 2006 **Federal Register** notice, PHAs must submit to HUD requests for approval of any substantial deviations from the approved Fungibility Plan, and HUD will respond to such requests within 10 calendar days.

DATES: Eligible PHAs must submit their Notices of Intent and Fungibility Plans no later than November 21, 2006.

FOR FURTHER INFORMATION CONTACT: For technical assistance and other questions concerning the Notice of Intent and Section 901 Fungibility Plan, PHAs should contact their local HUD Public

Housing Hub in New Orleans, Louisiana, or Jackson, Mississippi; or Bessy Kong, Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4216, Washington, DC 20410–5000, telephone (202) 708–0614 or 708–0713, extension 2548 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 28, 2006 (71 FR 42996), HUD published a notice entitled, "Implementation Guidance for Section 901 of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006." Section V.A. of the July 28, 2006, notice, entitled, "General Procedures for Combining Public Housing and Voucher Funds Under Section 901," instructs that PHAs interested in implementing the flexibility authorized in Section 901 should submit, in writing for HUD review and approval, no later than 45 days from the date of the notice or September 11, 2006: (1) A Notice of Intent to invoke Section 901 flexibility and (2) a detailed Section 901 Fungibility Plan describing the total amount under Section 901, and the source of those funds by account (HCV, Operating Fund, Capital Fund).

Some eligible PHAs are facing circumstances that precluded submission of their Notices of Intent and Fungibility plans by September 11, 2006, and require additional time to determine whether program funds are available to combine for other program uses. Therefore, HUD has extended the period during which eligible PHAs may submit their Notices of Intent and Fungibility Plans to no later than November 21, 2006, in order to allow sufficient time for HUD to review and approve the plans. HUD strongly recommends earlier submission, if possible, in the event resubmission of plans is required because of HUD's review determinations. HUD must approve all plans, including those that must be resubmitted, no later than December 31, 2006.

In addition to extending the PHA submission deadline, this notice removes the restriction that the combined funding may not be spent for uses under the housing choice voucher (HCV) program. If approved by HUD, the combined funding may now be used

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5089-N-03]

Additional Waivers Granted to and Alternative Requirements for the State of Louisiana Under Public Laws 109-148 and 109-234

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers and alternative requirements.

SUMMARY: As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this grant, upon the request of the state grantee. This Notice describes the additional waivers for the disaster recovery grants made to the state of Louisiana under the subject appropriations acts.

DATES: *Effective Date:* March 12, 2007.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Acting Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-2684. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. FAX inquiries may be sent to Mr. Taffet at (202) 708-1744. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The first federal fiscal year 2006 supplemental appropriation for the Community Development Block Grant (CDBG) program was the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109-148, approved December 30, 2005). The second 2006 supplemental appropriation was Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109-234, approved June 15, 2006) which appropriates \$5.2 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The 2006 Acts authorize the Secretary to waive, or

specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by the State and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The following waivers and alternative requirements for funds provided under either 2006 Act are in response to requests from the State of Louisiana. A waiver or alternative requirement will apply to assistance provided under either Act unless otherwise specified in this Notice.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**.

Except as described in this and other notices applicable to this grant, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the appropriations acts, HUD will reconsider every waiver in this Notice on the two-year anniversary of the day this Notice is published.

Waiver Justification

In general, waivers already granted to the state of Louisiana and alternative requirements already specified for CDBG disaster recovery grant funds provided under Public Law 109-148 and Public Law 109-234 apply. The notices in which these prior waivers and alternative requirements applicable to Louisiana appear are 71 FR 7666, published February 13, 2006; 71 FR 34451, published June 14, 2006; and 71 FR 63337, published October 30, 2006.

The provisions of this Notice do not apply to funds provided under the regular CDBG program. The provisions provide additional flexibility in program design and implementation and implement statutory requirements unique to these appropriations.

Eligibility—buildings for the general conduct of government. The state requested additional flexibility in the previously granted alternative

requirement that permitted funding the cost share for the FEMA Public Assistance or Hazard Mitigation Grant Program when disaster recovery CDBG funds assist buildings for the general conduct of government. The requested change will allow the state to fund more than just the amount of the FEMA cost share for a project in this activity category. The change will also permit use of grant funds for allowable rehabilitation, construction, or reconstruction costs in otherwise FEMA eligible projects when these costs are ineligible for FEMA assistance, such as the costs to assist rehabilitation or reconstruction of qualifying buildings that were underinsured or uninsured, and to allow funding to bring a selected building up to code or to allow it to receive a certificate of occupancy and be put into service. HUD considered the state's request and agreed that it is consistent with the overall purposes of the 1974 Act for the state to be allowed to use the grant funds under this notice to fund critical projects involving repair of buildings for the general conduct of government that the state has selected in accordance with the method described in its HUD-approved Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery, even if the funding provided under this notice assists some costs that do not qualify as cost share for the FEMA Public Assistance or Mitigation programs.

Eligibility—Research Commercialization and Educational Enhancement. According to the state's proposed Action Plan amendment, the Research Commercialization and Educational Enhancement (RCCE) Program is "intended to restore the economic impact of scientific and technology research facilities within higher education institutions in the most severely affected areas." Activities under this program may include, but are not limited to, stipends for students, related training, purchase of critical equipment, stipends for research professionals, and development of a master strategic plan for meeting the program's intent.

Normally, HUD provides funds to a research institution or a university either to increase its capacity to carry out a CDBG activity such as rehabilitation of housing, to carry out specific research, or to provide training. By contrast, the RCCE program is directed at stabilizing and increasing research and education sector employment and functions themselves. The state has stated that this sector was a significant regional job generator before the covered disasters, that

Hurricane Katrina and its aftermath critically damaged many aspects of the research sector, and that the RCEE program is a critical component of the state's long-term economic recovery.

To accomplish its stated intention, the State is funding strategic planning followed by a pilot assistance program for research institutions located in the most impacted areas. At HUD's request, the state has agreed that this planning process will identify critical performance measures for this program so that all parties involved can assess the usefulness of the RCEE model as part of overall disaster recovery.

The RCEE program design does not break down neatly into CDBG eligibility categories. Portions of the RCEE program are eligible CDBG activities, such as training (public services) and strategic planning. Other portions, especially the stipends and other direct support for retaining key faculty researchers, are outside the usual CDBG realm, although modeled on other government research and endowment grant programs. Program staff will be coordinating the various types of assistance into a coherent whole, moving between supporting eligible and currently ineligible activities.

To avoid bureaucratic hair-splitting that does not advance long-term disaster recovery or protect against fraud, waste, or abuse of funds, HUD is providing a waiver and alternative requirement to create the eligible activity called Louisiana Research Commercialization and Educational Enhancement to include all activities carried out in accordance with the RCEE program described in the HUD-approved Action Plan, beginning with the amendment introducing this program, approved January 3, 2007. (The allowable cost provisions of applicable OMB Circulars still apply, as do statutory prohibitions on duplications of benefit with other forms of assistance, such as Federal programs.)

Documentation of low- and moderate-income household benefit for multi-unit housing projects. Rehabilitation and reconstruction of housing is an eligible CDBG activity. HUD has already granted the state an eligibility waiver to allow new construction of housing. Now the state has requested a related waiver to allow it to fund multi-unit projects and to measure benefit to low- and moderate-income households in such projects in a manner more supportive of mixed income housing than the structure basis required by 24 CFR 570.483(b)(3). (Under the cited regulation, the general rule is that at least 51 percent of the residents of an

assisted structure must be income eligible.)

HUD has reviewed other housing assistance programs that measure benefit differently: By the housing unit. Under the unit approach, one or more of the units in a structure must house income-eligible families, but the remainder of the units may be market rate, so long as the proportion of assistance provided compared to the overall project budget is no more than the proportion of units that will be occupied by income-eligible households compared to the number of units in the overall project. In other words, the rule under the structure approach is that a dollar of CDBG assistance to a structure means that 51 percent of the units must meet income requirements. Under the proportional units approach, the number of income-eligible units is proportional to the amount of assistance provided. Based on HUD experience, the second approach is generally more compatible with large-scale development of mixed-income housing.

There is HUD precedent for using the proportional unit basis in two programs familiar to the state: (1) The CDBG program rule has a built-in exception that allows limited use of the unit basis for multi-unit non-elderly new construction structures with between 20 and 50 percent low- and moderate-income occupancy, and (2) the HOME Investment Partnerships program, HUD's primary housing production program, successfully uses its own variation on the proportional unit approach. After review of the state's Action Plan for Disaster Recovery and learning more about the state's intention to encourage mixed-income housing development, HUD has determined that it is consistent with the overall purposes of the 1974 Act to provide the state the requested additional flexibility in measuring program benefit.

Therefore, the waiver and alternative requirements allow the state a choice. The state may measure benefit within a housing development project (1) according to the existing CDBG requirements, (2) according to the HOME program requirements at 24 CFR 92.205(d) or (3) according to the modified CDBG alternative requirements specified in this notice, which extend the CDBG exception noted above. The state must select and use just one method for each project.

For these purposes, the term "project" will have the same meaning as in the HOME program at 24 CFR 92.2. Unlike the HOME program, the CDBG program does not regulate the maximum amount of assistance per unit, require unit and income reviews in the years following

initial occupancy, require a specific form of subsidy layering review, or define affordability. The state is reminded, however, that CDBG does require that costs be necessary and reasonable and that the state must develop procedures and documentation to ensure that its housing investments meet this requirement. The state must also meet all civil rights and fair housing requirements.

Eligibility—Operating Subsidy for Affordable Rental Housing. The State requested a waiver to allow a Project-Based Rental Subsidy (PBRA) and assistance to establish operating reserves to encourage developers to rebuild rental and mixed-income housing in the areas that suffered the greatest disaster impact. The subsidy funding, which is "Piggyback" funding generally designed to be linked to the use of housing tax credits or funding under another of the rental programs delineated in the State's HUD approved Action Plan for Disaster Recovery, targets housing for low-income and very-low-income families and is limited in amount to the difference between the rents that a project is projected to need to sustain itself, and a specified lower level that can be reasonably afforded by the tenants. With its affordable rental programs, the State proposes to address specific barriers unique to the affordable rental programs outlined by the State's Action Plan (see The Road Home Housing Programs described in the State's Action Plan for Disaster Recovery) such as the lack of affordability in the most heavily damaged areas, the lack of permanent financing for mixed-income rentals, and the need for more risk-tolerant pre-development capital.

In its Road Home programs, the State has set a high priority on deep affordability for some rental units and on placing these units within mixed-income communities wherever feasible. The state has included new scoring factors in the Piggyback tax credit selection process that reflect these priorities and that emphasize long-term viability and reduce operating costs. According to the state, the biggest remaining challenge in providing rental units affordable to very low-income households is the difference between what tenants can afford to pay and the projected cost of operating the units.

The state has researched existing housing models, and concluded that the Piggyback model and the small rental and homeless programs described in the Road Home are needed to ensure production of affordable units. The state believes it has a critical need for income-targeted rental housing

production programs. Although the state has made financing available for rental housing construction, it believes that it will need also to provide operating subsidy options for some projects to ensure they are affordable to very low-income households.

HUD agrees that keeping housing affordable to very low-income households over time may require additional operating subsidy after construction is complete. To allow the state flexible options, HUD will allow CDBG assistance for subsidizing operating costs using PBRA and funding initial operating reserves in the context of the Road Home rental programs as described in the Action Plan. The Department encourages the State to avoid using CDBG for operating subsidies if other financing is available or if the project can reasonably be structured to achieve and maintain its target affordability without the operating subsidy.

HUD recommends that the State establish written requirements for income eligibility, maximum rents, utility allowances, structure quality, and affirmative marketing of projects. HUD also recommends that inflation adjustments set by the State generally not exceed the Section 8 allowable adjustments.

HUD recommends that, in implementing PBRA funding, the State acquire and maintain the expertise equivalent to the role of a tax credit administrator whose responsibilities will include, but not be limited to, making PBRA payments to procured developers and compliance control of eligibility determinations. Due to the distinctive and potentially high-risk nature of this eligibility waiver, HUD recommends that such expertise be maintained throughout the life of the program to ensure the prevention of fraud, abuse of funds, and duplication of benefits. HUD reminds the state of the regulatory requirement for annual financial audits of its programs, and of the **Federal Register** Notice 71 FR 7666 and 71 FR 73337 requirements that its entire program be under the purview of an internal auditor.

Eligibility—Homeless Prevention and Rapid Rehousing. The State has requested an eligibility waiver to allow it to implement a Homeless Prevention and Rapid Rehousing Program using funds designated for homeless activities in its Action Plan. The principle of this program model is to minimize the time a family is homeless by providing rehousing assistance, rental assistance, and linking the family to services designed to help it become stable and self-sufficient. The State's request notes

that it has modeled its program on the rapid rehousing program approach that the National Alliance to End Homelessness has endorsed as a national best practice. The State also notes that as a consequence of Hurricanes Katrina and Rita: "Thousands of families today are doubled up with family and friends, facing eviction, in temporary housing conditions affordable only with time limited FEMA rental assistance, or living in FEMA trailer villages—unsure what they are going to do when assistance runs out."

The State needs an eligibility waiver for the rental assistance and utility payments that are paid for up to two years on behalf of homeless and at-risk households. The proposed program also includes rental and utility deposits and back payments for housing when the State determines that such payments are necessary to help prevent a family from becoming homeless. To the extent the existing CDBG program rules explicitly allow payments for these purposes, the program establishes a shorter time limitation (three months) and generally discourages or disallows back payments.

The State's proposed program will measurably advance the Department's priority on supporting forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness because of the effects of Hurricanes Katrina and Rita. Therefore, this Notice grants the eligibility waiver as requested.

Documentation of low- and moderate-income benefit and public benefit for certain economic development activities. For some of its economic development programs, the state has requested one waiver to allow it to provide alternate documentation of low- and moderate-income benefit, and another waiver to extend the public benefit standard waiver granted in **Federal Register** Notice 71 FR 7666 for the Bridge Loan Program to the economic development activities from Action Plan Amendments 2 and 8 and to FEMA public assistance cost share infrastructure projects carried out for the purpose of creating or retaining jobs.

For the national objective documentation for the business assistance activities, the state has asked to be able to apply individual salaries or wages per job and the income limits for a household of one, rather than the usual CDBG standard of total household income and the limits by total household size. The state asserts that its proposed documentation will be simpler and quicker for its participating lenders to administer, easier to verify,

and will not misrepresent the amount of low- and moderate-income benefit provided.

Further, for the Bridge Loan Program and for infrastructure projects carried out to create or retain jobs or businesses, the state argues for this approach because it considers these critical recovery activities that need the most streamlined approach to documentation that is consistent with prudent management. On review and following several discussions with state staff, HUD accepts the state's arguments for the activities and programs cited above, and is granting the waiver as requested.

HUD is granting this waiver because of the magnitude of the disaster. However, because the validity of this approach has not been verified systematically, HUD may not grant similar waivers in the future.

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 annual 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. Essentially, the public benefit standards are a proxy for all the other possible public benefits provided by an assisted activity. These dollar thresholds were set more than a decade ago and under disaster recovery conditions (which often require a larger investment to achieve a given result), can be too low and thus impede recovery by limiting the amount of assistance the grantee may provide to a critical activity. The State has made public in its Action Plan the disaster recovery needs each activity is addressing and the public benefits expected.

After consideration, this Notice waives the public benefit standards for the cited activities, except that the State shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, (c) the average amount of assistance per job and activity or program, and (c) the types of jobs. As a conforming change for the same activities or programs, HUD is also waiving paragraph (g) of 24 CFR 570.482 to the extent its provisions are related to public benefit.

Voluntary acquisition under the Piggyback Program. In connection with the State's Low Income Housing Tax Credit Piggyback Program, various developers obtained options for the acquisition of specific properties to

create mixed income rental housing and workforce housing projects to replace rental housing lost during the hurricanes. The options were obtained on a voluntary basis by developers without the use or threat of eminent domain and prior to the availability of federal funding. However, since these projects will now be receiving CDBG disaster funding assistance, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (the URA) will apply where the property acquisition has not been completed. The state has requested a waiver related to acquisition requirements under the URA for specific projects with existing options. The state has asked that HUD permit the waivers to help complete the acquisition of property and promote the replacement of housing in a timely and efficient manner. The state believes that these waivers will have little impact on those persons who voluntarily entered into these option agreements prior to the availability of federal funding.

CDBG funds are federal financial assistance so their use in projects that involve acquisition of property for a federally assisted project, or that involve acquisition, demolition, or rehabilitation that force a person to move permanently, are subject to the URA and the government-wide implementing regulations found at 49 CFR part 24. The URA provides assistance and protections to individuals and businesses affected by federal or federally assisted projects. HUD is waiving the following URA requirements to help promote accessibility to suitable decent, safe, and sanitary housing for victims of Hurricanes Katrina and Rita:

The acquisition requirements of the URA and implementing regulations so that they do not apply to an arm's length voluntary purchase carried out by a person that does not have the power of eminent domain, in connection with the purchase of properties for the projects listed in the waiver below. According to the state, the failure to suspend these requirements would impede disaster recovery. This waiver would not affect any lawful occupants of the affected projects, in terms of relocation assistance and payments, and would only waive certain transaction-related requirements vis a vis the project owners.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

1. *General note.* Except as described in this Notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are:

a. those governing the funds appropriated under Public Law 109-148

and Public Law 109-234 and already published in the **Federal Register**, including those in Notices 71 FR 7666, published February 13, 2006; 71 FR 34451, published June 14, 2006; and 71 FR 63337, published October 30, 2006.

b. those governing the Community Development Block Grant program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570.

2. *Buildings for the general conduct of government.* Waiver 11 of notice 71 FR 34451 is replaced with the following: 42 U.S.C. 5305(a) and 24 CFR 507.207(a)(1) are waived to the extent necessary to allow the state to use the grant funds under this notice to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible and that the state selects in accordance with its approved Action Plan for Disaster Recovery and that the State has determined have substantial value in promoting disaster recovery.

3. *Eligibility—Louisiana Research Commercialization and Educational Enhancement program (RCEE).* Activities carried out in accordance with the HUD approved Action Plan for the RCEE program approved January 3, 2007, are eligible.

4. *Documentation of low- and moderate-income benefit for multi-unit housing projects.* HUD will consider assistance for a multi-unit housing project involving new construction, acquisition, reconstruction, or rehabilitation to benefit low- and moderate-income households in the following circumstances:

(a)(i) The CDBG assistance defrays the development costs of a housing project providing eligible permanent residential units that, upon completion, will be occupied by low- and moderate-income households; and

(ii) if the project is rental, the units occupied by low and moderate income households will be leased at affordable rents. The grantee or unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose; and

(iii) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low- and moderate-income households; or

(b) When CDBG funds defray the development costs of eligible permanent residential units, such funds shall be considered to benefit low and moderate income persons if the grantee follows the provisions of 24 CFR 92.205(d); or

(c) The requirements of 24 CFR 570.483(b)(3) are met.

(d) The state must select and use just one method for each project.

(e) The term "project" will be defined as in the HOME program at 24 CFR 92.2.

(f) If the state applies option (a) or (b) above to a housing project, 24 CFR 570.483(b)(3) is waived for that project.

5. *Waiver to permit operating subsidies for affordable rental housing.* 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible the Road Home project-based rental assistance program included in the state's HUD-approved Action Plan for Disaster Recovery provided that the assisted activities are designed to ensure that CDBG funds will be invested only to the extent of reasonably anticipated need. Also in conjunction with the Road Home rental program, the grantee may provide assistance to establish an initial operating reserve account for a project receiving other Road Home assistance.

6. *National objective documentation for certain economic development activities.* 24 CFR 570.483(b)(4)(i) is waived to allow the grantee to establish 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.

7. *Eligibility of certain activities to support homeless prevention and rapid rehousing programs.* 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible rental assistance and utility payments paid for up to two years on behalf of homeless and at-risk households when such assistance or payments are part of a homeless prevention or rapid rehousing program. Eligible assistance in these programs may also include rental and utility deposits and back payments for housing when the State determines that such payments are necessary to help prevent a family from being homeless.

8. *Public benefit standards for economic development activities.* For economic development activities designed to create or retain jobs or businesses (including but not limited to BRIDGE, Short term, Long term, infrastructure projects), the public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived, except that the grantee shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, (c) average amount of assistance provided per job by activity or program, and (c) types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

9. *Voluntary acquisition under the Piggyback program.* The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an existing

option for the arm’s length voluntary purchase carried out by a person that does not have the power of eminent domain, in connection with the

purchase of property for the projects listed below, so long as the initial option pre-dates December 22, 2006.

LHFA project ID	Project name	Parish	Est. total units
0708FA37	The Meadows	Calcasieu	180
0708FA43	Renoir Acres Estates II	Calcasieu	60
0708FA44	Monet Acres Estates II	Calcasieu	60
0708FA48	Sulphur Retirement Community	Calcasieu	60
0708FA52	Grand Lake Elderly	Cameron	30
0708FA01	Timberlane Apartments	Jefferson	164
0708FA22	Beechgrove Homes	Jefferson	100
0708FA28	Wellswood Manor	Jefferson	84
08FA49	Oak Villa	Jefferson	80
0708FA30	Lafitte Redevelopment	Orleans	568
0708FA26	St Bernard I	Orleans	465
0708FA24	BW Cooper I	Orleans	410
0708FA25	CJ Peete III	Orleans	410
0708FA42	Rivergarden CSII	Orleans	310
0708FA57	Canterbury House Apts-New Orleans East	Orleans	276
0708FA47	The Marquis Apartments	Orleans	250
0708FA08	The Villas at Lake Forest	Orleans	230
0708FA11	The Crescent Club	Orleans	226
0708FA41	Walnut Square Apartments	Orleans	209
0708FA13	200 Carondelet	Orleans	190
0708FA10	The Preserve	Orleans	183
0708FA38	Crescent Garden Homes	Orleans	143
0708FA36	Levey Gardens	Orleans	100
0708FA40	Nine 27	Orleans	76
0708FA09	Jefferson Davis Apartments	Orleans	72
0708FA61	Indiana Homes	Orleans	60
0708FA64	Orleans Place	Orleans	60
0708FA27	Classic Construction of New Orleans Venture II	Orleans	56
0708FA29	Constance Lofts	Orleans	47
0708FA23	Delta Oaks Homes	Orleans	40
0708FA63	Old Morrison Homes	Orleans	38
0708FA07	Lakeside Apartments	St. Tammany	250
0708FA06	Tiffany Apartments	Vermilion	250
Totals			5737

10. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under OMB control number 2506–0165, which expires August 31, 2007. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information unless the collection displays a valid control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

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). The

FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Dated: February 27, 2007.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. E7–3830 Filed 3–5–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5089-N-05]

Additional Common Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees Under Public Laws 109-148 and 109-234

AGENCY: Office of the Secretary, HUD.
ACTION: Notice of waivers and alternative requirements.

SUMMARY: As described in the Supplementary Information section of this Notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for disaster recovery grants, upon the request of the state grantee(s). This Notice describes the additional waivers for the disaster recovery grants made to the States of Alabama, Florida, Louisiana, Mississippi, and Texas (the States), which are the Community Development Block Grant Program (CDBG) disaster recovery grantees under the subject appropriations acts.

DATES: *Effective Date:* August 29, 2007.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number (202) 708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. FAX inquiries may be sent to Ms. Kome at (202) 401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The first federal Fiscal Year (FY) 2006 supplemental appropriation for the CDBG program was the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109-148, approved December 30, 2005). The second 2006 supplemental appropriation was Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109-234, approved June 15, 2006), which appropriates \$5.2 billion in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. These 2006 Acts (collectively "the supplemental Acts") authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds or guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by a state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The waiver authorizations differ in that while Public Law 109-148 directs that the Secretary "shall" make the waivers in response to a state's request and a consistency finding; Public Law 109-234 states that the Secretary "may" make such waivers.

The following waivers and alternative requirements for funds provided under either 2006 Act are in response to requests from all five states receiving CDBG disaster recovery grants under those Acts. In accordance with the

states' earlier requests for administrative consistency to the extent feasible (noted in 71 FR 63337, published October 30, 2006), each waiver or alternative requirement will apply to assistance provided under either Act.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**. Further, under the supplemental Acts, the Secretary must publish, in the **Federal Register**, any waiver of any statute or regulation that the Secretary administers pursuant to Title I of the Housing and Community Development Act of 1974, no later than 5 days before the effective date of such waiver.

Except as described in this and other notices applicable to these grants, statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the 2006 Acts, HUD will reconsider every waiver in this Notice on the 2-year anniversary of the day this Notice is published.

Waiver Justification

In general, waivers already granted to the States of Alabama, Florida, Louisiana, Mississippi, and Texas and alternative requirements already specified for CDBG disaster recovery grant funds provided under Public Law 109-148 and Public Law 109-234 apply. The notices in which these prior waivers and alternative requirements appear are shown in the table below.

Notice	Publication date	Applicability
71 FR 7666, FR-5051-N-01	02/13/2006	Common Allocation/Application for \$11.5 billion.
71 FR 34448, FR-5051-N-02	06/14/2006	State of Alabama.
71 FR 34451, FR-5051-N-04	06/14/2006	State of Louisiana.
71 FR 34457, FR-5051-N-03	06/14/2006	State of Mississippi.
71 FR 43622, FR-5051-N-05	08/01/2006	State of Texas.
71 FR 51678, FR-5051-N-06	08/30/2006	State of Florida.
71 FR 62372, FR-5051-N-07	10/24/2006	State of Mississippi.
71 FR 63337, FR-5089-N-01	10/30/2006	Common Allocation/Application, and Applicability of Prior Waivers for \$5.2 billion.
72 FR 10014, FR-5089-N-03	03/06/2007	State of Louisiana.
72 FR 10020, FR-5089-N-03	03/06/2007	State of Mississippi.

The provisions of this Notice do not apply to funds provided under the regular CDBG program or other HUD or federally funded programs. The

provisions provide additional flexibility in program design and implementation and implement statutory requirements unique to these appropriations.

Section 414 of the Stafford Act

The states have requested a waiver of section 414 of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, as amended, for all their disaster recovery programs. This Notice grants, in part, the states' requests that the Secretary waive that section and provides alternative requirements more consistent with the purpose of the supplemental Acts, which is to assist and support disaster recovery in the areas most impacted by the effects of the hurricanes of 2005 in the Gulf Coast. Hurricanes Katrina, Rita, and Wilma resulted in unprecedented destruction in the Gulf States, which will require reconstruction for many years (and possibly decades) to come. The Department has surveyed other federal agencies' administration of section 414 and found varying interpretations for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. The five Gulf States, in the meantime, are launching programs, such as rental rehabilitation, that could be affected by this statute and urgently need a conclusion and clear direction in order to restore affordable rental housing to the devastated areas. Therefore, to avoid possible risk to the recovery effort by further delay in providing the States with a definitive answer, the Department is issuing this Notice, which includes a partial statutory waiver and specifies alternative requirements. For programs or projects covered by this waiver ("covered programs or projects") that are initiated within 3 years after the applicable disaster, the State must select one of the two alternative requirements specified in this Notice.

Alternative One

The state may provide relocation assistance to a former residential occupant whose former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance must be offered in a manner consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and its implementing regulations, except as modified by applicable waivers and alternative requirements.

Alternative Two

If the state determines that the first alternative would substantially conflict with meeting the disaster recovery purposes of the supplemental Acts, the state may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster. Such

determinations must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

1. A description of the class(es) of persons eligible for assistance, including all persons displaced from their residences by particular enumerated, or all, effects of the disaster, and including all persons still receiving temporary housing assistance from FEMA for the covered disaster(s);
2. A description of the types and amount of financial assistance to be offered, if any;
3. A description of other services to be made available, including, at minimum, outreach efforts to eligible persons and housing counseling providing information about available housing resources. Outreach efforts and housing counseling information should be provided in languages other than English to persons with limited English proficiency; and
4. Contact information and a description of any applicable application process, including any deadlines.

5. If the program or project involves rental housing, the re-housing plan must also include the following:

- (i) Placement services for former and prospective tenants;
- (ii) A public registry of available rental units assisted with CDBG disaster recovery and/or other funds; and
- (iii) Application materials, award letters, and operating procedures requiring property owners to make reasonable attempts to contact their former residential tenants and offer a unit upon completion to those tenants meeting the program's eligibility requirements.

Justification for Waiver

The reasons for granting this waiver are several, and are ably represented by the States in their requests. The principal reasons are highlighted here:

- Hurricanes Katrina, Rita, and Wilma caused unprecedented destruction in the Gulf Coast region. The magnitude of destruction resulted in massive displacements and decimated the region's affordable housing stock. Continued ambiguity on section 414's applicability may cause substantial delays in long-term recovery along the Gulf Coast, particularly in Louisiana, Mississippi, and Texas;
- URA assistance may duplicate insurance proceeds and federal, state, or local housing assistance that has already been disbursed; and
- Simplify the administration of disaster recovery projects or programs initiated years following the disaster.

Persons in physical occupancy who are displaced by a HUD-assisted disaster recovery project will continue to be eligible for URA assistance. Persons displaced by the effects of the disaster may continue to apply for assistance under the States' approved disaster recovery programs, which are designed to bring affordable housing to the affected areas. This waiver does not address programs or projects receiving other HUD funding, or funding from other federal sources.

A state may already be performing some elements of a re-housing plan, such as providing a public rental registry or undertaking outreach and placement services to those former residents still receiving FEMA housing assistance. Description in the re-housing plan of how those existing efforts will be available for covered programs or projects may be used in satisfying the requirements of this Notice.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

1. *General note.* Except as described in this Notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are:

a. Those governing the funds appropriated under Public Law 109-148 and Public Law 109-234 (the "supplemental Acts") and already published in the **Federal Register**.

b. Those governing the CDBG program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570.

2. *Section 414 of the Stafford Act waiver and alternative requirements.*

a. Section 414 of the Stafford Act, 42 U.S.C. 5181 (including its implementing regulation at 49 CFR 24.403(d)), is waived to the extent that it would apply to CDBG disaster recovery-funded programs or projects initiated at least one year after Hurricanes Katrina, Rita, or Wilma (as applicable) by the States of Alabama, Florida, Louisiana, Mississippi, and Texas under an approved Action Plan for Disaster Recovery for its grants under Public Law 109-148 or Public Law 109-234; provided that such program or project was not planned, approved, or otherwise underway prior to the disaster.

b. For all programs or projects covered by this waiver ("covered programs or projects") that are initiated within 3 years after the applicable disaster, the States of Alabama, Florida, Louisiana, Mississippi, and Texas must comply with one of the following two alternative requirements:

1. *Relocation Assistance.* The state may provide relocation assistance to a former residential occupant whose

former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance must be offered in a manner consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and its implementing regulations, except as modified by prior waivers and alternative requirements granted to the States.

2. *Re-housing Plan.* If the state determines that the first alternative would substantially conflict with meeting the disaster recovery purposes of the supplemental Acts, the grantee may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster. Such a determination must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

i. A description of the class(es) of persons eligible for assistance, including all residents displaced from their residences by certain enumerated or all effects of the covered disaster, and including all disaster-displaced residents still receiving temporary housing assistance from FEMA for the covered disasters;

ii. A description of the types and amount of financial assistance to be provided, if any;

iii. A description of other services to be made available, including, at minimum, outreach efforts to eligible

persons and housing counseling that provide information about available housing resources;

iv. Contact information for additional program information;

v. A description of any applicable application process, including any deadlines; and

vi. If the program or project covered by this waiver involves rental housing, the grantee shall establish procedures for the following:

A. Application materials, award letters, and operating procedures that require property owners to make reasonable attempts to contact their former tenants and to offer a unit upon completion to those tenants meeting the program's eligibility requirements;

B. Placement services for former and prospective tenants; and

C. A public registry of available rental units assisted with CDBG disaster recovery and/or other funds.

c. Eligible Project Costs. The cost of relocation assistance and the re-occupancy plan are eligible project costs in the same manner and to the same extent as other projects costs authorized under the supplemental Acts. For covered programs or projects involving affordable rental housing, the relocation and planning costs required by this Notice may be paid from funds reserved for the affordable rental housing stock in the impacted areas under Public Law 109-234.

2. *Information collection approval note.* The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB), in accordance with the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2506-0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information, unless the collection displays a valid control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

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 Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the FONSI must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Dated: August 16, 2007.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E7-16631 Filed 8-23-07; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5183-N-01]

Allocations and Requirements for the Supplemental Grant to the State of Louisiana Under Division B of the Department of Defense Appropriations Act, 2008

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of allocation and requirements.

SUMMARY: This Notice advises the public of the allocation of a \$3 billion Community Development Block Grant (CDBG) disaster recovery grant to the State of Louisiana solely for the purpose of covering costs associated with otherwise uncompensated but eligible claims that were filed on or before July 31, 2007, under the Road Home homeowner compensation program administered by the State in accordance with plans approved by the Secretary. As described in the Supplementary Information section of this notice, HUD has determined that the State shall follow the requirements applicable to the other CDBG disaster recovery grants funding the Road Home homeowner compensation program, unless those requirements conflict with the requirements of section 159 of Public Law 110-116, in which case the requirements of that law apply.

DATES: *Effective Date:* December 11, 2007.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number (202) 708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. Fax inquiries may be sent to Ms. Kome at (202) 401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Program Requirements

Except as described in Public Law 110-116 and in this and other notices applicable to this grant, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds.

The stated purpose of the supplemental appropriation is:

* * * solely for the purpose of covering costs associated with otherwise uncompensated but eligible claims that were filed on or before July 31, 2007, under the Road Home program administered by the State in accordance with plans approved by the Secretary.

The conference report clarifies that these funds are for costs associated with the Road Home homeowner compensation program and not for any other Road Home program. Public Law 110-116 further stipulates that the funds must "serve only to supplement and not supplant any other State or Federal resources committed to the Road Home program."

On review of Public Law 110-116, HUD has determined these funds must be used in accordance with the same CDBG disaster recovery program requirements that apply to the Road Home homeowner compensation program under law, regulation, and Notice unless those requirements conflict with the requirements of Public Law 110-116, in which case the stipulations of that supplemental law shall apply. This means, for example, that:

- The State must only use the funds for costs eligible under the Road Home homeowner compensation program under the Action Plans for Disaster Recovery (Action Plans) for the grants made under Public Laws 109-148 and 109-234, as those plans have been amended and accepted by HUD and in accordance with Public Law 110-116;
- The State may assume the responsibility for environmental review related to this grant in accordance with 24 CFR part 58;
- Because this grant is additional funding for activities included in approved Action Plans, this Notice requires that the amount of CDBG disaster recovery and State funds must remain at or above the allocations for the homeowner compensation program as of the date the law is effective until funds for the costs associated with the last eligible homeowner compensation claim are assigned by the State;
- On a quarterly basis, the State must report to HUD on the grant in the disaster recovery grant reporting system;
- The same CDBG disaster recovery financial standards and requirements apply to this grant as applied to the two preceding CDBG disaster recovery grants to the State;
- The same CDBG property disposition requirements apply to properties assisted or acquired with this grant; and
- HUD will apply the same actions to prevent fraud, waste, and abuse of funds related to this grant as it is applying to

the previous CDBG disaster recovery grants.

As noted, in general, CDBG waivers already granted to the State and alternative requirements already specified for CDBG disaster recovery grant funds provided under Public Law 109-148 and under Public Law 109-234 also apply to grant funds provided under Public Law 110-116. This eliminates unnecessary inconsistencies in administration of the three grants and, thus, reduces the opportunities for technical errors. The notices in which these prior waivers and alternative requirements appear are 71 FR 7666, published February 13, 2006 (all five states); 71 FR 34451 (for Louisiana), published June 14, 2006; 71 FR 63337, published October 30, 2006 (all five states); 72 FR 10014, published March 6, 2007 (for Louisiana); and 72 FR 48804, published August 24, 2007 (all five states). In addition to the requirements imposed by HUD, all other requirements of the Road Home homeowner compensation program shall apply to the use of these funds. Specifically, it is HUD's understanding that the State set a deadline of December 1, 2007, for those homeowners who applied by July 31, 2007, to schedule an appointment with the Road Home program to complete the application and begin the verification process. HUD expects the State to adhere to this deadline. The State may not extend this deadline without prior HUD approval.

The Road Home homeowner compensation program includes an elevation component, which is eligible under CDBG, but was intended by the program designers to be funded primarily through a Federal Emergency Management Agency (FEMA) program. Therefore, HUD expects the State of Louisiana to continue to work constructively with FEMA to access the available Hazard Mitigation Grant Program funding for elevation activities.

The provisions of this notice do not apply to funds provided to the states under the regular CDBG program.

Allocations

Public Law 110-116 (effective November 13, 2007) provides \$3 billion of supplemental appropriation for the State of Louisiana CDBG program solely for:

the purpose of covering costs associated with otherwise uncompensated but eligible claims that were filed on or before July 31, 2007, under the Road Home program administered by the State in accordance with plans approved by the Secretary.

As further provided for in Public Law 110-116, the funds may only be used to supplement and not supplant any other

State or federal resources committed to the Road Home homeowner compensation program. No funds shall be drawn from the U.S. Treasury beyond those necessary to fulfill this exclusive purpose. To ensure compliance with this limitation, the Department will make the grant under this Notice, but will restrict the use of the grant funds in the State's line of credit until the State has certified to HUD that all CDBG funds approved for the same purposes in the Action Plans for Disaster Recovery under each preceding CDBG disaster recovery grant (as of November 13, 2007, amounts budgeted from the grant under Public Law 109-148 equal \$4,035,090,868 and those under the Public Law 109-234 grant equal \$2,955,361,750), along with the \$372.5 million of additional state-appropriated funds pledged to the Road Home homeowner compensation program, have already been assigned by the State for eligible costs under that program. The State will demonstrate this assignment by documenting payment requests from its contractor for costs associated with Option 1 claims that have already closed or for costs associated with Option 2 or 3 claims that are scheduled for closing. The payment requests must document costs associated with homeowner compensation claims that are sufficient to exhaust funds budgeted for homeowner compensation in the Public Law 109-148 and Public Law 109-234 grants and the \$372.5 million in cash budgeted by the State. On receiving the signed certification from the State, HUD will permit drawdowns under this grant to commence. This assignment and certification process will allow HUD and the State to comply with the law without slowing the flow of funds to homeowners and without undue burden to the State program administrators. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds are not in compliance with this provision.

Prevention of Fraud, Abuse, and Duplication of Benefits

The previous supplemental appropriations statutes (Public Laws 109-148 and 109-234) also directed the Secretary to:

Establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading including duplication of benefits.

The grant under this Notice will be subject to the courses of action HUD is

already undertaking for the two previous grants to the State. To meet this directive, HUD is pursuing five courses of action. First, this Notice makes applicable specific reporting, written procedures, monitoring, and internal audit requirements for grantees. Second, to the extent its resources allow, HUD will institute risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds. Third, HUD will be extremely cautious in considering any waiver related to basic financial management requirements. HUD's standard, time-tested CDBG financial requirements will continue to apply. Fourth, HUD is collaborating with the HUD Office of Inspector General to plan and implement oversight of these funds. Fifth, HUD is applying \$6 million for immediate enhancement of the capabilities of the Disaster Recovery Grant Reporting system by building additional electronic controls to increase accountability while further decreasing the risk of fraud, waste, or abuse of funds.

Application for Allocation

The general requirements related to a state's application for its allocation are those delineated in a notice entitled, "Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees Under the Department of Defense Appropriations Act, 2006," published February 13, 2006, at 71 FR 7666. HUD invites the State of Louisiana to submit an application, including a Standard Form 424 and the appropriate CDBG disaster recovery certifications as listed in that Notice. Public Law 110-116 stipulates that this grant is governed by the State's Action Plans for the Road Home homeowner compensation program. Adding the additional program funding constitutes an amendment to the program covered by these plans, but because of the specificity of the law regarding the uses of funds, HUD has determined that the Action Plans taken together are drafted so that this funding increase, large as it is, does not meet the substantial amendment definition in the Notice cited above.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

1. *General requirements.* Except as described in this Notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are:

a. Those governing the funds appropriated under the Appropriations Act and already published in the **Federal Register**, including those in

notices 71 FR 7666, published February 13, 2006 (for all five states); 71 FR 34451 (for Louisiana), published June 14, 2006; 71 FR 63337, published October 30, 2006 (all five states); 72 FR 10014, published March 6, 2007 (for Louisiana); and 72 FR 48804, published August 24, 2007 (all five states); and

b. Those governing the CDBG program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570.

c. In addition to the requirements imposed by HUD, all other requirements of the Road Home homeowner compensation program shall apply to the use of these funds. Specifically, it is HUD's understanding that the State set a deadline of December 1, 2007, for those homeowners who applied by July 31, 2007, to schedule an appointment with the Road Home program to complete the application and begin the verification process. HUD expects the State to adhere to this deadline. The State may not extend this deadline without prior HUD approval.

2. Use of grant funds.

a. Public Law 110-116 requires that activities funded under this Notice be used solely for the purpose of covering costs associated with otherwise uncompensated but eligible claims that were filed on or before July 31, 2007 under the Road Home homeowner compensation program administered by the State in accordance with its CDBG Action Plans. To the extent that the requirements of Public Law 110-116 conflict with the requirements listed in paragraph 1 of this Notice, the requirements of Public Law 110-116 will apply.

b. Further, grant funds must serve only to supplement and not supplant any other state or federal resources committed to the Road Home program. Before the Department will permit the State to draw down grant funds, the State must certify to HUD, in writing, that all CDBG funds approved for the same purposes in the Action Plans under the grants made under Public Laws 109-148 and 109-234 and the \$372.5 million in additional state funds pledged to the Road Home homeowner compensation program already have been assigned or expended by the State for costs associated with the homeowner compensation program. The State will demonstrate the assignment of funds by documenting payment requests from the contractor for costs associated with Option 1 claims that have already closed or for costs associated with Option 2 or 3 claims that are scheduled for closing. The payment requests must document total costs associated with homeowner compensation claims that are sufficient to exhaust funds budgeted

for homeowner compensation in the Public Law 109-148 and Public Law 109-234 grants and the \$372.5 million in cash budgeted by the State. On receiving the signed certification from the State, HUD will permit the State to begin making draw downs under this grant.

c. The amount of CDBG disaster recovery funds budgeted for the homeowner compensation program must remain at or above the current Actions Plan allocations for the homeowner compensation program as of the date the law is effective until the costs associated with the last eligible homeowner compensation claim are assigned.

3. *De-obligation of unused grant funds.* If grant funds under Public Law 110-116 remain after all costs associated with Road Home homeowner compensation claims that were filed on or before July 31, 2007, have been paid,

those remaining funds shall be de-obligated by HUD.

4. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) under Office of Management and Budget (OMB) control number 2506-0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information unless the collection displays a valid control number.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

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). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Dated: December 5, 2007.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E7-24002 Filed 12-10-07; 8:45 am]

BILLING CODE 4210-67-P

Naval Base
Point Loma CA
Landholding Agency: Navy
Property Number: 77200830012
Status: Unutilized
Reasons: Secured Area

New York
Bldg. 913T
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200830001
Status: Unutilized
Reasons: Extensive deterioration; Secured
Area; Within 2000 ft. of flammable or
explosive material

Ohio
National Guard Facility
1512 Oak Harbor Rd.
Fremont OH 43420
Landholding Agency: GSA
Property Number: 54200830006
Status: Excess
GSA Number: 1-D-OH-834
Reasons: Within 2000 ft. of flammable or
explosive material

Unsuitable Properties

Building

Utah
Bldg. 00143
Tooele Army Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 21200830002
Status: Unutilized
Reasons: Extensive deterioration

Virginia
Bldgs. NH-18, NH-21
Naval Support Activity
Norfolk VA 23551
Landholding Agency: Navy
Property Number: 77200830014
Status: Excess
Reasons: Extensive deterioration; Secured
Area

Bldg. 100
Naval Support Activity
Lafayette River Annex
Norfolk VA 23551
Landholding Agency: Navy
Property Number: 77200830015
Status: Excess
Reasons: Extensive deterioration; Secured
Area

Unsuitable Properties

Land

North Carolina
0.23 acres
Marine Corps Base
Camp Lejeune NC
Landholding Agency: Navy
Property Number: 77200830013
Status: Unutilized
Reasons: Secured Area
[FR Doc. E8-18181 Filed 8-7-08; 8:45 am]

BILLING CODE 4210-67-P

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-5224-N-01]

**Reconsideration of Waivers Granted to
and Alternative Requirements for
Community Development Block Grant
Disaster Recovery Grantees Under
Public Laws 109-148 and 109-234**

AGENCY: Office of the Secretary, HUD.
ACTION: Notice.

SUMMARY: This Notice reconsiders and generally affirms the waivers made under the three “common” Notices governing grant funds for Community Development Block Grant (CDBG) disaster recovery grants for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, and Wilma in the Gulf of Mexico in 2005. These prior notices were published in the **Federal Register** on February 13, 2006, October 30, 2006, and August 24, 2007. The Notice published today addresses the purpose and use of these funds, while highlighting unique components of the three notices and noting any changes made by HUD as the result of the required reconsideration of the waivers. For the most part, HUD is repeating or restating the original explanatory text so that grantees and program administrators may continue to have the explanation of a changed requirement and the requirement itself in a single document.

DATES: *Effective Date:* August 8, 2008.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. Fax inquiries may be sent to Ms. Kome at 202-401-2044. (Except for the 800 number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109-148, approved December 30, 2005) (Appropriations Act) appropriated \$11.5 billion, and Chapter 9 of Title II of the

Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109-234, approved June 15, 2006), appropriated \$5.2 billion for a combined total of \$16.7 billion in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. These 2006 Acts (collectively “the supplemental Acts”) authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or by the five eligible states’ use of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by one of the five states and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The difference between the waiver authorizations in the supplemental Acts is that Public Law 109-148 directs that the Secretary “shall” make the waivers in response to a state’s request and a consistency finding, while Public Law 109-234 states that the Secretary “may” make such waivers.

This Notice reconsiders and generally affirms the waivers made under the three “common” Notices governing grant funds for CDBG disaster recovery grants for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, and Wilma in the Gulf of Mexico in 2005. These prior notices were published in the **Federal Register** on February 13, 2006 (71 FR 7666), October 30, 2006 (71 FR 63337), and August 24, 2007 (72 FR 48804). The reconsideration of the February 13, 2006, Notice is required at this time. HUD is reconsidering the October 30, 2006, and August 24, 2007, Notices earlier than required by statute because publication of all common waivers and alternative requirements in a single Notice will produce a more sensible administrative and regulatory result.

The following waivers and alternative requirements for funds provided under either 2006 Act are in response to requests from all five states receiving CDBG disaster recovery grants under those Acts. In accordance with the states’ earlier requests for administrative consistency to the extent feasible (noted in 71 FR 63337, published October 30, 2006), each waiver or alternative requirement will apply to assistance

provided under either Act wherever appropriate and possible.

After reconsideration, the Secretary affirms that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), as amended 42 U.S.C. 3535(q), regulatory waivers must be justified and published in the **Federal Register**.

Further, the supplemental Acts direct the Secretary to publish in the **Federal Register** any waiver (or reconsideration thereof) of any statute or regulation that the Secretary administers pursuant to Title I of the Housing and Community Development Act of 1974, no later than 5 days before the effective date of such waiver.

Except as described in this and other notices applicable to these grants, statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the supplemental Acts, HUD is reconsidering every published waiver 2 years from its date of publication.

Allocations

The supplemental Acts provide a combined total of \$16.7 billion for the CDBG program for:

Necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, or Wilma in the Gulf of Mexico in 2005.

The \$11.5 billion allocation appropriated under Public Law 109-148 is also discussed and expanded upon in the conference report (H.R. Rep. No. 109-359). The conference agreement included \$11.5 billion for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure, and mitigation in communities in any declared disaster area in Louisiana, Mississippi, Alabama, Florida, and Texas related to Hurricanes Katrina, Rita, or Wilma. The conference agreement emphasizes the requirement that the states with the most impacted and distressed areas in connection with the Gulf of Mexico hurricanes receive priority consideration in the allocation of funds by HUD.

Public Law 109-148 further states: That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each state. And that no state shall receive more than 54 percent of the amount provided under this heading.

Public Law 109-234 also states:

That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each state. And that no state shall receive more than \$4.2 billion of the amount provided under this heading.

As provided for in Public Law 109-148 and Public Law 109-234, the funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency (FEMA) or the Army Corps of Engineers. Further, none of the funds made available under Public Law 109-234 may be used by a state or locality as a matching requirement, share, or contribution for any other federal program.

Also as required by Public Law 109-234, not less than \$1.0 billion of the \$5.2 billion appropriation (which computes to 19.3311 percent of any state's allocation, excluding \$27.0 million in administrative set-asides) shall be used for repair, rehabilitation, and reconstruction (including demolition, site clearance, and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas. Therefore, HUD requires that not less than 19.3311 percent of each state's grant under Public Law 109-234 be used for these activities.

The allocations from Public Law 109-148 are as follows:

TABLE 1—FEBRUARY 13, 2006, DISASTER RECOVERY ALLOCATION

State	Disaster	Allocation amount (\$)
Alabama	Hurricane Katrina (FEMA-1605-DR)	74,388,000
Florida	Hurricane Katrina (FEMA-1602-DR), Hurricane Wilma (FEMA-1609-DR)	82,904,000
Louisiana	Hurricane Katrina (FEMA-1603-DR), Hurricane Rita (FEMA-1607-DR)	6,210,000,000
Mississippi	Hurricane Katrina (FEMA-1604-DR)	5,058,185,000
Texas	Hurricane Rita (FEMA-1606-DR)	74,523,000

The allocations from the supplemental appropriation, as

provided for in Public Law 109-234, are as follows:

TABLE 2—OCTOBER 30, 2006, DISASTER RECOVERY SUPPLEMENTAL ALLOCATION

State	Disaster	Allocation amount (\$)	Minimum amount for affordable rental housing (\$)
Alabama	Hurricane Katrina (FEMA-1605-DR)	21,225,574	4,103,146
Florida	Hurricane Katrina (FEMA-1602-DR), Hurricane Wilma (FEMA-1609-DR)	100,066,518	19,344,001
Louisiana	Hurricane Katrina (FEMA-1603-DR), Hurricane Rita (FEMA-1607-DR)	4,200,000,000	811,907,984
Mississippi	Hurricane Katrina (FEMA-1604-DR)	423,036,059	81,777,703
Texas	Hurricane Rita (FEMA-1606-DR)	428,671,849	82,867,166

The amounts in Table 2 include the minimum amount of the allocations each state is required to use, pursuant to Public Law 109-234, for repair, rehabilitation, and reconstruction (including demolition, site clearance, and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas.

In the case of Louisiana, the Department reviewed data chronicling the massive impact of the disasters on affordable rental housing, including public housing, in the areas of the state most affected by the disasters. In light of the state's unprecedented housing needs resulting from the disasters, the Secretary gave priority to affordable rental housing through an alternative requirement on the grant under Public Law 109-234. Under a prior Notice, HUD required that before the state of Louisiana expended any funds to meet the minimum requirement for affordable rental housing (see table above), the Governor of Louisiana had to demonstrate to the Secretary's satisfaction that the state will provide funds or has identified dedicated resources sufficient to meet the key disaster recovery needs for repair, rehabilitation, and reconstruction of affordable rental housing stock, including public housing, in the most impacted areas of the state. This notice continues the requirement to ensure that any fund reprogramming continues to prioritize such housing.

Pursuant to this Notice, HUD continues to invite each of the five states to submit an Action Plan for Disaster Recovery in accordance with prior Notices.

The supplemental Acts require that funds be used only for disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and

distressed areas related to the consequences of hurricanes in the Gulf of Mexico in 2005. The supplemental Acts direct that each grantee describe in its Action Plan for Disaster Recovery how the use of the grant funds gives priority to infrastructure development and the rehabilitation and reconstruction of the affordable rental housing stock, including public and other HUD-assisted housing. HUD monitors compliance with this direction and may be compelled to disallow expenditures if it finds that uses of funds are not disaster-related, or that funds allocated duplicate other benefits. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery and any amendments or if they have any questions regarding meeting these requirements.

For the state of Louisiana, which suffered major impacts from two of the hurricanes, HUD estimated that more than 85 percent of the major and severe damage due to those storms was in the New Orleans-Metairie-Bogalusa Metropolitan Area (Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany parishes). HUD, therefore, expects the state to target a substantial majority of its disaster recovery funds under Public Law 109-234 toward the disaster recovery needs in the New Orleans-Metairie-Bogalusa Metropolitan Area, and included an alternative requirement to that effect.

Prevention of Fraud, Abuse, and Duplication of Benefits

The supplemental Acts also directed the Secretary to: Establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the

Committees on Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading, including duplication of benefits.

To meet this directive, HUD has taken five courses of action. First, HUD established by Notice specific reporting, written procedures, monitoring, and internal audit requirements for grantees. Second, to the extent that its resources allowed, HUD instituted risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds. Third, HUD has been extremely cautious in considering any waiver related to basic financial management requirements. The standard, time-tested CDBG financial requirements will continue to apply to future waiver requests. Fourth, HUD collaborated with the HUD Office of Inspector General to plan and implement oversight of these funds. Fifth, HUD followed the direction of the conference report for Public Law 109-494 and applied \$6 million of funds appropriated for the Working Capital Fund for "immediate enhancement of the capabilities of the Disaster Recovery Grant Reporting system by building additional electronic controls that are intended to increase accountability while further decreasing the risk of fraud, waste, or abuse."

Waiver Justification

In general, waivers already granted to the states of Alabama, Florida, Louisiana, Mississippi, and Texas and alternative requirements already specified for CDBG disaster recovery grant funds provided under the supplemental Acts apply unless determined to be excepted or limited under this Notice. The notices in which these prior waivers and alternative requirements appear are shown in the table below.

Notice	Date	Applicability
71 FR 7666, FR-5051-N-01	02/13/2006	Common Allocation/Application for \$11.5 billion.
71 FR 34448, FR-5051-N-02	06/14/2006	State of Alabama.
71 FR 34451, FR-5051-N-04	06/14/2006	State of Louisiana.
71 FR 34457, FR-5051-N-03	06/14/2006	State of Mississippi.
71 FR 43622, FR-5051-N-05	08/01/2006	State of Texas.
71 FR 51678, FR-5051-N-06	08/30/2006	State of Florida.
71 FR 62372, FR 5051-N-07	10/24/2006	State of Mississippi.
71 FR 63337, FR-5089-N-01	10/30/2006	Common Allocation/Application, and Applicability of Prior Waivers for \$5.2 billion.
72 FR 10014, FR-5089-N-03	03/06/2007	State of Louisiana.
72 FR 10020, FR-5089-N-04	03/06/2007	State of Mississippi.
72 FR 48804, FR-5089-N-05	08/24/2007	Common waiver of Section 414 of the Stafford Act and alternative requirements.
72 FR 48808, FR-5051-N-08	08/24/2007	State of Mississippi.
72 FR 61788, FR-5051-N-09	10/31/2007	State of Mississippi.
72 FR 70472, FR-5183-N-01	12/11/2007	State of Louisiana for \$3 billion.

The provisions of this Notice do not apply to funds provided under the

regular CDBG program or other HUD or federally funded programs. The

provisions provide additional flexibility in program design and implementation

and implement statutory requirements unique to these appropriations.

Section 414 of the Stafford Act

The states requested and were granted a waiver of Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, for all their disaster recovery programs. Section 414 requires special measures that are designed to assist the efforts of the five states in expediting the rendering of aid and emergency services and in the reconstruction and rehabilitation of devastated areas, as necessary. In addition, the Secretary provided alternative requirements more consistent with the purpose of the supplemental Acts, which have assisted and supported disaster recovery in the areas most impacted by the effects of the three 2005 Gulf hurricanes. Hurricanes Katrina, Rita, and Wilma resulted in unprecedented destruction in the Gulf states, which will continue to require reconstruction for many years (and possibly decades) to come. The Department surveyed other federal agencies' administration of Section 414 and found varying interpretations for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. The five states have also launched programs, such as rental rehabilitation, that could be affected by this statute if a clear direction to restore affordable rental housing to the devastated areas is not realized. Therefore, to avoid possible risk to the recovery effort by further delay in providing the states with a definitive answer, the Department issued a partial statutory waiver and specified alternative requirements. HUD is continuing this statutory waiver by this Notice because affordable housing programs are under way in all five of the states that rely on this waiver and alternative requirements. For programs or projects covered by this waiver ("covered programs or projects") that are initiated within 3 years after the applicable disaster, an affected state must select one of the two alternative requirements specified in 72 FR 48804 and restated in this Notice.

Alternative One

The state may provide relocation assistance to a former residential occupant whose former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance

must be offered in a manner consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA) and its implementing regulations, except as modified by applicable waivers and alternative requirements.

Alternative Two

If the state determines that the first alternative would substantially conflict with meeting the disaster recovery purposes of the supplemental Acts, the state may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster. Such determinations must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

1. A description of the class(es) of persons eligible for assistance, including all persons displaced from their residences by particular enumerated, or all, effects of the disaster, and including all persons still receiving temporary housing assistance from FEMA for the covered disaster(s);
2. A description of the types and amount of financial assistance to be offered, if any;
3. A description of other services to be made available, including, at minimum, outreach efforts to eligible persons and housing counseling providing information about available housing resources. Outreach efforts and housing counseling information should be provided in languages other than English to persons with limited English proficiency; and
4. Contact information and a description of any applicable application process, including any deadlines.

5. If the program or project involves rental housing, the re-housing plan must also include the following:

- (i) Placement services for former and prospective tenants;
- (ii) A public registry of available rental units assisted with CDBG disaster recovery and/or other funds; and
- (iii) A description of application materials, award letters, and operating procedures requiring property owners to make reasonable attempts to contact their former residential tenants and offer them a unit upon completion if they meet the program's eligibility requirements.

Justification for Waiver

This section of the Notice describes the basis for granting the section 414 waivers represented by the states in their requests. The principal reasons are highlighted here:

- Hurricanes Katrina, Rita, and Wilma caused unprecedented destruction in the Gulf Coast region. The magnitude of destruction resulted in massive displacements and decimated the region's affordable housing stock. Continued ambiguity on Section 414's applicability may cause substantial delays in long-term recovery along the Gulf Coast, particularly in Louisiana, Mississippi, and Texas;
- URA assistance may duplicate insurance proceeds and federal, state, or local housing assistance that has already been disbursed; and
- The opportunity to simplify the administration of disaster recovery projects or programs initiated years following the disaster.

Persons in physical occupancy who are displaced by a HUD-assisted disaster recovery project will continue to be eligible for URA assistance. Persons displaced by the effects of the disaster may continue to apply for assistance under the states' approved disaster recovery programs, which are designed to bring affordable housing to the affected areas. This waiver does not address programs or projects receiving other HUD funding, or funding from other federal sources.

A state may already be performing some elements of a re-housing plan, such as providing a public rental registry or undertaking outreach and placement services to those former residents still receiving FEMA housing assistance. Description in the re-housing plan of how those existing efforts will be available for covered programs or projects may be used in satisfying the requirements of this Notice. These waivers and alternative requirements streamline the pre-grant process and set the guidelines for a state's application for allocations.

Application for Allocations Under Public Laws 109-148 and 109-234

Overall benefit to low- and moderate-income persons. Pursuant to explicit authority in the supplemental Acts, HUD granted an overall benefit waiver that allows for up to 50 percent of the grants to assist activities under the urgent need or under the prevention or elimination of slums and blight national objectives, rather than the 30 percent allowed in the annual state CDBG program. The primary objective of Title I of the Housing and Community Development Act of 1974 and of the funding program of each grantee is "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.” The statute goes on to set the standard of performance for this primary objective for the annual CDBG program at 70 percent of the aggregate of the funds used for support of activities producing benefit to low- and moderate-income persons. Because extensive damage to community development and housing affected those with varying incomes, and the hardest-hit grantees have designed their programs to take advantage of this waiver, HUD is retaining the waiver of the 70 percent overall benefit requirement and leaving the 50 percent requirement, in order to give grantees continued flexibility to carry out recovery activities within the confines of the CDBG program national objectives. HUD may provide additional waivers of this requirement only if it makes a finding of compelling need. The requirement that each activity meet one of the three national objectives is not waived. HUD did reconsider, but is not altering this waiver. The states have already budgeted the vast majority of the funds under the terms of the initial waiver. Changing the waiver and alternative requirement now might be counter-productive to the recovery efforts across the Gulf Coast and, most particularly, in Louisiana. The state of Mississippi has been granted additional overall benefit waivers and alternative requirements as published in Notices other than the three under reconsideration in the current Notice. The first of Mississippi’s other Notices is scheduled for reconsideration in June 2008.

Expanded distribution and direct action. The waivers and alternative requirements allowing distribution of funds by a state to entitlement communities and Indian tribes, and to allow a state to carry out activities directly rather than distribute all funds to units of local government, are consistent with waivers granted for previous similar disaster recovery cases. HUD believes that, in recommending the Lower Manhattan Development Corporation (LMDC) as a model and in increasing the administrative cap, Congress is signaling its intent that the states under this appropriation also be able to carry out activities directly. Therefore, HUD waived and continues its waiver of certain program requirements to support direct implementation of activities by the states. HUD stated in prior Notices and restates in this Notice the necessary complementary waivers and alternative requirements related to subrecipients to ensure proper management and

disposition of funds during the grant execution and at closeout.

Consistency with the consolidated plan. HUD waived the requirement for consistency with the consolidated plan priorities because the effects of a major disaster usually alter a grantee’s priorities for meeting housing, employment, and infrastructure needs. To emphasize that uses of grant funds must be consistent with the overall purposes of the Housing and Community Development Act of 1974, HUD requires the scope of the waiver to be consistent with the consolidated plan; the waiver applies only until the grantee first updates its consolidated plan priorities following the disaster. Because of limited data availability or staff resources, not all grantees have completely updated their consolidated plans. Therefore, HUD is continuing this waiver.

Action Plan for Disaster Recovery. HUD waived the CDBG action plan requirements and substituted an Action Plan for Disaster Recovery. HUD is continuing this waiver and restates the Action Plan for Disaster Recovery requirements under this Notice. This waiver allowed for rapid implementation of disaster recovery grant programs and ensured conformance with provisions of the supplemental Acts. Where possible, the Action Plan for Disaster Recovery, including certifications, does not repeat common action plan elements that the grantee already committed to carry out as part of its annual CDBG submission. Although a state as the grantee may designate an entity or entities to administer the funds, the state is responsible for compliance with federal requirements. During the course of these grants, HUD is monitoring the states’ uses of funds and their actions for consistency with the Action Plan. A state may submit an initial, partial Action Plan and amend it one or more times subsequently until the Action Plan describes uses for the combined total grant amount. A state may also amend activities in its Action Plan.

The following new elements to a state’s Action Plan for Disaster Recovery apply only to the supplemental funds allocated under Public Law 109–234:

These elements include a description of how the state gives priority to infrastructure development and rehabilitation and how the state gives priority to the rehabilitation and reconstruction of the affordable rental housing stock, including public and other HUD-assisted housing. The state must explain how its choices for the use of funds will result in the state meeting the requirement to use not less than

19.3311 percent of its allocation under Public Law 109–234 for repair, rehabilitation, and reconstruction (including demolition, site clearance, and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas. The explanation should include how the state has considered the unique challenges that individuals with disabilities face in finding accessible and affordable housing.

Citizen participation. The citizen participation waiver and alternative requirements permit a more streamlined public process, but one that still provides for reasonable public notice, appraisal, examination, and comment on the CDBG disaster recovery grant fund activities. The waiver removes the requirement at both the grantee and state grant recipient levels for public hearings or meetings as the method for disseminating information or collecting citizen comments. Instead, grantees are encouraged to employ innovative methods to communicate with citizens and solicit their views on proposed uses of disaster recovery funds, and to indicate in the Action Plan how the grantee has addressed these views. After reconsidering this waiver, HUD decided to leave it in place because the need for speedy decision-making is still necessary in some of the states. However, HUD is providing guidance that, as time since the hurricanes elapses, HUD expects grantees to provide for increased time for public comments and for provision of public hearings related to amendments to the Action Plan whenever hearings are administratively feasible. HUD notes that most grantees are making good use of the Internet to provide disaster recovery information on plan amendments and resources for their citizens, and HUD expects this practice will continue.

Administration limitation. State program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant to be used for the state’s administrative costs. The provisions at 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 state administration expenditures and require a dollar-for-dollar match of state funds for administrative costs exceeding \$100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow the state to exceed the overall planning, management, and administrative cap of 20 percent.

Use of Subrecipients

The state CDBG program rule does not make specific provision for the treatment of the entities called "subrecipients" in the CDBG entitlement program. The waiver allowing a state to carry out activities directly creates a situation in which the state may use subrecipients to carry out activities in a manner similar to entitlement communities. HUD and its Office of Inspector General have long identified the use of subrecipients as a practice that increases the risk of abuse of funds. HUD's experience is that this risk can be successfully managed by adhering to the CDBG entitlement requirements and related guidance. Therefore, HUD requires that a state taking advantage of the waiver allowing it to carry out activities directly must follow the alternative requirements that are drawn from the CDBG entitlement rule and specified in this Notice, when using subrecipients.

Reporting

HUD waives the annual reporting requirement because Congress requires quarterly reports from the grantees and from HUD on various aspects of the uses of funds and of the activities funded with these grants. Many of the data elements the grantees will report to Congress quarterly are the same as those that HUD uses to exercise oversight for compliance with the requirements of this Notice and for prevention of fraud, abuse of funds, and duplication of benefits. To collect these data elements and to meet its reporting requirements, HUD requires each grantee to report to HUD quarterly using the online Disaster Recovery Grant Reporting system. HUD uses grantee reports to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; to reconcile budgets, obligations, fund draws, and expenditures; to calculate applicable administrative and public service limitations and the overall percent of benefit to low- and moderate-income persons; and to establish a basis for risk analysis in determining a monitoring plan.

Originally, HUD's guidance was that after HUD reviews each report and accepts a report, the grantee must post the report on an Internet site with public access for its citizens. On reconsideration, HUD is requiring grantees to post each report as it is submitted. After HUD reviews the report, the grantee may also post the reviewed version, if HUD makes any changes. If a grantee chooses, it may use its report, together with a statement

regarding any sole source procurements, as its required quarterly submission to the Committees on Appropriations. Each quarter, HUD will submit to the Committees a summary description of its report reviews, of other HUD monitoring and technical assistance activities undertaken during the quarter, and of any significant conclusions related to fraud, abuse of funds, or duplication of benefits.

Certifications

HUD waived the standard certifications and substituted alternative certifications. The alternative certifications are tailored to CDBG disaster recovery grants and remove certifications and references that are redundant or appropriate to the annual CDBG formula program.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

The following discussion is comprised of two parts: a common section that applies to **Federal Register** notices 71 FR 7666, 71 FR 63337, and 72 FR 48804, and a unique section that highlights components of these three notices that are different.

Common Section

1. *General note.* Prerequisites to a grantee's receipt of CDBG disaster recovery assistance include adoption of a citizen participation plan; publication of its proposed Action Plan for Disaster Recovery; public notice and comment; and submission to HUD of an Action Plan for Disaster Recovery, including certifications. Except as described in this Notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are:

a. The state-specific Notices governing the funds appropriated under Public Law 109-148 and Public Law 109-234 (the supplemental Acts) and already published in the **Federal Register**;

b. Those governing the CDBG program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570.

2. *Overall benefit waiver and alternative requirement.* The requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), and 24 CFR 570.484 that at least 70 percent of funds are for activities that benefit low- and moderate-income persons are waived to stipulate that at least 50 percent of disaster recovery grant funds from each grant must assist activities that principally benefit low- and moderate-income persons.

3. *Section 414 of the Stafford Act waiver and alternative requirements.*

a. Section 414 of the Stafford Act, 42 U.S.C. 5181 (including its implementing

regulation at 49 CFR 24.403(d)), is waived to the extent that it would apply to CDBG disaster recovery-funded programs or projects initiated at least one year after the incident-date of Hurricane Katrina, Rita, or Wilma (as applicable) by the states of Alabama, Florida, Louisiana, Mississippi, and Texas under an approved Action Plan for Disaster Recovery for its grants under Public Law 109-148 or Public Law 109-234; provided that such program or project was not planned, approved, or otherwise under way prior to the disaster.

b. For all programs or projects covered by this waiver ("covered programs or projects") that are initiated at least one year after but within no more than 3 years after the applicable disaster, the states of Alabama, Florida, Louisiana, Mississippi, and Texas must comply with one of the following two alternative requirements (for programs or projects initiated after the 3-year period, the alternative requirements would not apply; only the waiver would be applicable):

1. Relocation Assistance. The state may provide relocation assistance to a former residential occupant whose former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance must be offered in a manner consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and its implementing regulations, except as modified by prior waivers and alternative requirements granted to the states.

2. Re-housing Plan. If the state determines that the first alternative would substantially conflict with meeting the disaster recovery purposes of the supplemental Acts, the grantee may establish a re-housing plan for a covered program or project initiated at least one year after, but within no more than 3 years after, the disaster. Such a determination must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

i. A description of the class(es) of persons eligible for assistance, including all residents displaced from their residences by either certain enumerated or all effects of the covered disaster, and including all disaster-displaced residents still receiving temporary housing assistance from FEMA for the covered disasters;

ii. A description of the types and amount of financial assistance to be provided, if any;

iii. A description of other services to be made available, including, at a minimum, outreach efforts to eligible persons and housing counseling that provide information about available housing resources;

iv. Contact information for additional program information;

v. A description of any applicable application process, including any deadlines; and

vi. If the program or project covered by this waiver involves rental housing, the grantee shall establish procedures for the following:

A. Application materials, award letters, and operating procedures that require property owners to make reasonable attempts to contact their former tenants and to offer a unit, upon completion, to those tenants meeting the program's eligibility requirements;

B. Placement services for former and prospective tenants; and

C. A public registry of available rental units assisted with CDBG disaster recovery and/or other funds.

c. **Eligible Project Costs.** The cost of relocation assistance and the reoccupancy plan are eligible project costs in the same manner and to the same extent as other project costs authorized under the supplemental Acts. For covered programs or projects involving affordable rental housing, the relocation and planning costs required by this Notice may be paid from funds reserved for the affordable rental housing stock in the impacted areas under Public Law 109-234.

4. **Direct grant administration by states and means of carrying out eligible activities.** Requirements at 42 U.S.C. 5306 are waived to the extent necessary to allow the state to use its disaster recovery grant allocation directly to carry out state-administered activities eligible under this Notice. Activities eligible under this Notice may be undertaken, subject to state law, by the recipient through its employees or through procurement contracts, through loans or grants under agreements with subrecipients, or by one or more entities that are designated by the chief executive officer of the state. Activities made eligible under section 105(a)(15) of the Housing and Community Development Act of 1974, as amended, may be undertaken only by entities specified in that section, regardless of whether the assistance is provided to such an entity from the state or from a unit of general local government.

5. **Consolidated Plan waiver.** Requirements at 42 U.S.C. 12706 and 24

CFR 91.325(a)(6), that housing activities undertaken with CDBG funds be consistent with the strategic plan, are waived. Further, the requirement at 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. These waivers apply only until the time that the grantee first updates its consolidated plan priorities following the hurricane.

6. **Citizen participation waiver and alternative requirement.** Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, and 24 CFR 91.115(b), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at either the state or local government level, but do require providing a reasonable opportunity for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for this grant are:

a. Before the grantee adopts the action plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment (including the information required in this Notice for an Action Plan for Disaster Recovery). The manner of publication (including prominent posting on the state, local, or other relevant Web site) must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. Subsequent to publication, the grantee must provide a reasonable time period and method(s) (including electronic submission) for receiving comments on the plan or on any substantial amendment to it. The grantee's plans to minimize displacement of persons or entities and to assist any persons or entities displaced must be published with the action plan. HUD expects the grantee to hold a public hearing on a proposed plan amendment unless doing so would hinder the provision of expedient disaster recovery.

b. In the action plan, each grantee will specify its criteria for determining what changes in the grantee's activities constitute a substantial amendment to the plan. At a minimum, adding or deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change. The grantee may modify or substantially amend the action plan if it follows the same procedures required in this Notice for the preparation and submission of an Action Plan for Disaster Recovery. The

grantee must notify HUD, but is not required to notify the public, when it makes any plan amendment that is not substantial.

c. The grantee must consider all comments received on the action plan or any substantial amendment and submit to HUD a summary of those comments and the grantee's response with the action plan or substantial amendment.

d. The grantee must make the action plan, any substantial amendments, and all performance reports available to the public. HUD recommends posting them on the Internet. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons. During the term of this 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 this grant.

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

7. **Modify requirement for consultation with local governments.** Currently, the statute and regulations require consultation with affected units of local government in the non-entitlement area of the state regarding the state's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that the state consult with all disaster-affected units of general local government, including any CDBG entitlement communities, in determining the use of funds.

8. **Action Plan waiver and alternative requirement.** The requirements at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR 1003.604, and 24 CFR 91.320 are waived for these disaster recovery grants. Each state must submit to HUD an Action Plan for Disaster Recovery that describes:

a. The effects of the covered disaster, especially in the most impacted areas and populations, and the greatest recovery needs resulting from the covered disaster that have not been addressed by insurance proceeds, other federal assistance, or any other funding source;

b. The grantee's overall plan for disaster recovery, including:

1. How the state will promote sound short- and long-term recovery planning at the state and local levels, especially land use decisions that reflect

responsible flood plain management, removal of regulatory barriers to reconstruction, and prior coordination with planning requirements of other state and federal programs and entities;

2. How the state will encourage construction methods that emphasize high quality, durability, energy efficiency, and mold resistance, including how the state will promote enactment and enforcement of modern building codes and mitigation of flood risk, where appropriate;

3. How the state will provide or encourage provision of adequate, flood-resistant housing for all income groups that lived in the disaster-impacted areas prior to the incident date(s) of the applicable disaster(s), including a description of the activities it plans to undertake to address emergency shelter and transitional housing needs of homeless individuals and families (including subpopulations), to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, to help homeless persons make the transition to permanent housing and independent living, and to address the special needs of persons who are not homeless-identified, in accordance with 24 CFR 91.315(d);

c. Monitoring standards and procedures that are sufficient to ensure that program requirements, including non-duplication of benefits, are met and that provide for continual quality assurance, investigation, and internal audit functions, with responsible staff reporting independently to the Governor of the state or, at a minimum, to the chief officer of the governing body of any designated administering entity;

d. A description of the steps the state will take to avoid or mitigate occurrences of fraud, abuse, and mismanagement, especially with respect to accounting, procurement, and accountability, with a description of how the state will provide for increasing the capacity for implementation and compliance of local governments, subrecipients, subgrantees, contractors, and any other entity responsible for administering activities under this grant; and

e. The state's method of distribution. The method of distribution shall include descriptions of the method of allocating funds to units of local government and of specific projects the state will carry out directly, as applicable. The descriptions will include:

1. When funds are to be allocated to units of local government; and all criteria used to select applications from

local governments for funding, including the relative importance of each criterion, and including a description of how the disaster recovery grant resources will be allocated among all funding categories, plus the threshold factors and grant size limits that are to be applied; and

2. In cases where the state will carry out activities directly, the projected uses for the CDBG disaster recovery funds broken down by responsible entity, activity, and geographic area;

3. How the method of distribution or use of funds described in accordance with the above subparagraphs will result in eligible uses of grant funds related to long-term recovery from specific effects of the disaster(s) or restoration of infrastructure; and

4. Sufficient information so that citizens, units of general local government, and other eligible subgrantees or subrecipients will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the state.

f. Required certifications (see the applicable Certifications section of this Notice); and

g. A completed and executed federal form SF-424.

9. *Allow reimbursement for pre-agreement costs.* The provisions of 24 CFR 570.489(b) are applied to permit a grantee to reimburse itself for otherwise allowable costs incurred on or after the incident date of the covered disaster.

10. *Clarifying note on the process for environmental release of funds when a state carries out activities directly.* Usually, a state distributes CDBG funds to units of local government 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 instead of distributing all funds to other governments. According to the environmental regulations at 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.

11. *Duplication of benefits.* In general, 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which such person/business/entity has received financial assistance under any other program or from insurance or any other source. The appropriations acts stipulate that funds may not be used for

activities reimbursable by, or for which funds have been made available by, the Federal Emergency Management Agency or by the Army Corps of Engineers.

12. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties.*

a. Section 5302(a)(7) of title 42, U.S.C. (definition of "non-entitlement area"), and provisions of 24 CFR part 570 that would prohibit a state from distributing CDBG funds to units of general local government in entitlement communities and to Indian tribes, are waived, including 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in entitlement areas and to state or federally recognized Indian tribes. The state is required instead to distribute funds to the most adversely affected and impacted areas related to the consequences of the covered disaster(s) without regard to a local government or Indian tribe status under any other CDBG program.

b. Additionally, because a state grantee under this appropriation may carry out activities directly, HUD is applying the regulations at 24 CFR 570.480(c) with respect to the basis under which HUD determines whether the state has failed to carry out its certifications; the basis shall be that the state has failed to carry out its certifications in compliance with applicable program requirements. Also, HUD is waiving 24 CFR 570.494, regarding timely distribution of funds. However, HUD expects each state grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner.

13. *Note that use of grant funds must relate to the covered disaster(s).* The supplemental Acts impose fundability criteria in addition to the annual CDBG requirement that each activity must be eligible under 42 U.S.C. 5305(a) or this Notice and meet a CDBG national objective under the penultimate paragraph of 42 U.S.C. 5304(b)(3). Public Laws 109-148 and 109-234 require that each activity assisted must be related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, and Wilma in communities included in Presidential disaster declarations.

14. *Note on the change to the administration limitation.* Up to 5 percent of the grant amount may be used for the state's administrative costs.

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 state administration expenditures and require a dollar-for-dollar match of state funds for administrative costs exceeding \$100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow a state to exceed the overall planning, management, and administrative cap of 20 percent.

Reporting

15. *Waiver of performance report and alternative requirement.* The requirements for submission of a Performance Evaluation Report (PER) pursuant to 42 U.S.C. 12708 and 24 CFR 91.520 are waived. The alternative requirement is that:

a. Each grantee must submit its Action Plan for Disaster Recovery, including performance measures, into HUD's Web-based Disaster Recovery Grant Reporting (DRGR) system. (The signed certifications and the form SF-424 must be submitted in hard copy.) As additional detail about uses of funds becomes available to the grantee, the grantee must enter this detail into DRGR, in sufficient detail to serve as the basis for acceptable performance reports.

b. Each grantee must submit a quarterly performance report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter, after grant award and continuing until all funds have been expended and all expenditures reported. Each quarterly report will include information about the uses of funds during the applicable quarter, including (but 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 disaster funds; beginning and ending dates of activities; and performance measures such as numbers of low- and moderate-income persons or households benefiting. Quarterly reports to HUD must be submitted using HUD's Web-based DRGR system.

16. *Use of subrecipients.* The following alternative requirement applies for any activity that a state carries out directly by funding a subrecipient:

a. 24 CFR 570.503, except that specific references to 24 CFR parts 84 and 85 need not be included in subrecipient agreements.

b. 570.502(b), except to the extent that it mandates compliance with Office of Management and Budget (OMB) Circular A-110 (implemented at 24 CFR part 84, "Uniform Administrative

Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations"). HUD recommends application of 24 CFR part 84, but does not require it.

17. *Recordkeeping.* Recognizing that the state may carry out activities directly, 24 CFR 570.490(b) is waived in such a case and the following alternative provision shall then apply: state records. 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 disaster recovery funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other federal requirements, the content of records maintained by the state shall be sufficient to: enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the state; and show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan. For fair housing and equal opportunity purposes and, as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

18. *Change of use of real property.* This waiver 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, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), "unit of general local government" shall be read as "unit of general local government or state."

19. *Responsibility for state review and handling of noncompliance.* This change conforms the rule with the waiver allowing the state to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies: The state shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and units of general local government as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the Housing and Community Development Act of 1974, as amended, and 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, to mitigate any adverse effects or consequences, and to prevent a recurrence. The state shall establish remedies for noncompliance by any designated public agencies or units of

general local governments and for its subrecipients.

20. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) under OMB control number 2506-0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information, unless the collection displays a valid control number.

Certifications

21. *Certifications for state governments, waiver, and alternative requirement.* Section 91.325 of title 24 of the Code of Federal Regulations is waived. Each state must make the following certifications prior to receiving a CDBG disaster recovery grant:

a. The state certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the state, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See 24 CFR 570.487(b)(2).)

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

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

d. The state certifies that the Action Plan for Disaster Recovery is authorized under state law and that the state, and any entity or entities designated by the state, possesses the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

e. The state 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 this grant.

f. The state 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.

g. The state certifies that it is following a detailed citizen participation plan that satisfies the

requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant), and that each unit of general local government that is receiving assistance from the state is following 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).

h. The state certifies that it has consulted with affected units of local government in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the state in determining the method of distribution of funding;

i. The state certifies that it is complying with each of the following criteria:

1. Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of the Gulf Coast hurricanes of 2005 in communities included in Presidential disaster declarations.

2. With respect to activities expected to be assisted with CDBG disaster recovery funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

3. The aggregate use of CDBG disaster recovery funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent of the amount is expended for activities that benefit such persons during the designated period.

4. The state will not attempt to recover any capital costs of public improvements assisted with CDBG disaster recovery grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (A) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (A).

j. The state 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) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

k. The state certifies that it has and that it will require units of general local government 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 non-violent 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 non-violent civil rights demonstrations within its jurisdiction.

l. The state certifies that each state grant recipient or administering entity has the capacity to carry out disaster recovery activities in a timely manner, or that the state has a plan to increase the capacity of any state grant recipient or administering entity that lacks such capacity.

m. The state certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area 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.

n. The state certifies that it will comply with applicable laws.

22. *Duration of funding.* Availability of funds provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510), limit the availability of certain appropriations for expenditure. This limitation may not be waived. However, the appropriations acts for these grants direct that these funds be available until expended unless, in accordance with 31 U.S.C. 1555, the Department determines that the purposes for which the appropriation has been made have been carried out and that no disbursement has been made against the appropriation for 2 consecutive fiscal years. In such a case, the Department shall close out the grant prior to expenditure of all funds.

Provisions Unique to Grants Under Public Law 109–234

23. *Action Plan additional elements.* The disaster recovery grantees receiving funding under Public Law 109–234 must provide the following elements as part of the overall plan for disaster recovery:

a. An explanation of how the state will give priority to the rehabilitation and reconstruction of the affordable rental housing stock, including public and other HUD-assisted housing, a description of the activities the state plans to undertake with grant funds under this priority, and a description of the unique challenges that individuals with disabilities face in finding accessible and affordable housing;

b. An explanation of how the state will give priority to infrastructure development and rehabilitation, and a description of the infrastructure activities it plans to undertake with grant funds; and

c. An explanation of how the method of distribution or use of funds described in accordance with the applicable notices will result in the state meeting the requirement that at least 19.3311 percent of its allocation under this notice shall be used for repair, rehabilitation, and reconstruction (including demolition, site clearance, and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas.

24. Alternative requirements regarding targeting in Louisiana.

a. The State of Louisiana will target 70 percent of its disaster recovery funds under Public Law 109–234 toward the disaster recovery needs in the New Orleans-Metairie-Bogalusa Metropolitan Area; and

b. Before Louisiana expends any funds to meet the minimum requirement for affordable rental housing under this notice, the Governor of Louisiana shall demonstrate to the Secretary's satisfaction that the state will provide funds or has identified dedicated resources sufficient to meet the key disaster recovery needs for repair, rehabilitation, and reconstruction of affordable rental housing stock, including public housing disaster recovery in the most impacted areas of the state.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

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 Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at 202-402-3055 (this is not a toll-free number).

Dated: July 28, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8-18281 Filed 8-7-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Committee.

DATES: September 3, 2008, at 9 a.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, 99501, (907) 271-5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America v. State of Alaska*, Civil Action No. A91-081 CV. The meeting agenda will include review of the draft fiscal year 2009 program development and implementation budget, and invitation; 2008 update to the Injured Resources and Services List; Integrated Herring Restoration Program;

fiscal year 2008 projects requesting extensions; and personnel changes.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E8-18341 Filed 8-7-08; 8:45 am]

BILLING CODE 4310-RG-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R7-R-2008-NO182] [70138-1263-0000-4A]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; Alaska Guide Service Evaluation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before September 8, 2008.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-6566 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358-2269 (fax); or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES) or by telephone at (703) 358-2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: None. This is a new collection.

Title: Alaska Guide Service Evaluation.

Service Form Number(s): 3-2349.

Type of Request: New collection.

Affected Public: Clients of permitted commercial guide service providers.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time following use of commercial guide services.

Estimated Annual Number of Respondents: 396.

Estimated Total Annual Responses: 396.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 99.

Abstract: We are proposing to collect information to help us evaluate commercial guide services on our national wildlife refuges in the State of Alaska (State). The National Wildlife Refuge Administration Act of 1966, as amended (16 U.S.C. 668dd-ee), authorizes us to permit uses, including commercial visitor services, on national wildlife refuges when we find the activity to be compatible with the purposes for which the refuge was established. With the objective of making available a variety of quality visitor services for wildlife-dependent recreation on National Wildlife Refuge System lands, we issue permits for commercial guide services, including big game hunting, sport fishing, wildlife viewing, river trips, and other guided activities. We plan to use FWS Form 3-2349 (Alaska Guide Service Evaluation) as a method to:

- (1) Monitor the quality of services provided by commercial guides.
 - (2) Gauge client satisfaction with the services.
 - (3) Assess the impacts of the activity on refuge resources.
- The client is the best source of information on the quality of commercial guiding services. We plan to collect:
- (1) Client name.
 - (2) Guide name(s).
 - (3) Type of guided activity.
 - (4) Dates and location of guided activity.
 - (5) Information on the services received such as the client's expectations, safety, environmental impacts, and client's overall satisfaction.

We will encourage respondents to provide any additional comments that they wish regarding the guide service or refuge experience, and ask whether or not they wish to be contacted for additional information.

The above information, in combination with State-required guide activity reports and contacts with guides and clients in the field, will provide a comprehensive method for monitoring permitted commercial guide activities. A regular program of client evaluation will help refuge managers detect potential problems with guide services so that we can take corrective actions promptly. In addition, we will use this information during the competitive selection process for big game and sport fishing guides to evaluate an applicant's

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5267-N-01]

The Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of appointments.

SUMMARY: The Department of Housing and Urban Development announces the appointments of Ronald Y. Spraker and Jon L. Gant as members; and Dominique G. Blom as an alternate member of the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410-0050.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Earnestine Pruitt, Director, Executive Personnel Management Division, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 708-1381. (This is not a toll-free number.)

Dated: October 7, 2008.

Roy A. Bernardi,
Deputy Secretary.

[FR Doc. E8-24371 Filed 10-14-08; 8:45 am]
BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5254-N-01]

Reconsideration of Waivers Granted to and Alternative Requirements for the State of Louisiana's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers, alternative requirements, and statutory program requirements.

SUMMARY: This notice describes the statutorily required reconsideration of additional waivers and alternative requirements applicable to the Community Development Block Grant (CDBG) disaster recovery grant provided to the State of Louisiana on June 14, 2006, and March 7, 2007, for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina and Rita in 2005. Although the reconsideration period is normally 2 years following grant of the

waiver, HUD is reconsidering and altering some waivers early at the state's request.

DATES: *Effective Date:* October 20, 2008.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. FAX inquiries may be sent to Ms. Kome at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109-148, approved December 30, 2005) (the 2006 Act) appropriated \$11.5 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The State of Louisiana received an allocation and grant of \$6,200,000,000 from this appropriation. The 2006 Act authorized 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 and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead-based paint), upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The following waivers, alternative requirements, and reconsidered waivers are in response to written requests from the State of Louisiana.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of 42 U.S.C. 5301 *et seq.*; Title I of the Housing and Community Development Act of 1974, as amended (the 1974 Act); or of 42 U.S.C. 12704 *et seq.*, the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**. As in the June 14, 2006, notice, the Department is also using this reconsideration notice to provide information about other ways in which the requirements for this grant vary from regular CDBG program rules. The compilation of this information in a single notice has created a helpful resource for Louisiana grant administrators and HUD field staff. Note that waivers and alternative requirements regarding the common application and reporting process for all grantees under this appropriation were published in a prior notice (71 FR 7666, published February 13, 2006, and updated in 73 FR 46312, published August 8, 2008).

Except as described in notices regarding this grant, the statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of these funds.

Descriptions of Changes

This section of the notice briefly describes the basis for each waiver and provides an explanation of related alternative requirements, if additional explanation is necessary. The Description of Changes section also highlights some of the statutory items and alternative requirements described in the sections that follow.

Except as provided in the common waiver notice published August 8, 2008, the waivers, alternative requirements, and statutory changes apply only to the CDBG supplemental disaster recovery funds appropriated in the 2006 Acts and allocated to the State of Louisiana. These actions provide additional flexibility in program design and implementation and note statutory requirements unique to this appropriation.

Eligibility—housing related. The waiver of Section 105(a) of the 1974 Act that allows new housing construction and of Section 105(a)(24), to allow homeownership assistance for families whose income is up to 120 percent of median income and payment of up to 100 percent of a housing down payment is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disaster eligible under this notice. The broadening of the Section 105(a)(24) waiver, in accordance with the state's request, will allow the state to permit local governments receiving long-term

community recovery funding to implement mixed-use housing recovery programs included in its state-approved long-term recovery plans.

Compensation for disaster-related losses or housing incentives to resettle in Louisiana. The state planned to provide compensation to certain homeowners whose homes were damaged during the covered disasters, if the homeowners agree to meet the stipulations of the published program design. The state has also offered disaster recovery or mitigation housing incentives to promote housing development or resettlement in particular geographic areas. The Department waived the 1974 Act and associated regulations to make these uses of grant funds eligible. Retention of this waiver is critical since the homeowner compensation and incentive program is ongoing.

Eligibility—tourism. The state plans to continue providing disaster recovery grant assistance to support the tourism industry and promote travel to communities in the disaster-impacted areas and has requested an eligibility waiver for such activities. Tourism industry support, such as a national consumer awareness advertising campaign for an area in general, is ineligible for CDBG assistance. However, Congress did make such support eligible, within limits, for the CDBG disaster recovery funds appropriated for recovery of Lower Manhattan following the September 11, 2001, terrorist attacks. HUD understands that such support can be a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues. Similarly, because the State of Louisiana proposed advertising and marketing activities, rather than direct assistance to tourism-dependent businesses, and because the measures of long-term benefit from the proposed activities must be derived using regression analysis and other indirect means, the original waiver permitted use of no more than \$30 million for assistance to the tourism industry. This provision continues unchanged. Further, the assisted activities must be designed to support tourism to the most impacted and distressed areas related to the effects of Hurricanes Katrina and Rita, and, on the state's request and reconsideration, the waiver will now expire 4 years after the date of this notice, after which previously ineligible support for the tourism industry, such as marketing a community as a whole, will again be ineligible for CDBG disaster recovery funding.

Eligibility—buildings for the general conduct of government. The state asked HUD to reconsider and broaden the waiver of the prohibition on funding buildings for the general conduct of government. HUD considered the request and agreed that it is consistent with the overall purposes of the 1974 Act for the state to be able to use its CDBG disaster recovery grant funds to assist projects involving rehabilitation, reconstruction, or construction of buildings for the general conduct of government that the state has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery.

Eligibility—Research Commercialization and Educational Enhancement. According to the state's Action Plan amendment, the Research Commercialization and Educational Enhancement (RCEE) Program is "intended to restore the economic impact of scientific and technology research facilities within higher education institutions in the most severely affected areas." Activities under this program may include, but are not limited to, stipends for students, related training, purchase of critical equipment, stipends for research professionals, and development of a master strategic plan for meeting the program's intent.

Normally, HUD provides funds to a research institution or a university either to increase its capacity to carry out a CDBG activity such as rehabilitation of housing, to carry out specific research, or to provide training. By contrast, the RCEE program is directed at stabilizing and increasing research and education sector employment and functions themselves. The state has stated that this sector was a significant regional job generator before the covered disasters, that Hurricane Katrina and its aftermath critically damaged many aspects of the research sector, and that the RCEE program is a critical component of the state's long-term economic recovery.

To accomplish its stated intention, the state is funding strategic planning followed by a pilot assistance program for research institutions located in the most impacted areas. At HUD's request, the state has agreed that this planning process will identify critical performance measures for this program, so that all parties involved can assess the usefulness of the RCEE model as part of overall disaster recovery.

The RCEE program design does not break down neatly into CDBG eligibility categories. Portions of the RCEE

program are eligible CDBG activities, such as training (public services) and strategic planning. Other portions, especially the stipends and other direct support for retaining key faculty researchers, are outside the usual CDBG realm, although modeled on other government research and endowment grant programs. Program staff will be coordinating the various types of assistance into a coherent whole, moving between supporting eligible and currently ineligible activities.

In the March 6, 2007, notice (72 FR 10014), HUD provided a waiver and alternative requirement to create the eligible activity called Louisiana Research Commercialization and Educational Enhancement to include all activities carried out in accordance with the RCEE program described in the HUD-approved Action Plan, beginning with the amendment introducing this program, accepted January 3, 2007. (The allowable cost provisions of applicable OMB Circulars still apply, as do statutory prohibitions on duplications of benefit with other forms of assistance, such as from federal programs.) The state asked HUD to reconsider this waiver to include an alternative program income requirement. On reconsideration, HUD has also agreed to waive, for the RCEE program only, the definition of "program income" to allow the state to define program income for the purposes of the RCEE program, provided that the institution of higher education that is an RCEE CDBG grant subrecipient uses any program revenues generated under the program on activities that benefit the subrecipient and its research mission, as stabilizing this sector and making it one of the drivers of the recovery was a purpose of the RCEE program. Finally, the Department is clarifying that the state may also, for RCEE subrecipients only, provide for alternative policies related to disposition of equipment, so that the RCEE subrecipients are allowed to manage their RCEE-assisted equipment in accordance with their agreements with the state and their own research missions.

Eligibility—Operating Subsidy for Affordable Rental Housing. The state requested and HUD is retaining a waiver to allow a Project-Based Rental Subsidy (PBRA) and assistance to establish operating reserves to encourage developers to rebuild rental and mixed-income housing in the areas that suffered the greatest disaster impact. The subsidy funding, which may be "piggyback" funding generally designed to be linked to the use of housing tax credits or funding under another of the rental programs delineated in the state's

HUD approved Action Plan for Disaster Recovery, targets housing for low-income and very low-income families and is limited in amount to the difference between the rents that a project is projected to need to sustain itself, and a specified lower level that can be reasonably afforded by the tenants. With its affordable rental programs, the state proposes to address specific barriers unique to the affordable rental programs outlined by the state's Action Plan (see the Road Home Housing Programs described in the state's Action Plan for Disaster Recovery), such as the lack of affordability in the most heavily damaged areas, the lack of permanent financing for mixed-income rentals, and the need for more risk-tolerant pre-development capital.

In its Road Home rental programs, the state has set a high priority on deep affordability for some rental units and on placing these units within mixed-income communities wherever feasible. The state included new scoring factors in the piggyback tax credit selection process that reflect these priorities and that emphasize long-term viability and reduce operating costs. According to the state, the biggest remaining challenge in providing rental units affordable to very low-income households is the difference between what tenants can afford to pay and the projected cost of operating the units.

The state has researched existing housing models, and concluded that the piggyback model and the small rental and homeless programs described in the Road Home and its amendments are needed to ensure production of affordable units. The state believes it has a critical need for income-targeted rental housing production programs. Although the state has made financing available for rental housing construction, it believes that it will need also to provide operating subsidy options for some projects to ensure they are affordable to very low-income households.

HUD agreed and continues to agree that keeping housing affordable to very low-income households over time may require additional operating subsidy after construction is complete. To allow the state flexible options, HUD will allow CDBG assistance for subsidizing operating costs using PBRA and funding initial operating reserves in the context of the Road Home rental programs as described in the Action Plan. The Department encourages the state to avoid using CDBG for operating subsidies if other financing is available or if the project can reasonably be structured to achieve and maintain its

target affordability without the operating subsidy.

HUD recommends that the state establish written requirements for income eligibility, maximum rents, utility allowances, structure quality, and affirmative marketing of projects. HUD also recommends that inflation adjustments set by the state generally not exceed the Section 8 allowable adjustments.

Rental programs of this type can be risky; HUD again reminds the state of the regulatory requirement for annual financial audits of its programs and of the requirement published in **Federal Register** notices 71 FR 7666, 71 FR 73337, and 73 FR 46312, that its entire program be under the purview of an internal auditor.

Eligibility—Homeless Prevention and Rapid Rehousing. The state requested, and HUD is retaining, an eligibility waiver to allow it to implement a Homeless Prevention and Rapid Rehousing Program using funds designated for homeless activities in its Action Plan. The principle of this program model is to minimize the time a family is homeless by providing rehousing and rental assistance, and by linking the family to services designed to help it become stable and self-sufficient. The state's request noted that it modeled its program on the rapid rehousing program approach that the National Alliance to End Homelessness has endorsed as a national best practice. The state also noted that as a consequence of Hurricanes Katrina and Rita, "Thousands of families today are doubled up with family and friends, facing eviction, in temporary housing conditions affordable only with time limited FEMA rental assistance, or living in FEMA trailer villages—unsure what they are going to do when assistance runs out."

To carry out this program, the state needs an eligibility waiver for the rental assistance and utility payments that are paid for up to 2 years on behalf of homeless and at-risk households. The program also includes rental and utility deposits and back payments for housing when the state determines that such payments are necessary to help prevent a family from becoming homeless. To the extent the existing CDBG program rules explicitly allow payments for these purposes, the program establishes a shorter time limitation (3 months) and generally discourages or disallows back payments.

The state's program could measurably advance the Department's priority on supporting forward-thinking solutions to help communities that are struggling to house and serve persons and families

that are homeless or at risk of homelessness because of the effects of Hurricanes Katrina and Rita. Therefore, this notice, on reconsideration, continues to grant the eligibility waiver as requested.

Documentation of low- and moderate-income benefit and public benefit for certain economic development activities. For some of its economic development programs, the state requested continuation of one waiver to allow it to provide alternate documentation of low- and moderate-income benefit, and another waiver to extend the public benefit standard waiver granted in **Federal Register** notice 71 FR 7666 for the Bridge Loan Program to the economic development activities from Action Plan Amendments 2 and 8, and to Federal Emergency Management Agency (FEMA) public assistance cost share infrastructure projects carried out for the purpose of creating or retaining jobs.

For the national objective documentation for the business assistance activities, the state asked to be able to apply individual salaries or wages per job and the income limits for a household of one, rather than the usual CDBG standard of total household income and the limits-by-total-household size. The state asserted that its proposed documentation would be simpler and quicker for its participating lenders to administer, easier to verify, and would not misrepresent the amount of low- and moderate-income benefit provided.

Further, for the Bridge Loan Program and for infrastructure projects carried out to create or retain jobs or businesses, the state argued for this approach because the state considers these critical recovery activities to need the most streamlined approach to documentation that is consistent with prudent management. On review and following several discussions with state staff, HUD accepted the state's arguments for the activities and programs cited above and granted and is continuing the waiver as requested.

HUD granted this waiver because of the magnitude of the disaster. However, because the validity of this approach has not been verified systematically, HUD may not grant similar waivers in the future. 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 annual 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. Essentially, the public benefit standards are a proxy for all the other possible public benefits provided by an assisted activity. These dollar thresholds were set more than a decade ago and, under disaster recovery conditions (which often require a larger investment to achieve a given result), can be too low and thus impede recovery by limiting the amount of assistance the grantee may provide to a critical activity. The state has made public in its Action Plan the disaster recovery needs each activity is addressing and the public benefits expected.

After consideration, this notice retains the waiver of the public benefit standards for the cited activities, except that the state shall continue to report and maintain documentation on the creation and retention of: (a) Total jobs, (b) number of jobs within certain salary ranges, (c) the average amount of assistance per job and activity or program, and (d) the types of jobs. As a conforming change for the same activities or programs, HUD also waived paragraph (g) of 24 CFR 570.482 to the extent its provisions are related to public benefit.

Documentation of low- and moderate-income household benefit for multi-unit housing projects. Rehabilitation and reconstruction of housing is an eligible CDBG activity. Prior to granting this waiver, HUD granted the state an eligibility waiver to allow new construction of housing. Later, the state requested a related waiver to allow it to fund multi-unit projects and to measure benefit to low- and moderate-income households in such projects in a manner more supportive of mixed-income housing than the structure basis required by 24 CFR 570.483(b)(3). (Under the cited regulation, the general rule is that at least 51 percent of the residents of an assisted structure must be income eligible.)

HUD has reviewed other housing assistance programs that measure benefit differently: by the housing unit. Under the most basic unit-based approach, one or more of the units in a structure must house income-eligible families, but the remainder of the units may be market rate, so long as the proportion of assistance provided compared to the overall project budget is no more than the proportion of units that will be occupied by income-eligible households compared to the number of units in the overall project. In other words, the rule under the usual CDBG structure approach is that a dollar of CDBG assistance to a structure means that 51 percent of the units must meet

income requirements. Under the proportional units approach, the number of income-eligible units is proportional to the amount of assistance provided. Based on HUD experience, the second approach is generally more compatible with large-scale development of mixed-income housing.

There is HUD precedent for using some variation on a proportional unit basis in two programs familiar to the state: (1) The CDBG program rule has a built-in exception that allows limited use of the unit basis for multi-unit non-elderly new construction structures with between 20 and 50 percent low- and moderate-income occupancy, and (2) the HOME Investment Partnerships program, HUD's primary housing production program, successfully uses its own variation on the proportional unit approach. After review of the state's Action Plan for Disaster Recovery and learning more about the state's intention to encourage mixed-income housing development, HUD has determined that it is consistent with the overall purposes of the 1974 Act to provide the state with the requested additional flexibility in measuring program benefit.

Therefore, the reconsidered waiver and alternative requirements continue to allow the state a choice. The state may measure benefit within a housing development project (1) according to the existing CDBG requirements, (2) according to the HOME program requirements at 24 CFR 92.205(d), or (3) according to the modified CDBG alternative requirements specified in this notice, which extend the CDBG exception noted above. The state must select and use just one method for each project.

For these purposes, the term "project" will have the same meaning as in the HOME program at 24 CFR 92.2. Unlike the HOME program, the CDBG program does not regulate the maximum amount of assistance per unit, require unit and income reviews in the years following initial occupancy, require a specific form of subsidy layering review, or define affordability. The state is reminded, however, that CDBG does require that costs be necessary and reasonable and that the state must develop procedures and documentation to ensure that its housing investments meet this requirement. The state must also meet all civil rights and fair housing requirements.

General planning activities use entitlement presumption. The annual state CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national

objective. In the state CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include nonproject-specific plans such as functional land use plans, historic preservation plans, comprehensive plans, development of housing codes, and neighborhood plans related to guiding long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, the Department waived and is retaining the waiver of the eligibility requirement that CDBG disaster recovery-assisted planning-only grants or state directly administered planning activities that guide recovery in accordance with the appropriations act must comply with the state CDBG program rules at 24 CFR 570.483(b)(5) or (c)(3).

Special economic development job retention activities. Under the public benefit implementing regulations, CDBG grantees are limited to a specified annual amount of CDBG assistance per job retained or created or the amount of CDBG assistance per low- and moderate-income person to whom goods or services are provided by the assisted activity. Grantees must maintain documentation to show that a job is a retained job or a created job and that the job was made available to or taken by a low- and moderate-income person. This policy and the specified documentation are effective and suitable for relatively small-scale economic development programs of hundreds of thousands of dollars or a few millions of dollars and of tens or hundreds of businesses. The State of Louisiana has undertaken a special economic development portfolio valued at over \$200 million to potentially serve thousands of businesses. The state has requested and received regulatory waivers related to public benefit documentation that have helped it to implement its economic development programs' large-scale disaster recovery special economic development activities in a short time frame. HUD is retaining those waivers as several of these programs are ongoing.

Anti-pirating. The limited waiver of the anti-pirating requirements allows the flexibility to provide assistance to a business located in another state or market area within the same state if the business was displaced from a declared area within the state by the disaster and the business wishes to return. This waiver is necessary to allow a grantee affected by a major disaster to rebuild its employment base.

Voluntary acquisition under the Piggyback Program. In connection with the state's Low Income Housing Tax Credit Piggyback Program, various developers obtained options for the acquisition of specific properties to create mixed-income rental housing and workforce housing projects to replace rental housing lost during the hurricanes. The options were obtained on a voluntary basis by developers without the use or threat of eminent domain and prior to the availability of federal funding. However, since these projects will now be receiving CDBG disaster funding assistance, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (the URA) will apply where the property acquisition has not been completed. The state requested and HUD is retaining a waiver related to acquisition requirements under the URA for specific projects with existing options. The state has asked that HUD permit the waivers to help complete the acquisition of property and promote the replacement of housing in a timely and efficient manner. The state believes that these waivers will have little impact on those persons who voluntarily entered into these option agreements prior to the availability of federal funding. Because CDBG funds are federal financial assistance, their use in projects that involve acquisition of property for a federally assisted project, or that involve acquisition, demolition, or rehabilitation that force a person to move permanently, are subject to the URA and the governmentwide implementing regulations found at 49 CFR part 24. The URA provides assistance and protections to individuals and businesses affected by federal or federally assisted projects. HUD waived the following URA requirements to help promote accessibility to suitable decent, safe, and sanitary housing for victims of Hurricanes Katrina and Rita:

The acquisition requirements of the URA and implementing regulations, so that they do not apply to an arm's length voluntary purchase carried out by a person that does not have the power of eminent domain, in

connection with the purchase of properties for the projects listed in the waiver below. According to the state, the failure to suspend these requirements would impede disaster recovery. This waiver would not affect any lawful occupants of the affected projects, in terms of relocation assistance and payments, and would only waive certain transaction-related requirements vis a vis the project owners.

Uniform Relocation Act Requirements. The state has engaged in voluntary acquisition and optional relocation activities (partly in a form sometimes called "buyouts") by using waivers related to acquisition and relocation requirements under the URA and the replacement of housing and relocation assistance provisions under section 104(d) of the 1974 Act. The state asked and received HUD's permission to grant the waivers to help promote the acquisition of property and the replacement of housing in a timely and efficient manner. To date, the state believes that these waivers have had little impact on those persons whose property is voluntarily acquired or who are required to move permanently for a federally assisted project. Because CDBG funds are federal financial assistance, their use in projects that involve acquisition of property necessary for a federally assisted project, or that involve acquisition, demolition, or rehabilitation that force a person to move permanently, are subject to the URA and the governmentwide implementing regulations found at 49 CFR part 24. The URA provides assistance and protections to individuals and businesses affected by federal or federally assisted projects. HUD has waived the following URA requirements to help promote accessibility to suitable decent, safe, and sanitary housing for victims of Hurricanes Katrina and Rita:

- The acquisition requirements of the URA and implementing regulations, so that they do not apply to an arm's length voluntary purchase carried out by a person who does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. According to the state, the failure to suspend these requirements would impede disaster recovery and may result in windfall payments.

- A limited waiver of the URA implementing regulations, to the extent that they require grantees to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. The failure to suspend these one-size-fits-all requirements could impede disaster

recovery. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required.

- The URA and implementing regulations, to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that the renter is also provided referrals to suitable, available rental replacement dwellings 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 the waiver would impede disaster recovery whenever TBRA program subsidies are available but when funds for cash relocation assistance are limited. The change provides access to an additional relocation resource option.

- The URA and implementing regulations, to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a "moving expense and dislocation allowance" based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Failure to suspend this provision would impede disaster recovery by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if such persons find that approach preferable to the locally established moving expense and dislocation allowance.

In addition to the URA waivers, HUD waived requirements of section 104(d) of the 1974 Act dealing with one-for-one replacement of low- and moderate-income housing units demolished or converted in connection with a CDBG-assisted development project for housing units damaged by one or more disasters. HUD waived this requirement because it does not take into account the large, sudden changes a major disaster

may cause to the local housing stock, population, or local economy. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage grantees from acquiring, converting, or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified time frame. HUD also waived the relocation assistance requirements contained in section 104(d) of the 1974 Act to the extent they differ from those of the URA. This change will simplify implementation, while preserving statutory protections for persons displaced by federal projects.

The state has provided the following additional reason for these waivers related to its decision to administer policy for the funds under this notice and for Federal Emergency Management Agency (FEMA) mitigation funding through the same agencies. The statutory requirements of the URA are also applicable to the administration of FEMA assistance, and disparities in rental assistance payments for activities funded by HUD and by FEMA will thus be eliminated. FEMA is subject to the requirements of the URA. Pursuant to this authority, FEMA requires that rental assistance payments be calculated on the basis of the amount necessary to lease or rent comparable housing for a period of 42 months. HUD is also subject to these requirements, but is also covered by alternative relocation provisions authorized under 42 U.S.C. 5304(d)(2)(A)(iii) and (iv) and implementing regulations at 24 CFR 42.350. These alternative relocation benefits, available to low- and moderate-income displacees opting to receive them in certain HUD programs, require the calculation of similar rental assistance payments on the basis of 60 months, rather than 42 months, thereby creating a disparity between the available benefits offered by HUD and FEMA (although not always an actual cash difference). The waiver assures uniform and equitable treatment, by allowing the URA benefits requirements to be the standard for assistance under this notice.

Program Income. A combination of CDBG provisions limits the flexibility available to the state for the use of program income. Prior to 2002, program income earned on disaster recovery grants has usually been program income in accordance with the rules of the

regular CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The 1974 Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The 1974 Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the state, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan can retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster recovery grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Timely Distribution of Funds. The state CDBG program regulation regarding timely distribution of funds is at 24 CFR 570.494. This provision is designed to work in the context of an annual program in which almost all grant funds are distributed to units of general local government. Because the state may use disaster recovery grant funds to carry out activities directly, and because Congress expressly allowed this grant to be available until expended, HUD has waived this requirement. However, HUD expects the State of Louisiana to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

Waivers and Alternative Requirements

1. Housing-related eligibility waivers. 42 U.S.C. 5305(a) is waived to the extent necessary to allow homeownership assistance for households with up to 120 percent of area median income and downpayment assistance for up to 100 percent of the down payment (42 U.S.C.

5305(a)(24)(D)), and to allow new housing construction.

2. Compensation for loss of housing or incentives to resettle in Louisiana. 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible incentives to resettle in Louisiana or compensation for loss of housing caused by the disaster and in accordance with the state's approved Action Plan and published program design.

3. Waiver to permit some activities in support of the tourism industry. 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived to the extent necessary to make eligible use of no more than \$30 million for assistance for the tourism industry, including promotion of a community or communities in general, provided that the assisted activities are designed to support tourism to the most impacted and distressed areas related to the effects of Hurricanes Katrina and Rita. This waiver will expire 4 years after the effective date of this notice, after which previously ineligible support for the tourism industry, such as promotion of a community in general, will again be ineligible for CDBG funding.

4. Buildings for the general conduct of government. 42 U.S.C. 5305(a) and 24 CFR 507.207(a)(1) are waived to the extent necessary to allow the state to use the grant funds under this notice to assist projects involving rehabilitation, reconstruction, or construction of buildings for the general conduct of government that the state has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery.

5. Eligibility—Louisiana Research Commercialization and Educational Enhancement program (RCEE). Activities carried out in accordance with the HUD-approved Action Plan for the RCEE program approved January 3, 2007, are eligible. Further, for the RCEE program only, the definition of "program income" may be defined by the state, provided that the institution of higher education that is an RCEE CDBG grant subrecipient uses any program revenues generated under the program on activities that benefit the RCEE subrecipient's research mission. The state may also, for RCEE activities only, provide for alternative policies related to disposition of equipment, to allow management of RCEE-assisted equipment, in accordance with subrecipient agreements with the state and to the benefit of the assisted research mission.

6. Waiver to permit operating subsidies for affordable rental housing.

42 U.S.C. 5305(a) is waived to the extent necessary to make eligible the Road Home project-based rental assistance program included in the state's HUD-approved Action Plan for Disaster Recovery, provided that the assisted activities are designed to ensure that CDBG funds will be invested only to the extent of reasonably anticipated need. Also in conjunction with the Road Home rental program, the grantee may provide assistance to establish an initial operating reserve account for a project receiving other Road Home assistance.

7. *Eligibility of certain activities to support homeless prevention and rapid rehousing programs.* 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible rental assistance and utility payments paid for up to 2 years on behalf of homeless and at-risk households when such assistance or payments are part of a homeless prevention or rapid rehousing program. Eligible assistance in these programs may also include rental and utility deposits and back payments for housing when the State of Louisiana determines that such payments are necessary to help prevent a family from being homeless.

8. *Documentation of low- and moderate-income benefit for multi-unit housing projects.* Under the following circumstances, HUD will consider assistance for a multi-unit housing project involving new construction, acquisition, reconstruction, or rehabilitation to benefit low- and moderate income households:

a.(1) The CDBG assistance defrays the development costs of a housing project providing eligible permanent residential units that, upon completion, will be occupied by low- and moderate-income households; and

(2) If the project is rental, the units occupied by low- and moderate-income households will be leased at affordable rents. The grantee or unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose; and

(3) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low- and moderate income households; or

b. When CDBG funds defray the development costs of eligible permanent residential units, such funds shall be considered to benefit low- and moderate-income persons if the grantee follows the provisions of 24 CFR 92.205(d); or

c. The requirements of 24 CFR 570.483(b)(3) are met.

d. The state must select and use just one method for each project.

e. The term "project" will be defined as in the HOME program at 24 CFR 92.2.

f. If the state applies option (a) or (b) above to a housing project, 24 CFR 570.483(b)(3) is waived for that project.

9. *Planning requirements.* For CDBG disaster recovery-assisted planning activities that will guide recovery in accordance with the 2006 Act, the state CDBG program rules at 24 CFR 570.483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies.

10. *National objective documentation for certain economic development activities.* 24 CFR 570.483(b)(4)(i) is waived to allow the grantee to establish 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.

11. *Public benefit standards for economic development activities.* For economic development activities designed to create or retain jobs or businesses (including but not limited to BRIDGE, long-term, short-term, infrastructure projects), the public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived, except that the grantee shall report and maintain documentation on the creation and retention of total jobs, the number of jobs within certain salary ranges, the average amount of assistance provided per job by activity or program, and the types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

12. *Waiver and modification of the anti-pirating clause to permit assistance to help a business return.* 42 U.S.C. 5305(h) and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of Hurricane Katrina or Rita, as applicable, 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.

13. *Waiver of one-for-one replacement of units damaged by disaster.*

a. One-for-one replacement requirements at 42 U.S.C. 5304(d)(2) and (d)(3), and 24 CFR 42.375(a) are waived for low- and moderate-income dwelling units:

(1) Damaged by the disaster,

(2) For which CDBG funds are used for demolition, and

(3) Which are not suitable for rehabilitation.

b. Relocation assistance requirements at 42 U.S.C. 5304(d)(2)(A) and at 24 CFR 42.359 are waived to the extent they differ from those of the URA and its implementing regulations at 49 CFR part 24, following waivers to activities involving buyouts and other activities covered by the URA and related to disaster recovery housing activities assisted by the funds covered by this notice and included in an approved Action Plan.

14. *Uniform Relocation Act requirements.*

a. The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person.

b. The requirements at 49 CFR 24.2, 24.402(b)(2), and 24.404 are waived to the extent that they require the state to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required. Before using this waiver, the state must establish a definition of "demonstrable hardship."

c. The requirements of sections 204 and 205 of the URA, and of 49 CFR 24.402(b), are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that the renter is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months.

d. The requirements of section 202(b) of the URA and of 49 CFR 24.302 are waived to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a "moving expense and dislocation allowance" based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes

and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the

furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.
15. *Voluntary acquisition under the Piggyback program.* The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an existing option for the arm’s length voluntary

purchase carried out by a person that does not have the power of eminent domain, in connection with the purchase of property for the projects listed below, so long as the initial option pre-dates December 22, 2006.

LHFA project ID	Project name	Parish	Est. total units
0708FA37	The Meadows	Calcasieu	180
0708FA43	Renoir Acres Estates II	Calcasieu	60
0708FA44	Monet Acres Estates II	Calcasieu	60
0708FA48	Sulphur Retirement Community	Calcasieu	60
0708FA52	Grand Lake Elderly	Cameron	30
0708FA01	Timberlane Apartments	Jefferson	164
0708FA22	Beechgrove Homes	Jefferson	100
0708FA28	Wellswood Manor	Jefferson	84
0708FA49	Oak Villa	Jefferson	80
0708FA30	Lafitte Redevelopment	Orleans	568
0708FA26	St. Bernard I	Orleans	465
0708FA24	BW Cooper I	Orleans	410
0708FA25	CJ Peete III	Orleans	410
0708FA42	Rivergarden CSII	Orleans	310
0708FA57	Canterbury House Apts—New Orleans East	Orleans	276
0708FA47	The Marquis Apartments	Orleans	250
0708FA08	The Villas at Lake Forest	Orleans	230
0708FA11	The Crescent Club	Orleans	226
0708FA41	Walnut Square Apartments	Orleans	209
0708FA13	200 Carondelet	Orleans	190
0708FA10	The Preserve	Orleans	183
0708FA38	Crescent Garden Homes	Orleans	143
0708FA36	Levey Gardens	Orleans	100
0708FA40	Nine 27	Orleans	76
0708FA09	Jefferson Davis Apartments	Orleans	72
0708FA61	Indiana Homes	Orleans	60
0708FA64	Orleans Place	Orleans	60
0708FA27	Classic Construction of New Orleans Venture II	Orleans	56
0708FA29	Constance Lofts	Orleans	47
0708FA23	Delta Oaks Homes	Orleans	40
0708FA63	Old Morrison Homes	Orleans	38
0708FA07	Lakeside Apartments	St. Tammany	250
0708FA06	Tiffany Apartments	Vermilion	250
Totals			5,737

16. *Program income alternative requirement.* 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent that they conflict with the rules stated in the program income alternative requirement below. The following alternative requirement applies instead.

a. Program income.

(1) For the purposes of this subpart, “program income” is defined as gross income received by a state, a unit of general local government, a tribe, or a subrecipient of a unit of general local government or of a tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds, or a single parcel of land purchased with CDBG funds and

other funds). Program income includes, but is not limited to, the following:

- (i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
- (ii) Proceeds from the disposition of equipment purchased with CDBG funds;
- (iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe, or a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;
- (iv) Gross income from the use or rental of real property owned by a state, tribe, or the unit of general local government or a subrecipient of a state, tribe, or unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

- (vi) Proceeds from the sale of loans made with CDBG funds;
- (vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;
- (viii) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;
- (ix) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the special assessments are all or part of the CDBG portion of a public improvement; and
- (x) Gross income paid to a state, tribe, or a unit of general local government or a subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

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

(i) The total amount of funds which is less than \$25,000 received in a single year that is retained by a unit of general local government, tribe, or subrecipient;

(ii) Amounts generated by activities eligible under section 105(a)(15) of the 1974 Act and carried out by an entity under the authority of section 105(a)(15) of the Act;

(3) The state may permit the unit of general local government or tribe which receives or will receive program income to retain the program income, subject to the requirements of paragraph (a)(3)(ii) of this section, or the state may require the unit of general local government or tribe to pay the program income to the state.

(i) Program income paid to the state. Program income that is paid to the state or received by the state is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used by the state or distributed to units of general local government in accordance with the state's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the United States Treasury, except as provided in paragraph (b) of this section.

(ii) Program income retained by a unit of general local government or tribe.

(A) Program income that is received and retained by the unit of general local government or tribe before closeout of the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this notice.

(B) Program income that is received and retained by the unit of general local government or tribe after closeout of the grant that generated the program income, but that is used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of this notice.

(C) All other program income is subject to the requirements of 42 U.S.C. 5304(j) and subpart I of 24 CFR part 570.

(D) The state shall require units of general local government or tribes, to the maximum extent feasible, to disburse program income that is subject to the requirements of this notice before requesting additional funds from the state for activities, except as provided in paragraph (b) of this section.

b. Revolving funds.

(1) The state may establish or permit units of general local government or tribes to establish revolving funds to carry out specific, identified activities.

A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for nonrevolving fund activities.

(2) The state may also establish a revolving fund to distribute funds to units of general local government or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the state or unit of general local government shall not be directly funded or capitalized with grant funds.

c. Transfer of program income. Notwithstanding other provisions of this notice, the state may transfer program income before closeout of the grant that generated the program income to its own annual CDBG program or to any annual CDBG-funded activities administered by a unit of general local government or tribe within the state.

d. Program income on hand at the state or its subrecipients at the time of grant closeout by HUD and program income received by the state after such grant closeout shall be program income to the most recent annual CDBG program grant of the state.

17. *Waiver of state CDBG requirement for timely distribution of funds.* 24 CFR 570.494 regarding timely distribution of funds is waived.

Notes on Applicable Statutory Requirements

18. *Note on the eligibility of providing funds to Enterprise and Local Initiatives Support Corporation (LISC) for certain purposes.* The appropriations statute provides that the States of Louisiana and Mississippi may each use up to \$20,000,000 (with up to \$400,000 each

for technical assistance) from funds made available under this heading for LISC and the Enterprise Foundation for activities authorized by section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103-120, 42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, and for activities authorized under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120, 42 U.S.C. 12805 note), including demolition, site clearance and remediation, and program administration.

19. *Notes on rules applicable to flood buyouts activities.*

a. Payment of pre-flood values for buyouts. HUD disaster recovery entitlement communities, state grant recipients, and tribes have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or floodplain. In using CDBG disaster recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although federal policy encourages the leasing rather than the sale of such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity.

c. Future federal assistance to owners remaining in floodplain. (1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) (Section 582) prohibits 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 of

damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional 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. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person who has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph d below, the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(i) Obtain flood insurance in accordance with applicable federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(ii) Maintain flood insurance in accordance with applicable federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(i) The transferee fails to obtain or maintain flood insurance, in accordance with applicable federal law, with respect to the property;

(ii) The property is damaged by a flood disaster; and

(iii) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage. The transferor shall be required to reimburse the federal government in an amount equal to the amount of the federal disaster relief assistance provided with respect to the property.

d. The notification requirements apply to personal, commercial, or residential property for which federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable federal law with respect to such property.

e. The term "Federal disaster relief assistance" applies to HUD or other federal assistance for disaster relief in "flood disaster areas." The term "flood disaster area" is defined in section 582(d)(2) to include an area receiving a presidential declaration of a major disaster or emergency as a result of flood conditions.

19. *Non-Federal Cost Sharing of Army Corps of Engineers Projects*. Public Law 105-276, Title II, October 21, 1998, 112 Stat. 2478, provided in part that: "For any fiscal year, of the amounts made available as emergency funds under the heading 'Community Development Block Grants Fund' and notwithstanding any other provision of law, not more than \$250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers."

Finding of No Significant Impact

A new Finding of No Significant Impact 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 Finding of No Significant Impact 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 Seventh Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at 202-708-3055 (this is not a toll-free number).

Dated: October 6, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8-24535 Filed 10-14-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 20, 2008.

The Commission was established pursuant to Public Law 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on November 20, 2008 at 9 a.m. at Central Mass Regional Planning Commission, located at 2 Washington Square, 2nd floor, Worcester, MA for the following reasons:

1. Approval of Minutes
2. Chairman's Report
3. Executive Director's Report
4. Financial Budget
5. Public Input

It is anticipated that about thirty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Jan H. Reitsma, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762-0250.

Further information concerning this meeting may be obtained from Jan H. Reitsma, Executive Director of the Commission at the aforementioned address.

Jan H. Reitsma,

Executive Director, BRVNHCC.

[FR Doc. E8-24359 Filed 10-14-08; 8:45 am]

BILLING CODE 4310-RK-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2008-N0274; 96300-1671-0000-P5]

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

to (202) 395-6974. Comments must be submitted on or before October 14, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, facsimile number (202) 646-3347, or e-mail address FEMA-Information-Collections@dhs.gov.

Dated: September 5, 2008

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8-21136 Filed 9-10-08; 8:45 am]

BILLING CODE 9110-11-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2008-0010]

National Fire Academy Board of Visitors

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Open Federal Advisory Committee Meeting.

SUMMARY: The National Fire Academy Board of Visitors will meet on October 2-4, 2008.

DATES: The meeting will take place Thursday, October 2, 2008, from 8:30 a.m. to 4 p.m., e.s.t.; Friday, October 3, 2008, from 9 a.m. to 5 p.m., e.s.t.; and Saturday, October 4, 2008, from 9 a.m. to 11:30 a.m., e.s.t. Comments must be submitted by Thursday, October 9, 2008.

ADDRESSES: Members of the public who wish to obtain information for the public meeting may contact Teresa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by September 30, 2008. Members of the public may participate by coming to the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Members of the general public who plan to participate in the meeting should contact Teresa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section, on or before September 30, 2008. Requests to have written material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by September 30, 2008.

Send written material to Teresa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727. Comments must be identified by Docket ID FEMA-2008-0010 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* FEMA-RULES@dhs.gov. Include Docket ID in the subject line of the message.

- *Fax:* (866) 466-5370.

- *Mail:* Teresa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the Docket ID for this action. Comments received will be posted without alteration at www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Teresa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447-1117, fax (301) 447-1173, and e-mail teressa.kaas@dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463). The National Fire Academy Board of Visitors will be holding a meeting for purposes of reviewing U.S. Fire Administration/ National Fire Academy Program activities, including the status of campus maintenance and capital improvements, the budget update, the annual Ethics Briefing, the Learning Management System update, the National Fire Programs update, the Education, Training and Partnerships update, the Academy update, and Board discussions and new items. This meeting is open to the public.

The Chairperson of the National Fire Academy Board of Visitors shall conduct the meeting in a way that will, in his judgment, facilitate the orderly conduct of business. During its meeting, the committee welcomes public comment; however, comments will be permitted only during the public comment period. The Chairperson will make every effort to hear the views of all interested parties. Please note that the meeting may end early if all business is completed.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Teresa Kaas as soon as possible.

Dated: September 5, 2008.

Denis G. Onieal,

Superintendent, National Fire Academy, U.S. Fire Administration, Federal Emergency Management Agency.

[FR Doc. E8-21127 Filed 9-10-08; 8:45 am]

BILLING CODE 9110-17-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5250-N-01]

Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for Midwest Flood Community Development Block Grant (CDBG) Disaster Recovery Grantees Under the Supplemental Appropriations Act, 2008

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of allocations, waivers, and alternative requirements.

SUMMARY: This Notice advises the public of the initial allocation for grant funds for CDBG disaster recovery grants for the purpose of assisting in the recovery in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters. As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantees. This Notice also describes the common application, eligibility, and administrative waivers and the common alternative and statutory requirements for the grants.

DATES: *Effective Date:* September 16, 2008.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-

8339. Facsimile inquiries may be sent to Ms. Kome at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Supplemental Appropriations Act, 2008 (Pub. L. 110-252, approved June 30, 2008) (Supplemental Appropriations Act) appropriates \$300 million, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters. The Supplemental 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 and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead based paint), upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. Additionally, regulatory waiver authority is provided by 24 CFR 5.110, 91.600, and 570.5. The following application and reporting waivers and alternative requirements are in response to requests from each of the states receiving an allocation under this Notice.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), regulatory waivers must be justified and published in the **Federal Register**.

Except as described in this Notice, statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the Supplemental Appropriations Act, HUD will reconsider every waiver in this Notice on the two-year anniversary of the day this Notice is published.

Additional Waivers

Each state receiving an allocation may request additional waivers from the Department as needed to address the specific needs related to that state's recovery activities. The Department will respond separately to the state's requests for waivers of provisions not covered in this Notice, after working with the state to tailor the program to best meet the unique disaster recovery needs in its impacted areas.

Allocations

The Supplemental Appropriations Act provides \$300 million of supplemental appropriation for the CDBG program for:

Necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of

the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters.

The law further notes:

That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each state. Provided further, that funds allocated under this heading shall not adversely affect the amount of any formula assistance received by a state under this heading: Provided further, that each state may use up to five percent of its allocation for administrative costs.

HUD computes allocations based on data that is generally available covering all the eligible affected areas. Two challenges arose in making this allocation. First, the statute gave very little guidance on what states are to receive funding, so HUD had to determine the eligible universe of grantees. The appropriation calls for funding "recent natural disasters." Since this appropriation was enacted on June 30, 2008, and was developed while there was significant awareness of flooding in the Midwest, the Department's primary assumption was that the funds were targeted to the Midwest flooding. However, there were also several other severe storms, flooding, and tornado events that received major disaster declarations during the same time frame. There were no declared disasters in April 2008, which allows for a natural break and argues that "recent disasters" is most likely to be those occurring after this lull. Therefore, HUD is defining "recent natural disasters" to be all major natural disasters that occurred and were declared from May 1, 2008, through June 30, 2008. This would limit the eligibility for an allocation to disasters in the states shown below.

TABLE 1—FEDERALLY DECLARED DISASTERS IN MAY AND JUNE 2008

No.	Declared date	State	Title
1773	25-Jun-08	Missouri	Severe Storms and Flooding.
1772	25-Jun-08	Minnesota	Severe Storms and Flooding.
1771	24-Jun-08	Illinois	Severe Storms and Flooding.
1770	20-Jun-08	Nebraska	Severe Storms, Tornadoes, and Flooding.
1769	19-Jun-08	West Virginia	Severe Storms, Tornadoes, Flooding, Mudslides, and Land-slides.
1768	14-Jun-08	Wisconsin	Severe Storms, Tornadoes, and Flooding.
1766	8-Jun-08	Indiana	Severe Storms and Flooding.
1763	27-May-08	Iowa	Severe Storms, Tornadoes, and Flooding.
1762	26-May-08	Colorado	Severe Storms and Tornadoes.
1760	23-May-08	Missouri	Severe Storms and Tornadoes.
1758	20-May-08	Arkansas	Severe Storms, Flooding, and Tornadoes.
1756	14-May-08	Oklahoma	Severe Storms, Tornadoes, and Flooding.
1755	9-May-08	Maine	Severe Storms and Flooding.
1753	8-May-08	Mississippi	Severe Storms and Flooding.

HUD is aware that other federal programs, such as Federal Emergency Management Agency (FEMA) Public Assistance and Small Business Administration (SBA) loans, exist to support disaster recovery. Compared to the number of major disaster declarations, the number of times Congress has appropriated CDBG supplemental disaster recovery funds is very small. The Department believes it is reasonable to limit the allocations to places experiencing a significant need for additional federal assistance to facilitate long-term recovery and generally applies a funding threshold, in this case, of \$2 million. Thus, it is very likely that not all of the eligible universe will be funded.

The second challenge in allocating supplemental disaster appropriations is the trade off of a timely allocation versus having the most complete data needed to make a fully informed allocation. CDBG disaster recovery assistance is intended to fund long-term disaster recovery. States need to know relatively quickly how much they are to receive so that they can begin developing their recovery plans. However, a fair allocation generally depends on having good data similarly collected for all eligible states so that the needs of each state are fully taken into consideration. In this case, where funds were appropriated at a time when some of the disasters were still ongoing, the data for most disasters and thus most states is still incomplete. Complete data to make a full allocation may not be available until mid- to late September at the earliest. However, HUD believed it was unreasonable to hold funds that are currently needed as the Department waits for more complete data. As such, HUD is making a two-stage allocation: \$100 million was allocated on August 4, 2008, to the three most affected states and the remaining funds will be allocated in mid-September or October when more complete data are available. Enough data were available from FEMA, SBA, and other sources to make reasonable initial allocation to the states with the most severe damage due to the incidents noted in the table above. The Department was concerned that the first stage of the two-stage allocation not over-fund a grantee. Currently, the Department can say with confidence that the following grants would not be over-funding the disaster recovery needs of the states receiving allocations.

State	Amount allocated
Wisconsin	5,000,000

As soon as better data are available, HUD will compute allocations for the remaining \$200 million and announce them. A state included in that announcement may immediately proceed to prepare and submit an Action Plan for disaster recovery in accordance with this Notice, although HUD will not be able to make the grant until the allocations are published in the **Federal Register**. Therefore, HUD commits to determining, announcing, and publishing the additional allocations swiftly once the data are available.

HUD will invite each grantee receiving an allocation under the Supplemental Appropriations Act to submit an Action Plan for Disaster Recovery in accordance with this Notice.

The Supplemental Appropriations Act requires funds be used only for disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters. The statute directs that each grantee will describe in its Action Plan for Disaster Recovery how the use of the grant funds will address long-term recovery and infrastructure restoration. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds are not disaster-related, or funds allocated duplicate other benefits. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery or if they have any questions regarding meeting these requirements.

As provided for in the Supplemental Appropriations Act, the funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency or the Army Corps of Engineers.

Prevention of Fraud, Abuse, and Duplication of Benefits

The Supplemental Appropriations Act also directs the Secretary to:

Establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading including duplication of benefits.

To meet this directive, HUD is pursuing four courses of action. First, this Notice includes specific reporting, written procedures, monitoring, and internal audit requirements for grantees. Second, to the extent its resources allow, HUD will institute risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds. Third, HUD will be extremely cautious in considering any waiver related to basic financial management requirements. The standard, time-tested CDBG financial requirements will continue to apply. Fourth, HUD is collaborating with the HUD Office of Inspector General to plan and implement oversight of these funds.

Waiver Justification

This section of the Notice briefly describes the basis for each waiver and related alternative requirements, if any.

Each state eligible for a disaster recovery grant receives annual CDBG allocations, has a consolidated plan, a citizen participation plan, a monitoring plan, and has made CDBG certifications. HUD encourages each CDBG disaster recovery grantee to carry out CDBG disaster recovery activities in the context of its ongoing community development program to the extent feasible (for example, by selecting activities consistent with the consolidated plan, by providing overall benefit to at least 70 percent low- and moderate-income persons, and by holding hearings or meetings to solicit public comment).

The waivers, alternative requirements, and statutory changes described in this Notice apply only to the CDBG supplemental disaster recovery funds appropriated in the Supplemental Appropriations Act, not to funds provided under the regular CDBG program. These actions provide additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation.

Application for Allocations Under the Supplemental Appropriations Act

These waivers and alternative requirements streamline the pre-grant process and set the guidelines for states' applications for their allocations. HUD encourages each grantee that receives an allocation to submit an Action Plan for Disaster Recovery to HUD as soon as practicable following an allocation announcement.

Overall Benefit to Low- and Moderate-Income Persons

Pursuant to explicit authority in the Supplemental Appropriations Act, HUD

State	Amount allocated
Indiana	\$10,000,000
Iowa	85,000,000

is granting an overall benefit waiver that allows for up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums and blight national objectives, rather than the 30 percent allowed in the annual state CDBG program. The primary objective of Title I of the Housing and Community Development Act and of the funding program of each grantee is "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." The statute goes on to set the standard of performance for this primary objective at 70 percent of the aggregate of the funds used for support of activities producing benefit to low- and moderate-income persons. Since extensive damage to community structures and housing affected those with varying incomes, and income-producing jobs are often lost for a period of time following a disaster, HUD is waiving the 70 percent overall benefit requirement, leaving the 50 percent requirement, to give grantees even greater flexibility to carry out recovery activities within the confines of the CDBG program national objectives. HUD may only provide additional waivers of this requirement if it makes a finding of compelling need. The requirement that each activity meet one of the three national objectives is not waived.

Expanded Distribution and Direct Action

The waivers and alternative requirements allowing distribution of funds by a state to entitlement communities and Indian tribes, and to allow a state to carry out activities directly rather than distribute all funds to units of local government are consistent with waivers granted for previous, similar disaster recovery cases. HUD believes that, in using very similar statutory language to that used for the CDBG supplemental appropriations for Hurricane Katrina, Rita, and Wilma recovery, Congress is signaling its intent that the states under this appropriation also be able to carry out activities directly. Therefore, HUD is waiving program requirements to support this. HUD is also including in this Notice the necessary complementary waivers and alternative requirements related to subrecipients to ensure proper management and disposition of funds during the grant execution and at closeout.

Consistency With the Consolidated Plan

HUD is waiving the requirement for consistency with the consolidated plan because the effects of a major disaster usually alter a grantee's priorities for meeting housing, employment, and infrastructure needs. To emphasize that uses of grant funds must be consistent with the overall purposes of the HCD Act, HUD is limiting the scope of the waiver for consistency with the consolidated plan; it applies only until the grantee first updates its consolidated plan priorities following the disaster.

Action Plan for Disaster Recovery

HUD is waiving the CDBG action plan requirements and substituting an Action Plan for Disaster Recovery. This will allow rapid implementation of disaster recovery grant programs and ensure conformance with provisions of the Supplemental Appropriations Act. Where possible, the Action Plan for Disaster Recovery, including certifications, does not repeat common action plan elements the grantee has already committed to carry out as part of its annual CDBG submission. Although a state as the grantee may designate an entity or entities to administer the funds, the state is responsible for compliance with federal requirements. During the course of the grant, HUD will monitor the state's use of funds and its actions for consistency with the Action Plan. The state may submit an initial partial Action Plan and amend it one or more times subsequently until the Action Plan describes uses for the total grant amount. The state may also amend activities in its Action Plan.

Citizen Participation

The citizen participation waiver and alternative requirements will permit a more streamlined public process, but one that still provides for reasonable public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG disaster recovery grant funds. The waiver removes the requirement at both the grantee and state grant recipient levels for public hearings or meetings as the method for disseminating information or collecting citizen comments. Instead, grantees are encouraged to employ innovative methods to communicate with citizens and solicit their views on proposed uses of disaster recovery funds, and then to indicate in the Action Plan how it has addressed these views.

Administration Limitation

State program administration requirements must be modified to be consistent with the Supplemental

Appropriations Act, which allows up to five percent of the grant to be used for the state's administrative costs. The provisions at 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 state administration expenditures and require a dollar for dollar match of state funds for administrative costs exceeding \$100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow the state to exceed the overall planning, management and administrative cap of 20 percent.

Use of Subrecipients

The State CDBG program rule does not make specific provision for the treatment of the entities called "subrecipients" in the CDBG entitlement program. The waiver allowing the state to carry out activities directly creates a situation in which the state may use subrecipients to carry out activities in a manner similar to entitlement communities rather than using a method of distributing funds to local governments. HUD and its Office of Inspector General have long identified the use of subrecipients as a practice that increases the risk of abuse of funds. HUD's experience is that this risk can be successfully managed by following the CDBG entitlement requirements and related guidance. Therefore, HUD is requiring that a state taking advantage of the waiver allowing it to carry out activities directly must follow the alternative requirements drawn from the CDBG entitlement rule and specified in this Notice when using subrecipients.

Reporting

HUD is waiving the annual reporting requirement because the Congress requires quarterly reports from the grantees and from HUD on various aspects of the uses of funds and of the activities funded with these grants. Many of the data elements the grantees will report to Congress quarterly are the same as those that HUD will use to exercise oversight for compliance with the requirements of this Notice and for prevention of fraud, abuse of funds, and duplication of benefits. To collect these data elements and to meet its reporting requirements, HUD is requiring each grantee to report to HUD quarterly using the online Disaster Recovery Grant Reporting (DRGR) system, which uses a streamlined, Internet-based format. HUD will use grantee reports to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; to reconcile budgets, obligations, fund draws, and expenditures; and to calculate

applicable administrative and public service limitations and the overall percent of benefit to low- and moderate-income persons, and as a basis for risk analysis in determining a monitoring plan.

The grantee must post the report on a Web site for its citizens within 3 days of the report's submission to HUD. If a grantee chooses, it may use this report, together with a statement regarding any sole source procurements, as its required quarterly submission to the Committees on Appropriations. Each quarter, HUD will submit to the Committees a summary description of its report reviews, other HUD monitoring and technical assistance activities undertaken during the quarter, and any significant conclusions related to fraud or abuse of funds or duplication of benefits.

Eligibility—Housing Related

The waiver of Section 105(a) of the 1974 Act that allows new housing construction and of Section 105(a)(24), to allow homeownership assistance for families whose income is up to 120 percent of median income and payment of up to 100 percent of a housing down payment is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disaster eligible under this notice. The broadening of the Section 105(a)(24) waiver, in accordance with the state's request, will allow the state to implement mixed-use housing recovery programs included in its HUD-accepted action plan.

Anti-Pirating

The limited waiver of the anti-pirating requirements allows the flexibility to provide assistance to a business located in another state or market area within the same state if the business was displaced from a declared area within the state by the disaster and the business wishes to return. This waiver is necessary to allow a grantee affected by a major disaster to rebuild its employment base.

Relocation Requirements

The states' plan to engage in voluntary acquisition and optional relocation activities (in a form often called "buyouts") by using waivers related to acquisition and relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (URA) and the replacement of housing and relocation assistance provisions under section 104(d) of the HCD Act. The

states asked for waivers to help promote the acquisition of property and the replacement of housing in a timely and efficient manner.

CDBG funds are federal financial assistance so their use in projects that involve acquisition of property necessary for a federally assisted project, or that involve acquisition, demolition, or rehabilitation that force a person to move permanently, are subject to the URA and the government-wide implementing regulations found at 49 CFR part 24. The URA provides assistance and protections to individuals and businesses affected by Federal or federally assisted projects. HUD is waiving the following URA requirements to help promote accessibility to suitable decent, safe, and sanitary housing for Midwest flooding victims.

The acquisition requirements of the URA and implementing regulations are waived so that they do not apply to an arm's length voluntary purchase carried out by a person that does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. The failure to suspend these requirements would impede disaster recovery and may result in windfall payments.

A limited waiver of the URA implementing regulations to the extent that they require grantees to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. The failure to suspend these one-size-fits-all requirements could impede disaster recovery. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required.

The URA and implementing regulations to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate) provided that the renter is also provided referrals to suitable, available rental replacement dwellings 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 the waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation

assistance are limited. The change provides access to an additional relocation resource option.

The URA and implementing regulations to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a "moving expense and dislocation allowance" based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Failure to suspend this provision would impede disaster recovery by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established moving expense and dislocation allowance.

In addition to the URA waivers, HUD is waiving requirements of section 104(d) of the HCD Act dealing with one-for-one replacement of low- and moderate-income housing units demolished or converted in connection with a CDBG-assisted development project for housing units damaged by one or more disasters. HUD is waiving this requirement because it does not take into account the large, sudden changes a major disaster may cause to the local housing stock, population, or local economy. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage grantees from acquiring, converting, or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified timeframe. HUD is also waiving the relocation assistance requirements contained in section 104(d) of the HCD Act to the extent they differ from those of the URA (42 U.S.C. 4601 *et seq.*). This change will simplify implementation while preserving statutory protections for persons displaced by projects assisted with CDBG disaster recovery grant funds.

Iowa has indicated that an additional reason for these waivers is related to its decision to administer some buyouts that will include in the same project funds under this notice and FEMA mitigation funding. The statutory requirements of the URA are also applicable to the administration of FEMA assistance, and disparities in rental assistance payments for activities funded by HUD and that agency will thus be eliminated. FEMA is subject to the requirements of the URA. Pursuant to this authority, FEMA requires that rental assistance payments be calculated on the basis of the amount necessary to lease or rent comparable housing for a period of 42 months. HUD is also subject to these requirements, but is also covered by alternative relocation provisions authorized under 42 U.S.C. 5304(d)(2)(A)(iii) and (iv) and implementing regulations at 24 CFR 42.350. These alternative relocation benefits, available to low- and moderate-income displacees opting to receive them in certain HUD programs, require the calculation of similar rental assistance payments on the basis of 60 months, rather than 42 months, thereby creating a disparity between the available benefits offered by HUD and FEMA (although not always an actual cash difference). The waiver assures uniform and equitable treatment by allowing the URA benefits requirements to be the standard for assistance under this notice.

Program Income

A combination of CDBG provisions limits the flexibility available to the states for the use of program income. Prior to 2002, program income earned on disaster recovery grants has usually been program income in accordance with the rules of the regular CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the State CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The HCD Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The HCD Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the states, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for

activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster recovery grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Certifications

HUD is waiving the standard certifications and substituting alternative certifications. The alternative certifications are tailored to CDBG disaster recovery grants and remove certifications and references that are redundant or appropriate to the annual CDBG formula program.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

Pre-Grant Process

1. General note. Prerequisites to a grantee's receipt of CDBG disaster recovery assistance include adoption of a citizen participation plan; publication of its proposed Action Plan for Disaster Recovery; public notice and comment; and submission to HUD of an Action Plan for Disaster Recovery, including certifications. Except as described in this Notice, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570, shall apply to the use of these funds.

2. Overall benefit waiver and alternative requirement. The requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), and 24 CFR 570.484 that 70 percent of funds are for activities that benefit low- and moderate-income persons are waived to stipulate that at least 50 percent of disaster recovery grant funds are for activities that principally benefit low- and moderate-income persons.

3. Direct grant administration by states and means of carrying out eligible activities. Requirements at 42 U.S.C. 5306 are waived to the extent necessary to allow a state to use its disaster recovery grant allocation directly to carry out state-administered activities eligible under this Notice. Activities eligible under this Notice may be undertaken, subject to state law, by the

recipient through its employees, or through procurement contracts, or through loans or grants under agreements with subrecipients, or by one or more entities that are designated by the chief executive officer of the state. Unless a waiver provides otherwise, activities made eligible under section 105(a)(15) of the HCD Act, as amended, may only be undertaken by entities specified in that section, whether the assistance is provided to such an entity from the state or from a unit of general local government.

4. Consolidated Plan waiver. Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(6), that housing activities undertaken with CDBG funds be consistent with the strategic plan, are waived. Further, 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. These waivers apply only until the time that the grantee first updates the consolidated plan priorities following the disaster.

5. Citizen participation waiver and alternative requirement. Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, and 24 CFR 91.115(b) with respect to citizen participation requirements are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at either the state or local government level, but do require providing a reasonable opportunity (at least 7 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for this grant are:

a. Before the grantee adopts the action plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment (including the information required in this Notice for an Action Plan for Disaster Recovery). The manner of publication (including prominent posting on the state, local, or other relevant Web site) must afford citizens, affected local governments and other interested parties a reasonable opportunity to examine the plan or amendment's contents. Subsequent to publication, the grantee must provide a reasonable time period and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. The grantee's plans to minimize displacement of persons or entities and to assist any persons or entities displaced must be published with the action plan.

b. In the action plan, each grantee will specify its criteria for determining what

changes in the grantee's activities constitute a substantial amendment to the plan. At a minimum, adding or deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change. The grantee may modify or substantially amend the action plan if it follows the same procedures required in this Notice for the preparation and submission of an Action Plan for Disaster Recovery. The grantee must notify HUD, but is not required to notify the public, when it makes any plan amendment that is not substantial.

c. The grantee must consider all comments received on the action plan or any substantial amendment and submit to HUD a summary of those comments and the grantee's response with the action plan or substantial amendment.

d. The grantee must make the action plan, any substantial amendments, and all performance reports available to the public. HUD recommends posting them on the Internet. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons. During the term of this grant, the grantee will provide citizens, affected local governments, and other interested parties reasonable and timely access to information and records relating to the action plan and the grantee's use of this grant.

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

6. Modify requirement for consultation with local governments. Currently, the statute and regulations require consultation with affected units of local government in the non-entitlement area of the state regarding the state's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that the state consult with all disaster-affected units of general local government, including any CDBG entitlement communities, in determining the use of funds.

7. Action Plan waiver and alternative requirement. The requirements at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR 1003.604, and 24 CFR 91.320 are waived for these disaster recovery grants. Each state must submit to HUD an Action Plan for Disaster Recovery that describes:

a. The effects of the covered disasters, especially in the most impacted areas and populations, and the greatest

recovery needs resulting from the covered disasters that have not been addressed by insurance proceeds, other federal assistance or any other funding source;

b. The grantee's overall plan for disaster recovery including:

(1) How the state will promote sound short- and long-term recovery planning at the state and local levels, especially land use decisions that reflect responsible flood plain management, removal of regulatory barriers to reconstruction, and prior coordination with planning requirements of other state and Federal programs and entities;

(2) How the state will encourage construction methods that emphasize high quality, durability, energy efficiency, sustainability, and mold resistance, including how the state will promote enactment and enforcement of modern building codes and mitigation of flood risk where appropriate; and

(3) How the state will provide or encourage provision of adequate, flood-resistant housing for all income groups that lived in the disaster affected areas prior to the incident date(s) of the applicable disaster(s), including a description of the activities it plans to undertake to address emergency shelter and transitional housing needs of homeless individuals and families (including subpopulations), to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, to help homeless persons make the transition to permanent housing and independent living, and to address the special needs of persons who are not homeless identified in accordance with 24 CFR 91.315(d);

c. Monitoring standards and procedures that are sufficient to ensure program requirements, including non-duplication of benefits, are met and that provide for continual quality assurance, investigation, and internal audit functions, with responsible staff reporting independently to the Governor of the state or, at a minimum, to the chief officer of the governing body of any designated administering entity;

d. A description of the steps the state will take to avoid or mitigate occurrences of fraud, abuse, and mismanagement, especially with respect to accounting, procurement, and accountability, with a description of how the state will provide for increasing the capacity for implementation and compliance of local government grant recipients, subrecipients, subgrantees, contractors, and any other entity responsible for administering activities under this grant; and

e. Method of distribution. The state's method of distribution shall include descriptions of the method of allocating funds to units of local government and of specific projects the state will carry out directly, as applicable. The descriptions will include:

(1) When funds are to be allocated to units of local government, all criteria used to select applications from local governments for funding, including the relative importance of each criterion, and including a description of how the disaster recovery grant resources will be allocated among all funding categories and the threshold factors and grant size limits that are to be applied; and

(2) When the state will carry out activities directly, the projected uses for the CDBG disaster recovery funds by responsible entity, activity, and geographic area;

(3) How the method of distribution to local governments or use of funds described in accordance with the above subparagraphs will result in eligible uses of grant funds related to long-term recovery from specific effects of the disaster(s) or restoration of infrastructure; and

(4) Sufficient information so that citizens, units of general local government and other eligible subgrantees or subrecipients will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the state.

f. Required certifications (see the applicable Certifications section of this Notice); and

g. A completed and executed Federal form SF-424.

8. Allow reimbursement for pre-agreement costs. The provisions of 24 CFR 570.489(b) are applied to permit a grantee to reimburse itself for otherwise allowable costs incurred on or after the incident date of the covered disaster.

9. Clarifying note on the process for environmental release of funds when a state carries out activities directly. Usually, a state distributes CDBG funds to units of local government 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 instead of distributing them to other governments. According to the environmental regulations at 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.

10. Duplication of benefits. In general, 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance

and Emergency Relief Act, as amended) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source. The Supplemental Appropriations Act stipulates that funds may not be used for activities reimbursable by or for which funds have been made available by the Federal Emergency Management Agency or by the Army Corps of Engineers.

11. Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties.

a. Section 5302(a)(7) of title 42, U.S.C. (definition of "nonentitlement area") and provisions of 24 CFR part 570 that would prohibit a state from distributing CDBG funds to units of general local government regardless of their status in the entitlement CDBG program and to Indian tribes, are waived, including 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in entitlement areas and to state or Federally recognized Indian tribes. The state is required instead to distribute funds to the most affected and impacted areas related to the consequences of the covered disaster(s) without regard to a local government or Indian tribe status under any other CDBG program.

b. Additionally, because a state grantee under this appropriation may carry out activities directly, HUD is applying the regulations at 24 CFR 570.480(c) with respect to the basis for HUD determining whether the state has failed to carry out its certifications so that such basis shall be that the state has failed to carry out its certifications in compliance with applicable program requirements. Also, 24 CFR 570.494 regarding timely distribution of funds is waived. However, HUD expects each state grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner.

12. Program income alternative requirement. 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent necessary to allow additional flexibility in the administration of program income. The requirements that are retained are republished here for the convenience of the grantees.

a. Program income.

(1) For the purposes of this subpart, "program income" is defined as gross income received by a state, a unit of general local government, a tribe or a

subrecipient of a state, a unit of general local government or a tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG 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:

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

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe or a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;

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

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

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

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

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

(x) Gross income paid to a state, tribe or a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

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

(i) The total amount of funds which is less than \$25,000 received in a single year that is retained by a unit of general local government, tribe or subrecipient;

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

(3) The state may permit the unit of general local government or tribe which receives or will receive program income to retain the program income, subject to the requirements of paragraph (a)(3)(ii) of this section, or the state may require the unit of general local government or tribe to pay the program income to the state.

(i) Program income paid to the state. Program income that is paid to the state or received by the state is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used by the state or distributed to units of general local government in accordance with the state's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the Treasury, except as provided in paragraph (b) of this section.

(ii) Program income retained by a unit of general local government or tribe.

(A) Program income that is received and retained by the unit of general local government or tribe before closeout of the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this notice.

(B) Program income that is received and retained by the unit of general local government or tribe after closeout of the grant that generated the program income, but that is used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of this notice.

(C) All other program income is subject to the requirements of 42 U.S.C. 5304(j) and subpart I of 24 CFR part 570.

(D) The state shall require units of general local government or tribes, to the maximum extent feasible, to disburse program income that is subject to the requirements of this notice before requesting additional funds from the state for activities, except as provided in paragraph (b) of this section.

(b) Revolving funds.

(1) The state may establish or permit units of general local government or tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in

carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

(2) The state may also establish a revolving fund to distribute funds to units of general local government or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the state or unit of general local government shall not be directly funded or capitalized with grant funds.

(c) Transfer of program income. Notwithstanding other provisions of this notice, the state may transfer program income before closeout of the grant that generated the program income to its own annual CDBG program or to any annual CDBG-funded activities administered by a unit of general local government or Indian tribe within the state.

(d) Program income on hand at the state or its subrecipients at the time of grant closeout by HUD and program income received by the state after such grant closeout shall be program income to the most recent annual CDBG program grant of the state.

13. Note that use of grant funds must relate to the covered disaster(s). In addition to being eligible under 42 U.S.C. 5305(a) or this Notice and meeting a CDBG national objective, the Supplemental Appropriations Act requires that activities funded under this Notice must also be for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of the recent natural disaster or disasters listed in this Notice for which the state received a funding allocation.

13a. Note on change to administration limitation. Up to five percent of the grant amount may be used for the state's administrative costs. 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 state administration expenditures, limit a state's ability to charge a *de minimis* 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. HUD does not waive 24 CFR 570.489(a)(3) to allow the state to exceed the overall planning, management and administrative cap of 20 percent.

Reporting

14. Waiver of performance report and alternative requirement. The requirements for submission of a Performance Evaluation Report (PER) pursuant to 42 U.S.C. 12708 and 24 CFR 91.520 are waived. The alternative requirement is that—

a. Each grantee must submit its Action Plan for Disaster Recovery, including performance measures, into HUD's Web-based Disaster Recovery Grant Reporting (DRGR) system. (The signed certifications and the SF-424 must be submitted in hard copy.) As additional detail about uses of funds becomes available to the grantee, the grantee must enter this detail into DRGR, in sufficient detail to serve as the basis for acceptable performance reports.

b. Each grantee must submit a quarterly performance report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and all expenditures reported. Each quarterly report will include information about the uses of funds during the applicable quarter including (but 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 disaster funds; beginning and ending dates of activities; and performance measures such as numbers of low- and moderate-income persons or households benefiting. Quarterly reports to HUD must be submitted using HUD's Web-based DRGR system and, within 3 days of submission, posted on the grantee's official Internet site open to the public.

15. Use of subrecipients. The following alternative requirement applies for any activity that a state

carries out directly by funding a subrecipient:

a. 24 CFR 570.503, except that specific references to 24 CFR parts 84 and 85 need not be included in subrecipient agreements.

b. 24 CFR 570.502(b), except that HUD recommends but does not require application of the requirements of 24 CFR part 84.

16. Recordkeeping. Recognizing that the state may carry out activities directly, 24 CFR 570.490(b) is waived in such a case and the following alternative provision shall apply: state records. 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 disaster recovery funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other federal requirements, the content of records maintained by the state shall be sufficient to: enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the state; and show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

17. Change of use of real property. This waiver 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, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), "unit of general local government" shall be read as "unit of general local government or state."

18. Responsibility for state review and handling of noncompliance. This change conforms the rule with the waiver allowing the state to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies: The state shall make reviews and audits including on-site reviews of any subrecipients, designated public agencies, and units of general local government as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCD Act, 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 public agencies or units of general local governments and for its subrecipients.

19. Housing-related eligibility waivers. 42 U.S.C. 5305(a) is waived to the extent necessary to allow homeownership assistance for households with up to 120 percent of area median income and downpayment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

20. Waiver and modification of the anti-pirating clause to permit assistance to help a business return. 42 U.S.C. 5305(h) and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster 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.

Relocation Requirements

21. Waiver of one-for-one replacement of units damaged by disaster.

a. One-for-one replacement requirements at 42 U.S.C. 5304(d)(2) and (d)(3), and 24 CFR 42.375(a) are waived for low- and moderate-income dwelling units (1) damaged by the disaster, (2) for which CDBG funds are used for demolition, and (3) which are not suitable for rehabilitation.

b. Relocation assistance requirements at 42 U.S.C. 5304(d)(2)(A), and 24 CFR 42.350 are waived to the extent they differ from those of the URA and its implementing regulations at 49 CFR part 24 following waivers to activities involving buyouts and other activities covered by the URA and related to disaster recovery housing activities assisted by the funds covered by this notice and included in an approved Action Plan.

c. The requirements at 49 CFR 24.101(b)(2)(i)-(ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person that does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person.

d. The requirements at sections 204(a) and 206 of the URA, 49 CFR 24.2, 24.402(b)(2) and 24.404 are waived to the extent that they require the state to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. To the extent that a tenant has been

paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required. Before using this waiver, the state must establish a definition of "demonstrable hardship."

e. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate) provided that the renter is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months.

f. The requirements of section 202(b) of the URA and 49 CFR 24.302 are waived to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a "moving expense and dislocation allowance" based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

22. *Notes on flood buyouts:* a. Payment of pre-flood values for buyouts. HUD disaster recovery state grant recipients and Indian tribes have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or floodplain. In using CDBG disaster recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor

exceptions, no new structure may be erected on the property and no subsequent application for Federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity.

c. Future Federal assistance to owners remaining in floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154(a)) 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 conditional 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. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph d., the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(i) Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the

property is not so insured as of the date on which the property is transferred; and

(ii) Maintain flood insurance in accordance with applicable Federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(i) The transferee fails to obtain or maintain flood insurance, in accordance with applicable Federal law, with respect to the property;

(ii) The property is damaged by a flood disaster; and

(iii) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

d. The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

e. The term "Federal disaster relief assistance" applies to HUD or other Federal assistance for disaster relief in "flood disaster areas." The term "flood disaster area" is defined in section 582(d)(2) of the National Flood Insurance Reform Act of 1994, as amended, to include an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

23. Information collection approval note. HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information unless the collection displays a valid control number.

Certifications

24. Certifications for state governments, waiver and alternative requirement. Section 91.325 of title 24

of the Code of Federal Regulations is waived. Each state must make the following certifications prior to receiving a CDBG disaster recovery grant:

a. The state certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the state, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See 24 CFR 570.487(b)(2).)

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

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

d. The state certifies that the Action Plan for Disaster Recovery is authorized under state law and that the state, and any entity or entities designated by the state, possesses the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

e. The state certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for this grant.

f. The state 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.

g. The state certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant), and that each unit of general local government that is receiving assistance from the state is following 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).

h. The state certifies that it has consulted with affected units of local government in counties designated in covered major disaster declarations in the nonentitlement, entitlement and tribal areas of the state in determining the method of distribution of funding;

i. The state certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters.

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

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

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

j. The state 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) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

k. The state certifies that it has and that it will require units of general local government 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 non-violent 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 non-violent civil rights demonstrations within its jurisdiction.

l. The state certifies that each state grant recipient or administering entity has the capacity to carry out disaster recovery activities in a timely manner, or the state has a plan to increase the capacity of any state grant recipient or administering entity who lacks such capacity.

m. The state certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area 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.

n. The state certifies that it will comply with applicable laws.

Duration of Funding

Availability of funds provisions in 31 U.S.C. 1551-1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510), limit the availability of certain appropriations for expenditure. This limitation may not be waived. However, the Supplemental Appropriations Act for these grants directs that these funds be available until expended unless, in accordance with 31 U.S.C. 1555, the Department determines that the purposes for which the appropriation has been made have been carried out and no disbursement has been made against the appropriation for two consecutive fiscal years. In such case, the Department shall close out the grant prior to expenditure of all funds.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

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). 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, Room 10276, 451 7th Street, SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be

scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

Dated: September 8, 2008.

Roy A Bernardi,

Deputy Secretary.

[FR Doc. E8-21092 Filed 9-10-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-1430-FR; WYW-27997; 8-08807]

Notice of Realty Action: Recreation and Public Purposes Act Classification of Public Lands in Park County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 90.00 acres of public land in Park County, Wyoming. Park County proposes to use the land for a sanitary landfill.

DATES: Interested parties may submit comments regarding the proposed conveyance or classification of the lands until *October 27, 2008*.

ADDRESSES: Send written comments to the Field Manager, Cody Field Office, P.O. Box 518, Cody, Wyoming 82414.

FOR FURTHER INFORMATION CONTACT: Mike Stewart, Field Manager, Bureau of Land Management, Cody Field Office, at (307) 578-5915.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act, (43 U.S.C. 315f), and Executive Order No. 6910, the following described public land in Park County, Wyoming, has been examined and found suitable for classification for lease and conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*):

Sixth Principal Meridian, Wyoming

T. 52 N., R. 101 W.,

Sec. 20, W $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

The land described contains 90.00 acres, more or less.

In accordance with the R&PP Act, Park County filed an application to purchase the above-described 90.00 acres of public land which has been

leased for solid waste disposal purposes since 1971. The land was classified for lease under the provisions of the R&PP Act. Before the conveyance can occur, the land must be classified for conveyance under the provisions of the R&PP Act. Additional detailed information pertaining to this application, plan of development, and site plan is in case file W-27997, located in the BLM Cody Field Office at the above address.

The land is not needed for any Federal purpose. The conveyance is consistent with the Cody Resource Management Plan dated November 8, 1990, and would be in the public interest. The patent, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The patent will be subject to all valid existing rights documented on the official public land records at the time of patent issuance.

Classification Comments: Interested parties may submit comments involving the suitability of the land for municipal and recreation uses. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

Confidentiality of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before March 16, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/ Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, the Electronic System for Travel Authorization (ESTA).

OMB Number: 1651-0111.

Form Numbers: I-94 and I-94W.

Abstract: Form I-94 (Arrival/Departure Record) and Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are used to document a traveler's admission into the United States. These forms include date of arrival, visa classification and the date the authorized stay expires. The forms are also used by business employers and other organizations to confirm legal status in the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens traveling to the United States under the

Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States. The recent expansion of the VWP to include seven additional countries resulted in a change to the burden hours of this collection of information.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (with change).

Affected Public: Individuals.

Estimated Number of Respondents (I-94 and I-94W): 30,924,380.

Estimated Number of Respondents (ESTA): 18,000,000.

Estimated Time per Response (I-94 and I-94W): 8 minutes.

Estimated Time per Response (ESTA): 15 minutes.

Estimated Total Annual Burden Hours: 8,623,249.

Estimated Total Annualized Cost on the Public: \$185,546,280.

If additional information is required, contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: February 6, 2009.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E9-3120 Filed 2-12-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5256-N-01]

Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for Community Development Block Grant (CDBG) Disaster Recovery Grantees Under 2008 Supplemental CDBG Appropriations

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of allocations, waivers, and alternative requirements.

SUMMARY: This Notice advises the public of the initial allocation of grant funds for CDBG disaster recovery grants for the purpose of assisting in the recovery in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of natural disasters that occurred in 2008. As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD

is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantees. This Notice also describes the common application, eligibility, and administrative waivers and the common alternative and statutory requirements for the grants. This Notice also grants to additional state allocatees the waivers included in the **Federal Register** published on September 11, 2008 (73 FR 52870).

DATES: *Effective Date:* February 18, 2009.

FOR FURTHER INFORMATION CONTACT:

Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. Facsimile inquiries may be sent to Ms. Kome at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110-329, approved September 30, 2008) (hereinafter, "Second 2008 Act" to differentiate it from the earlier 2008 Supplemental Appropriations Act, Pub. L. 110-252, approved June 30, 2008) appropriates \$6.5 billion, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing and economic revitalization in areas affected by hurricanes, flooding, and other natural disasters that occurred during 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). A rescission of \$377,139,920 (Pub. L. 110-161, approved December 26, 2007), and a statutory set-aside of \$6.5 million for HUD administrative costs reduces the amount to be distributed to \$6,116,360,080. The Second 2008 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 and guarantees, except for

requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead-based paint), upon a request by the state explaining why such waiver is required to facilitate the use of such funds or guarantees and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974 (HCD Act). Additionally, regulatory waiver authority is provided by 24 CFR 5.110, 91.600, and 570.5. The following application and reporting waivers and alternative requirements are in response to requests from the states receiving an allocation under this Notice.

The Secretary finds that the following waivers and alternative requirements, as described below, are necessary to facilitate use of the funds for the statutory purposes and are not inconsistent with the overall purpose of Title I of the HCD Act or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Second 2008 Act and the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), regulatory waivers must be

justified and published in the **Federal Register**.

Except as described in this Notice, statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the Second 2008 Act, HUD will reconsider every waiver in this Notice on the 2-year anniversary of the day this Notice is published.

Additional Waivers

Each state receiving an allocation may request additional waivers from the Department as needed to address the specific needs related to that state's recovery activities. The Department will respond separately to the state's requests for waivers of provisions not covered in this Notice, after working with the state to tailor the program to best meet the unique disaster recovery needs in its impacted areas.

Allocations

This Notice makes available \$2.145 billion of the \$6.1165 billion of supplemental appropriation for the CDBG program for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, floods, and other natural

disasters occurring in 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

The Second 2008 Act further notes:

That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each state * * * Provided further, that funds allocated under this heading shall not adversely affect the amount of any formula assistance received by a state under the Community Development Fund: Provided further, that each state may use up to 5 percent of its allocation for administrative costs.

HUD computes allocations based on data that are generally available and that cover all the eligible affected areas. Congress also required that states devote "not less than 650,000,000" to support "repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas where there is a demonstrated need as determined by the Secretary." HUD expects each grantee receiving an allocation to use the prorated share indicated in the allocation table for affordable rental housing activities.

State	Allocation	Affordable housing minimum *
Arkansas	\$20,294,857	\$2,156,733
Florida	17,457,005	1,855,155
Georgia	4,570,779	485,736
Illinois	41,984,121	4,461,649
Indiana	95,042,622	10,100,172
Iowa	125,297,142	13,315,318
Kentucky	3,217,686	341,943
Louisiana	438,223,344	46,569,962
Mississippi	6,283,404	667,737
Missouri	13,979,941	1,485,647
Puerto Rico	17,982,887	1,911,040
Tennessee	20,636,056	2,192,992
Texas	1,314,990,193	139,743,911
Wisconsin	25,039,963	2,660,995
Total	2,145,000,000	227,948,990

In determining the allocations, HUD focused on two factors:

- Unmet housing needs. This is each state's (or Puerto Rico's) relative share of estimated unmet housing needs for property owners experiencing serious damage to their homes; and
- Concentrated damage. To determine infrastructure and economic revitalization needs, HUD focused on areas of particular concentration of damage—specifically, each state's (or Puerto Rico's) share of seriously

damaged homes in areas where more than 20 percent of the homes experienced damage.

In the first quarter of calendar year 2009, HUD will make a final review of long-term disaster recovery needs for all states affected by disasters in 2008 to allocate the remaining \$3.972 billion. This review will include unmet housing, infrastructure, and economic revitalization needs.

A state included in the subsequent announcement may immediately

proceed to prepare and submit an Action Plan for disaster recovery in accordance with this Notice, although HUD will not be able to make the grant until the allocations and waivers are published in the **Federal Register**. Therefore, HUD commits to swiftly determining, announcing, and publishing the additional allocations once the data are available.

HUD invites each grantee receiving an allocation under the Second 2008 Act to submit an Action Plan for Disaster

Recovery in accordance with this Notice.

The Second 2008 Act requires funds be used only for specific purposes. The statute directs that each grantee will describe, in its Action Plan for Disaster Recovery, criteria for eligibility and how the use of the grant funds will address long-term recovery and infrastructure restoration, housing, and economic revitalization. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds do not meet the statutory purposes, or that funds allocated duplicate other benefits. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery or if they have any questions regarding meeting these requirements.

As provided for in the Second 2008 Act, the funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency (FEMA) or the Army Corps of Engineers. Further, none of the funds may be used as the required match, share, or contribution for another federal program.

Prevention of Fraud, Abuse, and Duplication of Benefits

The Second 2008 Act also directs the Secretary to:

Establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading including duplication of benefits.

To meet this directive, HUD is pursuing four courses of action. First, this Notice includes specific reporting, written procedures, monitoring, and internal audit requirements for grantees. Second, to the extent its resources allow, HUD will institute risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds. Third, HUD will be extremely cautious in considering any waiver related to basic financial management requirements. The standard, time-tested CDBG financial requirements will continue to apply. Fourth, HUD is collaborating with the HUD Office of Inspector General to plan and implement oversight of these funds.

Waiver Justification

This section of the Notice briefly describes the basis for each waiver and related alternative requirements, if any.

Each state eligible for a disaster recovery grant receives annual CDBG allocations, has a consolidated plan, a citizen participation plan, a monitoring plan, and has made CDBG certifications. HUD encourages each CDBG disaster recovery grantee to carry out CDBG disaster recovery activities in the context of its ongoing community development program to the extent feasible (for example, by selecting activities consistent with the consolidated plan, by providing overall benefit to at least 70 percent low- and moderate-income persons, and by holding hearings or meetings to solicit public comment).

The waivers, alternative requirements, and statutory changes described in this Notice apply only to the CDBG supplemental disaster recovery funds appropriated in the Second 2008 Act and, where applicable, the Supplemental Appropriations Act, 2008 (Pub. L. 110-252, approved June 30, 2008), and not to funds provided under the regular CDBG program or those provided under any other component of the CDBG program, such as the Neighborhood Stabilization Program. These actions provide additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation.

Application for Allocations Under the Second 2008 Act

These waivers and alternative requirements streamline the pre-grant process and set the guidelines for states' applications for their allocations. HUD encourages each grantee that receives an allocation to submit an Action Plan for Disaster Recovery to HUD as soon as practicable following an allocation announcement.

Overall Benefit to Low- and Moderate-Income Persons

Pursuant to explicit authority in the Second 2008 Act, HUD is granting an overall benefit waiver that allows for up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums or blight national objectives, rather than the 30 percent allowed under the annual state CDBG program. The primary objective of Title I of the HCD Act and of the funding program of each grantee is "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." The statute goes on to set the standard of performance for this primary objective

at 70 percent of the aggregate of the funds used for support of activities producing benefit to low- and moderate-income persons. Since extensive damage to community structures and housing affected those with varying incomes, and income-producing jobs are often lost for a period of time following a disaster, HUD is waiving the 70 percent overall benefit requirement and establishing the 50 percent requirement in order to give grantees even greater flexibility to carry out recovery activities within the confines of the CDBG program's national objectives. HUD may provide additional waivers of this requirement only if the Secretary specifically finds a compelling need to further reduce or eliminate the percentage requirement. The requirement that each activity meet one of the three national objectives of the CDBG program is not waived.

Consistency With the Consolidated Plan

HUD is waiving the requirement for consistency with the consolidated plan because the effects of a major disaster usually alter a grantee's priorities for meeting housing, employment, and infrastructure needs. To emphasize that uses of grant funds must be consistent with the overall purposes of the HCD Act, HUD is limiting the scope of the waiver for consistency with the consolidated plan; the waiver applies only until the grantee first updates its consolidated plan priorities following the disaster.

Action Plan for Disaster Recovery

HUD is waiving the CDBG action plan requirements and substituting an Action Plan for Disaster Recovery. This will allow rapid implementation of disaster recovery grant programs and ensure conformance with provisions of the Second 2008 Act. Where possible, the Action Plan for Disaster Recovery, including certifications, does not repeat common action-plan elements the grantee has already committed to carry out as part of its annual CDBG submission. Although a state as the grantee may designate an entity or entities to administer the funds, the state is responsible for compliance with federal requirements. During the course of the grant, HUD will monitor the state's use of funds and its actions for consistency with the Action Plan. The state may submit an initial partial Action Plan and amend it one or more times subsequently until the Action Plan describes uses for the total grant amount. The state may also amend activities in its Action Plan.

Citizen Participation

The citizen participation waiver and alternative requirements will permit a more streamlined public process, but one that still provides for reasonable public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG disaster recovery grant funds. The waiver removes the requirement at both the grantee and state grant recipient levels for public hearings or meetings as the method for disseminating information or collecting citizen comments.

Normally, in the CDBG program, a grantee takes at least 30 days soliciting comment from its citizens before it submits an annual action plan to HUD, which then has 45 days to accept or reject the plan. To expedite the process and to ensure that the disaster recovery grants are awarded in a timely manner, while preserving reasonable citizen participation, HUD is waiving the requirement that the grantee follow its citizen participation plan to the extent necessary to allow for a grantee to submit an Action Plan for Disaster Recovery in an expedited manner. HUD is shortening the minimum time for citizen comments and is requiring the proposed Action Plan for Disaster Recovery and any amendment thereof to be posted on the grantee's official Web site as the plan or amendment is developed, published, and submitted to HUD.

In combination, this Notice's alternative requirements provide the following expedited steps for disaster recovery grants:

- Proposed Action Plan for Disaster Recovery published via the usual methods and on the Internet for no less than 7 calendar days of public comment;
- Final Action Plan posted on the Internet and submitted to HUD (grant application includes Standard Form 424 (SF-424) and certifications; other parts of the Action Plan may initially be submitted either via Disaster Recovery Grant Reporting (DRGR) or paper);
 - HUD expedites review;
 - HUD accepts the plan and prepares a cover letter, grant agreement, and grant conditions;
 - Grant agreement signed by HUD and immediately transmitted to the grantee;
 - Grantee signs and returns the grant agreements;
 - HUD establishes the line of credit and the grantee requests and receives DRGR access (if the grantee does not already have it);
 - If it has not already done so, grantee creates an Action Plan in DRGR and

submits it to HUD. (Funds can be drawn from the line of credit only for an activity that is established in an Action Plan in DRGR.)

After completing the environmental review(s) pursuant to 24 CFR part 58 and, as applicable, receiving from HUD or the state an approved Request for Release of Funds and certification, the grantee may draw down funds from the line of credit.

Grantees are cautioned that, despite the expedited application and plan process, they are still responsible for ensuring that all citizens have equal access to information about the programs. Among other things, this means that each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction. This will be an issue particularly for states that this notice is allowing to make grants throughout the state, including into regular CDBG entitlement areas if these entitlements are included in a relevant disaster declaration. Because regular state CDBG funds are not used in entitlement areas, state CDBG staffs may not be aware of limited-English-proficient (LEP) speaking populations in those metropolitan jurisdictions.

Administration Limitation

State program administration requirements must be modified to be consistent with the Second 2008 Act, which allows up to 5 percent of the grant to be used for administrative costs, whether by the state, by entities designated by the state, by units of local government, or by subrecipients. The provisions at 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 state administration expenditures and require a dollar-for-dollar match of state funds for administrative costs exceeding \$100,000. HUD does not waive 24 CFR 570.489(a)(3), which will allow the state to fund planning activities that may exceed the 5 percent limitation on general administrative costs.

Use of Subrecipients

The state CDBG program rule does not make specific provision for the treatment of entities called "subrecipients" in the CDBG entitlement program. 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 entitlement communities rather than use a method of distributing funds to local governments. HUD and its Office of Inspector General have long

identified the use of subrecipients as a practice that increases the risk of abuse of funds. However, HUD's experience is that this risk can be successfully managed by following the CDBG entitlement requirements and related guidance. Therefore, HUD is requiring that when using subrecipients, a state taking advantage of the waiver allowing it to carry out activities directly must follow the alternative requirements drawn from the CDBG entitlement rule and specified in this Notice.

Reporting

HUD is waiving the annual reporting requirement because Congress requires quarterly reports from the grantees and from HUD on various aspects of the uses of funds and on the activities funded with these grants. Many of the data elements the grantees will report to Congress quarterly are the same as those that HUD will use to exercise oversight for compliance with the requirements of this Notice and for prevention of fraud, abuse of funds, and duplication of benefits. To collect these data elements and to meet its reporting requirements, HUD is requiring each grantee to report to HUD quarterly using the online DRGR system, which uses a streamlined, Internet-based format. Grantees will also use the recently enhanced DRGR to record obligations and to make draws of funds from the line of credit established for each grant. HUD will use the transactional data from DRGR and from grantee reports to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; to reconcile budgets, obligations, funding draws, and expenditures; to calculate applicable administrative and public service limitations and the overall percent of benefit to low- and moderate-income persons; to report to Congress and the public; and as a basis for risk analysis in determining a monitoring plan.

The grantee must post the quarterly report on an Internet site for its citizens within 3 days of the report's submission to HUD. If a grantee chooses, it may use this report, together with a statement regarding any sole source procurements, as its required quarterly submission to the Committees on Appropriations. Each quarter, HUD will submit to the Committees a summary description of its report reviews, of other HUD monitoring and technical assistance activities undertaken during the quarter, and of any significant conclusions related to fraud or abuse of funds or duplication of benefits.

Eligibility—Housing Related

The waiver of Section 105(a) of the 1974 Act to allow new housing construction, and of Section 105(a)(24), to allow homeownership assistance for families whose income is up to 120 percent of median income and payment of up to 100 percent of a housing down payment, is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disasters eligible under this Notice. The broadening of the Section 105(a)(24) waiver, in accordance with the states' requests, will allow each state to implement mixed-use housing recovery programs included in its HUD-accepted action plan.

Anti-Pirating

The limited waiver of the job relocation requirements allows the flexibility for a state to provide assistance to a business located in another state or another market area within the same state if the business was displaced from a declared area within the state by the disaster and wishes to return. This waiver is necessary to allow a grantee affected by a major disaster to rebuild its employment base.

Expanded Distribution and Direct Action

The waivers and alternative requirements allowing distribution of funds by a state to entitlement communities and Indian tribes, and to allow a state to carry out activities directly, rather than distribute all funds to units of local government, are consistent with waivers granted for previous, similar disaster recovery cases. HUD believes that, in using very similar statutory language to that used for the CDBG supplemental appropriations for Hurricane Katrina, Rita, and Wilma recovery, Congress is signaling its intent that the states under this appropriation also be able to carry out activities directly. Therefore, HUD is waiving program requirements in order to support this intent. HUD is also including in this Notice the necessary complementary waivers and alternative requirements related to subrecipients, to ensure proper management and disposition of funds during grant execution and at closeout.

Relocation Requirements

The states have indicated that they plan or wish to facilitate the ability of their local government grantees to engage in voluntary acquisition and relocation activities (in a form often called "buyouts"), by using waivers

related to acquisition and relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (URA), and the replacement of housing and relocation assistance provisions under section 104(d) of the HCD Act (42 U.S.C. 5304(d)). The states asked for waivers to help promote the acquisition of real property and relocation of displaced persons in a timely and efficient manner.

CDBG funds are federal financial assistance. Therefore, CDBG-assisted programs or projects are subject to the URA and the governmentwide implementing regulations at 49 CFR part 24. The URA's protection and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for CDBG-assisted programs or projects. The URA provides assistance and protections to individuals and businesses affected by federal or federally assisted projects. HUD is waiving the following URA requirements to help promote accessibility to suitable decent, safe, and sanitary housing for victims of hurricanes and flooding in 2008.

The acquisition requirements of the URA and implementing regulations are waived so that they do not apply to an arm's length voluntary purchase carried out by a person who does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. The failure to suspend these requirements would impede disaster recovery and may result in windfall payments.

A limited waiver is granted of the URA's implementing regulations to the extent that they require grantees to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. The failure to suspend these one-size-fits-all requirements could impede disaster recovery. To the extent that a tenant has been paying rent in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required.

The URA and implementing regulations are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher

or certificate), provided that the tenant is also provided with referrals to suitable, available rental replacement dwellings 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 the waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. This waiver gives states an additional relocation resource option.

The URA and implementing regulations are waived to the extent that they require a grantee to offer a person displaced from a dwelling the option to receive a "moving expense and dislocation allowance" based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Failure to suspend this provision would impede disaster recovery by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established moving expense and dislocation allowance.

In addition to the URA waivers, HUD is waiving requirements of section 104(d) of the HCD Act dealing with one-for-one replacement of lower-income dwelling units demolished or converted in connection with a CDBG-assisted development project for housing units damaged by one or more disasters. HUD is waiving this requirement because it does not take into account the large, sudden changes a major disaster may cause to the local housing stock, population, or local economy. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged housing structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage grantees from converting or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified time frame. HUD is also waiving the relocation assistance

requirements contained in section 104(d) of the HCD Act to the extent that they differ from those of the URA (42 U.S.C. 4601 *et seq.*). This change will simplify implementation while preserving statutory protections for persons displaced by projects assisted with CDBG disaster recovery grant funds.

Although the Second 2008 Act precludes the use of these disaster recovery CDBG grants for federal cost share or match, some disaster recovery CDBG funds used to support buyouts and relocation activities may be used in support of programs receiving FEMA funding. The statutory requirements of the URA are also applicable to the administration of FEMA mitigation funding, and disparities in rental assistance payments for activities funded by HUD and FEMA will thus be eliminated. FEMA is subject to the requirements of the URA. Pursuant to this authority, FEMA requires that rental assistance payments be calculated on the basis of the amount necessary to lease or rent comparable housing for a period of 42 months. HUD is also subject to these requirements, but is also covered by alternative relocation provisions authorized under 42 U.S.C. 5304(d)(2)(A)(iii) and (iv), and implementing regulations at 24 CFR 42.350. These alternative relocation benefits, available to low- and moderate-income displacées opting to receive them in certain HUD programs, require the calculation of similar rental assistance payments on the basis of 60 months, rather than 42 months, thereby creating a disparity between the available benefits offered by HUD and FEMA (although not always an actual cash difference). The waiver assures uniform and equitable treatment by allowing the URA benefits requirements to be the standard for assistance under this Notice.

Program Income

A combination of CDBG provisions limits the flexibility available to the states for the use of program income. Prior to 2002, program income earned on disaster recovery grants had usually been program income in accordance with the rules of the regular CDBG program of the applicable state and had lost its disaster recovery grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The HCD Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it

uses the funds for additional eligible activities under the annual CDBG program. The HCD Act allows the state to require return of the program income to the state under certain circumstances. This Notice waives the existing statute and regulations to give the states, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this Notice allows program income to the disaster recovery grant generated by activities undertaken directly by the state or its agent(s), to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Certifications

HUD is waiving the standard certifications and substituting alternative ones. The alternative certifications are tailored to CDBG disaster recovery grants and remove certifications and references that are redundant or appropriate to the annual CDBG formula program.

Waivers and Alternative Requirements for Grants Under the Supplemental Appropriations Act, 2008

In HUD's December 19, 2008 **Federal Register** notice (73 FR 77818), HUD published supplemental disaster recovery allocations and notified the states that received an initial fund allocation under that Notice that they could apply the waivers and alternative requirements of HUD's September 11, 2008 **Federal Register** notice (73 FR 52870), if they requested those waivers from HUD. Today's **Federal Register** Notice notifies Congress and the public that the states receiving initial allocations under the December 19, 2008 Notice have, with one exception, requested all the waivers and alternative requirements under HUD's September 11, 2008 notice, and that HUD is granting them. The exception is the State of Minnesota, which did not request the waivers that would allow it to carry out activities directly or to facilitate flood buyouts. Those waivers and alternative requirements, therefore, do not apply to Minnesota's grant; all the others do.

Applicable Rules, Statutes, Waivers, and Alternative Requirements; Pre-Grant Process

1. *General note.* Prerequisites to a grantee's receipt of CDBG disaster recovery assistance include adoption of a citizen participation plan; publication of its proposed Action Plan for Disaster Recovery; public notice and comment; and submission to HUD of an Action Plan for Disaster Recovery, including certifications. Except as described in this Notice, statutory and regulatory provisions governing the CDBG program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570, shall apply to the use of these funds.

2. *Overall benefit waiver and alternative requirement.* The requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), and 24 CFR 570.484 that 70 percent of funds are for activities that benefit low- and moderate-income persons are waived to stipulate that at least 50 percent of disaster recovery grant funds are for activities that principally benefit low- and moderate-income persons.

3. *Direct grant administration by states and means of carrying out eligible activities.* Requirements at 42 U.S.C. 5306 are waived to the extent necessary to allow a state to use its disaster recovery grant allocation directly to carry out state-administered activities eligible under this Notice. Activities eligible under this Notice may be undertaken, subject to state law, by the recipient through its employees, or through procurement contracts, or through loans or grants under agreements with subrecipients, or by one or more entities that are designated by the chief executive officer of the state. Unless a waiver provides otherwise, activities made eligible under section 105(a)(15) of the HCD Act, as amended, may only be undertaken by entities specified in that section, whether the assistance is provided to such an entity from the state or from a unit of general local government.

4. *Consolidated Plan waiver.* Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(5), that housing activities undertaken with CDBG funds be consistent with the strategic plan, are waived. Further, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, also is waived. These waivers apply only until the time that the grantee first updates the consolidated plan priorities following the disaster.

5. *Citizen participation waiver and alternative requirement.* Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C.

12707, 24 CFR 570.486, and 24 CFR 91.115(b), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at either the state or local government level, but do require providing a reasonable opportunity (at least 7 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for this grant are:

a. Before the grantee adopts the action plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment (including the information required in this Notice for an Action Plan for Disaster Recovery). The manner of publication must include prominent posting on the state, local, or other relevant Internet site and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. Subsequent to publication, the grantee must provide a reasonable time frame and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. The grantee's plans to minimize displacement of persons or entities and to assist any persons or entities displaced must be published with the Action Plan.

b. In the Action Plan, each grantee will specify its criteria for determining what changes in the grantee's activities constitute a substantial amendment to the plan. At a minimum, adding or deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change. The grantee may modify or substantially amend the Action Plan if it follows the same procedures required in this Notice for the preparation and submission of an Action Plan for Disaster Recovery. The grantee must notify HUD, but is not required to notify the public, when it makes any plan amendment that is not substantial.

c. The grantee must consider all comments received on the Action Plan or any substantial amendment and submit to HUD a summary of those comments and the grantee's response, with the Action Plan or substantial amendment.

d. The grantee must make the Action Plan, any substantial amendments, and all performance reports available to the public on the Internet and on request. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons.

During the term of this 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 this grant.

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

6. Modify requirement for consultation with local governments. Currently, the statute and regulations require consultation with affected units of local government in the nonentitlement area of the state regarding the state's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that the state consult with all disaster-affected units of general local government, including any CDBG-entitlement communities, in determining the use of funds.

7. Action Plan waiver and alternative requirement. The requirements at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR 1003.604, and 24 CFR 91.320 are waived for these disaster recovery grants. Each state must submit to HUD an Action Plan for Disaster Recovery that describes:

a. The effects of the covered disasters, especially in the most affected areas and populations, and the greatest recovery needs resulting from the covered disasters that have not been addressed by insurance proceeds, other federal assistance, or any other funding source;

b. The grantee's overall plan for disaster recovery including:

(1) How the state will promote sound short- and long-term recovery planning at the state and local levels, especially land-use decisions that reflect responsible flood plain management, removal of regulatory barriers to reconstruction, and prior coordination with planning requirements of other state and federal programs and entities;

(2) How the state will encourage construction methods that emphasize high quality, durability, energy efficiency, sustainability, and mold resistance, including how the state will promote enactment and enforcement of modern building codes and mitigation of flood risk, where appropriate; and

(3) How the state will provide or encourage provision of adequate, flood-resistant housing for all income groups that lived in the disaster-affected areas prior to the incident date(s) of the applicable disaster(s), including a description of the activities it plans to

undertake to address emergency shelter and transitional housing needs of homeless individuals and families (including subpopulations), to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, to help homeless persons make the transition to permanent housing and independent living, and to address the special needs of persons who are not homeless identified in accordance with 24 CFR 91.315(d);

c. Monitoring standards and procedures that are sufficient to ensure program requirements, including non-duplication of benefits, are met and that provide for continual quality assurance, investigation, and internal audit functions with responsible staff reporting independently to the Governor of the state or, at a minimum, to the chief officer of the governing body of any designated administering entity;

d. A description of the steps the state will take to avoid or mitigate occurrences of fraud, abuse, and mismanagement, especially with respect to accounting, procurement, and accountability, with a description of how the state will provide for increasing the capacity for implementation and compliance of local government grant recipients, subrecipients, subgrantees, contractors, and any other entity responsible for administering activities under this grant; and

e. Method of distribution. The state's method of distribution shall include descriptions of the method of allocating funds to units of local government and descriptions of specific projects the state will carry out directly, as applicable. The descriptions will include:

(1) When funds are to be allocated to units of local government, all criteria used to select applications from local governments for funding, including the relative importance of each criterion, and a description of how the disaster recovery grant resources will be allocated among all funding categories and the threshold factors and grant size limits that are to be applied; and

(2) When the state will carry out activities directly, the projected uses for the CDBG disaster recovery funds, by responsible entity, activity, and geographic area;

(3) How the method of distribution to local governments or use of funds described in accordance with the above subparagraphs will result in eligible uses of grant funds related to long-term recovery from specific effects of the disaster(s) or restoration of infrastructure, housing, and economic revitalization; and

(4) Sufficient information so that citizens, units of general local government, and other eligible subgrantees or subrecipients will be able to understand and comment on the Action Plan and, if applicable, be able to prepare responsive applications to the state.

f. Required certifications (see the applicable Certifications section of this Notice); and

g. A completed and executed federal form SF-424.

8. *Allow reimbursement for pre-agreement costs.* The provisions of 24 CFR 570.489(b) are applied to permit a grantee to reimburse itself for otherwise allowable costs incurred on or after the incident date of the covered disaster.

9. *Clarifying note on the process for environmental release of funds when a state carries out activities directly.*

Usually, a state distributes CDBG funds to units of local government 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 instead of distributing them to other governments. According to the environmental regulations at 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.

10. *Duplication of benefits.* In general, 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source. The Second 2008 Act stipulates that funds may not be used for activities reimbursable by or for which funds have been made available by FEMA or by the Army Corps of Engineers.

11. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties.*

a. Section 5302(a)(7) of title 42, U.S.C. (definition of "nonentitlement area") and provisions of 24 CFR part 570 that would prohibit a state from distributing CDBG funds to units of general local government regardless of their status in the entitlement CDBG program and to Indian tribes, are waived, including 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in entitlement areas and to state or federally recognized Indian tribes. The state is required

instead to distribute funds to activities assisting a declared county or counties and eligible under this Notice without regard to the status of a local government or Indian tribe under any other CDBG program.

b. Additionally, because the state grantees under this appropriation have requested a waiver to carry out activities directly, HUD is applying the regulations at 24 CFR 570.480(c) with respect to the basis for HUD determining whether the state has failed to carry out its certifications so that such basis shall be that the state has failed to carry out its certifications in compliance with applicable program requirements. Also, 24 CFR 570.494 regarding timely distribution of funds is waived. However, HUD expects each state grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner.

12. *Program income alternative requirement.* 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent necessary to allow additional flexibility in the administration of program income.

a. Program income.

(1) For the purposes of this subpart, "program income" is defined as gross income received by a state, a unit of general local government, a tribe or a subrecipient of a state, a unit of general local government or a tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG 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:

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

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe or a unit of general local government with CDBG funds, less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property owned by a state, tribe, or the unit of general local government or a subrecipient of a state, tribe or unit of general local

government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

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

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

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

(x) Gross income paid to a state, tribe, or a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

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

(i) The total amount of funds which is less than \$25,000 received in a single year, that is retained by a unit of general local government, tribe, or subrecipient;

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

(3) The state may permit the unit of general local government or tribe which receives or will receive program income to retain the program income, subject to the requirements of paragraph (a)(3)(ii) of this section, or the state may require the unit of general local government or tribe to pay the program income to the state.

(i) Program income paid to the state. Program income that is paid to the state or received by the state is treated as additional disaster recovery CDBG funds subject to the requirements of this Notice and must be used by the state or distributed to units of general local government in accordance with the state's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the U.S. Treasury, except as provided in paragraph (b) of this section.

(ii) Program income retained by a unit of general local government or tribe.

(A) Program income that is received and retained by the unit of general local government or tribe before closeout of

the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this Notice.

(B) Program income that is received and retained by the unit of general local government or tribe after closeout of the grant that generated the program income, but that is used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of this Notice.

(C) All other program income is subject to the requirements of 42 U.S.C. 5304(j) and subpart I of 24 CFR part 570.

(D) The state shall require units of general local government or tribes, to the maximum extent feasible, to disburse program income that is subject to the requirements of this Notice before requesting additional funds from the state for activities, except as provided in paragraph (b) of this section.

b. Revolving funds.

(1) The state may establish or permit units of general local government or tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for revolving fund activities. Such program income is not required to be disbursed for nonrevolving fund activities.

(2) The state may also establish a revolving fund to distribute funds to units of general local government or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the U.S. Treasury for payments to units of general local government that could be funded from the revolving fund.

(3) A revolving fund established by either the state or unit of general local government shall not be directly funded or capitalized with grant funds.

c. Transfer of program income. Notwithstanding other provisions of this Notice, the state may transfer program income before closeout of the grant that generated the program income to its own annual CDBG program or to any annual CDBG-funded activities administered by a unit of general local government or Indian tribe within the state.

d. Program income on hand at the state or at its subrecipients at the time of grant closeout by HUD and program income received by the state after such grant closeout shall be program income to the most recent annual CDBG program grant of the state.

13. *Note that use of grant funds must relate to the purposes of the Second 2008 Act.* In addition to being eligible under 42 U.S.C. 5305(a) or this Notice and meeting a CDBG national objective, the Second 2008 Act requires that activities funded under this Notice must also be for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, flooding, and other natural disasters that occurred in 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of the specific natural disaster or disasters for which the state received a funding allocation.

13a. *Note on change to administration limitation.* Up to 5 percent of the grant amount may be used for administrative costs. 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 state administration expenditures, limit a state's ability to charge a *de minimis* 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. HUD does not waive 24 CFR 570.489(a)(3), which will allow the state to carry out planning activities that may exceed the 5 percent limitation on general administrative costs.

Reporting

14. *Waiver of performance report and alternative requirement.* The requirements for submission of a Performance Evaluation Report (PER) pursuant to 42 U.S.C. 12708 and 24 CFR 91.520 are waived. The alternative requirement is that:

a. Each grantee must submit its Action Plan for Disaster Recovery, including performance measures, into HUD's Internet-based DRGR system. (The signed certifications and the SF-424

must be, and the initial Action Plan for Disaster Recovery may be, submitted in hard copy.) As additional information about uses of funds becomes available to the grantee, the grantee must enter such detail into DRGR, in sufficient detail to serve as the basis for acceptable performance reports.

b. Each grantee must submit a quarterly performance report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and all expenditures reported. Each quarterly report will include information about the uses of funds during the applicable quarter including (but 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 disaster funds; beginning and ending dates of activities; and performance measures such as numbers of low- and moderate-income persons or households benefiting. Quarterly reports to HUD must be submitted using HUD's Internet-based DRGR system and, within 3 days of submission, be posted on the grantee's official Internet site open to the public.

15. *Use of subrecipients.* The following alternative requirement applies for any activity that a state carries out directly by funding a subrecipient:

a. 24 CFR 570.503, except that specific references to 24 CFR parts 84 and 85 need not be included in subrecipient agreements.

b. 24 CFR 570.502(b), except that HUD recommends but does not require application of the requirements of 24 CFR part 84.

16. *Recordkeeping.* Recognizing that the state may carry out activities directly, 24 CFR 570.490(b) is waived in such a case and the following alternative provision shall apply: State records. 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 disaster recovery funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other federal requirements, the content of records maintained by the state shall be sufficient to: enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the state; and show how activities funded are consistent with the descriptions of activities proposed for

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

17. *Change of use of real property.* This waiver 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, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), "unit of general local government" shall be read as "unit of general local government or state."

18. *Responsibility for state review and handling of noncompliance.* This change conforms the rule with the waiver allowing the state to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies: The state shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and units of general local government, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCD Act, 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 public agencies or units of general local governments and for its subrecipients.

19. *Housing-related eligibility waivers.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow homeownership assistance for households with up to 120 percent of area median income and downpayment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

20. *Waiver and modification of the job relocation clause to permit assistance to help a business return.* 42 U.S.C. 5305(h) and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster 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.

Relocation Requirements

21. *Waiver of one-for-one replacement of units damaged by disaster.*

a. One-for-one replacement requirements at 42 U.S.C. 5304(d)(2) and (d)(3), and 24 CFR 42.375(a) are waived for lower-income dwelling units: (1) damaged by the disaster, (2) for which CDBG funds are used for conversion or demolition, and (3) which are not suitable for rehabilitation.

b. Relocation assistance requirements at 42 U.S.C. 5304(d)(2)(A) and 24 CFR 42.350 are waived, to the extent that they differ from those of the URA and its implementing regulation at 49 CFR part 24, for activities involving buyouts and other activities covered by the URA and related to disaster recovery activities assisted by the funds covered by this Notice and included in an approved Action Plan.

c. The requirements at 49 CFR 24.101(b)(2)(i)-(ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person.

d. The requirements at sections 204(a) and 206 of the URA, 49 CFR 24.2, 24.402(b)(2), and 24.404 are waived to the extent that they require the state to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. To the extent that a tenant has been paying rent in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required. Before using this waiver, the state must establish a definition of "demonstrable hardship."

e. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced tenant by offering rental housing through a TBRA housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that the tenant is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months.

f. The requirements of section 202(b) of the URA and 49 CFR 24.302 are waived to the extent that they require a grantee to offer a person displaced from a dwelling the option to receive a "moving expense and dislocation allowance" based on the current schedule of allowances prepared by the Federal Highway Administration,

provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

22. Notes on flood buyouts:

a. Payment of pre-flood values for buyouts. HUD disaster recovery state grant recipients and Indian tribes have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a floodway or floodplain. In using CDBG disaster recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity. Although the funds under this Notice may not be used as a match or cost share for FEMA programs, HUD urges grantees carrying out buyouts with funds under this Notice to consider implementing the same or similar use restrictions on properties acquired under CDBG-assisted buyouts.

c. Future federal assistance to owners remaining in 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 conditional 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. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person who has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph d., the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(i) Obtain flood insurance in accordance with applicable federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(ii) Maintain flood insurance in accordance with applicable federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(i) The transferee fails to obtain or maintain flood insurance, in accordance with applicable federal law, with respect to the property;

(ii) The property is damaged by a flood disaster; and

(iii) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the federal disaster relief

assistance provided with respect to the property.

d. The notification requirements apply to personal, commercial, or residential property for which federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable federal law with respect to such property.

e. The term "Federal disaster relief assistance" applies to HUD or other federal assistance for disaster relief in "flood disaster areas." The term "flood disaster area" is defined in section 582(d)(2) of the National Flood Insurance Reform Act of 1994, as amended, to include an area receiving a presidential declaration of a major disaster or emergency as a result of flood conditions.

23. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information, unless the collection displays a valid control number.

Certifications

24. *Certifications for state governments, waiver, and alternative requirement.* Section 91.325 of title 24 of the Code of Federal Regulations is waived. Each state must make the following certifications prior to receiving a CDBG disaster recovery grant:

a. The state certifies that it will affirmatively further fair housing, which means that it has or will conduct an analysis to identify impediments to fair housing choice within the state, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See 24 CFR 570.487(b)(2).)

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

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

d. The state certifies that the Action Plan for Disaster Recovery is authorized under state law and that the state, and any entity or entities designated by the state, possess(es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

e. The state 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 this grant.

f. The state 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.

g. The state certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant), and that each unit of general local government that is receiving assistance from the state is following 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).

h. The state certifies that it has consulted with affected units of local government in counties designated in covered major disaster declarations in the nonentitlement, entitlement, and tribal areas of the state in determining the method of distribution of funding.

i. The state certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of natural disasters that occurred and were declared in 2008.

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

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

(4) The state will not attempt to recover any capital costs of public improvements assisted with CDBG disaster recovery grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (A) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (A).

j. The state 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) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

k. The state certifies that it has and that it will require units of general local government 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.

l. The state certifies that each state grant recipient or administering entity has the capacity to carry out disaster recovery activities in a timely manner, or the state has a plan to increase the capacity of any state grant recipient or administering entity who lacks such capacity.

m. The state certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area 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.

n. The state certifies that it will comply with applicable laws.

Grant of Waivers for Grants Under the Supplemental Appropriations Act, 2008

The states receiving initial allocations under HUD's **Federal Register** notice published on December 19, 2003, (73 FR 77818) have, with one exception, requested all the waivers and alternative requirements provided by HUD's September 11, 2008, **Federal Register** notice (73 FR 52870), and HUD is granting them. The exception is the State of Minnesota, which did not request the waivers that would allow it to carry out activities directly or to facilitate flood buyouts. Those waivers and alternative requirements, therefore, do not apply to Minnesota's grant; all the others do.

Duration of Funding

Availability of funds provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510), limit the availability of certain appropriations for expenditure. This limitation may not be waived. However, the Second 2008 Act for these grants directs that these funds be available until expended unless, in accordance with 31 U.S.C. 1555, HUD determines that the purposes for which the appropriation has been made have been carried out and no disbursement has been made against the appropriation for 2 consecutive fiscal years. In such a case, HUD shall close out the grant prior to expenditure of all funds.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

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). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by

calling the toll-free Federal Information Relay Service at 800–877–8339.

Dated: February 10, 2009.

Shaun Donovan,

Secretary.

[FR Doc. E9–3216 Filed 2–11–09; 11:15 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2008–N0019; 97600–9792–0000–5d]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, Fish and Wildlife Service, announce a public meeting of the Sport Fishing and Boating Partnership Council (Council).

DATES: The meeting will be held on Monday, March 2, 2009, from 1 p.m. to 5 p.m. and Tuesday, March 3, 2009 from 8:30 a.m. to 1:30 p.m. (Eastern Time).

Members of the public wishing to participate in the meeting must notify Douglas Hobbs by close of business on Monday, February 23, 2009, per instructions under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Department of the Interior, in the Room 5160, 1849 C Street, NW., Washington, DC; telephone (703) 358–2336.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2336; fax (703) 358–2548; or via e-mail at doug_hobbs@fws.gov.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a meeting on Monday, March 2, 2009, from 1 p.m. to 5 p.m. and Tuesday, March 3, 2009 from 8:30 a.m. to 1:30 p.m. (Eastern time).

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director, U.S. Fish and Wildlife Service, on nationally-significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463).

Agenda of the Meeting

The agenda for the September 9 meeting will be as follows:

- (1) Opening comments.
- (2) Introductions.
- (3) Administrative announcements.
- (4) Pre-approved presentations from the public.
- (5) Debriefs from each DRBOSAC Subcommittee.
- (6) Public comments.
- (7) Future Committee business.
- (8) Closing.

More information and detail on the meeting will be available at the committee Web site, located at <https://homeport.uscg.mil/drbosac>. Additional detail may be added to the agenda up to September 2, 2009.

Procedural

This meeting is open to the public. All persons entering the Harbor Room will need to sign in at the door. Please note that the meeting may close early if all business is finished.

The public will be able to make oral presentations during the meeting when given the opportunity to do so. Members of the public may seek pre-approval for their oral presentations by contacting the Coast Guard no later than September 2, 2009. The public may file written statements with the committee; written material should reach the Coast Guard no later than September 2, 2009. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 35 copies to the Liaison to the DFO no later than September 2, 2009, and indicate that the material is to be distributed to committee members in advance of the September 9 meeting.

Please register your attendance with the Liaison to the DFO no later than September 2, 2009.

Information on Services for Individuals with Disabilities

For information on facilities, or services for individuals with disabilities, or to request special assistance at the meeting, contact the Liaison to the DFO as soon as possible.

Dated: August 6, 2009.

Nakeisha B. Hills,

Lieutenant Commander, U.S. Coast Guard, Preparedness Officer, Sector Delaware Bay Acting Designated Federal Officer.

[FR Doc. E9-19550 Filed 8-13-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5337-N-01]

Additional Allocations and Waivers Granted to and Alternative Requirements for 2008 Community Development Block Grant (CDBG) Disaster Recovery Grantees

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of allocations, waivers, and alternative requirements.

SUMMARY: This Notice advises the public of the second allocation for grant funds for CDBG disaster recovery grants for the purpose of assisting in the recovery in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters. As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantees. This Notice also describes: (1) How the allocatees may implement the common application, eligibility, and administrative waivers and the common alternative and statutory requirements for the grants; and (2) additional waivers and alternative requirements for certain earlier grants.

DATES: *Effective Date:* August 19, 2009.

FOR FURTHER INFORMATION CONTACT:

Scott Davis, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at telephone number 800-877-8339. Facsimile inquiries may be sent to Mr. Davis at facsimile number 202-401-2044. (Except for the "800" number, these telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110-329, approved September 30, 2008) (hereinafter, "Second 2008 Act") to differentiate it from the earlier 2008 Supplemental Appropriations Act) (Pub. L. 110-252 approved June 30, 2008)

(hereinafter "First 2008 Act"), appropriated \$6.5 billion, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring during 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). To date, \$377,139,920 has been rescinded, \$6,500,000 was set-aside for HUD administrative costs, and \$2,145,000,000 was allocated by HUD in November 2008. This Notice allocates the remaining \$3,971,360,080.

The First 2008 Act also appropriated funds for 2008 disaster recovery grantees, although it only provided funds for disasters occurring in May and June 2008. Both the First 2008 Act and the Second 2008 Act authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use of these funds and guarantees by the recipient, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead-based paint), upon a request by the state explaining why such waiver is required to facilitate the use of such funds or guarantees, and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of title I of the Housing and Community Development Act of 1974 (HCD Act). Additionally, regulatory waiver authority is provided by 24 CFR 5.110, 91.600, and 570.5. The following application and reporting waivers and alternative requirements are in response to requests from the states receiving an allocation under today's **Federal Register** Notice.

The Secretary finds that the following waivers and alternative requirements, as described below, are necessary to facilitate use of the funds for the statutory purposes and are not inconsistent with the overall purpose of title I of the HCD Act or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the First 2008 Act and the Second 2008 Act, statutory and regulatory waivers must be published in the **Federal Register**. Except as described in this Notice, statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570,

shall apply to the use of these funds. In accordance with the First and Second 2008 Acts, HUD will reconsider every waiver in today's **Federal Register** Notice on the 2-year anniversary of the day this Notice is published.

Additional Waivers

Each state receiving an allocation may request additional waivers from the Department as needed to address the specific needs related to that state's recovery activities. The Department will respond separately to the state's requests for waivers of provisions not covered in this Notice, after working with the state to tailor the program to best meet the unique disaster recovery needs in its impacted areas. HUD has included some additional waivers and alternative requirements for individual states in this Notice.

Allocations

Today's Notice makes available the remainder of the Second Act's supplemental appropriation, \$3,971,360,080 for the CDBG program for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing,

and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring in 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). The Second 2008 Act notes:

That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each state * * * Provided further, that funds allocated under this heading shall not adversely affect the amount of any formula assistance received by a state under the Community Development Fund: Provided further, that each state may use up to five percent of its allocation for administrative costs.

HUD computes allocations based on data that are generally available covering all the eligible affected areas. The 11 states receiving an allocation in today's Notice are indicated in Table 1, below. Their estimated unmet needs represent more than 97 percent of the estimated unmet needs across all 76 disasters that occurred in 2008. The allocation was based on two factors: (i) The sum of estimated unmet housing, infrastructure, and business needs,

adjusted by (ii) a HUD calculated risk level for recovery challenge. More detailed information about the data reviewed, the formula process, and the possible risks affecting recovery can be found in Appendix 1 of this Notice. Initial allocations made under the Second 2008 Act were announced by HUD on November 26, 2008, and published in the **Federal Register** on February 13, 2009 (74 FR 7244). Initial allocations are included in Table 1. The states of Kentucky, Georgia, and Mississippi, and the Commonwealth of Puerto Rico received allocations in the February 13, 2009, **Federal Register** Notice, but are not receiving additional funds under today's Notice, bringing to 15 the total number of grantees allocated funding from the Second 2008 Act. Table 2 is a reprint from the initial allocation notice that shows what the allocations were under the First 2008 Act. Unlike funds allocated under the Second 2008 Act, which may be used for recovery from any disaster occurring during Calendar Year 2008, funds under the First 2008 Act are available only for use in areas covered by specific declarations, so these are also noted.

TABLE 1—SECOND 2008 ACT DISASTER RECOVERY ALLOCATIONS

State	This Notice's Second 2008 Act allocation	Initial Second 2008 Act allocation (Notice 74 FR 7244)	Total Second 2008 Act allocation	Minimum amount for affordable rental housing
Texas	\$1,743,001,247	\$1,314,990,193	\$3,057,991,440	\$342,521,992
Louisiana	620,467,205	438,223,344	1,058,690,549	118,582,672
Iowa	516,713,868	125,297,142	642,011,010	71,910,891
Indiana	253,340,079	95,042,622	348,382,701	39,021,933
Illinois	127,207,128	41,984,121	169,191,249	18,950,911
Missouri	78,625,549	13,979,941	92,605,490	10,372,631
Wisconsin	75,200,572	25,039,963	100,240,535	11,227,823
Tennessee	71,881,834	20,636,056	92,517,890	10,362,819
Arkansas	70,181,041	20,294,857	90,475,898	10,134,098
Florida	63,606,850	17,457,005	81,063,855	9,079,866
California	39,531,784	0	39,531,784	4,427,908
Kentucky	0	3,217,686	3,217,686	341,943
Georgia	0	4,570,779	4,570,779	485,736
Mississippi	0	6,283,404	6,283,404	667,737
Puerto Rico	0	17,982,887	17,982,887	1,911,040

TABLE 2—FIRST 2008 ACT DISASTER RECOVERY ALLOCATIONS

State	Disaster No.	Incident date	Declared date	Allocation
Mississippi	1753	3/20 to 5/19	5/8/08	\$2,281,287
Maine	1755	4/28 to 5/14	5/9/08	2,187,114
Oklahoma	1756	5/10 to 5/13	5/14/08	1,793,876
Arkansas	1758	5/2 to 5/12	5/20/08	4,747,501
South Dakota	1759	5/1	5/22/08	1,987,271
Missouri	1760	5/10 to 5/11	5/23/08	3,519,866
Colorado	1762	5/21	5/26/08	589,651
Iowa	1763	5/25 and continuing	5/27/08	156,690,815
Indiana	1766	5/30 to 6/27	6/8/08	67,012,966
Montana	1767	5/1	6/13/08	666,672
Wisconsin	1768	6/5 and continuing	6/14/08	24,057,378
West Virginia	1769	6/3 to 6/7	6/19/08	3,127,935
Nebraska	1770	5/22	6/20/08	5,557,736

TABLE 2—FIRST 2008 ACT DISASTER RECOVERY ALLOCATIONS—Continued

State	Disaster No.	Incident date	Declared date	Allocation
Illinois	1771	6/1 to 7/22	6/24/08	17,341,434
Minnesota	1772	6/7 to 6/12	6/25/08	925,926
Missouri	1773	6/1 to 8/13	6/25/08	7,512,572

Congress required that states devote “not less than \$650,000,000” of the total Second 2008 Act to support “repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas where there is a demonstrated need as determined by the Secretary.” Table 1 above shows the minimum amount each grantee must spend on affordable rental housing from its total combined allocation of first and second round funding under the Second 2008 Act.

Disaster Recovery Enhancement Allocations. As stated above, HUD calculates CDBG disaster recovery allocations, including the above allocations, to each grantee based on unmet needs data (see Appendix 1). These data largely represent an estimate of the costs for repairs to a pre-disaster condition. Often, this data does not adequately reflect the full recovery costs associated with a disaster. Also, because of cost considerations, state disaster recovery grantees may not always choose recovery activities that are the most advantageous for long-term recovery and resilience from a federal perspective. For example, relocating a repetitively flooded community from a floodplain limits future calls on the National Flood Insurance program and other federal recovery programs. From a federal perspective, flood buyouts are frequently a good idea; locally, they can be politically difficult and somewhat more costly to administer than a traditional rehabilitation program.

Therefore, the Secretary has created a \$311,602,923 Disaster Recovery Enhancement Fund (DREF) for secondary allocations to grantees that anticipate that they will still have unmet disaster recovery needs after developing and undertaking forward-thinking recovery strategies and activities in a timely manner. To be eligible to receive an additional allocation, a grantee must budget its allocated Second 2008 Act funds for the specific activities listed in this Notice by programming the funds in an Action Plan for Disaster Recovery (or an amendment thereof) submitted to HUD by June 30, 2010. A state receiving an additional allocation may use the funds

for any activity eligible for assistance under the Second 2008 Act in accordance with this Notice.

Note that the Stafford Act and the Second 2008 Act prohibit use of these funds as a substitute or match for Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program (HMGP) funds. Also note that CDBG disaster recovery funds must be used in the counties declared in the applicable covered disaster(s) for each state, while HMGP funds may generally be used statewide.

By setting a specific deadline for the Action Plan submissions for this DREF allocation, HUD is signaling that the Department intends to assist grantees that will implement these forward-thinking approaches to long-term recovery in a timely manner. Funds will be allocated dollar-for-dollar for the first \$15 million budgeted for enhanced disaster recovery activities for an individual state and on a pro rata basis for amounts budgeted above \$15 million as measured by funds budgeted by grant recipients by June 30, 2010, on the following specific enhanced disaster recovery activities that reduce the risk of damage from a future disaster:

1. Development and adoption of a forward-thinking land-use plan that will guide use of long-term recovery efforts and subsequent land-use decisions throughout the community and that reduces existing or future development in disaster-risk areas;

2. Floodplain or critical fire or seismic hazard area buyouts programs under an optional relocation plan that includes incentives so that families and private sector employers move out of areas at severe risk for a future disaster;

3. Individual mitigation measures (IMM) to improve residential properties and make them less prone to damage. If such activities are incorporated into the grantee’s rehabilitation or new construction programs generally, the cost increment attributed to IMM will be the amount considered for the additional allocation, not the total construction amount budget; or

4. Implementation of modern disaster resistant building codes, including, but not limited to, training on new standards and code enforcement.

A grantee must include start and end dates for each activity in its Action Plan.

A grantee must demonstrate in its Action Plan submission for any additional allocation that it still has eligible unmet needs to receive assistance from the DREF before HUD will add the additional allocation to the state’s line of credit. Furthermore, the Secretary reserves the right to allocate more or less than \$311,602,923 under this fund, depending on the amount grantees actually budget on such activities and any amounts available for reallocation.

A grantee may reprogram funds from one of the listed enhanced disaster recovery activities to another, but if the grantee reprograms grant funds to any other activity, HUD may recapture the DREF allocation, in whole or in part, in accordance with section 111 of the HCD Act, 24 CFR part 570, subpart O, and this Notice.

The Second 2008 Act requires funds to be used in accordance with its specific purposes. The statute directs that each grantee will describe in its Action Plan for Disaster Recovery criteria for eligibility and how the use of grant funds will address long-term recovery and infrastructure restoration, housing, and economic revitalization in the affected areas. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds do not meet the statutory purposes, or duplicate other benefits. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery or if they have any questions regarding meeting these requirements.

As provided for in the Second 2008 Act, the funds may not be used for activities reimbursable by or for which funds are made available by FEMA or the Army Corps of Engineers. Further, none of the funds may be used as the required match, share, or contribution for another federal program.

Prevention of Fraud, Abuse, and Duplication of Benefits

Additionally, the Second 2008 Act directs the Secretary to:

Establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on

Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading, including duplication of benefits.

To meet this directive, HUD is pursuing four courses of action. First, the **Federal Register** Notice published February 13, 2009 (74 FR 7244), includes specific reporting, written procedures, monitoring, and internal audit requirements for grantees. Second, to the extent its resources allow, HUD will institute risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds. Third, HUD will be extremely cautious in considering any waiver related to basic financial management requirements. The standard, time-tested CDBG financial requirements will continue to apply. Fourth, HUD is collaborating with the HUD Office of Inspector General to plan and implement oversight of these funds.

Waiver Justification

The waivers, alternative requirements, and statutory changes described in the February 13, 2009, **Federal Register** Notice (74 FR 7244) apply to all of the CDBG supplemental disaster recovery funds appropriated in the Second 2008 Act (Pub. L. 110-329), but not to funds provided under the regular CDBG program. Similarly, the waivers, alternative requirements, and statutory changes described in the September 11, 2008, **Federal Register** Notice (73 FR 52870) apply to the CDBG supplemental disaster recovery funds appropriated in the First 2008 Act, not to funds provided under the regular CDBG program. These actions, below, provide additional flexibility in program design and implementation and implement statutory requirements. The previous notices, referenced above, provide further justification for the waivers.

Common Waivers

Previously published waivers to streamline application and program launch. Funds allocated by today's **Federal Register** Notice will be subject to the waivers, alternative requirements, and statutory changes described in this Notice and those previously published in the February 13, 2009, **Federal Register** Notice (74 FR 7244).

General planning activities use entitlement presumption, all grantees. Today's **Federal Register** Notice notifies Congress and the public that the states receiving funds under the First 2008 Act and/or the Second 2008 Act have requested this waiver and HUD is granting the waiver. The annual State CDBG program requires that local

government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include nonproject specific plans such as functional land-use plans, historic preservation plans, comprehensive plans, development of housing codes, and neighborhood plans related to guiding long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, the Department is removing the eligibility requirement that CDBG disaster recovery-assisted planning-only grants or state directly administered planning activities that will guide recovery in accordance with the appropriations act must comply with the State CDBG program rules at 24 CFR 570.483(b)(5) or (c)(3). Instead, 24 CFR 570.208(d)(4) will apply.

State-Specific Waivers

National Objective Documentation for Economic Development Activities—States of Iowa, Louisiana, and Texas. For the national objective documentation for business assistance activities, the states of Iowa, Louisiana and Texas, which have received funds under the First 2008 Act and Second 2008 Act, have asked to apply individual salaries or wages-per-job and the income limits for a household of one, rather than the usual CDBG standard of total household income and the limits by total household size. The states have asserted that this proposed documentation would be simpler and quicker for participating lenders to administer, easier to verify, and would not misrepresent the amount of low- and moderate-income benefit provided. Upon consideration, HUD is granting this waiver, which also was granted for recovery in lower Manhattan following September 11, 2001, and in certain states following the Gulf Coast hurricanes of 2005. Due to the significant breadth of many states' economic development programs, this waiver will play a key role in

streamlining the documentation process because it allows collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

Section 414 of the Stafford Act—States of Louisiana and Texas. In addition to the above, the states of Louisiana and Texas have also requested a waiver of section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, for their disaster recovery programs. Section 414 directs that persons who were displaced by a disaster be considered to be displaced by a federal action, as defined under the Uniform Relocation Act (URA), if the property in which they were living prior to the disaster is assisted with certain federal funds. Today's **Federal Register** Notice grants, in part, the request that the Secretary waive that section and provides alternative requirements more consistent with the purpose of the Second 2008 Act, which is to assist and support disaster recovery in the areas most affected by the effects of the disasters in 2008.

Several states suffered significant destruction in the wake of Hurricanes Ike and Gustav, and the reconstruction will likely last for many years to come—much like in the Gulf Coast states affected by the hurricanes in 2005. For programs or projects covered by this waiver ("covered programs or projects") that are initiated within 3 years after the applicable disaster, each state receiving this waiver must comply with one of the two alternative requirements (for programs or projects initiated after the 3-year period, the alternative requirements would not apply; only the waiver would be applicable):

Alternative One

The state may provide relocation assistance to a former residential occupant whose former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance should be offered in a manner consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, and its implementing regulations, except as modified by applicable waivers and alternative requirements.

Alternative Two

If the state determines that the first alternative would substantially conflict

with meeting the disaster recovery purposes of the Second 2008 Act, the state may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster. Such determinations must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

1. A description of the class(es) of persons eligible for assistance, including all persons displaced from their residences by particular, enumerated, or by all, effects of the disaster, and including all persons still receiving temporary housing assistance from FEMA for the covered disaster(s);
2. A description of the types and amount of financial assistance to be offered, if any;
3. A description of other services to be made available, including, at minimum, outreach efforts to eligible persons and housing counseling providing information about available housing resources. Outreach efforts and housing counseling information should be provided in languages other than English to persons with limited English proficiency; and
4. Contact information and a description of any applicable application process, including any deadlines.
5. If the program or project involves rental housing, the re-housing plan must also include the following:
 - (i) Placement services for former and prospective tenants;
 - (ii) A public registry of available rental units assisted with CDBG disaster recovery and/or other funds; and
 - (iii) Application materials, award letters, and operating procedures requiring property owners to make reasonable attempts to contact their former residential tenants and offer a unit, upon completion, to those tenants meeting the program's eligibility requirements.

(iv) Persons in physical occupancy who are displaced by a HUD-assisted disaster recovery project will continue to be eligible for URA assistance.

Justification for Waiver

The reasons for granting this waiver are several, and are ably represented by the states in their requests. The principal reasons are highlighted here:

- Hurricanes Ike and Gustav caused significant destruction that resulted in massive displacements and decimated the region's affordable housing stock. Continued ambiguity on section 414's applicability may cause substantial delays in long-term recovery, particularly in Texas and Louisiana; and

- Simplify the administration of disaster recovery projects or programs initiated years following the disaster.

Persons displaced by the effects of the disaster may continue to apply for assistance under the states' approved disaster recovery programs, which are designed to bring affordable housing to the affected areas. This waiver does not address programs or projects receiving other HUD funding, or funding from other federal sources.

A state may already be performing some elements of a re-housing plan, such as providing a public rental registry or undertaking outreach and placement services to those former residents still receiving FEMA housing assistance. A description in the re-housing plan of how those existing efforts will be available for covered programs or projects may be used in satisfying the requirements of this Notice.

Eligibility—buildings for the general conduct of government—States of Indiana, Louisiana, and Texas. The states of Indiana, Louisiana, and Texas requested a limited waiver of the prohibition on funding buildings for the general conduct of government. HUD has considered the request and agrees that it is consistent with the overall purposes of the 1974 Act for requesting states to be able to use the grant funds under this notice to repair or reconstruct buildings used for the general conduct of government and that the states have selected in accordance with the method described in their Action Plans for Disaster Recovery and that they have determined have substantial value in promoting disaster recovery. However, as stated by the Second 2008 Act, funds allocated under today's **Federal Register Notice**, or the February 13, 2009, **Federal Register Notice** (74 FR 7244), may not be used for activities reimbursable by or for which funds are made available by FEMA or the Army Corps of Engineers. Further, none of the funds may be used as the required match, share, or contribution for another federal program.

Public benefit for certain economic development activities—States of Iowa, Louisiana, and Texas. The states of Iowa, Louisiana, and Texas have requested a waiver of the public benefit standards for their 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 annual 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. Essentially, the public benefit standards are a proxy for all the other possible public benefits provided by an assisted activity. These dollar thresholds were set more than a decade ago and, under disaster recovery conditions (which often require a larger investment to achieve a given result), can be too low and, thus, impede recovery by limiting the amount of assistance the grantee may provide to a critical activity. States requesting this waiver have made public in their Action Plans the disaster recovery needs each activity is addressing and the public benefits expected.

After consideration, today's **Federal Register Notice** waives the public benefit standards for the cited activities, except that each requesting state shall report and maintain documentation on the creation and retention of: (a) Total jobs, (b) number of jobs within certain salary ranges, (c) the average amount of assistance per job and activity or program, and (d) the types of jobs. As a conforming change for the same activities or programs, HUD is also waiving paragraph (g) of 24 CFR 570.482 to the extent its provisions are related to public benefit.

Housing incentives to encourage housing resettlement consistent with local recovery plans; States of Louisiana and Texas. The states of Louisiana and Texas may offer disaster recovery or mitigation housing incentives to promote suitable housing development or resettlement in particular geographic areas. By "resettlement," HUD is referring to resettling the community as a whole, which may include buyouts and relocation, as well as repopulation initiatives if part of a recovery plan. In the past, the state of New York successfully used an incentive program to induce rapid and stable resettlement of lower Manhattan following September 11, 2001. Also, the city of Grand Forks, North Dakota, provided a very affordable soft-second loan as an incentive to help induce households to resettle within the city during its recovery. Any state choosing to provide incentives must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. Generally, incentives are offered in addition to other programs or funding (such as insurance), to try to influence individual residential location decisions, when these decisions are in doubt. For example, a grantee may offer an incentive payment (possibly in

addition to buyouts) for households that volunteer to relocate within a particular period of time, or who choose to resettle outside a 100- or 500-year floodplain. Note, however, that if the grantee requires the funds to be used for a particular purpose by the household receiving the assistance, then the activity will be that required use, not an eligible incentive. The Department is waiving 42 U.S.C. 5305(a) and associated regulations to make these uses of grant funds eligible.

Compensation for disaster-related losses. The states of Louisiana and Texas plan to provide compensation to certain homeowners whose homes were affected during the covered disasters, if the homeowners agree to meet the stipulations of the state's or subawardee's published program design. Such stipulations may not include requirements related to how the homeowner may use the funds, because then the assisted activity would be that required use, not compensation. Such programs were carried out by the states of Louisiana and Mississippi following the 2005 hurricanes. A strength of these compensation programs is that they may be able to disburse funding more quickly than traditional CDBG rehabilitation programs. However, a major weakness is the lack of certainty about whether an assisted homeowner will use the granted assistance in a way that supports the community's long-term recovery goals. Very little data exists to verify the degree to which compensation funds have been used for reconstruction or rehabilitation. Existing data suggest that a certain percentage of those receiving assistance fail to comply with the program stipulations. By contrast, a rehabilitation program is typically able to demonstrate that all or nearly all of its assisted households reside (after receiving assistance) in reconstructed or rehabilitated homes, according to the grantee's standards. Therefore, HUD is granting this compensation waiver together with alternative requirements. HUD will disapprove an action plan if a compensation program is not adequately justified in accordance with these alternative requirements. Any state deciding to assist a compensation activity must address in its action plan and program design:

(1) How the state will ensure that compensation payments will result in disaster recovery or economic revitalization;

(2) Why a housing rehabilitation or reconstruction or buyouts program is not a more appropriate choice; and

(3) How the state determined the appropriate compensation amount(s).

Further, any state choosing to provide compensation assistance must also carry out an evaluation of outcomes of the program, for a statistically valid sample of the program participants, within a year of providing the final payment.

Three-month limitation on emergency grant payments. In response to the state of Iowa's request, HUD is waiving 42 U.S.C. 5305(a) to allow it to extend interim mortgage assistance to qualified individuals for up to 20 months. The state is currently operating an Interim Mortgage Assistance Program, limited to a maximum of 3 months and a maximum of \$1,000 per month. It has now been almost 12 months since the original flooding event occurred but many families still require this assistance. Furthermore, it will still be several months before FEMA buyout decisions will be made and implemented. Therefore, to permit the state of Iowa to adequately assist households through this period, and to be consistent with the state funding that has been supplied separately for this purpose, HUD will waive the normal 3-month limitation, to provide a total of 20 months of Interim Mortgage Assistance to qualified individuals.

Summary of States Receiving Waivers

Texas. Texas has requested and HUD has approved the following waivers and alternative requirements for funds provided to the state under the Second 2008 Act (Pub. L. 110-329): (1) Documentation of job retention, (2) section 414 of the Stafford Act, (3) eligibility of buildings for the general conduct of government, (4) public benefit for certain economic development activities, and (5) compensation for disaster-related losses or housing incentives to resettle in disaster-affected communities. Texas has justified each request and documented the need for each waiver.

Iowa. Iowa has requested and HUD has approved the following waivers and alternative requirements: (1) Documentation of job retention, (2) public benefit for certain economic development activities, and (3) three-month limitation on emergency grant payments. Iowa has justified each request and documented the need for each waiver. The waivers granted by this Notice will apply to funds received under the First 2008 Act (Pub. L. 110-252), and to all funds received under the Second 2008 Act (Pub. L. 110-329).

Louisiana. Louisiana has requested and HUD has approved the following waivers and alternative requirements for funds provided to the state under the Second 2008 Act: (1) Documentation of job retention, (2) section 414 of the

Stafford Act, (3) eligibility of buildings for the general conduct of government, (4) public benefit for certain economic development activities, and (5) compensation for disaster-related losses or housing incentives to resettle in disaster-affected communities.

Louisiana has justified each request and documented the need for each waiver.

Indiana. Indiana has requested and HUD has approved a waiver regarding the eligibility of buildings for the general conduct of government for all funds received under the First 2008 Act, 2008 (Pub. L. 110-252). Note, this waiver has been neither requested nor approved for funds received under the Second 2008 Act (Pub. L. 110-329).

Application for Allocations Under the Second 2008 Act

The waivers and alternative requirements streamline the pre-grant process and set the guidelines for states' applications for their allocations. Each grantee receiving an allocation under the Second 2008 Act (which includes allocations made under this Notice, as well as those made under the February 13, 2009, Notice) is required, with the exception of California, to submit and/or amend its Action Plan for Disaster Recovery to program all of each state's allocations by September 30, 2009. The state of California (which did not receive an allocation under the February 13, 2009, Notice) is required to submit an Action Plan for Disaster Recovery by December 30, 2009. Any allocation not applied for by these dates may be added to the funds available under the DREF and reallocated. If any grantee fails to meet the requirement to program its allocations within the relevant timelines, HUD, on the first business day after that deadline, will commence an action to recapture the funds.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

1. **General note.** Prerequisites to a grantee's receipt of CDBG disaster recovery assistance include adoption of a citizen participation plan; publication of its proposed Action Plan for Disaster Recovery; public notice and comment; and submission to HUD of an Action Plan for Disaster Recovery, including certifications. Except as described in this Notice, statutory and regulatory provisions governing the CDGB program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570, shall apply to the use of these funds.

2. The waivers provided in the February 13, 2009, **Federal Register** Notice (74 FR 7244) are granted and the alternative requirements of that Notice apply to all the states receiving an

allocation of grant funds under this Notice. Each of the states has requested, in writing, that HUD grant it the waivers and alternative requirements of that Notice.

3. *Planning activities.* For CDBG disaster recovery-assisted general planning activities that will guide recovery in accordance with the First 2008 Act (Pub. L. 110-252) and the Second 2008 Act (Pub. L. 110-329), the State CDBG program rules at 24 CFR 570.483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies for all First 2008 Act and Second 2008 Act grantees.

4. *National Objective Documentation for Economic Development Activities.* 24 CFR 570.483(b)(4)(i) is waived to allow the states of Texas, Iowa, and Louisiana to establish 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.

5. *Section 414 of the Stafford Act.* Section 414 of the Stafford Act, 42 U.S.C. 5181 (including its implementing regulation at 49 CFR 24.403(d)), is waived to the extent that it would apply to CDBG disaster recovery-funded programs or projects initiated within 3 years of the incident-date of Hurricane Ike or Hurricane Gustav (as applicable) by the states of Texas and Louisiana under an approved Action Plan for Disaster Recovery for its grants under the Second 2008 Act, provided that such program or project was not planned, approved, or otherwise under way prior to the disaster.

a. For all programs or projects covered by this waiver ("covered programs or projects") that are within 3 years after the applicable disaster, the states of Texas and Louisiana must comply with one of the following two alternative requirements (for programs or projects initiated after the 3-year period, the alternative requirements would not apply; only the waiver would be applicable): (1) Relocation Assistance. The state may provide relocation assistance to a former residential occupant whose former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance must be offered in a manner consistent with the URA, as amended, and its

implementing regulations, except as modified by prior waivers and alternative requirements granted to the states. (2) Re-housing Plan. If the state determines that the first alternative would substantially conflict with meeting the disaster recovery purposes of the Second 2008 Act, the grantee may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster. Such a determination must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

(i) A description of the class(es) of persons eligible for assistance, including all residents displaced from their residences by either certain enumerated or all effects of the covered disaster, and including all disaster-displaced residents still receiving temporary housing assistance from FEMA for the covered disasters;

(ii) A description of the types and amount of financial assistance to be provided, if any;

(iii) A description of other services to be made available, including, at a minimum, outreach efforts to eligible persons and housing counseling, that provide information about available housing resources;

(iv) Contact information for additional program information;

(v) A description of any applicable application process, including any deadlines; and

(vi) If the program or project covered by this waiver involves rental housing, the grantee shall establish procedures for the following:

A. Application materials, award letters, and operating procedures that require property owners to make reasonable attempts to contact their former tenants and to offer a unit, upon completion, to those tenants meeting the program's eligibility requirements;

B. Placement services for former and prospective tenants; and

C. A public registry of available rental units assisted with CDBG disaster recovery and/or other funds.

b. Eligible Project Costs. The costs of relocation assistance and the reoccupancy plan are eligible project costs in the same manner and to the same extent as other project costs authorized under the Second 2008 Act. For covered programs or projects involving affordable rental housing, the relocation and planning costs required by this Notice may be paid from funds reserved for the affordable rental housing stock in the impacted areas under the Second 2008 Act.

c. Persons in physical occupancy who are displaced by a HUD-assisted disaster

recovery project will continue to be eligible for URA assistance.

6. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow the states of Texas and Louisiana to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible and that the state selects in accordance with its approved Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery. The state of Indiana may use funds allocated under the September 11, 2008, **Federal Register** Notice (73 FR 52870) or December 19, 2008, **Federal Register** Notice (73 FR 77818) to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible.

7. *Public benefit for certain economic development activities.* For economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects), the public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived for the states of Texas, Louisiana, and Iowa, except that these states shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; and the types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived for these states to the extent its provisions are related to public benefit.

8. *Compensation for disaster-related losses.* HUD is granting a compensation waiver together with alternative requirements for the states of Louisiana and Texas. Either state deciding to assist a compensation activity must address the following in its action plan and program design:

a. How the state will ensure that compensation payments will result in disaster recovery or economic revitalization;

b. Why a housing rehabilitation or reconstruction or buyouts program is not a more appropriate choice than providing housing compensation. The state must compare and contrast schedules, delivery costs, and projected recovery resulting from each type of activity; and

c. How the state determined the appropriate compensation amount(s). Further, any state choosing to provide compensation assistance must also carry out and publish an evaluation of outcomes of the program for a statistically valid sample of the program participants within a year of providing

the final compensation payment. If the state also provides rehabilitation assistance, it must include in its evaluation a comparison of the results of the compensation and rehabilitation activities.

9. *Housing incentives to encourage housing resettlement consistent with local recovery plans.* The states of Louisiana and Texas may offer disaster recovery or mitigation housing incentives to promote suitable housing development or resettlement in particular geographic areas. Any state choosing to provide incentives must maintain documentation at least at a programmatic level describing how the amount of assistance was determined to be necessary and reasonable. Note that if the grantee requires the funds to be used for a particular purpose by the household receiving the assistance, then the activity will be that required use, not an eligible incentive. The Department is waiving 42 U.S.C. 5305(a) and associated regulations to make these uses of grant funds eligible.

10. *Three-month limitation on emergency grant payments.* 42 U.S.C. 5305(a) is waived so that Iowa may extend interim mortgage assistance to qualified individuals for up to 20 months. This waiver applies to funds received under the First 2008 Act (Pub. L. 110-252), and to funds received under the Second 2008 Act (Pub. L. 110-329).

Duration of Funding

Availability of funds provisions in 31 U.S.C. 1551-1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510), limit the availability of certain appropriations for expenditure. This limitation may not be waived. However, the Second 2008 Act directs that these funds be available until expended unless, in accordance with 31 U.S.C. 1555, the Department determines that the purposes for which the appropriation has been made have been carried out and no disbursement has been made against the appropriation for 2 consecutive fiscal years. In such a case, the Department shall close out the grant prior to expenditure of all funds.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

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). 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 telephone number 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

Dated: July 20, 2009.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

Appendix 1—Allocation Methodology Detail

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110-329), enacted on September 30, 2008, appropriated \$6.5 billion through the CDBG program for “necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring during 2008 for which the President declared a major disaster.”

It went on to say that “such funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers” and that “none of the funds * * * may be used * * * as a matching requirement, share, or contribution for any other Federal program.” It also stated that “not less than \$650,000,000 from funds made available on a pro-rata basis according to the allocation made to each State” shall be used for affordable rental housing.

Finally, the statute called for “not less” than 33 percent of the funds to be allocated within 60 days of enactment (that is, by November 28th) based “on the best estimates available of relative damage and anticipated assistance from other Federal sources.”

Schedule for Allocations

While Congress appropriated \$6.5 billion, \$377,139,920 has been rescinded, \$6.5 million has been set aside for HUD administrative costs, and \$2,145,000,000 was allocated in November 2008. This allocation distributes the remaining \$3,971,360,080, with a \$311,603,923 set-aside to the Disaster Recovery Enhancement Fund.

Disasters in 2008

There were 76 major disasters that occurred in 2008 in 35 states, Puerto Rico, and the Virgin Islands. Data on damaged housing are available for 36 disasters from FEMA and Small Business Administration (SBA); business loss data are available for 39 disasters from SBA; and 72 disasters have data on the cost FEMA and states are estimated to spend on infrastructure and other Public Assistance costs.

Available Data

The data HUD staff have identified as being available to calculate “relative damage and anticipated assistance from Federal sources” at this time for the targeted disasters come from the following data sources:

- FEMA Individual Assistance program data concerning housing unit damage;
- SBA for management of its disaster assistance loan program for housing repair and replacement;
- SBA for management of its disaster assistance loan program for business real estate repair and replacement, as well as content loss; and
- FEMA estimated and obligated amounts under its Public Assistance program, including the federal and state cost share.

Formula

This formula “allocates” the full \$6,116,360,080 available for allocation under this appropriation and then subtracts out the \$2,145,000,000 that was previously allocated and the \$311,602,923 set-aside reserve fund (on a pro-rata basis). HUD has adopted this practice to adjust grants to reflect better data than were available at the time of the November 2008 allocation and to treat disasters occurring after November equally with disasters that occurred earlier in the year.

The formula mechanics are as follows: \$6,116,360,080

$$* \left[\frac{\text{(State sum of HUD-calculated unmet housing, business, and infrastructure needs)}}{\text{(All disaster sum of HUD-calculated unmet housing, business, and infrastructure needs)}} \right]$$

$$* \left[\frac{\text{(State Per Seriously Damaged Home Challenge Score)}^a}{\text{(Basic Allocation National Weighted Challenge Score)}} * (20\% \text{ power})^b \right]$$

—State total: November \$2.145 billion allocation

* Pro-rata adjustment after minimum grant threshold and reserve grant set-aside

^aNo state can have its grant adjusted up or down by more than 10 percent using this factor.

^bMathematically, each state’s challenge factor is divided by the weighted national rate (14.7) and multiplied by 0.2 (that is, if a state’s ratio was above 1; for example, 1.5 would become 1.10, $[1 + ((1 - 0.5) * 0.2)]$; if the ratio was below 1, for example, 0.5 would become 0.9 $[1 - ((1 - 0.5) * 0.2)]$).

This allocation does not duplicate funding already provided under the Supplemental Appropriations Act of 2008 (Pub. L. 110–252, 122 Stat. 2323), enacted on June 30, 2008, which appropriated \$300 million for disasters that were declared and occurred in May and June of 2008. This current allocation subtracts out of the unmet housing and business need estimates the amount of funds allocated for housing and business under the 2008 June appropriation.

Calculating Unmet Housing Needs

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

- The number of owner-occupied units with unmet needs are units FEMA housing inspectors determined would require more than \$3,000 to become habitable and were determined by FEMA to be eligible for a repair or replacement grant (now up to \$30,300, earlier disasters in the year had a cap of \$28,800). In general, when HUD refers to units “seriously damaged,” it is

referring to units with a FEMA damage assessment of \$3,000 or greater.

- The number of rental units with unmet needs are units FEMA housing inspectors determined would require more than \$3,000 to become habitable AND are occupied by households with an income reported to FEMA of less than \$20,000. The use of the \$20,000 income cut-off for calculating rental unmet needs is in response to the statutory language that emphasized the use of the funds for affordable rental housing.

- Each of the FEMA inspected units are categorized by HUD into one of five categories:
 - Minor-Low: Less than \$3,000 of FEMA-inspected damage
 - Minor-High: \$3,000 to \$7,999 of FEMA-inspected damage
 - Major-Low: \$8,000 to \$14,999 of FEMA-inspected damage
 - Major-High: \$15,000 to \$28,800 of FEMA-inspected damage
 - Severe: Greater than \$28,800 of FEMA-inspected damage or -determined destroyed.

Note: FEMA has recently raised its maximum grant to \$30,300. For this first round allocation, HUD continues to use the \$28,800 as the threshold, because it applied for most of the declared disasters.

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

- The base amount of unmet housing needs is then increased by 20 percent to reflect an assumed premium associated with the additional costs needed to run a repair program with CDBG funding.

Calculating Infrastructure Needs

As noted above, the statute for this allocation states that “such funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers” and that “none of the funds * * * may be used * * * as a matching requirement, share, or contribution for any other Federal program.” In past disasters, unmet infrastructure need has been calculated at the required match portion for the public assistance program. Because these funds cannot be used as match, we must identify a proxy for what infrastructure activities are likely to require funding beyond FEMA’s Public Assistance funding and the state match requirement. To best proxy unmet needs that would exceed what FEMA and state match will pay for under the Public Assistance program, this allocation uses only a subset of the Public Assistance damage estimates reflecting the categories of activities most likely to require CDBG funding above the Public Assistance and State Match requirement. Those activities are the following categories: C—Roads and Bridges; D—Water Control Facilities; E—Public Buildings; F—Public Utilities; and G—Recreational—Other. Categories A (Debris Removal) and B (Protective Measures) are largely expended immediately after a disaster and reflect interim recovery measures, rather than the long-term recovery measures the CDBG funds are generally used for. “Unmet” infrastructure needs assume that the subset categories of Public Assistance needs will have state aggregate costs 25 percent higher than that covered by FEMA or the state match requirement.

	Disasters with project(s)	Total estimate	Percent
Public Assistance Total	75	\$5,322,992,430	
A_Debris_Removal	71	1,185,035,209	22

	Disasters with project(s)	Total estimate	Percent
B_Protective Measures	75	995,171,090	19
C_Roads_Bridges	73	494,369,300	9
D_Water_Control_Facilities	43	57,455,582	1
E_Public_Buildings	69	1,509,980,683	28
F_Public_Utilities	74	837,448,078	16
G_Recreational_Other	64	243,532,488	5

FEMA Extract: April 14, 2009.

Calculating Economic Revitalization Needs

Based on SBA disaster loans to businesses, HUD used the sum of real property and real content loss of small businesses not receiving an SBA disaster loan. This is adjusted upward by the proportion of applications that were received for a disaster for which content and real property loss were not calculated because the applicant had inadequate credit or income. For example, if a state had 160 applications for assistance, and if 150 had calculated needs and 10 were denied in the pre-processing stage for not enough income or poor credit, the estimated unmet need calculation would be increased as $(1 + 10/160)$, multiplied by the calculated unmet real content loss.

SBA business loan data shows that verified real estate damage and content loss not approved for an SBA loan equaled \$972 million. Across all of the disasters there were 17,157 applications for a business disaster loan from SBA. No inspections were done (and loss calculated) for 14 percent of those applications. SBA maintains information on why an application was denied. There are dozens of reasons for such denials, but the most common relate to income and credit. Of those denied at the pre-processing stage 59 percent were denied because of a low credit score and 10 percent for not being able to establish repayment ability. The remaining applications denied in pre-processing are largely denied for being ineligible for the program or similar reasons. For the applications that get

processed and a loss determined but are subsequently not approved, the reasons for not being approved are 38 percent for inability to repay, 2 percent for poor credit, and dozens of other reasons, but mostly because the applications are withdrawn by the applicant.

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

Calculating Challenge To Recover

The 2005 hurricanes damaged more than 1.2 million homes. One year after the disaster, 90 percent of those homes were occupied. It is in the areas that homes were vacant a year after the storms that the recovery has been especially slow, and a large number of those homes vacant a year after the storms continue to remain vacant. As described in more detail below, two variables are very strong predictors of whether a home becomes vacant and remains vacant over an extended period of time. Those variables are the percent of homes with serious damage within the neighborhood (Census Tract is the proxy) and if a home received very severe damage.

The vast majority of households impacted by a disaster are able to return to their homes within a relatively short time frame. For those households displaced longer than a year and for the neighborhoods where that displacement

occurs, the recovery challenges are much more pronounced. For example, areas may decide not to build back and to build elsewhere, using buyout programs and other strategies. Alternatively, homes built back might need to be built to a higher standard of construction to better resist future disasters. These are factors not accounted for in the basic repair costs calculated in the needs calculations for housing, infrastructure, and economic revitalization. To account for these above normal recovery needs that are associated with only the most severe of disasters, HUD has used data from Hurricanes Katrina, Rita, and Wilma to develop a model for estimating if a home is at a high or low risk for overcoming these recovery challenges. There are many reasons why a recovery might not happen for a particular house, but just two factors can predict 34 percent of the variance between homes. According to the model, any home with serious damage (FEMA-estimated damage of greater than \$5,200 in a 2005 disaster) had about a one percent risk for being vacant for some period during the 43 months following the disaster. A home with severe damage (more than 50 percent damaged) had an additional 20 percent risk, and if that home was in a Census Tract where many other homes had major or severe damage, it had an additional risk of that proportion of homes affected, multiplied by 34 percent. Such a risk factor can be a useful tool for adjusting grants so that states with a higher per-damaged home risk score get relatively more than states with a relatively lower per-damaged home risk score.

	Unstandardized coefficients	Std. Error	Standardized coefficients	t	Sig.
	B		Beta		
(Constant)	0.010695	0.000909	11.76848	5.77E-32
Percent of homes in Census Tract with serious damage	0.347154	0.001615	0.375916	214.9506	0
Home with severe damage	0.195913	0.001158	0.295827	169.1555	0

Dependent Variable: A time weighted average vacancy risk due to the 2005 Hurricanes =

[16 * (1 - ratio of 12-2006 active address rate to 2005 pre-storm active address rate)

14 * (1 - ratio of 2-2008 active address rate to 2005 pre-storm active address rate)

10 * (1 – ratio of 12–2008 active address rate to 2005 pre-storm active address rate)
 3 * (1 – ratio of 3–2009 active address rate to 2005 pre-storm active address rate)]
 Divided by 43 months. (the longer the vacancy the higher the average score)

R-square: 0.340
 N: 287,190

To adjust for this greater recovery challenge, the results of the analysis above are used in the following model for 2008:

$$\begin{aligned} \text{Vacancy Risk Score} = & 0.010695 \text{ (Constant)} \\ & + 0.347154 \text{ Percent of homes in} \\ & \text{Census Tract with serious damage} \\ & + 0.195913 \text{ Home with major-high or} \\ & \text{severe damage} \end{aligned}$$

The risk score is then aggregated for each disaster and divided by the total number of housing units with more than very minor damage. That is, we determine a per-damaged home recovery challenge risk score. Such a risk factor can be a useful tool for adjusting grants so that states with a higher risk for long-term recovery challenges get a somewhat higher grant because of this risk.

[FR Doc. E9–19488 Filed 8–13–09; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5282–N–04]

Notice of Proposed Information Collection: Comment Request; Community Development Block Grant Recovery (CDBG–R) Program

AGENCY: Office of Community Planning and Development, Department of Housing and Urban Development.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: October 13, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management

Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410; telephone 202–402–8048 (this is not a toll-free number) or e-mail Ms. Deitzer at Lillian.L.Deitzer@hud.gov for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Steve Johnson, Director, Entitlement Communities Division, Office of Block Grant Assistance, 451 7th Street, SW., Room 7282, Washington, DC 20410; telephone (202) 708–1577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Department submitted to OMB for emergency processing a proposed information collection for the Community Development Block Grant Recovery (CDBG–R) program. It was approved by OMB on April 17, 2009 and expires on October 31, 2009. Since HUD will be using the form (SF 424) beyond the emergency clearance time period, this is a resubmission to OMB under the normal paperwork clearance process for a three-year approval.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Community Development Block Grant Recovery Program.

OMB Control Number, if Applicable: 2506–0184.

Description of the Need for the Information and Proposed Use: This request identifies the estimated reporting burden associated with information that CDBG–R grantees will report in IDIS for CDBG–R assisted activities, recordkeeping requirements,

and reporting requirements. Section 1512 of the Recovery Act requires that not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains: (1) The total amount of recovery funds received from that agency; (2) the amount of recovery funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including the name of the project or activity; a description of the project or activity; an evaluation of the completion status of the project or activity; an estimate of the number of jobs created and the number of jobs retained by the project or activity; and for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act and name of the person to contact at the agency if there are concerns with the infrastructure investment. Not later than 30 calendar days after the end of each calendar quarter, each agency that made Recovery Act funds available to any recipient shall make the information in reports submitted publicly available by posting the information on a Web site.

Agency Form Numbers: Not applicable.

Members of the Affected Public: Eligible CDBG grantees (metropolitan cities, urban counties, nonentitlement counties in Hawaii, and States).

Estimation of the total numbers of hours needed to prepare the information collection including number of responses, frequency of responses, and hours of responses: The number of respondents is 1,196. The proposed frequency of the response to the collection is on a quarterly basis. The total estimated burden is 28,704 quarterly hours.

Status of the proposed information collection: This submission is an extension of a previously approved emergency information collection. The current OMB approval expires on October 31, 2009.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 6, 2009.

Mercedes Márquez,
Assistant Secretary for Community Planning and Development.

[FR Doc. E9–19485 Filed 8–13–09; 8:45 am]
BILLING CODE 4210–67–P

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

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

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

TOTAL BURDEN ESTIMATE

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

Status: New collection.

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

Dated: February 27, 2013.

Colette Pollard,

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

[FR Doc. 2013-05080 Filed 3-4-13; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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

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

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

ACTION: Notice.

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

criteria for plan approval, and eligible disaster recovery activities.

DATES: Effective Date: March 11, 2013.

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587.

Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

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I. Allocation

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

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

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

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

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

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

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

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

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

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

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

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

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

date, a policy to address qualifying events in 2013.

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

II. Use of Funds

The Appropriations Act requires funds to be used only for specific disaster-related purposes. The law also requires that prior to the obligation of funds, a grantee shall submit a plan detailing the proposed use of funds, including criteria for eligibility and how the use of these funds will address disaster relief, long-term recovery, restoration of infrastructure and housing and economic revitalization in the most

impacted and distressed areas. Thus, in an Action Plan for Disaster Recovery, grantees must describe uses and activities that: (1) are authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCD Act) or allowed by a waiver or alternative requirement published in this Notice; and (2) respond to a disaster-related impact. To help meet these requirements, grantees must conduct an assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities. For more guidance on the needs assessment and the creation of the Action Plan, see paragraph A.1 under section VI of this Notice.

Additionally, as provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG–DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers (USACE).

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

To ensure the timely expenditure of funds, section 904(c) under Title IX of the Appropriations Act requires that all funds be expended within two years of the date HUD obligates funds to a grantee (funds are obligated to a grantee upon HUD's signing of the grantee's CDBG-DR grant agreement). Action Plans must demonstrate how funds will be fully expended within two years of obligation. For any funds that the grantee believes will not be expended by the deadline, it must submit a letter to HUD justifying why it is necessary to extend the deadline for a specific portion of funds. The letter must detail the compelling legal, policy, or operational challenges for any such waiver, and must also identify the date by when the specified portion of funds will be expended. HUD will forward the request to the Office of Management and Budget (OMB) and publish any approved waivers in the **Federal Register** once granted. Waivers to extend the expenditure deadline may be granted by OMB in accordance with guidance to be issued by OMB, but grantees are cautioned that such waivers may not be approved. Funds remaining in the grantee's line of credit at the time of its expenditure deadline will be returned to the U.S. Treasury, or if before September 30, 2017, will be recaptured by HUD. The Appropriations Act requires that HUD obligate all funds not later than September 30, 2017. Grantees must continue to meet the requirements for Federal cash management at 24 CFR 85.20(a)(7).

In addition to the above, the Appropriations Act requires the Secretary to certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. Departmental guidance to assist in preventing a duplication of benefits is provided in a notice published in the **Federal Register** at 76 FR 71060 (November 16, 2011) and in paragraph A.21 under section VI of this Notice. To provide a basis for the Secretary to make the certification, each grantee must submit documentation to the Department demonstrating its compliance with the above

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

Additionally, this Notice requires grantees to submit to the Department a projection of expenditures and outcomes to ensure funds are expended in a timely manner. The projections must be based on each quarter's expected performance—beginning the quarter funds are available to the grantee and continuing each quarter until all funds are expended. Each grantee must amend its Action Plan to include these projections within 90 days of Action Plan approval. Action Plans must also be amended to reflect any subsequent changes, updates, or revision of the projections. Amending Action Plans to accommodate these changes is not considered to be a substantial amendment. Guidance on the preparation of projections is available on HUD's Web site under the Office of Community Planning and Development, Disaster Recovery Assistance (herein also referred to as the CPD Disaster Recovery Web site). This will enable HUD, the public, and the grantee, to track proposed versus actual performance. For more information on the projection requirements, see paragraph A.1.1 under section VI of this Notice.

Grantees are also required to ensure all contracts (with subrecipients, recipients, and contractors) clearly stipulate the period of performance or the date of completion. In addition, grantees must enter expected completion dates for each activity in HUD's Disaster Recovery Grant Reporting (DRGR) system. When target dates are not met, grantees are required to explain why in the activity narrative. For additional guidance on DRGR system reporting requirements, see paragraph A.2 under section VI of this Notice. More information on the timely expenditure of funds is included in paragraphs A.24–27 under section VI of this Notice.

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

IV. Authority To Grant Waivers

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

that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the HCD Act. Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

V. Overview of Grant Process

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

- Grantee adopts citizen participation plan for disaster recovery in accordance with the requirements of this Notice;
- Grantee consults with stakeholders, including required consultation with affected, local governments and public housing authorities (as identified in section VI of this Notice);
- Within 30 days of the effective date of this Notice (or when the grantee submits its Action Plan, whichever is sooner), grantee submits evidence that it has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds;
- Grantee publishes its Action Plan for Disaster Recovery on the grantee's official web site for no less than 7 calendar days to solicit public comment;
- Grantee responds to public comment and submits its Action Plan (which includes Standard Form 424 (SF-424) and certifications) to HUD no later than 90 days after the effective date of this Notice;
- HUD expedites review of Action Plan (allotted 45 days from date of receipt; however, completion of review is anticipated much sooner) and approves the Plan according to criteria identified in this Notice;
- HUD sends an Action Plan approval letter, grant conditions, and signed grant agreement to the grantee. If the Action Plan is not approved, a letter will be sent identifying its deficiencies; the grantee must then re-submit the Action Plan within 45 days of the notification letter;

- Grantee ensures that the HUD-approved Action Plan is posted on its official Web site;
- Grantee signs and returns the fully executed grant agreement;
- HUD establishes the proper amount in a line of credit for the grantee;
- Grantee requests and receives DRGR system access (if the grantee does not already have it);
- If it has not already done so, grantee enters the activities from its published Action Plan into DRGR and submits it to HUD within the system (funds can be drawn from the line of credit only for activities that are established in DRGR);
- The grantee may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58 (or paragraph A.20 under section VI of this Notice) and, as applicable, receives from HUD or the State an approved Request for Release of Funds and certification;
- Grantee begins to draw down funds within 60 days of receiving access to its line of credit;
- Grantee amends its published Action Plan to include its projection of expenditures and outcomes within 90 days of the Action Plan approval; and
- Grantee updates its full consolidated plan to reflect disaster-related needs no later than its Fiscal Year 2015 consolidated plan update.

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

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

Grantees may request additional waivers and alternative requirements

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

Except as described in this Notice, statutory and regulatory provisions governing the State CDBG program shall apply to any State receiving an allocation under this Notice while statutory and regulatory provisions governing the Entitlement CDBG program shall apply to New York City. Applicable statutory provisions can be found at 42 U.S.C. 5301 *et seq.* Applicable State and Entitlement regulations can be found at 24 CFR part 570.

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

A. Grant Administration.

1. *Action Plan for Disaster Recovery waiver and alternative requirement.* The requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR 91.220, and 91.320 are waived for funds provided under the Appropriations Act. Instead, each grantee must submit to HUD an Action Plan for Disaster Recovery. This streamlined Plan will allow grantees to more quickly and effectively implement disaster recovery programs while conforming to statutory requirements. During the course of the grant, HUD will monitor the grantee’s actions and use of funds for consistency with the Plan, and meeting the performance and timeliness objectives therein. Per the Appropriations Act, and in addition to the requirements at 24 CFR 91.500, the Secretary may disapprove an Action Plan if it is determined that the Plan does not satisfy all of the required elements identified in this Notice.

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

and submit an acceptable Action Plan in a timely manner, a grantee may elect to program or budget only a portion of the grantee’s CDBG-DR award in an Action Plan. Funds dedicated for uses not described in accordance with paragraphs b (applicable to State grantees) or c (applicable to UGLG grantees) under this section will not be obligated until the grantee submits, and HUD approves, an Action Plan amendment programming the use of those funds at the necessary level of detail. Although a grantee may submit a partial Action Plan, the partial Action Plan must be amended one or more times until it describes uses for 100 percent of the grantee’s CDBG-DR award, subject to the limitations that HUD may not obligate Appropriations Act funds after September 30, 2017 and the last date that grantees may submit an amendment is June 1, 2017. The requirement to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable.

The Action Plan must contain:

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

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

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

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

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

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

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

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

(3) A description of how the grantee will promote (a) sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account possible sea level rise (for example, by using the new FEMA floodplain maps and designs applying the new Advisory Based Flood Elevations (ABFE) or higher), and (b) how it will coordinate with other local and regional planning efforts to ensure consistency;

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

(5) A description of how the grantee's programs or activities will attempt to protect people and property from harm, and how the grantee will encourage construction methods that emphasize high quality, durability, energy efficiency, a healthy indoor environment, sustainability, and water or mold resistance, including how it will support adoption and enforcement of modern building codes and mitigation of hazard risk, including possible sea level rise, storm surge, and flooding, where appropriate. All rehabilitation, reconstruction, and new construction should be designed to incorporate principles of sustainability, including water and energy efficiency, resilience and mitigating the impact of future disasters. Whenever feasible, grantees should follow best practices such as those provided by the U.S. Department of Energy Home Energy Professionals: *Professional Certifications and Standard Work Specifications*.

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

At a minimum, HUD is requiring the following construction standards:

(a) Green Building Standard for Replacement and New Construction of Residential Housing. Grantees must meet the Green Building Standard in this subparagraph for: (i) all new construction of residential buildings; and (ii) all replacement of substantially-damaged residential buildings. Replacement of residential buildings may include reconstruction (i.e., demolishing and re-building a housing unit on the same lot in substantially the same manner) and may include changes to structural elements such as flooring systems, columns or load bearing interior or exterior walls.

(b) For purposes of this Notice, the Green Building Standard means the grantee will require that all construction covered by subparagraph (a), above, meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High Rise); (ii) Enterprise Green Communities; (iii) LEED (NC, Homes, Midrise, Existing Buildings O&M, or Neighborhood Development); (iv) ICC-700 National Green Building Standard; (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite); or (vi) any other equivalent comprehensive green building program, including regional programs such as those operated by the New York State Energy Research and Development Authority or the New Jersey Clean Energy Program.

(c) Standards for rehabilitation of non-substantially-damaged residential buildings. For rehabilitation other than

that described in subparagraph (a), above, grantees must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available on the CPD Disaster Recovery Web site. Grantees must apply these guidelines to the extent applicable to the rehabilitation work undertaken, including the use of mold resistant products when replacing surfaces such as drywall. When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances. For example, if the furnace, air conditioner, windows, and appliances are replaced, the replacements must be ENERGY STAR-labeled or FEMP-designated products; WaterSense-labeled products (e.g., faucets, toilets, showerheads) must be used when water products are replaced. Rehabilitated housing may also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).

(d) Implementation: (i) For construction projects completed, under construction, or under contract prior to the date that assistance is approved for the project, the grantee is encouraged to apply the applicable standards to the extent feasible, but the Green Building Standard is not required; (ii) for specific required equipment or materials for which an ENERGY STAR- or WaterSense-labeled or FEMP-designated product does not exist, the requirement to use such products does not apply.

(e) HUD encourages grantees to implement green infrastructure policies to the extent practicable. Additional tools for green infrastructure are available at the Environmental Protection Agency's water Web site; *Indoor AirPlus* Web site; *Healthy Indoor Environment Protocols for Home Energy Upgrades* Web site; and *ENERGY STAR* Web site: www.epa.gov/greenbuilding.

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

requirement, the grantee must identify how it will address the rehabilitation, mitigation, and new construction needs of each impacted Public Housing Authority (PHA) within its jurisdiction. The grantee must work directly with the PHA in identifying necessary costs and ensure that adequate funding is dedicated to addressing the unmet needs of damaged public housing. In its Action Plan, each grantee must set aside funding to specifically address the needs described in this subparagraph; Grantees are reminded that public housing is eligible for FEMA Public Assistance and must ensure that there is no duplication of benefits when using CDBG-DR funds to assist public housing. Information on the public housing agencies impacted by the disaster is available on the Department's *Web site*;

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

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

(9) A description of how the grantee will manage program income (e.g., whether subrecipients may retain it), and the purpose(s) for which it may be used. Waivers and alternative requirements related to program income can be found in this Notice at paragraphs A.2 and A.17 of section VI;

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

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

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

(12) A description demonstrating the adequacy of the grantee's capacity, and the capacity of any UGLG or other organization expected to carry out disaster recovery programs (this assessment shall include a description of how the grantee will provide for increasing the capacity of UGLGs or other organizations, as needed and where capacity deficiencies (e.g., outstanding Office of Inspector General audit findings) have been identified. Grantees are responsible for providing adequate technical assistance to subrecipients or subgrantees to ensure the timely, compliant, and effective use of funds. Although UGLGs or other organizations may carry out disaster recovery programs and projects, each grantee under this Notice remains legally and financially accountable for the use of all funds and may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight (also see paragraph A.10 under section VI), policy development, and financial management;

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

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

In addition, for each program or activity that will be carried out by the State, the Action Plan or partial Action Plan must describe: (1) The projected use of the CDBG–DR funds, including the entity administering the program/activity, budget, and geographic area; (2) the threshold factors or applicant eligibility criteria, grant size limits, and proposed start and end dates; (3) how the projected use will meet CDBG eligibility criteria and a national objective; (4) how the projected use relates to a specific impact of the disaster and will result in long-term recovery; and (5) estimated and quantifiable performance outcomes (i.e., a performance measure) relative to the identified unmet need.

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

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

In addition, for each program or activity that will be carried out by the UGLG or through a subrecipient, the Action Plan or partial Action Plan must describe: (1) The projected use of the CDBG–DR funds, including the entity administering the program/activity, budget, and geographic area; (2) the threshold factors or applicant eligibility criteria, grant size limits, and proposed start and end dates; (3) how the projected use will meet CDBG eligibility criteria and a national objective; (4) how the projected use relates to a specific impact of the disaster and will result in long-term recovery; and (5) estimated and quantifiable performance outcomes (i.e., a performance measure) relative to the identified unmet need.

d. Clarification of disaster-related activities. All CDBG–DR activities must clearly address an impact of the disaster for which funding was appropriated. This means each activity must be CDBG-eligible (or receive a waiver), meet a national objective, and address a direct or indirect impact from the disaster in a county covered by a Presidential disaster declaration and cited in Table

2 of this Notice. Additional details on disaster-related activities are provided under Section VI, parts B through D.

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

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

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

Local and regional economic recoveries are typically driven by small businesses. To target assistance to small businesses, the Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) to prohibit grantees from assisting businesses, including privately owned utilities, that do not meet the definition of a small business as defined by SBA at 13 CFR part 121.

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

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

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

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

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

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

f. *Use of the urgent need national objective.* The certification requirements for the documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), are waived for the grants under this Notice until two years after the date HUD obligates funds to a grantee for the activity. In the context of disaster recovery, these standard requirements may prove burdensome and redundant. Since the Department only provides CDBG-DR awards to grantees with documented disaster-related impacts (as supported by data provided by FEMA, SBA, and other sources), and each grantee is limited to spending funds only in counties with a Presidential disaster declaration of recent origin respective to each appropriation, the following temporary, streamlined alternative requirement recognizes the inherent urgency in addressing the serious threat to community welfare following a major disaster.

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

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

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

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

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

i. *Certification of proficient controls, processes and procedures.* The Appropriations Act requires that the Secretary certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds.

To enable the Secretary to make the certification, each grantee must submit the items listed below to the grantee's designated HUD representative. The information must be submitted within 30 days of the effective date of this Notice, or with the grantee's submission of its Action Plan, whichever date is earlier. Grant agreements will not be executed until HUD has issued a certification in response to the grantee's submission.

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

(a) Most recent OMB Circular A-133 audit and annual financial statement indicates that the grantee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of the CDBG program. If the A-133 or annual financial statement identified weaknesses or deficiencies, the grantee must provide documentation showing how those weaknesses have been removed or are being addressed; and

(b) Completed HUD monitoring checklist for financial standards (Exhibit 3-18 of the Community Planning and Development *Monitoring Handbook* 6509.02) and the grantee's financial standards. The checklist and standards must demonstrate the financial standards are complete and conform with the requirements of Exhibit 3-18. The grantee must identify which sections of its financial standards

address each of the questions in the monitoring checklist and which personnel or unit are responsible for each checklist item.

(2) Procurement. A grantee has in place a proficient procurement process if the:

(a) Grantee has adopted the specific procurement standards identified in 24 CFR 85.36. The grantee must provide a copy of its procurement standards and indicate the sections of its procurement standards that incorporate 24 CFR 85.36. The procedures should also indicate which personnel or unit are responsible for each item; or

(b) Grantee's procurement process/standards are equivalent to the procurement standards at 24 CFR 85.36 (applicable to State grantees only). Grantee must provide its procurement standards and indicate the sections of its procurement standards that align with each procurement provision of 24 CFR 85.36. The procedures should also indicate which personnel or unit are responsible for the task.

(3) Duplication of benefits. A grantee has adequate procedures to prevent the duplication of benefits when it provides to HUD a uniform prevention of duplication of benefits procedure wherein the grantee identifies its processes for each of the following: verifying all sources of disaster assistance; determining an applicant's unmet need(s) before awarding assistance; and ensuring beneficiaries agree to repay the assistance if they later receive other disaster assistance for the same purpose. The procedures should also indicate which personnel or unit are responsible for the task.

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

(4) Adequate procedures to determine timely expenditures. A grantee has adequate procedures to determine timely expenditures if a grantee provides procedures to HUD that indicate how the grantee will track expenditures each month; how it will monitor expenditures of its recipients; how it will reprogram funds in a timely manner for activities that are stalled; and how it will project expenditures. The procedures should also indicate which personnel or unit are responsible for the task.

(5) Procedures to maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds. A grantee has adequate procedures to maintain comprehensive Web sites regarding all disaster recovery

activities if its procedures indicate that the grantee will have a separate page dedicated to its disaster recovery that will contain links to all action plans, action plan amendments, performance reports, citizen participation requirements, and activity/program information for activities described in the action plan. The procedures should also indicate the frequency of Web site updates and which personnel or unit are responsible for the task.

(6) Procedures to detect fraud, waste, and abuse of funds. A grantee has adequate procedures to detect fraud, waste, and abuse if its procedures indicate how the grantee will verify the accuracy of information provided by applicants; provides a monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring, and which items are monitored; and that the internal auditor has affirmed and described its role in detecting fraud, waste, and abuse.

(7) Grantee certification. As part of its submission, the grantee is required by paragraph E.42.q to attest to the proficiency and adequacy of its controls.

j. *Obligation and expenditure of funds.* Upon the Secretary's certification, HUD will issue a grant agreement obligating the funds to the grantee. Only the funds described by the grantee in its Action Plan, at the necessary level of detail, will be obligated. In addition, HUD will establish the line of credit and the grantee will receive DRGR system access (if it does not have access already). The grantee must also enter its Action Plan activities into the DRGR system before it may draw funds as described in paragraph A.2, below.

Each activity must meet the applicable environmental requirements. After the Responsible Entity completes an environmental review(s) pursuant to 24 CFR part 58, as applicable (or paragraph A.20, as applicable), and receives from HUD or the State an approved Request for Release of Funds and certification (as applicable), the grantee may draw down funds from the line of credit for the activity. Note that the disbursement of grant funds must begin no later than 60 days after the grantee has received access to its line of credit.

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

Plan. The beginning of every Action Plan amendment must include a section that identifies exactly what content is being added, deleted, or changed. This section must also include a chart or table that clearly illustrates where funds are coming from and where they are moving to. The Action Plan must include a revised budget allocation table that reflects the entirety of all funds, as amended. A grantee's most recent version of its entire Action Plan must be accessible for viewing as a single document at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments.

If a grantee amends its Action Plan to program additional funds that the Department has allocated to it, the grant agreement must also be revised. As stated in paragraph 1.a, the requirement for each grantee to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable.

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

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

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

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

This Notice waives the requirements for submission of a performance report pursuant to 42 U.S.C. 12708 and 24 CFR 91.520. In the alternative, and to ensure consistency between grants allocated under the Appropriations Act and prior CDBG-DR appropriation laws, HUD is requiring that grantees enter information in the DRGR system in sufficient detail to permit the Department's review of grantee performance on a quarterly basis and to enable remote review of grantee data to allow HUD to assess compliance and risk.

b. *DRGR Action Plan.* Each grantee must enter its Action Plan for Disaster Recovery, including performance measures, into HUD's DRGR system. As more detailed information about uses of funds is identified by the grantee, it must be entered into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports, and permits HUD review of compliance requirements.

The Action Plan must also be entered into the DRGR system so that the grantee is able to draw its CDBG-DR funds. The grantee may enter activities into DRGR before or after submission of the Action Plan to HUD. To enter an activity into the DRGR system, the grantee must know the activity type, national objective, and the organization that will be responsible for the activity. In addition, a Data Universal Numbering System (DUNS) number must be entered into the system for any entity carrying out a CDBG-DR funded activity, including the grantee, recipient(s) and subrecipient(s), contractor(s), and developers. To comply with the statutory requirements regarding identification of contractors, and to provide a mechanism for tracking large contracts in DRGR, HUD is requiring grantees to identify in the DRGR system any contract over \$25,000.

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

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

c. *Tracking oversight activities in the DRGR system; use of DRGR data for HUD review and dissemination.* Each grantee must also enter into DRGR summary information on monitoring visits and reports, audits, and technical assistance it conducts as part of its oversight of its disaster recovery programs. The grantee's Quarterly Performance Report (QPR) will include a summary indicating the number of grantee oversight visits and reports (see subparagraph e for more information on the QPR). HUD will use data entered into the DRGR Action Plan and the QPR, transactional data from the DRGR system, and other information provided by the grantee to provide reports to Congress and the public, as well as to (1) Monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile budgets, obligations, funding draws, and expenditures; (3) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (4) analyze the risk of grantee programs to determine priorities for the Department's monitoring.

d. *Tracking program income in the DRGR system.* Grantees must use the DRGR system to draw grant funds for each activity. Grantees must also use the DRGR system to track program income receipts, disbursements, and revolving loan funds. If a grantee permits local governments or subrecipients to retain program income, the grantee must establish program income accounts in the DRGR system. The DRGR system requires grantees to use program income before drawing additional grant funds, and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

e. *DRGR System Quarterly Performance Report (QPR).* Each grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the grantee's official Web site. The grantee's first QPR is due after the first full calendar quarter after the grant award. For example, a grant award made in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until

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

Each QPR will include information about the uses of funds in activities identified in the DRGR system Action Plan during the applicable quarter. This includes, but is not limited to, the: project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes such as number of housing units complete or number of low- and moderate-income persons benefiting; and the race and ethnicity of persons assisted under direct-benefit activities. Grantees must also record the amount of funding expended for each contractor identified in the Action Plan. The DRGR system will automatically display the amount of program income received, the amount of program income reported as disbursed, and the amount of grant funds disbursed. Grantees must include a description of actions taken in that quarter to affirmatively further fair housing within the section titled "Overall Progress Narrative" in the DRGR system.

3. *Citizen participation waiver and alternative requirement.* To permit a more streamlined process, and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 91.105(b) and (c), and 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at a state, entitlement, or local government level, but do require providing a reasonable opportunity (at least 7 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for a grant carried out under this Notice are:

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

contents. The topic of disaster recovery must be navigable by citizens from the grantee (or relevant agency) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

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

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

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

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

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

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

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

4. *Direct grant administration and means of carrying out eligible activities.*

a. *Requirements applicable to State grantees.* Requirements at 42 U.S.C. 5306 are waived, to the extent necessary, to allow a State to directly carry out CDBG-DR activities eligible under this Notice, rather than distribute all funds to UGLGs. Experience in administering CDBG supplemental disaster recovery funding demonstrates that this practice can expedite recovery. Pursuant to this waiver, the standard at section 570.480(c) and the provisions at 42 U.S.C. 5304(e)(2) will also include activities that the State carries out directly. In addition, activities eligible under this Notice may be carried out, subject to State law, by the State through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients or recipients. Notwithstanding this waiver, State grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements contained in the HCD Act and 24 CFR part 570, as well as ensuring such compliance by subgrantees.

b. *Requirements for all grantees – direct administration and assistance to neighborhood organizations described in 42 U.S.C. 5305(a)(15) of the HCD Act.* Activities made eligible at 42 U.S.C.

5305(a)(15) may only be undertaken by the eligible entities described in that section, whether the assistance is provided to such an entity from the State or from a UGLG.

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

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

5. *Consolidated Plan waiver.* HUD is waiving the requirement for consistency with the consolidated plan (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5), 91.225(a)(5), 91.325(b)(3), and 91.225(b)(3)), because the effects of a major disaster alter a grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. However, this waiver applies only until the grantee first updates its full consolidated plan. HUD expects grantees to update its full consolidated plan to reflect disaster-related needs no later than its Fiscal Year 2015 consolidated plan update. At a minimum, the updated consolidated plan must include the criteria discussed in this Notice. While grantees are encouraged to incorporate disaster recovery needs into their consolidated plan updates as soon as practicable, any

unmet disaster-related needs and associated priorities must be incorporated into the grantee's next consolidated plan update by Fiscal Year 2015. If not completed already, the grantee must update its Analysis of Impediments to Fair Housing Choice in coordination with its post-waiver consolidated plan update, so that it more accurately reflects housing conditions following the disaster.

6. *Requirement for consultation during plan preparation.* Currently, the statute and regulations require States to consult with affected units of local government in non-entitlement areas of the State in determining the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), 24 CFR 91.325(b), and 91.110, with the alternative requirement that any State receiving an allocation under this Notice consult with all disaster-affected UGLGs (including any CDBG-entitlement communities, and local public housing authorities in affected areas) in determining the use of funds. This ensures State grantees sufficiently assess the recovery needs of all areas affected by the disaster.

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

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

7. *Overall benefit waiver and alternative requirement.* The primary objective of the HCD Act is the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." 42 U.S.C. 5301(c). To carry out this objective, the statute requires that 70 percent of the aggregate of a regular CDBG program's funds be used to support activities benefitting low- and moderate-income persons. This target could be difficult to reach, and perhaps even impossible, for many grantees affected by Hurricane Sandy. Grantees under this Notice experienced disaster impacts that affected entire communities—regardless of income, and the existing requirement

may prevent grantees from providing assistance to damaged areas of need. Therefore, this Notice waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3), that 70 percent of funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of funds must benefit low- and moderate-income persons. This provides grantees with greater flexibility to carry out recovery activities by allowing up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums or blight national objectives.

Grantees may seek to reduce the overall benefit requirement below 50 percent of the total grant, but must submit a justification that, at a minimum: (a) Identifies the planned activities that meet the needs of its low- and moderate-income population; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the grantee's long-term disaster recovery plan; (c) describes how the activities/ programs identified in (b) prevent the grantee from meeting the 50 percent requirement; and (d) demonstrates that the needs of non-low and moderate-income persons or areas are disproportionately greater, and that the jurisdiction lacks other resources to serve them. Upon request, a sample justification can be provided by the Department. Note that the 50 percent overall benefit requirement will not be reduced unless the Secretary specifically finds that there is a compelling need to further reduce the threshold.

8. *Use of the "upper quartile" or "exception criteria" for low- and moderate-income area benefit activities.* This exception applies to entitlement communities that have few, if any, areas within their jurisdiction that have 51 percent or more low- and moderate-income residents. per the requirements at 42 U.S.C. 5305(c)(2)(A), these communities are allowed to use a percentage less than 51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the "exception criteria" or the "upper quartile".

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

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

9. *Use of "uncapped" income limits.* The Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105-276) enacted a provision that directed the Department to grant exceptions to at least 10 jurisdictions that are currently "capped" under HUD's low and moderate-income limits. Under this exception, a number of CDBG entitlement grantees may use "uncapped" income limits that reflect 80 percent of the actual median income for the area. Each year, HUD publishes guidance on its Web site identifying which grantees may use uncapped limits. The uncapped limits apply to disaster recovery activities funded pursuant to this Notice in jurisdictions covered by the uncapped limits, including jurisdictions that receive disaster recovery funds from the State.

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

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

b. *General administration cap.* For grants under this Notice, the annual CDBG program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant to be used for general administration costs, by the grantee, by UGLGs, or by subrecipients. Thus, the total of all costs charged to the grant and classified as general administration must be less than or equal to the 5 percent cap.

(1) For State grantees under this Notice, the provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) will not apply to the extent that they cap general administration and

technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding \$100,000. 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for general administrative and technical assistance expenditures must not exceed 5 percent. States remain limited to spending a maximum of 20 percent of their total grant amount on a combination of planning and general administration costs. Planning costs subject to the 20 percent cap are those defined in 42 U.S.C. 5305(a)(12).

(2) New York City is also subject to the 5 percent administrative cap. This 5 percent applies to all general administration costs—whether incurred by the grantee or its subrecipients. The City also remains limited to spending 20 percent of its total allocation on a combination of planning and general administration costs.

11. *Planning-only activities – applicable to State grantees only.* The annual State CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. These plans may guide long-term community development efforts comprising multiple activities funded by multiple sources. In the entitlement program, these general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4).

The Department notes that effective CDBG disaster recoveries have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, for State grantees receiving an award under this Notice, the Department is removing the eligibility requirements at 24 CFR 570.483(b)(5) or (c)(3). Instead, States must comply with 570.208(d)(4) when funding disaster recovery-assisted planning-only grants, or directly administering planning activities that

guide recovery in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or administer are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205.

12. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties – applicable to State grantees only.* Section 5302(a)(7) of title 42, U.S.C. (definition of “nonentitlement area”) and provisions of 24 CFR part 570 that would prohibit or restrict a State from distributing CDBG funds to entitlement communities and Indian tribes under the CDBG program, are waived, including 24 CFR 570.480(a) and 570.486(c) (revised April 23, 2012). Instead, the State may distribute funds to UGLGs and Indian tribes.

13. *Use of subrecipients – applicable to State grantees only.* The State CDBG program rule does not make specific provision for the treatment of entities that the CDBG Entitlement program calls “subrecipients.” The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, for States taking advantage of the waiver to carry out activities directly, the requirements at 24 CFR 570.502, 570.503, and 570.500(c) apply, except the requirements that specific references to 24 CFR parts 84 and 85 must be included in subrecipient agreements. Pursuant to 24 CFR 570.489(n) (revised April 23, 2012) and 570.502, State grantees must ensure that its costs and those of its state recipients and subrecipients are in conformance with 24 CFR part 225 (OMB Circular A–87), whether carrying out activities directly or through the use of a subrecipient.

14. *Recordkeeping.*

a. *State grantees.* When a State carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: the State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State’s administration of CDBG–DR funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the State; and show how activities funded are consistent with the descriptions of activities proposed for

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

b. *UGLGs grantees.* New York City remains subject to the recordkeeping requirements of 24 CFR 570.506.

15. *Change of use of real property – applicable to State grantees only.* This waiver conforms to the change of use of real property rule to the waiver allowing a State to carry out activities directly. For purposes of this program, all references to “unit of general local government” in 24 CFR 570.489(j), shall be read as “unit of general local government or State.”

16. *Responsibility for review and handling of noncompliance – applicable to State grantees only.* This change is in conformance with the waiver allowing the State to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies for any State receiving a direct award under this Notice: the State shall make reviews and audits, including onsite reviews of any subrecipients, designated public agencies, and UGLGs, as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2), as amended, and as modified by this Notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or UGLGs.

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

a. *Definition of program income.*

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

CDBG–DR funds, the income shall be prorated to reflect the percentage of CDBG–DR funds used (e.g., a single loan supported by CDBG–DR funds and other funds; a single parcel of land purchased with CDBG–DR funds and other funds). Program income includes, but is not limited to, the following:

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

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

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

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

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

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

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

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

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

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

(2) “Program income” does not include the following:

(a) The total amount of funds which is less than \$25,000 received in a single year and retained by a State, UGLG, tribe, or retained by a subrecipient thereof;

(b) Amounts generated by activities both eligible and carried out by an entity under the authority of section 105(a)(15) of the HCD Act;

b. *Retention of program income.* Per 24 CFR 570.504(c), a UGLG receiving a direct award under this Notice may permit a subrecipient to retain program income. State grantees may permit a UGLG or tribe, which receives or will

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

c. Program income – use, closeout, and transfer.

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

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

d. Revolving loan funds. New York City, State grantees, and UGLGs or tribes (as permitted by a State grantee) may establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities generate payments, which will be used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments which could be funded from the revolving fund. Such program income is not required to be disbursed for non-revolving fund activities.

State grantees may also establish a revolving fund to distribute funds to UGLGs or tribes to carry out specific,

identified activities. The same requirements, outlined above, apply to this type of revolving loan fund. Last, note that no revolving fund, established per this Notice, shall be directly funded or capitalized with an advance of CDBG–DR grant funds.

18. *Reimbursement of disaster recovery expenses.* The provisions of 24 CFR 570.489(b) are applied to permit a State to reimburse itself for otherwise allowable costs incurred by itself or its recipients subgrantees or subrecipients (including public housing authorities) on or after the incident date of the covered disaster. New York City is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable costs incurred on or after the incident date of the covered disaster. 24 CFR 570.200(h)(1)(i) will not apply to the extent that it requires pre-agreement activities to be included in a consolidated plan. The Department expects both State grantees and New York City to include all pre-agreement activities in their Action Plans. The provisions at 24 CFR 570.200(h) and 570.489(b) apply to grantees reimbursing costs incurred by itself or its recipients or subrecipients prior to the execution of a grant agreement with HUD.

19. *One-for-One Relocation, Relocation, and Real Property Acquisition Requirements.* Activities and projects assisted by CDBG–DR are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (“URA”) and Section 104(d) of the HCD Act (42 U.S.C. 5304(d)) (“Section 104(d)”). The implementing regulations for the URA are at 49 CFR part 24. The regulations for Section 104(d) are at 24 CFR part 42, subpart C. For the purposes of promoting the availability of decent, safe, and sanitary housing and expediting disaster recovery and rehousing efforts, HUD is waiving the following URA and Section 104(d) requirements for grantees under this Notice:

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

grantee's definition of “not suitable for rehabilitation” from the one-for-one replacement requirements. Before carrying out a program or activity which may be subject to the one-for-one replacement requirements, the grantee must define “not suitable for rehabilitation” in its Action Plan or in policies/procedures governing these programs and activities. Grantees with questions about the one-for-one replacement requirements are encouraged to contact the HUD Regional Relocation Specialist responsible for their state.

HUD is waiving the one-for-one replacement requirements because they do not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Furthermore, the requirements may discourage grantees from converting or demolishing disaster-damaged housing when excessive costs would result from replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and may impede economic revitalization. Grantees should re-assess post-disaster population and housing needs to determine the appropriate type, amount, and location of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note, however, that the demolition and/or disposition of Public Housing Authority-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970, neither of which is waived by this Notice.

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

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

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

d. Rental assistance to a displaced person. The requirements at sections 204(a) and 206 of the URA, and 49 CFR 24.2(a)(6)(viii), 24.402(b)(2), and 24.404 are waived to the extent that they require the grantee to use 30 percent of a low-income displaced person's household income in computing a rental assistance payment if the person had been paying more than 30 percent of household income in rent/utilities without "demonstrable hardship" before the project. Thus, if a tenant has been paying rent/utilities in excess of 30 percent of household income without demonstrable hardship, using 30 percent of household income to calculate the rental assistance payment would not be required. Before carrying out a program or activity in which the grantee will provide rental assistance payments to displaced persons, the grantee must define "demonstrable hardship" in its Action Plan or in the policies and procedures governing these programs and activities. The grantee's definition of demonstrable hardship applies when implementing these alternative requirements.

e. Tenant-based rental assistance. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(ix) and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 Housing Choice Voucher Program), provided that the tenant is provided referrals to comparable replacement dwellings in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and

the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. This waiver gives grantees an additional relocation resource option.

f. Moving expenses. The requirements at section 202(b) of the URA and 49 CFR 24.302, which require that a grantee offer a displaced person the option to receive a fixed moving cost payment based on the Federal Highway Administration's Fixed Residential Moving Cost Schedule instead of receiving payment for actual moving and related expenses, are waived. As an alternative, the grantee must establish and offer the person a "moving expense and dislocation allowance" under a schedule of allowances that is reasonable for the jurisdiction and that takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Without this waiver and alternative requirement, disaster recovery may be impeded by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established "moving expense and dislocation allowance."

g. Optional relocation policies. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the grantee or state recipient level. Unlike the regular CDBG program, States receiving CDBG–DR funds may carry out disaster recovery activities directly or through subrecipients. The regulation at 24 CFR 570.606(d) governing optional relocation policies does not account for this distinction. This waiver also makes clear that UGLGs receiving CDBG disaster funds may establish separate optional relocation policies. This waiver is intended to provide States and UGLGs with maximum flexibility in developing optional relocation policies with CDBG–DR funds.

20. Environmental requirements.

a. Clarifying note on the process for environmental release of funds when a State carries out activities directly. In the regular CDBG program, a State distributes CDBG funds to UGLGs and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases

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

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

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

d. Historic preservation reviews. To facilitate expedited historic preservation reviews under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), HUD strongly encourages grantees to allocate general administration funds to support the capacity of the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) to review CDBG–DR projects.

21. Duplication of benefits. Section 312 of the Stafford Act, as amended, generally prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source. To comply with this law and provisions of the Appropriations Act, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the

person or entity has a disaster recovery need that has not been fully met.

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

22. *Procurement.*

a. *State grantees.* Per 24 CFR 570.489(d), a State must have fiscal and administrative requirements for expending and accounting for all funds. Furthermore, per § 570.489(g), a State shall establish requirements for procurement policies and procedures for UGLGs based on full and open competition. All subgrantees of a State (UGLGs) are subject to the procurement policies and procedures required by the State.

A State may meet the above requirements by electing to follow 24 CFR part 85. If a State has adopted part 85 in full, it must follow the same policies and procedures it uses when procuring property and services with its non-Federal funds. However, the State must ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations per 24 CFR 85.36(a).

If a State has not adopted 85.36(a), but has adopted 85.36(b) through (i), the State and its subgrantees must follow State and local law (as applicable), so long as the procurements conform to applicable Federal law and the standards identified in 85.36(b) through (i).

b. *Direct grants to UGLGs.* New York City will be subject to the procurement requirements of 24 CFR 85.36(b) through (i).

c. *Additional requirements related to procurement.* Congress and HUD may request periodic updates from grantees that employ contractors. A contractor is a third-party firm that the grantee acquires through a formal procurement process to perform specific functions; a subrecipient is not a contractor. Grantees must incorporate performance requirements and penalties into each procured contract or agreement. The Appropriations Act requires HUD to provide grantees with technical assistance on contracting and procurement processes.

23. *Public Web site.* The Appropriations Act requires grantees to maintain a public Web site which provides information accounting for how all grant funds are used, and

managed/administered, including details of all contracts and ongoing procurement policies. To meet this requirement, each grantee must enter information on contracts in the DRGR system activity profiles (for all contracts valued over \$25,000), and make the following items available on its Web site: the Action Plan (including all amendments); each QPR (as created using the DRGR system) detailing expenditures for each contractor; procurement policies and procedures; executed CDBG–DR contracts; and status of services or goods currently being procured by the grantee—*e.g.*, phase of the procurement, requirements for proposals, etc.

24. *Timely distribution of funds.* The provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with the alternative requirements under this Notice. Section 904(c) of the Appropriations Act requires that all funds be expended within two years of the date HUD obligates funds to a grantee. Therefore, each grantee must expend all funds within two years of the date its grant agreement with HUD is executed. Note that a grant agreement must be amended when the Department allocates additional funds to the grantee. As stated in paragraph A.1.a, in this section, the requirement for each grantee to expend funds within two years of the date of obligation will be enforced relative to the activities funded under each obligation. HUD expects each grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner to ensure this deadline is met. See sections III and VII of this Notice for additional details on expenditure of funds.

To track grantees' progress, HUD will evaluate timeliness in relation to each grantee's established projection schedules (see section III of this Notice, and paragraph A.1.l under section VI). The Department will, absent substantial evidence to the contrary, deem a grantee to be carrying out its programs and activities in a timely manner if the schedule for carrying out its activities is substantially met. In determining the appropriate corrective action pursuant to this section, HUD will take into account the extent to which unexpended funds have been obligated by the grantee and its subrecipients for specific activities at the time the finding is made and other relevant information.

25. *Review of continuing capacity to carry out CDBG-funded activities in a timely manner.* If HUD determines at

any time that the grantee has not carried out its CDBG–DR activities and certifications in accordance with the requirements and criteria described in this Notice, HUD will undertake a further review to determine whether or not the grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the following alternative requirements to provisions under 42 U.S.C. 5304(e): the nature and extent of the grantee's performance deficiencies, types of corrective actions the grantee has undertaken, and the success or likely success of such actions.

26. *Corrective and remedial actions.* To ensure compliance with the requirements of the Appropriations Act and to effectively administer the CDBG–DR program in a manner that facilitates recovery, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) of the HCD Act to the extent necessary to impose the following alternative requirement: HUD may undertake corrective and remedial actions for States in accordance with the authorities applicable to entitlement grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. Before determining appropriate corrective actions, HUD will notify the grantee of the procedures applicable to its review. In accordance with 24 CFR 570.300, the policies and procedures set forth in subpart O will apply to New York City.

27. *Reduction, withdrawal, or adjustment of a grant or other appropriate action.* Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action taken pursuant to this section, the recipient shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation. Consistent with the procedures described in this Notice, the Secretary may adjust, reduce or withdraw the grant or take other actions as appropriate, except that funds already expended on eligible approved activities shall not be recaptured.

B. *Housing and Related Floodplain Issues.*

28. *Housing-related eligibility waivers.* The broadening of 42 U.S.C. 5305(a)(24) is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case of the disasters eligible under this Notice. Thus, 42

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

29. *Housing incentives to resettle in disaster-affected communities.* Incentive payments are generally offered in addition to other programs or funding (such as insurance), to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan. For example, a grantee may offer an incentive payment (possibly in addition to a buyout payment) for households that volunteer to relocate outside of a floodplain or to a lower-risk area. Therefore, 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to allow the provision of housing incentives. Grantees providing housing incentives must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. In addition, the incentives must be in accordance with the grantee's approved Action Plan and published program design(s). Note that this waiver does not permit a compensation program. Additionally, a grantee may require the incentive to be used for a particular purpose by the household receiving the assistance.

30. *Limitation on emergency grant payments – interim mortgage assistance.* 42 U.S.C. 5305(a)(8) is modified to extend interim mortgage assistance to qualified individuals from 3 months, for up to 20 months. Interim mortgage assistance is typically used in conjunction with a buyout program, or the rehabilitation or reconstruction of single family housing, during which mortgage payments may be due but the home is uninhabitable. The time required for a household to complete the rebuilding process may often extend beyond three months. Thus, interim assistance is critical for many households facing financial hardship during this period. A grantee using this alternative requirement must document, in its policies and procedures, how it will determine the amount of assistance

to be provided is necessary and reasonable.

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

a. *Buyout requirements:*

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

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

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

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

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

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

b. *Redevelopment of acquired properties.*

(1) Properties purchased through a buyout program may not typically be redeveloped, with a few exceptions. See subparagraph a(2), above.

(2) Grantees may redevelop an acquired property if: (a) the property is not acquired through a buyout program,

and (b) the purchase price is based on the property's post-flood fair market value (the pre-flood value may not be used). In addition to the purchase price, grantees may opt to provide relocation assistance to the owner of a property that will be redeveloped if the property is purchased by the grantee or subgrantee through voluntary acquisition, and the owner's need for additional assistance is documented.

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

32. *Alternative requirement for housing rehabilitation – assistance for second homes.* The Department is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a) as follows: a "second home", as defined in IRS Publication 936 (mortgage interest deductions), is not eligible for rehabilitation assistance, residential incentives, or to participate in a CDBG-DR buyout program (as defined by this Notice).

33. *Flood insurance.* Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, prior to providing assistance. For additional information, please consult with the Field Environmental Officer in the local HUD Field Office or review the guidance on flood insurance requirements on HUD's Web site.

a. *Flood insurance purchase requirements.* HUD does not prohibit the use of CDBG-DR funds for existing residential buildings in the Special Flood Hazard Area (SFHA) (or "100-year" floodplain). However, Federal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner for a property located in the SFHA must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for any HUD-assisted property within the SFHA.

b. *Future Federal assistance to owners remaining in a floodplain.*

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area

may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. This means that a grantee may not provide disaster assistance for the repair, replacement, or restoration to a person who has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG-DR funds or that designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in subparagraph (5), the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(a) Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(b) Maintain flood insurance in accordance with applicable Federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(a) The transferee fails to obtain or maintain flood insurance, in accordance with applicable federal law, with respect to the property;

(b) The property is damaged by a flood disaster; and

(c) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

(5) The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

(6) The term “Federal disaster relief assistance” applies to HUD or other Federal assistance for disaster relief in “flood disaster areas.” The term “flood disaster area” is defined in section 582(d)(2) of the National Flood Insurance Reform Act of 1994, as amended, to include an area receiving a presidential declaration of a major disaster or emergency as a result of flood conditions.

C. Infrastructure (Public Facilities, Public Improvements, Public Buildings)

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

35. *Use of CDBG as Match.* Additionally, as provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR activity. This includes programs or activities administered by the Federal Emergency Management Agency (FEMA) or the U.S. Army Corps of Engineers (USACE).

D. Economic Revitalization.

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

household income and size (i.e., number of persons). Thus, it streamlines the documentation process by allowing the collection of wage data from the assisted business for each position created or retained, rather than from each individual household.

This alternative requirement has been granted on several prior occasions to CDBG-DR grantees, and to date, those grants have not exhibited any issues of concern in calculating the benefit to low- and moderate-income persons. The Department has determined that, in the context of disaster recovery, this waiver is consistent with the HCD Act.

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

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

38. *Clarifying note on Section 3 income documentation requirements.* Pursuant to the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) and 24 CFR 135.5, the Secretary is authorized to establish income limits to consider an individual to be a Section 3 resident. This Notice authorizes grantees to determine that an individual is eligible to be considered a Section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.

39. *Waiver and modification of the job relocation clause to permit assistance to help a business return.* Traditional CDBG requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another—if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved. This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, and 24 CFR 570.482(h) are waived to allow a grantee to provide assistance to any business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another State or to a labor market area within the same State to continue business.

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

41. *Alternative requirement for assistance to businesses, including privately-owned utilities.* The Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) as follows: when grantees under this Notice provide funds to for-profit businesses, such funds may only be provided to a small business, as defined by the SBA under 13 CFR Part 121. CDBG–DR funds made available under this Notice may also not be used to assist a privately-owned utility for any purpose.

E. Certifications and Collection of Information.

42. *Certifications waiver and alternative requirement.* Sections 91.325 and 91.225 of title 24 of the Code of Federal Regulations are waived. Each State or UGLG receiving a direct allocation under this Notice must make the following certifications with its Action Plan:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

q. The grantee certifies that it has reviewed the requirements of this Notice and requirements of Public Law 113–2 applicable to funds allocated by this Notice, and that it has in place

proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, to ensure timely expenditure of funds, to maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and to detect and prevent waste, fraud, and abuse of funds.

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

VII. Duration of Funding

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

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

VIII. Catalog of Federal Domestic Assistance

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

IX. Finding of No Significant Impact

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

Dated: February 28, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs Programs.

Appendix A – Allocation Methodology

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

Background

Public Law 113–2 states:

For an additional amount for “Community Development Fund”, \$16,000,000,000, to remain available until September 30, 2017, for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013, for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.):

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

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

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

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

The legislation specifies that the CDBG-DR funds are to be used “for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster” and further specifies that the funds are not to be used for activities reimbursable by FEMA or the Corps of Engineers.

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

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

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

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

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

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

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

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

Methodology for Calculating Unmet Needs

Available Data

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

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

Calculating Unmet Housing Needs

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

- Each of the FEMA inspected owner units are categorized by HUD into one of five categories:

- AE Minor-Low: Less than \$3,000 of FEMA inspected *real property* damage

- AE Minor-High: \$3,000 to \$7,999 of FEMA inspected *real property* damage

- AE Major-Low: \$8,000 to \$14,999 of FEMA inspected *real property* damage

- AE Major-High: \$15,000 to \$28,800 of FEMA inspected *real property* damage and/or 1 to 4 feet of flooding on the first floor.

- AE Severe: Greater than \$28,800 of FEMA inspected *real property* damage or determined destroyed and/or 4 or more feet of flooding on the first floor.

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

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

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

- AE Minor-Low: Less than \$1,000 of FEMA inspected *personal property* damage

- AE Minor-High: \$1,000 to \$1,999 of FEMA inspected *personal property* damage

- AE Major-Low: \$2,000 to \$3,499 of FEMA inspected *personal property* damage

- AE Major-High: \$3,500 to \$7,499 of FEMA inspected *personal property* damage or 1 to 4 feet of flooding on the first floor.

- AE Severe: Greater than \$7,500 of FEMA inspected *personal property* damage or determined destroyed and/or 4 or more feet of flooding on the first floor.

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

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

Calculating Economic Revitalization Needs

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

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

[FR Doc. 2013-05170 Filed 3-4-13; 8:45 am]

BILLING CODE 4210-67-P

practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Rental Assistance Demonstration Evaluation, Phase I.

OMB Control Number: Pending.

Description of the Need for the Information and Proposed Use: HUD is conducting an evaluation of the Rental Assistance Demonstration (RAD), focused on the conversion of public housing developments to project-based rental assistance and project-based vouchers. The evaluation will study a

sample of RAD sites and a carefully chosen group of comparison sites. Identification of comparison sites will rely heavily on analysis of existing data—including internal HUD data on public housing and public housing tenants, and neighborhood data from the American Community Survey. If there are significant differences between RAD sites and comparison sites that are not reflected in the data, the resulting evaluation will be biased. Therefore it is necessary to conduct limited information collection from local experts to learn about any "unobservable" characteristics that should influence the selection of comparison sites. This information will refine the comparison group and enable HUD to produce more rigorous estimates of program impacts.

Agency Form Numbers: None.

Members of the Affected Public: This information collection request will affect individuals involved with public

and assisted housing programs in the 24 sites selected to be part of the RAD Evaluation. Up to five individuals per site will be interviewed by telephone. They will be asked to provide information about a specific public housing development undergoing conversion through RAD—specifically, they will be asked about the decision to utilize RAD at that particular development. They will also be asked to comment on other public housing properties identified by the research team as potential comparison sites. These interviews will be semi-structured, guided by an interview protocol comprising mostly open-ended questions. Interviews will take no longer than 30 minutes.

Estimate of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The following chart details the respondent burden:

	Number of responses	Hours per response	Total hours
Telephone interviews	120	.5	60
Total	120	.5	60

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 12, 2013.

Jean Lin Pao,
General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2013-09237 Filed 4-18-13; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5710-N-01]

Clarifying Guidance, Waivers, and Alternative Requirements for Hurricane Sandy Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds

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

ACTION: Notice.

SUMMARY: Previously, the Department allocated \$5,400,000,000 of Community Development Block Grant disaster recovery (CDBG-DR) funds appropriated by the Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2) for the purpose of assisting recovery

in the most impacted and distressed areas declared a major disaster due to Hurricane Sandy (see 78 FR 14329, published in the **Federal Register** on March 5, 2013). This Notice provides clarifying guidance, waivers, and alternative requirements.

DATES: With the exception of waivers included in this Notice, this Notice is effective on April 19, 2013. The effective date for waivers in this Notice is April 24, 2013.

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

SUPPLEMENTARY INFORMATION:

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- I. Background
- II. Applicable Rules, Statutes, Waivers, and

- Alternative Requirements
- III. Catalog of Federal Domestic Assistance
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I. Background

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2, approved January 29, 2013) (Appropriations Act) makes available \$16,000,000,000 in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

On March 1, 2013, the President issued a sequestration order in accordance with section 251A of the Balanced Budget and Emergency Deficit Control Act. This provision of law and the order implementing sequestration reduces funding for disaster recovery grants from \$15,980,000,000 to \$15,181,000,000. The \$10 million provided to CPD for administrative costs and the \$10 million provided to the

Office of the Inspector General are also each reduced to \$9.5 million.

In a **Federal Register** Notice published March 5, 2013 (78 FR 14329), the Department allocated \$5,400,000,000 after analyzing the impacts of Hurricane Sandy and identifying unmet needs. This Notice provides clarifying guidance, waivers, and alternative requirements to grantees in receipt of an allocation under the Appropriations Act.

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

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

This section provides additional waivers and alternative requirements to Hurricane Sandy grantees, and clarifies or modifies guidance provided at 78 FR 14329. For each waiver and alternative requirement described in this Notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act. Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of the Appropriations Act, regulatory waivers must be published in the **Federal Register** no later than five days before the effective date of such waiver.

1. *Action Plan for Disaster Recovery criterion for approval – Elevation Requirements.* Paragraph 1(a)(3) at 78 FR 14333 is hereby amended by deleting that paragraph and replacing it in its entirety with the following:

A description of how the grantee will promote: (a) Sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account possible sea level rise; and (b) how it will coordinate with

other local and regional planning efforts to ensure consistency.

In addition, grantees must adopt and meet the following minimum requirements for approval: In order to better ensure a sustainable long-term recovery, grantees must elevate (or may, for certain non-residential structures as described below, floodproof) new construction and substantially improved structures one foot higher than the latest Federal Emergency Management Agency (FEMA) issued base flood elevation. This standard and criterion for approval of an Action Plan was made after considering the history of FEMA flood mitigation efforts. This higher elevation also takes into account projected sea level rise, which is not considered in current FEMA maps and National Flood Insurance Program premiums, which will potentially rise as FEMA Flood Insurance Rate Maps that take Hurricane Sandy into account are issued.

Each grantee must include in its Action Plan a description of how it will ensure compliance with the requirement that it will not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent in FEMA's most recent and current data source unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain. At a minimum, actions to minimize harm must include elevating or floodproofing new construction and substantial improvements to one foot above the base flood elevation and otherwise acting in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source and best available data under Executive Order 11988 is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

Executive Order 11988 on floodplain management requires that federal agencies use the best available flood data to determine the location of projects and activities. In addition, best available flood risk data must be used to determine requirements for reconstruction, and the elevation of structures for grants funding (in whole or part) new construction and substantial-improvements as defined at 24 CFR 55.2(b)(8). If a new construction or substantial improvement project or activity is located in a floodplain, the lowest floor must be designed using the base flood elevation, determined in accordance with the best available data, plus one foot as the baseline standard for elevation. If higher elevations are required by locally adopted code or

standards, those higher standards would apply.

Instead of elevating non-residential structures that are not critical actions as defined at 24 CFR 55.2(b)(2), grantees may design and construct the project such that below the flood level, the structure is floodproofed using the best available flood data plus one foot. Floodproofing requires structures to be water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic loads, hydrodynamic loads, the effects of buoyancy or higher standards required by the FEMA National Flood Insurance Program as well as state and locally adopted codes. All mixed-use structures must be floodproofed consistent with the latest FEMA guidance.

Each grantee that submitted an Action Plan prior to the publication of this Notice must amend its Plan to address this modified requirement. This revision will be treated as a non-substantial amendment and does not require a public comment period. Revised plans must be submitted to the Department within thirty (30) days of the effective date of this Notice.

2. *State of New York – counties eligible for CDBG-DR assistance.* HUD is amending 78 FR 14330 to define “most impacted and distressed counties” to include counties that meet the revised threshold that will be used for non-Sandy allocations under Public Law 113–2. The new threshold identifies “most impacted counties” as counties with at least \$10 million in damages. Of counties eligible for CDBG-DR assistance from the devastation of Hurricane Sandy, Westchester County, New York, meets this new threshold in addition to the “most impacted counties” already identified in FR 14330. As such, Table 2 at 78 FR 14330 is amended to identify the following counties as the most impacted and distressed: Nassau, Suffolk, Rockland, and Westchester. In addition, to provide consistency among CDBG disaster recovery appropriations, HUD has determined that any county within the State of New York that received a Presidential declaration under FEMA–4020–DR (Hurricane Irene) or FEMA–4031–DR (Tropical Storm Lee) is eligible to receive assistance under the Appropriations Act. However, the State must expend at least 80 percent of its CDBG-DR allocation in its most impacted and distressed counties.

3. *Waiver to permit some activities in support of the tourism industry (State of New York only).* The State of New York has requested a waiver to allow the State to use CDBG-DR funds to support

its \$53.9 billion tourism industry and promote travel to communities in the disaster-impacted areas. Tourism in Sandy-impacted counties generates approximately \$32.5 billion, \$1.7 billion of which is created by disaster-affected businesses. In the surge area alone (nine of the 14 impacted counties), Hurricane Sandy affected 32,282 businesses; the Long Island tourism industry lost approximately 6,000 jobs due to Sandy's impact. Without this waiver, the State estimates a \$500 million loss in revenue.

Tourism industry support, such as a national consumer awareness advertising campaign for an area in general, is ineligible for CDBG assistance. However, HUD understands that such support can be a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues and has granted similar waivers for several CDBG-DR disaster recovery efforts. As the State of New York is proposing advertising and marketing activities for this specific program, rather than direct assistance to tourism-dependent businesses, and because the measures of long-term benefit from the proposed activities must be derived using indirect means, 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived only to the extent necessary to make eligible use of no more than \$30 million for assistance for the tourism industry. CDBG-DR funds may be used to promote a community or communities in general, provided the assisted activities are designed to support tourism to the most impacted and distressed areas related to the effects of Hurricane Sandy. This waiver will expire at the end of the State's two-year expenditure period.

4. *Tenant-based rental assistance (New York City only)*. The City of New York has found that low-income households were disproportionately impacted by Hurricane Sandy. Of the renters that registered for FEMA assistance, almost 65 percent had annual incomes less than \$30,000. As of March 2013, nearly 1,200 households (almost 3,000 people) remain in hotels or interim facilities as a result of Hurricane Sandy, while an unknown number are living in unsafe conditions or "doubled-up."

To assess the permanent housing needs of displaced persons and families, and to match those households with available housing units, the city's Department of Housing Preservation and Development (HPD) created a "housing portal." To date, more than 1,600 households have registered for assistance; 84 percent of these have incomes at or below 50 percent of the

area median income. Meanwhile, HUD and FEMA are activating the Disaster Housing Assistance Program (DHAP), which could potentially address some households' need for rental assistance. However, DHAP is limited to one year, and the program requirements include evidence of sufficient financial assets to support a post-DHAP housing plan, which will exclude most extremely low-income households. Many of these households require a longer subsidy period so that they can develop a permanent housing plan. Thus, the Department is waiving 42 U.S.C. 5305(a), to the extent necessary to make eligible rental assistance payments on behalf of low-income households (at or below 50 percent of the area median income) displaced by Hurricane Sandy. Displaced households that have rejected public housing assistance, or declined a Section 8 voucher, will not be eligible. This waiver will expire at the end of the State's two year expenditure period.

5. *Program income alternative requirement*. The following changes and additions are made to Paragraph 17 at 78 FR 14341. Paragraphs a.(1)(h) through (j) are replaced, paragraph a.(1)(k) is added, and paragraph (2) is replaced with the following:

(h) Interest earned on funds held in a revolving fund account;

(i) Interest earned on program income pending disposition of the income;

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

(k) Gross income paid to a unit of general local government or subgrantee of the unit of general local government from the ownership interest in a for-profit entity acquired in return for the provision of CDBG-DR assistance.

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

(a) The total amount of funds, which does not exceed \$35,000 received in a single year from activities, other than revolving loan funds that is retained by a unit of general local government and its subgrantees (all funds received from revolving loan funds are considered program income, regardless of amount);

(b) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act;

(c) Payments of principal and interest made by a subgrantee carrying out a CDBG-DR activity for a unit of general local government, toward a loan from

the local government to the subgrantee, to the extent that program income received by the subgrantee is used for such payments;

(d) The following classes of interest, which must be remitted to HUD for transmittal to the Department of the Treasury, and will not be reallocated under section 106(c) or (d) of the Act:

(i) Interest income from loans or other forms of assistance provided with CDBG-DR funds that are used for activities determined by HUD to be not eligible under § 570.482 or section 105(a) of the Act, to fail to meet a national objective in accordance with the requirements of § 570.483, or to fail substantially to meet any other requirement of this subpart or the Act;

(ii) Interest income from deposits of amounts reimbursed to a state's CDBG-DR program account prior to the state's disbursement of the reimbursed funds for eligible purposes; and

(iii) Interest income received by units of general local government on deposits of grant funds before disbursement of the funds for activities, except that the unit of general local government may keep interest payments of up to \$100 per year for administrative expenses otherwise permitted to be paid with CDBG-DR funds.

(e) Proceeds from the sale of real property purchased or improved with CDBG-DR funds, if the proceeds are received more than 5 years after expiration of the grant agreement between the state and the unit of general local government.

* * * * *

6. *Assistance to businesses, including privately-owned utilities*. Paragraph 1(d)(3) at 78 FR 14335 is hereby amended to be consistent with the alternative requirement as stated in paragraph 41 at 78 FR 14347. While Paragraph 41 discussed both small businesses and private utilities, the paragraph at 1(d)(3) only discussed small businesses. Thus, grantees in receipt of an allocation under the Appropriations Act are subject to the following: when CDBG-DR funds are provided to for-profit businesses, such funds may only be provided to a small business, as defined by the SBA under 13 CFR part 121. CDBG-DR funds may not be used to assist a privately-owned utility for any purpose.

7. *Modification of certification*. Paragraph 42(n) at 78 FR 14348 is replaced with the following: The grantee will not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent in FEMA's most recent and current data source unless it also ensures that the action is

designed or modified to minimize harm to or within the floodplain. The grantee further certifies that at a minimum, actions to minimize harm will include elevating or floodproofing new construction and substantial improvements to one foot above the base flood elevation and otherwise acting in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

Grantees that have provided this certification in compliance with the previous Notice must resubmit the revised language to the Department within thirty (30) days of the effective date of this Notice.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this Notice are as follows: 14.269.

IV. Finding of No Significant Impact

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

Dated: April 15, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs Programs.

[FR Doc. 2013-09228 Filed 4-18-13; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5681-N-16]

Federal Property Suitable as Facilities To Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402-3970; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW, Room 7040 Washington, DC 20405, (202) 501-0084; (This is not toll-free numbers).

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 8517]

RIN 1400-AD42

Visas: Documentation of Nonimmigrants—Visa Classification; T Visa Class

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule is being promulgated to add a new visa classification symbol to the nonimmigrant classification table in our regulations. This amendment is necessary to implement legislation that created an additional nonimmigrant classification as described herein.

DATES: This rule is effective November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Lauren A. Prosnik, Legislation and Regulations Division, Visa Services, Department of State, 2401 E Street NW., Room L-603D, Washington, DC 20520-0106, (202) 663-1260.

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

Section 1221 of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113-4) amended Section 101(a)(15)(T)(ii)(III) of the Immigration and Nationality Act by adding a derivative “T” visa class. The T-6 visa would be available to eligible adult and minor children of a derivative beneficiary of a T-1 principal alien whom the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien’s escape from trafficking or cooperation with law enforcement to accompany or follow to join the principal alien. This rule amends 22 CFR 41.12 to include the T-6 visa classification in the chart of nonimmigrant visa classification symbols.

Regulatory Findings

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rulemaking procedures set forth at 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Nonetheless, consistent with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities, since it involves creating a nonimmigrant visa category for certain victims of trafficking.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804. The Department is aware of no monetary effect on the economy that would result from this rulemaking, nor will there be any increase in costs or prices; or any effect on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866, and has determined that the benefits of this regulation, i.e., complying with a Congressional mandate and providing a nonimmigrant visa category for certain victims of trafficking, outweigh any cost. The Department does not consider this rule to be a significant rulemaking action.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national

government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13563: Improving Regulation and Regulatory Review

The Department has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35 beyond what is already required of other nonimmigrant visa applicants.

List of Subjects in 22 CFR Part 41

Aliens, Foreign Officials, Immigration, Documentation of nonimmigrants, Passports and visas.

For the reasons stated in the preamble, the Department of State amends 22 CFR Part 41 to read as follows:

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for Part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105-277, 112 Stat. 2681-795 through 2681-801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295).

■ 2. Section 41.12 is revised to read as follows:

§ 41.12 Classification symbols.

A visa issued to a nonimmigrant alien within one of the classes described in this section shall bear an appropriate visa symbol to show the classification of the alien. The symbol shall be inserted in the space provided on the visa. The following visa symbols shall be used:

Symbol	Class	Section of law
A1	Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family.	101(a)(15)(A)(i).
A2	Other Foreign Government Official or Employee, or Immediate Family.	101(a)(15)(A)(ii).
A3	Attendant, Servant, or Personal Employee of A1 or A2, or Immediate Family.	101(a)(15)(A)(iii).
B1	Temporary Visitor for Business	101(a)(15)(B).
B2	Temporary Visitor for Pleasure	101(a)(15)(B).
B1/B2	Temporary Visitor for Business & Pleasure	101(a)(15)(B).
C1	Alien in Transit	101(a)(15)(C).
C1/D	Combined Transit and Crewmember Visa	101(a)(15)(C) and (D).
C2	Alien in Transit to United Nations Headquarters District Under Sec. 11.(3), (4), or (5) of the Headquarters Agreement.	101(a)(15)(C).
C3	Foreign Government Official, Immediate Family, Attendant, Servant or Personal Employee, in Transit.	212(d)(8).
D	Crewmember (Sea or Air)	101(a)(15)(D).
E1	Treaty Trader, Spouse or Child	101(a)(15)(E)(i).
E2	Treaty Investor, Spouse or Child	101(a)(15)(E)(ii).
E3	Australian Treaty Alien coming to the United States Solely to Perform Services in a Specialty Occupation.	101(a)(15)(E)(iii).
E3D	Spouse or Child of E3	101(a)(15)(E)(iii).
E3R	Returning E3	101(a)(15)(E)(iii).
F1	Student in an academic or language training program	101(a)(15)(F)(i).
F2	Spouse or Child of F1	101(a)(15)(F)(ii).
F3	Canadian or Mexican national commuter student in an academic or language training program.	101(a)(15)(F)(iii).
G1	Principal Resident Representative of Recognized Foreign Government to International Organization, Staff, or Immediate Family.	101(a)(15)(G)(i).
G2	Other Representative of Recognized Foreign Member Government to International Organization, or Immediate Family.	101(a)(15)(G)(ii).
G3	Representative of Nonrecognized or Nonmember Foreign Government to International Organization, or Immediate Family.	101(a)(15)(G)(iii).
G4	International Organization Officer or Employee, or Immediate Family.	101(a)(15)(G)(iv).
G5	Attendant, Servant, or Personal Employee of G1 through G4, or Immediate Family.	101(a)(15)(G)(v).
H1B	Alien in a Specialty Occupation (Profession)	101(a)(15)(H)(i)(b).
H1B1	Chilean or Singaporean National to Work in a Specialty Occupation.	101(a)(15)(H)(i)(b1).
H1C	Nurse in health professional shortage area	101(a)(15)(H)(i)(c).
H2A	Temporary Worker Performing Agricultural Services Unavailable in the United States.	101(a)(15)(H)(ii)(a).
H2B	Temporary Worker Performing Other Services Unavailable in the United States.	101(a)(15)(H)(ii)(b).
H3	Trainee	101(a)(15)(H)(iii).
H4	Spouse or Child of Alien Classified H1B/B1/C, H2A/B/R, or H-3	101(a)(15)(H)(iv).
I	Representative of Foreign Information Media, Spouse and Child	101(a)(15)(I).
J1	Exchange Visitor	101(a)(15)(J).
J2	Spouse or Child of J1	101(a)(15)(J).
K1	Fiance(e) of United States Citizen	101(a)(15)(K)(i).
K2	Child of Fiance(e) of U.S. Citizen	101(a)(15)(K)(iii).
K3	Spouse of U.S. citizen awaiting availability of immigrant visa	101(a)(15)(K)(ii).
K4	Child of K3	101(a)(15)(K)(iii).
L1	Intracompany Transferee (Executive, Managerial, and Specialized Knowledge Personnel Continuing Employment with International Firm or Corporation).	101(a)(15)(L).
L2	Spouse or Child of Intracompany Transferee	101(a)(15)(L).
M1	Vocational Student or Other Nonacademic Student	101(a)(15)(M)(i).
M2	Spouse or Child of M1	101(a)(15)(M)(ii).
M3	Canadian or Mexican national commuter student (Vocational student or other nonacademic student).	101(a)(15)(M)(iii).
N8	Parent of an Alien Classified SK3 or SN3	101(a)(15)(N)(i).
N9	Child of N8 or of SK1, SK2, SK4, SN1, SN2 or SN4	101(a)(15)(N)(ii).
NATO 1	Principal Permanent Representative of Member State to NATO (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff; Secretary General, Assistant Secretaries General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank, or Immediate Family.	Art. 12, 5 UST 1094; Art. 20, 5 UST 1098.

Symbol	Class	Section of law
NATO 2	Other Representative of member state to NATO (including any of its Subsidiary Bodies) including Representatives, Advisers, and Technical Experts of Delegations, or Immediate Family; Dependents of Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the "Protocol on the Status of International Military Headquarters"; Members of Such a Force if Issued Visas.	Art. 13, 5 UST 1094; Art. 1, 4 UST 1794; Art. 3, 4 UST 1796.
NATO 3	Official Clerical Staff Accompanying Representative of Member State to NATO (including any of its Subsidiary Bodies), or Immediate Family.	Art. 14, 5 UST 1096.
NATO 4	Official of NATO (Other Than Those Classifiable as NATO1), or Immediate Family.	Art. 18, 5 UST 1098.
NATO 5	Experts, Other Than NATO Officials Classifiable Under NATO4, Employed in Missions on Behalf of NATO, and their Dependents.	Art. 21, 5 UST 1100.
NATO 6	Member of a Civilian Component Accompanying a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement; Member of a Civilian Component Attached to or Employed by an Allied Headquarters Under the "Protocol on the Status of International Military Headquarters" Set Up Pursuant to the North Atlantic Treaty; and their Dependents.	Art. 1, 4 UST 1794; Art. 3, 5 UST 877.
NATO 7	Attendant, Servant, or Personal Employee of NATO1, NATO2, NATO 3, NATO4, NATO5, and NATO6 Classes, or Immediate Family.	Arts. 12–20, 5 UST 1094–1098.
O1	Alien with Extraordinary Ability in Sciences, Arts, Education, Business or Athletics.	101(a)(15)(O)(i).
O2	Alien Accompanying and Assisting in the Artistic or Athletic Performance by O1.	101(a)(15)(O)(ii).
O3	Spouse or Child of O1 or O2	101(a)(15)(O)(iii).
P1	Internationally Recognized Athlete or Member of Internationally Recognized Entertainment Group.	101(a)(15)(P)(i).
P2	Artist or Entertainer in a Reciprocal Exchange Program	101(a)(15)(P)(ii).
P3	Artist or Entertainer in a Culturally Unique Program	101(a)(15)(P)(iii).
P4	Spouse or Child of P1, P2, or P3	101(a)(15)(P)(iv).
Q1	Participant in an International Cultural Exchange Program	101(a)(15)(Q)(i).
Q2	Irish Peace Program Participant	101(a)(15)(Q)(ii)(I).
Q3	Spouse or Child of Q2	101(a)(15)(Q)(ii)(II).
R1	Alien in a Religious Occupation	101(a)(15)(R).
R2	Spouse or Child of R1	101(a)(15)(R).
S5	Certain Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise.	101(a)(15)(S)(i).
S6	Certain Aliens Supplying Critical Information Relating to Terrorism	101(a)(15)(S)(ii).
S7	Qualified Family Member of S5 or S6	101(a)(15)(S).
T1	Victim of a severe form of trafficking in persons	101(a)(15)(T)(i).
T2	Spouse of T1	101(a)(15)(T)(ii).
T3	Child of T1	101(a)(15)(T)(ii).
T4	Parent of a T1 under 21 years of age	101(a)(15)(T)(ii).
T5	Unmarried Sibling under age 18 of T1 under 21 years of age	101(a)(15)(T)(ii).
T6	Adult or Minor Child of a Derivative Beneficiary of a T1	101(a)(15)(T)(ii).
TN	NAFTA Professional	214(e)(2).
TD	Spouse or Child of a NAFTA Professional	214(e)(2).
U1	Victim of criminal activity	101(a)(15)(U)(i).
U2	Spouse of U1	101(a)(15)(U)(ii).
U3	Child of U1	101(a)(15)(U)(ii).
U4	Parent of U1 under 21 years of age	101(a)(15)(U)(ii).
U5	Unmarried Sibling under age 18 of U1 under 21 years of age	101(a)(15)(U)(ii).
V1	Spouse of a Lawful Permanent Resident Alien Awaiting Availability of Immigrant Visa.	101(a)(15)(V)(i) or 101(a)(15)(V)(ii).
V2	Child of a Lawful Permanent Resident Alien Awaiting Availability Of Immigrant Visa.	101(a)(15)(V)(i) or 101(a)(15)(V)(ii).
V3	Child of a V1 or V2	203(d) & 101(a)(15)(V)(i) or 101 (a)(15)(V)(ii).

Dated: August 20, 2013.

Janice L. Jacobs,

*Assistant Secretary for Consular Affairs,
Department of State.*

[FR Doc. 2013-27303 Filed 11-15-13; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2013-0918]

Special Local Regulation; Southern California Annual Marine Events for the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 during the San Diego Parade of Lights, held on December 8, 2013 and December 15, 2013. This event occurs on the San Diego Bay in San Diego, CA. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels of the parade, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 5:30 p.m. to 8:30 p.m. on December 8, 2013 and December 15, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278-7656, email D11-PF-MarineEventsSanDiego@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 in support of the annual marine event, the San Diego Parade of Lights (Item 5 on Table 1 of 33 CFR 100.1101), held over two Sunday nights in December. The Coast Guard will enforce the special local regulations on the northern portion of San Diego Bay on December 8, 2013 and December 15, 2013 from 5:30 p.m. to 8:30 p.m. The parade route will commence at Shelter Island Basin and proceed east to the Embarcadero and Seaport Village, cross the federal channel in the vicinity of the Tenth

Avenue Marine Terminal, and end on the north side of Coronado.

Under the provisions of 33 CFR 100.1101, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued pursuant to 5 U.S.C. 552 (a) and 33 CFR 100.1101. In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this notice, he or she may use a Broadcast Notice to Mariners or other communications coordinated by the event sponsor to grant general permission to enter the regulated area.

Dated: November 1, 2013.

S. M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2013-27582 Filed 11-15-13; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0914]

RIN 1625-AA00

Safety Zone: Vessel Removal From the Oakland Estuary, Alameda, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Oakland Estuary just north of the Park Street Bridge in Alameda, CA in support of the Oakland Estuary Closure for the Vessel Removal Project on November 4, 2013 through November 22, 2013. This safety zone is established to ensure the safety of workers, mariners, and other vessels transiting the area from the dangers associated with cranes operating under heavy loads in close proximity to both sides of the Oakland Estuary. Unauthorized persons or vessels are prohibited from entering into, transiting

through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective on November 4, 2013 through November 22, 2013 and will be enforced for two 48-hour periods that will be announced via Broadcast Notice to Mariner.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0914. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Junior Grade Joshua Dykman, U.S. Coast Guard Sector San Francisco; telephone (415) 399-3585 or email at D11-PF-MarineEvents@uscg.mil. If you have questions on viewing or submitting material to the docket, call Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received the information about the vessel removal project on 17 October, 2013, and the vessel removal project would occur before the rulemaking process would be completed. Because of the dangers posed by the cranes operating under heavy loads in close proximity to both