

**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 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 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**

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## 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**

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.

**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

**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 re-housing 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              |
| <b>Totals .....</b> | <b>.....</b>   | <b>.....</b>      | <b>5737</b>      |

*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**

- 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.

- 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.

- 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.

- 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.

- 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.

- 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              |
| <b>Totals .....</b> |  |                   | <b>5,737</b>     |

**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, BRVNHC.*

[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.