

to (202) 395-6974. Comments must be submitted on or before October 14, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, facsimile number (202) 646-3347, or e-mail address FEMA-Information-Collections@dhs.gov.

Dated: September 5, 2008

John A. Sharetts-Sullivan,

Director, Records Management Division,
Office of Management, Federal Emergency
Management Agency, Department of
Homeland Security.

[FR Doc. E8-21136 Filed 9-10-08; 8:45 am]

BILLING CODE 9110-11-P

**DEPARTMENT OF HOMELAND
SECURITY**

**Federal Emergency Management
Agency**

[Docket ID FEMA-2008-0010]

**National Fire Academy Board of
Visitors**

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Committee Management; Notice
of Open Federal Advisory Committee
Meeting.

SUMMARY: The National Fire Academy
Board of Visitors will meet on October
2-4, 2008.

DATES: The meeting will take place
Thursday, October 2, 2008, from 8:30
a.m. to 4 p.m., e.s.t.; Friday, October 3,
2008, from 9 a.m. to 5 p.m., e.s.t.; and
Saturday, October 4, 2008, from 9 a.m.
to 11:30 a.m., e.s.t. Comments must be
submitted by Thursday, October 9,
2008.

ADDRESSES: Members of the public who
wish to obtain information for the
public meeting may contact Teresa
Kaas as listed in the **FOR FURTHER
INFORMATION CONTACT** section by
September 30, 2008. Members of the
public may participate by coming to the
National Emergency Training Center,
Building H, Room 300, Emmitsburg,
Maryland. Members of the general
public who plan to participate in the
meeting should contact Teresa Kaas as
listed in the **FOR FURTHER INFORMATION
CONTACT** section, on or before September
30, 2008. Requests to have written
material distributed to each member of
the committee prior to the meeting
should reach the contact person at the
address below by September 30, 2008.

Send written material to Teresa Kaas,
16825 South Seton Avenue,
Emmitsburg, Maryland 21727.
Comments must be identified by Docket
ID FEMA-2008-0010 and may be
submitted by *one* of the following
methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* FEMA-RULES@dhs.gov. Include Docket ID in the subject line of the message.

- *Fax:* (866) 466-5370.

- *Mail:* Teresa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Instructions: All submissions received must include the Docket ID for this action. Comments received will be posted without alteration at www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Teresa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447-1117, fax (301) 447-1173, and e-mail teressa.kaas@dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463). The National Fire Academy Board of Visitors will be holding a meeting for purposes of reviewing U.S. Fire Administration/ National Fire Academy Program activities, including the status of campus maintenance and capital improvements, the budget update, the annual Ethics Briefing, the Learning Management System update, the National Fire Programs update, the Education, Training and Partnerships update, the Academy update, and Board discussions and new items. This meeting is open to the public.

The Chairperson of the National Fire Academy Board of Visitors shall conduct the meeting in a way that will, in his judgment, facilitate the orderly conduct of business. During its meeting, the committee welcomes public comment; however, comments will be permitted only during the public comment period. The Chairperson will make every effort to hear the views of all interested parties. Please note that the meeting may end early if all business is completed.

**Information on Services for Individuals
With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Teresa Kaas as soon as possible.

Dated: September 5, 2008.

Denis G. Onieal,

Superintendent, National Fire Academy, U.S.
Fire Administration, Federal Emergency
Management Agency.

[FR Doc. E8-21127 Filed 9-10-08; 8:45 am]

BILLING CODE 9110-17-P

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-5250-N-01]

**Allocations and Common Application
and Reporting Waivers Granted to and
Alternative Requirements for Midwest
Flood Community Development Block
Grant (CDBG) Disaster Recovery
Grantees Under the Supplemental
Appropriations Act, 2008**

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of allocations, waivers,
and alternative requirements.

SUMMARY: This Notice advises the public of the initial allocation for grant funds for CDBG disaster recovery grants for the purpose of assisting in the recovery in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters. As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantees. This Notice also describes the common application, eligibility, and administrative waivers and the common alternative and statutory requirements for the grants.

DATES: *Effective Date:* September 16, 2008.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-

8339. Facsimile inquiries may be sent to Ms. Kome at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Supplemental Appropriations Act, 2008 (Pub. L. 110-252, approved June 30, 2008) (Supplemental Appropriations Act) appropriates \$300 million, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters. The Supplemental Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead based paint), upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. Additionally, regulatory waiver authority is provided by 24 CFR 5.110, 91.600, and 570.5. The following application and reporting waivers and alternative requirements are in response to requests from each of the states receiving an allocation under this Notice.

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

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

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

Additional Waivers

Each state receiving an allocation may request additional waivers from the Department as needed to address the specific needs related to that state's recovery activities. The Department will respond separately to the state's requests for waivers of provisions not covered in this Notice, after working with the state to tailor the program to best meet the unique disaster recovery needs in its impacted areas.

Allocations

The Supplemental Appropriations Act provides \$300 million of supplemental appropriation for the CDBG program for:

Necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of

the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters.

The law further notes:

That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each state. Provided further, that funds allocated under this heading shall not adversely affect the amount of any formula assistance received by a state under this heading: Provided further, that each state may use up to five percent of its allocation for administrative costs.

HUD computes allocations based on data that is generally available covering all the eligible affected areas. Two challenges arose in making this allocation. First, the statute gave very little guidance on what states are to receive funding, so HUD had to determine the eligible universe of grantees. The appropriation calls for funding "recent natural disasters." Since this appropriation was enacted on June 30, 2008, and was developed while there was significant awareness of flooding in the Midwest, the Department's primary assumption was that the funds were targeted to the Midwest flooding. However, there were also several other severe storms, flooding, and tornado events that received major disaster declarations during the same time frame. There were no declared disasters in April 2008, which allows for a natural break and argues that "recent disasters" is most likely to be those occurring after this lull. Therefore, HUD is defining "recent natural disasters" to be all major natural disasters that occurred and were declared from May 1, 2008, through June 30, 2008. This would limit the eligibility for an allocation to disasters in the states shown below.

TABLE 1—FEDERALLY DECLARED DISASTERS IN MAY AND JUNE 2008

No.	Declared date	State	Title
1773	25-Jun-08	Missouri	Severe Storms and Flooding.
1772	25-Jun-08	Minnesota	Severe Storms and Flooding.
1771	24-Jun-08	Illinois	Severe Storms and Flooding.
1770	20-Jun-08	Nebraska	Severe Storms, Tornadoes, and Flooding.
1769	19-Jun-08	West Virginia	Severe Storms, Tornadoes, Flooding, Mudslides, and Land-slides.
1768	14-Jun-08	Wisconsin	Severe Storms, Tornadoes, and Flooding.
1766	8-Jun-08	Indiana	Severe Storms and Flooding.
1763	27-May-08	Iowa	Severe Storms, Tornadoes, and Flooding.
1762	26-May-08	Colorado	Severe Storms and Tornadoes.
1760	23-May-08	Missouri	Severe Storms and Tornadoes.
1758	20-May-08	Arkansas	Severe Storms, Flooding, and Tornadoes.
1756	14-May-08	Oklahoma	Severe Storms, Tornadoes, and Flooding.
1755	9-May-08	Maine	Severe Storms and Flooding.
1753	8-May-08	Mississippi	Severe Storms and Flooding.

HUD is aware that other federal programs, such as Federal Emergency Management Agency (FEMA) Public Assistance and Small Business Administration (SBA) loans, exist to support disaster recovery. Compared to the number of major disaster declarations, the number of times Congress has appropriated CDBG supplemental disaster recovery funds is very small. The Department believes it is reasonable to limit the allocations to places experiencing a significant need for additional federal assistance to facilitate long-term recovery and generally applies a funding threshold, in this case, of \$2 million. Thus, it is very likely that not all of the eligible universe will be funded.

The second challenge in allocating supplemental disaster appropriations is the trade off of a timely allocation versus having the most complete data needed to make a fully informed allocation. CDBG disaster recovery assistance is intended to fund long-term disaster recovery. States need to know relatively quickly how much they are to receive so that they can begin developing their recovery plans. However, a fair allocation generally depends on having good data similarly collected for all eligible states so that the needs of each state are fully taken into consideration. In this case, where funds were appropriated at a time when some of the disasters were still ongoing, the data for most disasters and thus most states is still incomplete. Complete data to make a full allocation may not be available until mid- to late September at the earliest. However, HUD believed it was unreasonable to hold funds that are currently needed as the Department waits for more complete data. As such, HUD is making a two-stage allocation: \$100 million was allocated on August 4, 2008, to the three most affected states and the remaining funds will be allocated in mid-September or October when more complete data are available. Enough data were available from FEMA, SBA, and other sources to make reasonable initial allocation to the states with the most severe damage due to the incidents noted in the table above. The Department was concerned that the first stage of the two-stage allocation not over-fund a grantee. Currently, the Department can say with confidence that the following grants would not be over-funding the disaster recovery needs of the states receiving allocations.

State	Amount allocated
Wisconsin	5,000,000

As soon as better data are available, HUD will compute allocations for the remaining \$200 million and announce them. A state included in that announcement may immediately proceed to prepare and submit an Action Plan for disaster recovery in accordance with this Notice, although HUD will not be able to make the grant until the allocations are published in the **Federal Register**. Therefore, HUD commits to determining, announcing, and publishing the additional allocations swiftly once the data are available.

HUD will invite each grantee receiving an allocation under the Supplemental Appropriations Act to submit an Action Plan for Disaster Recovery in accordance with this Notice.

The Supplemental Appropriations Act requires funds be used only for disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters. The statute directs that each grantee will describe in its Action Plan for Disaster Recovery how the use of the grant funds will address long-term recovery and infrastructure restoration. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds are not disaster-related, or funds allocated duplicate other benefits. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery or if they have any questions regarding meeting these requirements.

As provided for in the Supplemental Appropriations Act, the funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency or the Army Corps of Engineers.

Prevention of Fraud, Abuse, and Duplication of Benefits

The Supplemental Appropriations Act also directs the Secretary to:

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

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

Waiver Justification

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

Each state eligible for a disaster recovery grant receives annual CDBG allocations, has a consolidated plan, a citizen participation plan, a monitoring plan, and has made CDBG certifications. HUD encourages each CDBG disaster recovery grantee to carry out CDBG disaster recovery activities in the context of its ongoing community development program to the extent feasible (for example, by selecting activities consistent with the consolidated plan, by providing overall benefit to at least 70 percent low- and moderate-income persons, and by holding hearings or meetings to solicit public comment).

The waivers, alternative requirements, and statutory changes described in this Notice apply only to the CDBG supplemental disaster recovery funds appropriated in the Supplemental Appropriations Act, not to funds provided under the regular CDBG program. These actions provide additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation.

Application for Allocations Under the Supplemental Appropriations Act

These waivers and alternative requirements streamline the pre-grant process and set the guidelines for states' applications for their allocations. HUD encourages each grantee that receives an allocation to submit an Action Plan for Disaster Recovery to HUD as soon as practicable following an allocation announcement.

Overall Benefit to Low- and Moderate-Income Persons

Pursuant to explicit authority in the Supplemental Appropriations Act, HUD

State	Amount allocated
Indiana	\$10,000,000
Iowa	85,000,000

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

Expanded Distribution and Direct Action

The waivers and alternative requirements allowing distribution of funds by a state to entitlement communities and Indian tribes, and to allow a state to carry out activities directly rather than distribute all funds to units of local government are consistent with waivers granted for previous, similar disaster recovery cases. HUD believes that, in using very similar statutory language to that used for the CDBG supplemental appropriations for Hurricane Katrina, Rita, and Wilma recovery, Congress is signaling its intent that the states under this appropriation also be able to carry out activities directly. Therefore, HUD is waiving program requirements to support this. HUD is also including in this Notice the necessary complementary waivers and alternative requirements related to subrecipients to ensure proper management and disposition of funds during the grant execution and at closeout.

Consistency With the Consolidated Plan

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

Action Plan for Disaster Recovery

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

Citizen Participation

The citizen participation waiver and alternative requirements will permit a more streamlined public process, but one that still provides for reasonable public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG disaster recovery grant funds. The waiver removes the requirement at both the grantee and state grant recipient levels for public hearings or meetings as the method for disseminating information or collecting citizen comments. Instead, grantees are encouraged to employ innovative methods to communicate with citizens and solicit their views on proposed uses of disaster recovery funds, and then to indicate in the Action Plan how it has addressed these views.

Administration Limitation

State program administration requirements must be modified to be consistent with the Supplemental

Appropriations Act, which allows up to five percent of the grant to be used for the state's administrative costs. The provisions at 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap state administration expenditures and require a dollar for dollar match of state funds for administrative costs exceeding \$100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow the state to exceed the overall planning, management and administrative cap of 20 percent.

Use of Subrecipients

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

Reporting

HUD is waiving the annual reporting requirement because the Congress requires quarterly reports from the grantees and from HUD on various aspects of the uses of funds and of the activities funded with these grants. Many of the data elements the grantees will report to Congress quarterly are the same as those that HUD will use to exercise oversight for compliance with the requirements of this Notice and for prevention of fraud, abuse of funds, and duplication of benefits. To collect these data elements and to meet its reporting requirements, HUD is requiring each grantee to report to HUD quarterly using the online Disaster Recovery Grant Reporting (DRGR) system, which uses a streamlined, Internet-based format. HUD will use grantee reports to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; to reconcile budgets, obligations, fund draws, and expenditures; and to calculate

applicable administrative and public service limitations and the overall percent of benefit to low- and moderate-income persons, and as a basis for risk analysis in determining a monitoring plan.

The grantee must post the report on a Web site for its citizens within 3 days of the report's submission to HUD. If a grantee chooses, it may use this report, together with a statement regarding any sole source procurements, as its required quarterly submission to the Committees on Appropriations. Each quarter, HUD will submit to the Committees a summary description of its report reviews, other HUD monitoring and technical assistance activities undertaken during the quarter, and any significant conclusions related to fraud or abuse of funds or duplication of benefits.

Eligibility—Housing Related

The waiver of Section 105(a) of the 1974 Act that allows new housing construction and of Section 105(a)(24), to allow homeownership assistance for families whose income is up to 120 percent of median income and payment of up to 100 percent of a housing down payment is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disaster eligible under this notice. The broadening of the Section 105(a)(24) waiver, in accordance with the state's request, will allow the state to implement mixed-use housing recovery programs included in its HUD-accepted action plan.

Anti-Pirating

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

Relocation Requirements

The states' plan to engage in voluntary acquisition and optional relocation activities (in a form often called "buyouts") by using waivers related to acquisition and relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (URA) and the replacement of housing and relocation assistance provisions under section 104(d) of the HCD Act. The

states asked for waivers to help promote the acquisition of property and the replacement of housing in a timely and efficient manner.

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

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

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

The URA and implementing regulations to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate) provided that the renter is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant the waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation

assistance are limited. The change provides access to an additional relocation resource option.

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

In addition to the URA waivers, HUD is waiving requirements of section 104(d) of the HCD Act dealing with one-for-one replacement of low- and moderate-income housing units demolished or converted in connection with a CDBG-assisted development project for housing units damaged by one or more disasters. HUD is waiving this requirement because it does not take into account the large, sudden changes a major disaster may cause to the local housing stock, population, or local economy. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage grantees from acquiring, converting, or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified timeframe. HUD is also waiving the relocation assistance requirements contained in section 104(d) of the HCD Act to the extent they differ from those of the URA (42 U.S.C. 4601 *et seq.*). This change will simplify implementation while preserving statutory protections for persons displaced by projects assisted with CDBG disaster recovery grant funds.

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

Program Income

A combination of CDBG provisions limits the flexibility available to the states for the use of program income. Prior to 2002, program income earned on disaster recovery grants has usually been program income in accordance with the rules of the regular CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the State CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The HCD Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The HCD Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the states, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for

activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster recovery grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Certifications

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

Applicable Rules, Statutes, Waivers, and Alternative Requirements

Pre-Grant Process

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

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

3. Direct grant administration by states and means of carrying out eligible activities. Requirements at 42 U.S.C. 5306 are waived to the extent necessary to allow a state to use its disaster recovery grant allocation directly to carry out state-administered activities eligible under this Notice. Activities eligible under this Notice may be undertaken, subject to state law, by the

recipient through its employees, or through procurement contracts, or through loans or grants under agreements with subrecipients, or by one or more entities that are designated by the chief executive officer of the state. Unless a waiver provides otherwise, activities made eligible under section 105(a)(15) of the HCD Act, as amended, may only be undertaken by entities specified in that section, whether the assistance is provided to such an entity from the state or from a unit of general local government.

4. Consolidated Plan waiver. Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(6), that housing activities undertaken with CDBG funds be consistent with the strategic plan, are waived. Further, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. These waivers apply only until the time that the grantee first updates the consolidated plan priorities following the disaster.

5. Citizen participation waiver and alternative requirement. Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, and 24 CFR 91.115(b) with respect to citizen participation requirements are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at either the state or local government level, but do require providing a reasonable opportunity (at least 7 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for this grant are:

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

b. In the action plan, each grantee will specify its criteria for determining what

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

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

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

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

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

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

a. The effects of the covered disasters, especially in the most impacted areas and populations, and the greatest

recovery needs resulting from the covered disasters that have not been addressed by insurance proceeds, other federal assistance or any other funding source;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Clarifying note on the process for environmental release of funds when a state carries out activities directly. Usually, a state distributes CDBG funds to units of local government and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD will allow a state grantee to also carry out activities directly instead of distributing them to other governments. According to the environmental regulations at 24 CFR 58.4, when a state carries out activities directly, the state must submit the certification and request for release of funds to HUD for approval.

10. Duplication of benefits. In general, 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance

and Emergency Relief Act, as amended) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source. The Supplemental Appropriations Act stipulates that funds may not be used for activities reimbursable by or for which funds have been made available by the Federal Emergency Management Agency or by the Army Corps of Engineers.

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

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

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

12. Program income alternative requirement. 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent necessary to allow additional flexibility in the administration of program income. The requirements that are retained are republished here for the convenience of the grantees.

a. Program income.

(1) For the purposes of this subpart, "program income" is defined as gross income received by a state, a unit of general local government, a tribe or a

subrecipient of a state, a unit of general local government or a tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

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

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe or a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property owned by a state, tribe or the unit of general local government or a subrecipient of a state, tribe or unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

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

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

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

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

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

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

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

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

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

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

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

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

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

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

(b) Revolving funds.

(1) The state may establish or permit units of general local government or tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in

carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

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

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

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

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

13. Note that use of grant funds must relate to the covered disaster(s). In addition to being eligible under 42 U.S.C. 5305(a) or this Notice and meeting a CDBG national objective, the Supplemental Appropriations Act requires that activities funded under this Notice must also be for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of the recent natural disaster or disasters listed in this Notice for which the state received a funding allocation.

13a. Note on change to administration limitation. Up to five percent of the grant amount may be used for the state's administrative costs. The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap state administration expenditures, limit a state's ability to charge a *de minimis* application fee for grant applications for activities the state carries out directly, and require a dollar for dollar match of state funds for administrative costs exceeding \$100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow the state to exceed the overall planning, management and administrative cap of 20 percent.

Reporting

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

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

b. Each grantee must submit a quarterly performance report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and all expenditures reported. Each quarterly report will include information about the uses of funds during the applicable quarter including (but not limited to) the project name, activity, location, and national objective, funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG disaster funds; beginning and ending dates of activities; and performance measures such as numbers of low- and moderate-income persons or households benefiting. Quarterly reports to HUD must be submitted using HUD's Web-based DRGR system and, within 3 days of submission, posted on the grantee's official Internet site open to the public.

15. Use of subrecipients. The following alternative requirement applies for any activity that a state

carries out directly by funding a subrecipient:

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

b. 24 CFR 570.502(b), except that HUD recommends but does not require application of the requirements of 24 CFR part 84.

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

17. Change of use of real property. This waiver conforms the change of use of real property rule to the waiver allowing a state to carry out activities directly. For purposes of this program, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), "unit of general local government" shall be read as "unit of general local government or state."

18. Responsibility for state review and handling of noncompliance. This change conforms the rule with the waiver allowing the state to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies: The state shall make reviews and audits including on-site reviews of any subrecipients, designated public agencies, and units of general local government as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCD Act, as amended, as modified by this Notice. In the case of noncompliance with these requirements, the state shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences and

prevent a recurrence. The state shall establish remedies for noncompliance by any designated public agencies or units of general local governments and for its subrecipients.

19. Housing-related eligibility waivers. 42 U.S.C. 5305(a) is waived to the extent necessary to allow homeownership assistance for households with up to 120 percent of area median income and downpayment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

20. Waiver and modification of the anti-pirating clause to permit assistance to help a business return. 42 U.S.C. 5305(h) and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of the applicable disaster, and has since moved in whole or in part from the affected area to another state or to a labor market area within the same state to continue business.

Relocation Requirements

21. Waiver of one-for-one replacement of units damaged by disaster.

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

b. Relocation assistance requirements at 42 U.S.C. 5304(d)(2)(A), and 24 CFR 42.350 are waived to the extent they differ from those of the URA and its implementing regulations at 49 CFR part 24 following waivers to activities involving buyouts and other activities covered by the URA and related to disaster recovery housing activities assisted by the funds covered by this notice and included in an approved Action Plan.

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

d. The requirements at sections 204(a) and 206 of the URA, 49 CFR 24.2, 24.402(b)(2) and 24.404 are waived to the extent that they require the state to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. To the extent that a tenant has been

paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required. Before using this waiver, the state must establish a definition of "demonstrable hardship."

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

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

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

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor

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

c. Future Federal assistance to owners remaining in floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154(a)) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property, if that person at any time has received Federal flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

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

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

(i) Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the

property is not so insured as of the date on which the property is transferred; and

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

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

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

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

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

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

e. The term "Federal disaster relief assistance" applies to HUD or other Federal assistance for disaster relief in "flood disaster areas." The term "flood disaster area" is defined in section 582(d)(2) of the National Flood Insurance Reform Act of 1994, as amended, to include an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

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

Certifications

24. Certifications for state governments, waiver and alternative requirement. Section 91.325 of title 24

of the Code of Federal Regulations is waived. Each state must make the following certifications prior to receiving a CDBG disaster recovery grant:

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

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

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

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

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

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

g. The state certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant), and that each unit of general local government that is receiving assistance from the state is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

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

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

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters.

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

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

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

j. The state certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

k. The state certifies that it has and that it will require units of general local government that receive grant funds to certify that they have adopted and are enforcing:

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

(2) A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility

or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

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

m. The state certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area in FEMA's most current flood advisory maps unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain in accordance with Executive Order 11988 and 24 CFR part 55.

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

Duration of Funding

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

Catalog of Federal Domestic Assistance

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

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th Street, SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be

scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

Dated: September 8, 2008.

Roy A Bernardi,

Deputy Secretary.

[FR Doc. E8-21092 Filed 9-10-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-1430-FR; WYW-27997; 8-08807]

Notice of Realty Action: Recreation and Public Purposes Act Classification of Public Lands in Park County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 90.00 acres of public land in Park County, Wyoming. Park County proposes to use the land for a sanitary landfill.

DATES: Interested parties may submit comments regarding the proposed conveyance or classification of the lands until *October 27, 2008*.

ADDRESSES: Send written comments to the Field Manager, Cody Field Office, P.O. Box 518, Cody, Wyoming 82414.

FOR FURTHER INFORMATION CONTACT: Mike Stewart, Field Manager, Bureau of Land Management, Cody Field Office, at (307) 578-5915.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act, (43 U.S.C. 315f), and Executive Order No. 6910, the following described public land in Park County, Wyoming, has been examined and found suitable for classification for lease and conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*):

Sixth Principal Meridian, Wyoming

T. 52 N., R. 101 W.,

Sec. 20, W $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$.

The land described contains 90.00 acres, more or less.

In accordance with the R&PP Act, Park County filed an application to purchase the above-described 90.00 acres of public land which has been

leased for solid waste disposal purposes since 1971. The land was classified for lease under the provisions of the R&PP Act. Before the conveyance can occur, the land must be classified for conveyance under the provisions of the R&PP Act. Additional detailed information pertaining to this application, plan of development, and site plan is in case file W-27997, located in the BLM Cody Field Office at the above address.

The land is not needed for any Federal purpose. The conveyance is consistent with the Cody Resource Management Plan dated November 8, 1990, and would be in the public interest. The patent, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The patent will be subject to all valid existing rights documented on the official public land records at the time of patent issuance.

Classification Comments: Interested parties may submit comments involving the suitability of the land for municipal and recreation uses. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

Confidentiality of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before March 16, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/ Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, the Electronic System for Travel Authorization (ESTA).

OMB Number: 1651-0111.

Form Numbers: I-94 and I-94W.

Abstract: Form I-94 (Arrival/Departure Record) and Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are used to document a traveler's admission into the United States. These forms include date of arrival, visa classification and the date the authorized stay expires. The forms are also used by business employers and other organizations to confirm legal status in the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens traveling to the United States under the

Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States. The recent expansion of the VWP to include seven additional countries resulted in a change to the burden hours of this collection of information.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (with change).

Affected Public: Individuals.

Estimated Number of Respondents (I-94 and I-94W): 30,924,380.

Estimated Number of Respondents (ESTA): 18,000,000.

Estimated Time per Response (I-94 and I-94W): 8 minutes.

Estimated Time per Response (ESTA): 15 minutes.

Estimated Total Annual Burden Hours: 8,623,249.

Estimated Total Annualized Cost on the Public: \$185,546,280.

If additional information is required, contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202-344-1429.

Dated: February 6, 2009.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E9-3120 Filed 2-12-09; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5256-N-01]

Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for Community Development Block Grant (CDBG) Disaster Recovery Grantees Under 2008 Supplemental CDBG Appropriations

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of allocations, waivers, and alternative requirements.

SUMMARY: This Notice advises the public of the initial allocation of grant funds for CDBG disaster recovery grants for the purpose of assisting in the recovery in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of natural disasters that occurred in 2008. As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD

is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantees. This Notice also describes the common application, eligibility, and administrative waivers and the common alternative and statutory requirements for the grants. This Notice also grants to additional state allocatees the waivers included in the **Federal Register** published on September 11, 2008 (73 FR 52870).

DATES: *Effective Date:* February 18, 2009.

FOR FURTHER INFORMATION CONTACT:

Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-8339. Facsimile inquiries may be sent to Ms. Kome at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110-329, approved September 30, 2008) (hereinafter, "Second 2008 Act" to differentiate it from the earlier 2008 Supplemental Appropriations Act, Pub. L. 110-252, approved June 30, 2008) appropriates \$6.5 billion, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing and economic revitalization in areas affected by hurricanes, flooding, and other natural disasters that occurred during 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). A rescission of \$377,139,920 (Pub. L. 110-161, approved December 26, 2007), and a statutory set-aside of \$6.5 million for HUD administrative costs reduces the amount to be distributed to \$6,116,360,080. The Second 2008 Act authorizes the Secretary to waive, or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for

requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead-based paint), upon a request by the state explaining why such waiver is required to facilitate the use of such funds or guarantees and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974 (HCD Act). Additionally, regulatory waiver authority is provided by 24 CFR 5.110, 91.600, and 570.5. The following application and reporting waivers and alternative requirements are in response to requests from the states receiving an allocation under this Notice.

The Secretary finds that the following waivers and alternative requirements, as described below, are necessary to facilitate use of the funds for the statutory purposes and are not inconsistent with the overall purpose of Title I of the HCD Act or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Second 2008 Act and the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), regulatory waivers must be

justified and published in the **Federal Register**.

Except as described in this Notice, statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the Second 2008 Act, HUD will reconsider every waiver in this Notice on the 2-year anniversary of the day this Notice is published.

Additional Waivers

Each state receiving an allocation may request additional waivers from the Department as needed to address the specific needs related to that state's recovery activities. The Department will respond separately to the state's requests for waivers of provisions not covered in this Notice, after working with the state to tailor the program to best meet the unique disaster recovery needs in its impacted areas.

Allocations

This Notice makes available \$2.145 billion of the \$6.1165 billion of supplemental appropriation for the CDBG program for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, floods, and other natural

disasters occurring in 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

The Second 2008 Act further notes:

That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each state * * * Provided further, that funds allocated under this heading shall not adversely affect the amount of any formula assistance received by a state under the Community Development Fund: Provided further, that each state may use up to 5 percent of its allocation for administrative costs.

HUD computes allocations based on data that are generally available and that cover all the eligible affected areas. Congress also required that states devote "not less than 650,000,000" to support "repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas where there is a demonstrated need as determined by the Secretary." HUD expects each grantee receiving an allocation to use the prorated share indicated in the allocation table for affordable rental housing activities.

State	Allocation	Affordable housing minimum *
Arkansas	\$20,294,857	\$2,156,733
Florida	17,457,005	1,855,155
Georgia	4,570,779	485,736
Illinois	41,984,121	4,461,649
Indiana	95,042,622	10,100,172
Iowa	125,297,142	13,315,318
Kentucky	3,217,686	341,943
Louisiana	438,223,344	46,569,962
Mississippi	6,283,404	667,737
Missouri	13,979,941	1,485,647
Puerto Rico	17,982,887	1,911,040
Tennessee	20,636,056	2,192,992
Texas	1,314,990,193	139,743,911
Wisconsin	25,039,963	2,660,995
Total	2,145,000,000	227,948,990

In determining the allocations, HUD focused on two factors:

- Unmet housing needs. This is each state's (or Puerto Rico's) relative share of estimated unmet housing needs for property owners experiencing serious damage to their homes; and
- Concentrated damage. To determine infrastructure and economic revitalization needs, HUD focused on areas of particular concentration of damage—specifically, each state's (or Puerto Rico's) share of seriously

damaged homes in areas where more than 20 percent of the homes experienced damage.

In the first quarter of calendar year 2009, HUD will make a final review of long-term disaster recovery needs for all states affected by disasters in 2008 to allocate the remaining \$3.972 billion. This review will include unmet housing, infrastructure, and economic revitalization needs.

A state included in the subsequent announcement may immediately

proceed to prepare and submit an Action Plan for disaster recovery in accordance with this Notice, although HUD will not be able to make the grant until the allocations and waivers are published in the **Federal Register**. Therefore, HUD commits to swiftly determining, announcing, and publishing the additional allocations once the data are available.

HUD invites each grantee receiving an allocation under the Second 2008 Act to submit an Action Plan for Disaster

Recovery in accordance with this Notice.

The Second 2008 Act requires funds be used only for specific purposes. The statute directs that each grantee will describe, in its Action Plan for Disaster Recovery, criteria for eligibility and how the use of the grant funds will address long-term recovery and infrastructure restoration, housing, and economic revitalization. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds do not meet the statutory purposes, or that funds allocated duplicate other benefits. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery or if they have any questions regarding meeting these requirements.

As provided for in the Second 2008 Act, the funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency (FEMA) or the Army Corps of Engineers. Further, none of the funds may be used as the required match, share, or contribution for another federal program.

Prevention of Fraud, Abuse, and Duplication of Benefits

The Second 2008 Act also directs the Secretary to:

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

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

Waiver Justification

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

Each state eligible for a disaster recovery grant receives annual CDBG allocations, has a consolidated plan, a citizen participation plan, a monitoring plan, and has made CDBG certifications. HUD encourages each CDBG disaster recovery grantee to carry out CDBG disaster recovery activities in the context of its ongoing community development program to the extent feasible (for example, by selecting activities consistent with the consolidated plan, by providing overall benefit to at least 70 percent low- and moderate-income persons, and by holding hearings or meetings to solicit public comment).

The waivers, alternative requirements, and statutory changes described in this Notice apply only to the CDBG supplemental disaster recovery funds appropriated in the Second 2008 Act and, where applicable, the Supplemental Appropriations Act, 2008 (Pub. L. 110-252, approved June 30, 2008), and not to funds provided under the regular CDBG program or those provided under any other component of the CDBG program, such as the Neighborhood Stabilization Program. These actions provide additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation.

Application for Allocations Under the Second 2008 Act

These waivers and alternative requirements streamline the pre-grant process and set the guidelines for states' applications for their allocations. HUD encourages each grantee that receives an allocation to submit an Action Plan for Disaster Recovery to HUD as soon as practicable following an allocation announcement.

Overall Benefit to Low- and Moderate-Income Persons

Pursuant to explicit authority in the Second 2008 Act, HUD is granting an overall benefit waiver that allows for up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums or blight national objectives, rather than the 30 percent allowed under the annual state CDBG program. The primary objective of Title I of the HCD Act and of the funding program of each grantee is "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." The statute goes on to set the standard of performance for this primary objective

at 70 percent of the aggregate of the funds used for support of activities producing benefit to low- and moderate-income persons. Since extensive damage to community structures and housing affected those with varying incomes, and income-producing jobs are often lost for a period of time following a disaster, HUD is waiving the 70 percent overall benefit requirement and establishing the 50 percent requirement in order to give grantees even greater flexibility to carry out recovery activities within the confines of the CDBG program's national objectives. HUD may provide additional waivers of this requirement only if the Secretary specifically finds a compelling need to further reduce or eliminate the percentage requirement. The requirement that each activity meet one of the three national objectives of the CDBG program is not waived.

Consistency With the Consolidated Plan

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

Action Plan for Disaster Recovery

HUD is waiving the CDBG action plan requirements and substituting an Action Plan for Disaster Recovery. This will allow rapid implementation of disaster recovery grant programs and ensure conformance with provisions of the Second 2008 Act. Where possible, the Action Plan for Disaster Recovery, including certifications, does not repeat common action-plan elements the grantee has already committed to carry out as part of its annual CDBG submission. Although a state as the grantee may designate an entity or entities to administer the funds, the state is responsible for compliance with federal requirements. During the course of the grant, HUD will monitor the state's use of funds and its actions for consistency with the Action Plan. The state may submit an initial partial Action Plan and amend it one or more times subsequently until the Action Plan describes uses for the total grant amount. The state may also amend activities in its Action Plan.

Citizen Participation

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

Normally, in the CDBG program, a grantee takes at least 30 days soliciting comment from its citizens before it submits an annual action plan to HUD, which then has 45 days to accept or reject the plan. To expedite the process and to ensure that the disaster recovery grants are awarded in a timely manner, while preserving reasonable citizen participation, HUD is waiving the requirement that the grantee follow its citizen participation plan to the extent necessary to allow for a grantee to submit an Action Plan for Disaster Recovery in an expedited manner. HUD is shortening the minimum time for citizen comments and is requiring the proposed Action Plan for Disaster Recovery and any amendment thereof to be posted on the grantee's official Web site as the plan or amendment is developed, published, and submitted to HUD.

In combination, this Notice's alternative requirements provide the following expedited steps for disaster recovery grants:

- Proposed Action Plan for Disaster Recovery published via the usual methods and on the Internet for no less than 7 calendar days of public comment;
- Final Action Plan posted on the Internet and submitted to HUD (grant application includes Standard Form 424 (SF-424) and certifications; other parts of the Action Plan may initially be submitted either via Disaster Recovery Grant Reporting (DRGR) or paper);
 - HUD expedites review;
 - HUD accepts the plan and prepares a cover letter, grant agreement, and grant conditions;
 - Grant agreement signed by HUD and immediately transmitted to the grantee;
 - Grantee signs and returns the grant agreements;
 - HUD establishes the line of credit and the grantee requests and receives DRGR access (if the grantee does not already have it);
 - If it has not already done so, grantee creates an Action Plan in DRGR and

submits it to HUD. (Funds can be drawn from the line of credit only for an activity that is established in an Action Plan in DRGR.)

After completing the environmental review(s) pursuant to 24 CFR part 58 and, as applicable, receiving from HUD or the state an approved Request for Release of Funds and certification, the grantee may draw down funds from the line of credit.

Grantees are cautioned that, despite the expedited application and plan process, they are still responsible for ensuring that all citizens have equal access to information about the programs. Among other things, this means that each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction. This will be an issue particularly for states that this notice is allowing to make grants throughout the state, including into regular CDBG entitlement areas if these entitlements are included in a relevant disaster declaration. Because regular state CDBG funds are not used in entitlement areas, state CDBG staffs may not be aware of limited-English-proficient (LEP) speaking populations in those metropolitan jurisdictions.

Administration Limitation

State program administration requirements must be modified to be consistent with the Second 2008 Act, which allows up to 5 percent of the grant to be used for administrative costs, whether by the state, by entities designated by the state, by units of local government, or by subrecipients. The provisions at 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap state administration expenditures and require a dollar-for-dollar match of state funds for administrative costs exceeding \$100,000. HUD does not waive 24 CFR 570.489(a)(3), which will allow the state to fund planning activities that may exceed the 5 percent limitation on general administrative costs.

Use of Subrecipients

The state CDBG program rule does not make specific provision for the treatment of entities called "subrecipients" in the CDBG entitlement program. The waiver allowing the state to directly carry out activities creates a situation in which the state may use subrecipients to carry out activities in a manner similar to entitlement communities rather than use a method of distributing funds to local governments. HUD and its Office of Inspector General have long

identified the use of subrecipients as a practice that increases the risk of abuse of funds. However, HUD's experience is that this risk can be successfully managed by following the CDBG entitlement requirements and related guidance. Therefore, HUD is requiring that when using subrecipients, a state taking advantage of the waiver allowing it to carry out activities directly must follow the alternative requirements drawn from the CDBG entitlement rule and specified in this Notice.

Reporting

HUD is waiving the annual reporting requirement because Congress requires quarterly reports from the grantees and from HUD on various aspects of the uses of funds and on the activities funded with these grants. Many of the data elements the grantees will report to Congress quarterly are the same as those that HUD will use to exercise oversight for compliance with the requirements of this Notice and for prevention of fraud, abuse of funds, and duplication of benefits. To collect these data elements and to meet its reporting requirements, HUD is requiring each grantee to report to HUD quarterly using the online DRGR system, which uses a streamlined, Internet-based format. Grantees will also use the recently enhanced DRGR to record obligations and to make draws of funds from the line of credit established for each grant. HUD will use the transactional data from DRGR and from grantee reports to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; to reconcile budgets, obligations, funding draws, and expenditures; to calculate applicable administrative and public service limitations and the overall percent of benefit to low- and moderate-income persons; to report to Congress and the public; and as a basis for risk analysis in determining a monitoring plan.

The grantee must post the quarterly report on an Internet site for its citizens within 3 days of the report's submission to HUD. If a grantee chooses, it may use this report, together with a statement regarding any sole source procurements, as its required quarterly submission to the Committees on Appropriations. Each quarter, HUD will submit to the Committees a summary description of its report reviews, of other HUD monitoring and technical assistance activities undertaken during the quarter, and of any significant conclusions related to fraud or abuse of funds or duplication of benefits.

Eligibility—Housing Related

The waiver of Section 105(a) of the 1974 Act to allow new housing construction, and of Section 105(a)(24), to allow homeownership assistance for families whose income is up to 120 percent of median income and payment of up to 100 percent of a housing down payment, is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disasters eligible under this Notice. The broadening of the Section 105(a)(24) waiver, in accordance with the states' requests, will allow each state to implement mixed-use housing recovery programs included in its HUD-accepted action plan.

Anti-Pirating

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

Expanded Distribution and Direct Action

The waivers and alternative requirements allowing distribution of funds by a state to entitlement communities and Indian tribes, and to allow a state to carry out activities directly, rather than distribute all funds to units of local government, are consistent with waivers granted for previous, similar disaster recovery cases. HUD believes that, in using very similar statutory language to that used for the CDBG supplemental appropriations for Hurricane Katrina, Rita, and Wilma recovery, Congress is signaling its intent that the states under this appropriation also be able to carry out activities directly. Therefore, HUD is waiving program requirements in order to support this intent. HUD is also including in this Notice the necessary complementary waivers and alternative requirements related to subrecipients, to ensure proper management and disposition of funds during grant execution and at closeout.

Relocation Requirements

The states have indicated that they plan or wish to facilitate the ability of their local government grantees to engage in voluntary acquisition and relocation activities (in a form often called "buyouts"), by using waivers

related to acquisition and relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (URA), and the replacement of housing and relocation assistance provisions under section 104(d) of the HCD Act (42 U.S.C. 5304(d)). The states asked for waivers to help promote the acquisition of real property and relocation of displaced persons in a timely and efficient manner.

CDBG funds are federal financial assistance. Therefore, CDBG-assisted programs or projects are subject to the URA and the governmentwide implementing regulations at 49 CFR part 24. The URA's protection and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for CDBG-assisted programs or projects. The URA provides assistance and protections to individuals and businesses affected by federal or federally assisted projects. HUD is waiving the following URA requirements to help promote accessibility to suitable decent, safe, and sanitary housing for victims of hurricanes and flooding in 2008.

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

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

The URA and implementing regulations are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher

or certificate), provided that the tenant is also provided with referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant the waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. This waiver gives states an additional relocation resource option.

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

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

requirements contained in section 104(d) of the HCD Act to the extent that they differ from those of the URA (42 U.S.C. 4601 *et seq.*). This change will simplify implementation while preserving statutory protections for persons displaced by projects assisted with CDBG disaster recovery grant funds.

Although the Second 2008 Act precludes the use of these disaster recovery CDBG grants for federal cost share or match, some disaster recovery CDBG funds used to support buyouts and relocation activities may be used in support of programs receiving FEMA funding. The statutory requirements of the URA are also applicable to the administration of FEMA mitigation funding, and disparities in rental assistance payments for activities funded by HUD and FEMA will thus be eliminated. FEMA is subject to the requirements of the URA. Pursuant to this authority, FEMA requires that rental assistance payments be calculated on the basis of the amount necessary to lease or rent comparable housing for a period of 42 months. HUD is also subject to these requirements, but is also covered by alternative relocation provisions authorized under 42 U.S.C. 5304(d)(2)(A)(iii) and (iv), and implementing regulations at 24 CFR 42.350. These alternative relocation benefits, available to low- and moderate-income displaces opting to receive them in certain HUD programs, require the calculation of similar rental assistance payments on the basis of 60 months, rather than 42 months, thereby creating a disparity between the available benefits offered by HUD and FEMA (although not always an actual cash difference). The waiver assures uniform and equitable treatment by allowing the URA benefits requirements to be the standard for assistance under this Notice.

Program Income

A combination of CDBG provisions limits the flexibility available to the states for the use of program income. Prior to 2002, program income earned on disaster recovery grants had usually been program income in accordance with the rules of the regular CDBG program of the applicable state and had lost its disaster recovery grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The HCD Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it

uses the funds for additional eligible activities under the annual CDBG program. The HCD Act allows the state to require return of the program income to the state under certain circumstances. This Notice waives the existing statute and regulations to give the states, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this Notice allows program income to the disaster recovery grant generated by activities undertaken directly by the state or its agent(s), to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Certifications

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

Waivers and Alternative Requirements for Grants Under the Supplemental Appropriations Act, 2008

In HUD's December 19, 2008 **Federal Register** notice (73 FR 77818), HUD published supplemental disaster recovery allocations and notified the states that received an initial fund allocation under that Notice that they could apply the waivers and alternative requirements of HUD's September 11, 2008 **Federal Register** notice (73 FR 52870), if they requested those waivers from HUD. Today's **Federal Register** Notice notifies Congress and the public that the states receiving initial allocations under the December 19, 2008 Notice have, with one exception, requested all the waivers and alternative requirements under HUD's September 11, 2008 notice, and that HUD is granting them. The exception is the State of Minnesota, which did not request the waivers that would allow it to carry out activities directly or to facilitate flood buyouts. Those waivers and alternative requirements, therefore, do not apply to Minnesota's grant; all the others do.

Applicable Rules, Statutes, Waivers, and Alternative Requirements; Pre-Grant Process

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

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

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

4. *Consolidated Plan waiver.* Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(5), that housing activities undertaken with CDBG funds be consistent with the strategic plan, are waived. Further, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, also is waived. These waivers apply only until the time that the grantee first updates the consolidated plan priorities following the disaster.

5. *Citizen participation waiver and alternative requirement.* Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C.

12707, 24 CFR 570.486, and 24 CFR 91.115(b), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at either the state or local government level, but do require providing a reasonable opportunity (at least 7 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for this grant are:

a. Before the grantee adopts the action plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment (including the information required in this Notice for an Action Plan for Disaster Recovery). The manner of publication must include prominent posting on the state, local, or other relevant Internet site and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. Subsequent to publication, the grantee must provide a reasonable time frame and method(s) (including electronic submission) for receiving comments on the plan or substantial amendment. The grantee's plans to minimize displacement of persons or entities and to assist any persons or entities displaced must be published with the Action Plan.

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

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

d. The grantee must make the Action Plan, any substantial amendments, and all performance reports available to the public on the Internet and on request. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons.

During the term of this grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the Action Plan and to the grantee's use of this grant.

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

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

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

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

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

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

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

(3) How the state will provide or encourage provision of adequate, flood-resistant housing for all income groups that lived in the disaster-affected areas prior to the incident date(s) of the applicable disaster(s), including a description of the activities it plans to

undertake to address emergency shelter and transitional housing needs of homeless individuals and families (including subpopulations), to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, to help homeless persons make the transition to permanent housing and independent living, and to address the special needs of persons who are not homeless identified in accordance with 24 CFR 91.315(d);

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

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

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

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

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

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

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

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

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

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

9. *Clarifying note on the process for environmental release of funds when a state carries out activities directly.*

Usually, a state distributes CDBG funds to units of local government and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD will allow a state grantee to also carry out activities directly instead of distributing them to other governments. According to the environmental regulations at 24 CFR 58.4, when a state carries out activities directly, the state must submit the certification and request for release of funds to HUD for approval.

10. *Duplication of benefits.* In general, 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source. The Second 2008 Act stipulates that funds may not be used for activities reimbursable by or for which funds have been made available by FEMA or by the Army Corps of Engineers.

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

a. Section 5302(a)(7) of title 42, U.S.C. (definition of "nonentitlement area") and provisions of 24 CFR part 570 that would prohibit a state from distributing CDBG funds to units of general local government regardless of their status in the entitlement CDBG program and to Indian tribes, are waived, including 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in entitlement areas and to state or federally recognized Indian tribes. The state is required

instead to distribute funds to activities assisting a declared county or counties and eligible under this Notice without regard to the status of a local government or Indian tribe under any other CDBG program.

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

12. *Program income alternative requirement.* 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent necessary to allow additional flexibility in the administration of program income.

a. Program income.

(1) For the purposes of this subpart, "program income" is defined as gross income received by a state, a unit of general local government, a tribe or a subrecipient of a state, a unit of general local government or a tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

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

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe or a unit of general local government with CDBG funds, less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property owned by a state, tribe, or the unit of general local government or a subrecipient of a state, tribe or unit of general local

government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

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

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

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

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

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

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

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

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

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

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

(A) Program income that is received and retained by the unit of general local government or tribe before closeout of

the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this Notice.

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

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

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

b. Revolving funds.

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

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

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

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

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

13. *Note that use of grant funds must relate to the purposes of the Second 2008 Act.* In addition to being eligible under 42 U.S.C. 5305(a) or this Notice and meeting a CDBG national objective, the Second 2008 Act requires that activities funded under this Notice must also be for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, flooding, and other natural disasters that occurred in 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of the specific natural disaster or disasters for which the state received a funding allocation.

13a. *Note on change to administration limitation.* Up to 5 percent of the grant amount may be used for administrative costs. The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap state administration expenditures, limit a state's ability to charge a *de minimis* application fee for grant applications for activities the state carries out directly, and require a dollar-for-dollar match of state funds for administrative costs exceeding \$100,000. HUD does not waive 24 CFR 570.489(a)(3), which will allow the state to carry out planning activities that may exceed the 5 percent limitation on general administrative costs.

Reporting

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

a. Each grantee must submit its Action Plan for Disaster Recovery, including performance measures, into HUD's Internet-based DRGR system. (The signed certifications and the SF-424

must be, and the initial Action Plan for Disaster Recovery may be, submitted in hard copy.) As additional information about uses of funds becomes available to the grantee, the grantee must enter such detail into DRGR, in sufficient detail to serve as the basis for acceptable performance reports.

b. Each grantee must submit a quarterly performance report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and all expenditures reported. Each quarterly report will include information about the uses of funds during the applicable quarter including (but not limited to) the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG disaster funds; beginning and ending dates of activities; and performance measures such as numbers of low- and moderate-income persons or households benefiting. Quarterly reports to HUD must be submitted using HUD's Internet-based DRGR system and, within 3 days of submission, be posted on the grantee's official Internet site open to the public.

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

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

b. 24 CFR 570.502(b), except that HUD recommends but does not require application of the requirements of 24 CFR part 84.

16. *Recordkeeping.* Recognizing that the state may carry out activities directly, 24 CFR 570.490(b) is waived in such a case and the following alternative provision shall apply: State records. The state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG disaster recovery funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other federal requirements, the content of records maintained by the state shall be sufficient to: enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the state; and show how activities funded are consistent with the descriptions of activities proposed for

funding in the Action Plan. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

17. *Change of use of real property.* This waiver conforms the change of use of real property rule to the waiver allowing a state to carry out activities directly. For purposes of this program, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), "unit of general local government" shall be read as "unit of general local government or state."

18. *Responsibility for state review and handling of noncompliance.* This change conforms the rule with the waiver allowing the state to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies: The state shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and units of general local government, as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the HCD Act, as amended, as modified by this Notice. In the case of noncompliance with these requirements, the state shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The state shall establish remedies for noncompliance by any designated public agencies or units of general local governments and for its subrecipients.

19. *Housing-related eligibility waivers.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow homeownership assistance for households with up to 120 percent of area median income and downpayment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

20. *Waiver and modification of the job relocation clause to permit assistance to help a business return.* 42 U.S.C. 5305(h) and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another state or to a labor market area within the same state to continue business.

Relocation Requirements

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

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

b. Relocation assistance requirements at 42 U.S.C. 5304(d)(2)(A) and 24 CFR 42.350 are waived, to the extent that they differ from those of the URA and its implementing regulation at 49 CFR part 24, for activities involving buyouts and other activities covered by the URA and related to disaster recovery activities assisted by the funds covered by this Notice and included in an approved Action Plan.

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

d. The requirements at sections 204(a) and 206 of the URA, 49 CFR 24.2, 24.402(b)(2), and 24.404 are waived to the extent that they require the state to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. To the extent that a tenant has been paying rent in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required. Before using this waiver, the state must establish a definition of "demonstrable hardship."

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

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

provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

22. *Notes on flood buyouts:*

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

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity. Although the funds under this Notice may not be used as a match or cost share for FEMA programs, HUD urges grantees carrying out buyouts with funds under this Notice to consider implementing the same or similar use restrictions on properties acquired under CDBG-assisted buyouts.

c. Future federal assistance to owners remaining in floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no federal disaster relief assistance made available in a flood disaster area may be used to make a payment

(including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received federal flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person who has failed to meet this requirement.

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

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

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

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

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

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

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

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

assistance provided with respect to the property.

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

e. The term "Federal disaster relief assistance" applies to HUD or other federal assistance for disaster relief in "flood disaster areas." The term "flood disaster area" is defined in section 582(d)(2) of the National Flood Insurance Reform Act of 1994, as amended, to include an area receiving a presidential declaration of a major disaster or emergency as a result of flood conditions.

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

Certifications

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

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

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

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

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

e. The state certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for this grant.

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

g. The state certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant), and that each unit of general local government that is receiving assistance from the state is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

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

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

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of natural disasters that occurred and were declared in 2008.

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

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

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

j. The state certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

k. The state certifies that it has and that it will require units of general local government that receive grant funds to certify that they have adopted and are enforcing:

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

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

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

m. The state certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55.

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

Grant of Waivers for Grants Under the Supplemental Appropriations Act, 2008

The states receiving initial allocations under HUD's **Federal Register** notice published on December 19, 2003, (73 FR 77818) have, with one exception, requested all the waivers and alternative requirements provided by HUD's September 11, 2008, **Federal Register** notice (73 FR 52870), and HUD is granting them. The exception is the State of Minnesota, which did not request the waivers that would allow it to carry out activities directly or to facilitate flood buyouts. Those waivers and alternative requirements, therefore, do not apply to Minnesota's grant; all the others do.

Duration of Funding

Availability of funds provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510), limit the availability of certain appropriations for expenditure. This limitation may not be waived. However, the Second 2008 Act for these grants directs that these funds be available until expended unless, in accordance with 31 U.S.C. 1555, HUD determines that the purposes for which the appropriation has been made have been carried out and no disbursement has been made against the appropriation for 2 consecutive fiscal years. In such a case, HUD shall close out the grant prior to expenditure of all funds.

Catalog of Federal Domestic Assistance

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

Finding of No Significant Impact

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

calling the toll-free Federal Information Relay Service at 800–877–8339.

Dated: February 10, 2009.

Shaun Donovan,

Secretary.

[FR Doc. E9–3216 Filed 2–11–09; 11:15 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2008–N0019; 97600–9792–0000–5d]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, Fish and Wildlife Service, announce a public meeting of the Sport Fishing and Boating Partnership Council (Council).

DATES: The meeting will be held on Monday, March 2, 2009, from 1 p.m. to 5 p.m. and Tuesday, March 3, 2009 from 8:30 a.m. to 1:30 p.m. (Eastern Time).

Members of the public wishing to participate in the meeting must notify Douglas Hobbs by close of business on Monday, February 23, 2009, per instructions under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Department of the Interior, in the Room 5160, 1849 C Street, NW., Washington, DC; telephone (703) 358–2336.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2336; fax (703) 358–2548; or via e-mail at doug_hobbs@fws.gov.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a meeting on Monday, March 2, 2009, from 1 p.m. to 5 p.m. and Tuesday, March 3, 2009 from 8:30 a.m. to 1:30 p.m. (Eastern time).

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director, U.S. Fish and Wildlife Service, on nationally-significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463).

Agenda of the Meeting

The agenda for the September 9 meeting will be as follows:

- (1) Opening comments.
- (2) Introductions.
- (3) Administrative announcements.
- (4) Pre-approved presentations from the public.
- (5) Debriefs from each DRBOSAC Subcommittee.
- (6) Public comments.
- (7) Future Committee business.
- (8) Closing.

More information and detail on the meeting will be available at the committee Web site, located at <https://homeport.uscg.mil/drbosac>. Additional detail may be added to the agenda up to September 2, 2009.

Procedural

This meeting is open to the public. All persons entering the Harbor Room will need to sign in at the door. Please note that the meeting may close early if all business is finished.

The public will be able to make oral presentations during the meeting when given the opportunity to do so. Members of the public may seek pre-approval for their oral presentations by contacting the Coast Guard no later than September 2, 2009. The public may file written statements with the committee; written material should reach the Coast Guard no later than September 2, 2009. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 35 copies to the Liaison to the DFO no later than September 2, 2009, and indicate that the material is to be distributed to committee members in advance of the September 9 meeting.

Please register your attendance with the Liaison to the DFO no later than September 2, 2009.

Information on Services for Individuals with Disabilities

For information on facilities, or services for individuals with disabilities, or to request special assistance at the meeting, contact the Liaison to the DFO as soon as possible.

Dated: August 6, 2009.

Nakeisha B. Hills,

Lieutenant Commander, U.S. Coast Guard, Preparedness Officer, Sector Delaware Bay Acting Designated Federal Officer.

[FR Doc. E9-19550 Filed 8-13-09; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5337-N-01]

Additional Allocations and Waivers Granted to and Alternative Requirements for 2008 Community Development Block Grant (CDBG) Disaster Recovery Grantees

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of allocations, waivers, and alternative requirements.

SUMMARY: This Notice advises the public of the second allocation for grant funds for CDBG disaster recovery grants for the purpose of assisting in the recovery in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters. As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantees. This Notice also describes: (1) How the allocatees may implement the common application, eligibility, and administrative waivers and the common alternative and statutory requirements for the grants; and (2) additional waivers and alternative requirements for certain earlier grants.

DATES: *Effective Date:* August 19, 2009.

FOR FURTHER INFORMATION CONTACT:

Scott Davis, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at telephone number 800-877-8339. Facsimile inquiries may be sent to Mr. Davis at facsimile number 202-401-2044. (Except for the "800" number, these telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110-329, approved September 30, 2008) (hereinafter, "Second 2008 Act") to differentiate it from the earlier 2008 Supplemental Appropriations Act) (Pub. L. 110-252 approved June 30, 2008)

(hereinafter "First 2008 Act"), appropriated \$6.5 billion, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring during 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). To date, \$377,139,920 has been rescinded, \$6,500,000 was set-aside for HUD administrative costs, and \$2,145,000,000 was allocated by HUD in November 2008. This Notice allocates the remaining \$3,971,360,080.

The First 2008 Act also appropriated funds for 2008 disaster recovery grantees, although it only provided funds for disasters occurring in May and June 2008. Both the First 2008 Act and the Second 2008 Act authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use of these funds and guarantees by the recipient, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead-based paint), upon a request by the state explaining why such waiver is required to facilitate the use of such funds or guarantees, and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of title I of the Housing and Community Development Act of 1974 (HCD Act). Additionally, regulatory waiver authority is provided by 24 CFR 5.110, 91.600, and 570.5. The following application and reporting waivers and alternative requirements are in response to requests from the states receiving an allocation under today's **Federal Register** Notice.

The Secretary finds that the following waivers and alternative requirements, as described below, are necessary to facilitate use of the funds for the statutory purposes and are not inconsistent with the overall purpose of title I of the HCD Act or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the First 2008 Act and the Second 2008 Act, statutory and regulatory waivers must be published in the **Federal Register**. Except as described in this Notice, statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570,

shall apply to the use of these funds. In accordance with the First and Second 2008 Acts, HUD will reconsider every waiver in today's **Federal Register** Notice on the 2-year anniversary of the day this Notice is published.

Additional Waivers

Each state receiving an allocation may request additional waivers from the Department as needed to address the specific needs related to that state's recovery activities. The Department will respond separately to the state's requests for waivers of provisions not covered in this Notice, after working with the state to tailor the program to best meet the unique disaster recovery needs in its impacted areas. HUD has included some additional waivers and alternative requirements for individual states in this Notice.

Allocations

Today's Notice makes available the remainder of the Second Act's supplemental appropriation, \$3,971,360,080 for the CDBG program for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing,

and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring in 2008, for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). The Second 2008 Act notes:

That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each state * * * Provided further, that funds allocated under this heading shall not adversely affect the amount of any formula assistance received by a state under the Community Development Fund: Provided further, that each state may use up to five percent of its allocation for administrative costs.

HUD computes allocations based on data that are generally available covering all the eligible affected areas. The 11 states receiving an allocation in today's Notice are indicated in Table 1, below. Their estimated unmet needs represent more than 97 percent of the estimated unmet needs across all 76 disasters that occurred in 2008. The allocation was based on two factors: (i) The sum of estimated unmet housing, infrastructure, and business needs,

adjusted by (ii) a HUD calculated risk level for recovery challenge. More detailed information about the data reviewed, the formula process, and the possible risks affecting recovery can be found in Appendix 1 of this Notice. Initial allocations made under the Second 2008 Act were announced by HUD on November 26, 2008, and published in the **Federal Register** on February 13, 2009 (74 FR 7244). Initial allocations are included in Table 1. The states of Kentucky, Georgia, and Mississippi, and the Commonwealth of Puerto Rico received allocations in the February 13, 2009, **Federal Register** Notice, but are not receiving additional funds under today's Notice, bringing to 15 the total number of grantees allocated funding from the Second 2008 Act. Table 2 is a reprint from the initial allocation notice that shows what the allocations were under the First 2008 Act. Unlike funds allocated under the Second 2008 Act, which may be used for recovery from any disaster occurring during Calendar Year 2008, funds under the First 2008 Act are available only for use in areas covered by specific declarations, so these are also noted.

TABLE 1—SECOND 2008 ACT DISASTER RECOVERY ALLOCATIONS

State	This Notice's Second 2008 Act allocation	Initial Second 2008 Act allocation (Notice 74 FR 7244)	Total Second 2008 Act allocation	Minimum amount for affordable rental housing
Texas	\$1,743,001,247	\$1,314,990,193	\$3,057,991,440	\$342,521,992
Louisiana	620,467,205	438,223,344	1,058,690,549	118,582,672
Iowa	516,713,868	125,297,142	642,011,010	71,910,891
Indiana	253,340,079	95,042,622	348,382,701	39,021,933
Illinois	127,207,128	41,984,121	169,191,249	18,950,911
Missouri	78,625,549	13,979,941	92,605,490	10,372,631
Wisconsin	75,200,572	25,039,963	100,240,535	11,227,823
Tennessee	71,881,834	20,636,056	92,517,890	10,362,819
Arkansas	70,181,041	20,294,857	90,475,898	10,134,098
Florida	63,606,850	17,457,005	81,063,855	9,079,866
California	39,531,784	0	39,531,784	4,427,908
Kentucky	0	3,217,686	3,217,686	341,943
Georgia	0	4,570,779	4,570,779	485,736
Mississippi	0	6,283,404	6,283,404	667,737
Puerto Rico	0	17,982,887	17,982,887	1,911,040

TABLE 2—FIRST 2008 ACT DISASTER RECOVERY ALLOCATIONS

State	Disaster No.	Incident date	Declared date	Allocation
Mississippi	1753	3/20 to 5/19	5/8/08	\$2,281,287
Maine	1755	4/28 to 5/14	5/9/08	2,187,114
Oklahoma	1756	5/10 to 5/13	5/14/08	1,793,876
Arkansas	1758	5/2 to 5/12	5/20/08	4,747,501
South Dakota	1759	5/1	5/22/08	1,987,271
Missouri	1760	5/10 to 5/11	5/23/08	3,519,866
Colorado	1762	5/21	5/26/08	589,651
Iowa	1763	5/25 and continuing	5/27/08	156,690,815
Indiana	1766	5/30 to 6/27	6/8/08	67,012,966
Montana	1767	5/1	6/13/08	666,672
Wisconsin	1768	6/5 and continuing	6/14/08	24,057,378
West Virginia	1769	6/3 to 6/7	6/19/08	3,127,935
Nebraska	1770	5/22	6/20/08	5,557,736

TABLE 2—FIRST 2008 ACT DISASTER RECOVERY ALLOCATIONS—Continued

State	Disaster No.	Incident date	Declared date	Allocation
Illinois	1771	6/1 to 7/22	6/24/08	17,341,434
Minnesota	1772	6/7 to 6/12	6/25/08	925,926
Missouri	1773	6/1 to 8/13	6/25/08	7,512,572

Congress required that states devote “not less than \$650,000,000” of the total Second 2008 Act to support “repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas where there is a demonstrated need as determined by the Secretary.” Table 1 above shows the minimum amount each grantee must spend on affordable rental housing from its total combined allocation of first and second round funding under the Second 2008 Act.

Disaster Recovery Enhancement Allocations. As stated above, HUD calculates CDBG disaster recovery allocations, including the above allocations, to each grantee based on unmet needs data (see Appendix 1). These data largely represent an estimate of the costs for repairs to a pre-disaster condition. Often, this data does not adequately reflect the full recovery costs associated with a disaster. Also, because of cost considerations, state disaster recovery grantees may not always choose recovery activities that are the most advantageous for long-term recovery and resilience from a federal perspective. For example, relocating a repetitively flooded community from a floodplain limits future calls on the National Flood Insurance program and other federal recovery programs. From a federal perspective, flood buyouts are frequently a good idea; locally, they can be politically difficult and somewhat more costly to administer than a traditional rehabilitation program.

Therefore, the Secretary has created a \$311,602,923 Disaster Recovery Enhancement Fund (DREF) for secondary allocations to grantees that anticipate that they will still have unmet disaster recovery needs after developing and undertaking forward-thinking recovery strategies and activities in a timely manner. To be eligible to receive an additional allocation, a grantee must budget its allocated Second 2008 Act funds for the specific activities listed in this Notice by programming the funds in an Action Plan for Disaster Recovery (or an amendment thereof) submitted to HUD by June 30, 2010. A state receiving an additional allocation may use the funds

for any activity eligible for assistance under the Second 2008 Act in accordance with this Notice.

Note that the Stafford Act and the Second 2008 Act prohibit use of these funds as a substitute or match for Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program (HMGP) funds. Also note that CDBG disaster recovery funds must be used in the counties declared in the applicable covered disaster(s) for each state, while HMGP funds may generally be used statewide.

By setting a specific deadline for the Action Plan submissions for this DREF allocation, HUD is signaling that the Department intends to assist grantees that will implement these forward-thinking approaches to long-term recovery in a timely manner. Funds will be allocated dollar-for-dollar for the first \$15 million budgeted for enhanced disaster recovery activities for an individual state and on a pro rata basis for amounts budgeted above \$15 million as measured by funds budgeted by grant recipients by June 30, 2010, on the following specific enhanced disaster recovery activities that reduce the risk of damage from a future disaster:

1. Development and adoption of a forward-thinking land-use plan that will guide use of long-term recovery efforts and subsequent land-use decisions throughout the community and that reduces existing or future development in disaster-risk areas;

2. Floodplain or critical fire or seismic hazard area buyouts programs under an optional relocation plan that includes incentives so that families and private sector employers move out of areas at severe risk for a future disaster;

3. Individual mitigation measures (IMM) to improve residential properties and make them less prone to damage. If such activities are incorporated into the grantee’s rehabilitation or new construction programs generally, the cost increment attributed to IMM will be the amount considered for the additional allocation, not the total construction amount budget; or

4. Implementation of modern disaster resistant building codes, including, but not limited to, training on new standards and code enforcement.

A grantee must include start and end dates for each activity in its Action Plan.

A grantee must demonstrate in its Action Plan submission for any additional allocation that it still has eligible unmet needs to receive assistance from the DREF before HUD will add the additional allocation to the state’s line of credit. Furthermore, the Secretary reserves the right to allocate more or less than \$311,602,923 under this fund, depending on the amount grantees actually budget on such activities and any amounts available for reallocation.

A grantee may reprogram funds from one of the listed enhanced disaster recovery activities to another, but if the grantee reprograms grant funds to any other activity, HUD may recapture the DREF allocation, in whole or in part, in accordance with section 111 of the HCD Act, 24 CFR part 570, subpart O, and this Notice.

The Second 2008 Act requires funds to be used in accordance with its specific purposes. The statute directs that each grantee will describe in its Action Plan for Disaster Recovery criteria for eligibility and how the use of grant funds will address long-term recovery and infrastructure restoration, housing, and economic revitalization in the affected areas. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds do not meet the statutory purposes, or duplicate other benefits. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery or if they have any questions regarding meeting these requirements.

As provided for in the Second 2008 Act, the funds may not be used for activities reimbursable by or for which funds are made available by FEMA or the Army Corps of Engineers. Further, none of the funds may be used as the required match, share, or contribution for another federal program.

Prevention of Fraud, Abuse, and Duplication of Benefits

Additionally, the Second 2008 Act directs the Secretary to:

Establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on

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

To meet this directive, HUD is pursuing four courses of action. First, the **Federal Register** Notice published February 13, 2009 (74 FR 7244), includes specific reporting, written procedures, monitoring, and internal audit requirements for grantees. Second, to the extent its resources allow, HUD will institute risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds. Third, HUD will be extremely cautious in considering any waiver related to basic financial management requirements. The standard, time-tested CDBG financial requirements will continue to apply. Fourth, HUD is collaborating with the HUD Office of Inspector General to plan and implement oversight of these funds.

Waiver Justification

The waivers, alternative requirements, and statutory changes described in the February 13, 2009, **Federal Register** Notice (74 FR 7244) apply to all of the CDBG supplemental disaster recovery funds appropriated in the Second 2008 Act (Pub. L. 110-329), but not to funds provided under the regular CDBG program. Similarly, the waivers, alternative requirements, and statutory changes described in the September 11, 2008, **Federal Register** Notice (73 FR 52870) apply to the CDBG supplemental disaster recovery funds appropriated in the First 2008 Act, not to funds provided under the regular CDBG program. These actions, below, provide additional flexibility in program design and implementation and implement statutory requirements. The previous notices, referenced above, provide further justification for the waivers.

Common Waivers

Previously published waivers to streamline application and program launch. Funds allocated by today's **Federal Register** Notice will be subject to the waivers, alternative requirements, and statutory changes described in this Notice and those previously published in the February 13, 2009, **Federal Register** Notice (74 FR 7244).

General planning activities use entitlement presumption, all grantees. Today's **Federal Register** Notice notifies Congress and the public that the states receiving funds under the First 2008 Act and/or the Second 2008 Act have requested this waiver and HUD is granting the waiver. The annual State CDBG program requires that local

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

State-Specific Waivers

National Objective Documentation for Economic Development Activities—States of Iowa, Louisiana, and Texas. For the national objective documentation for business assistance activities, the states of Iowa, Louisiana and Texas, which have received funds under the First 2008 Act and Second 2008 Act, have asked to apply individual salaries or wages-per-job and the income limits for a household of one, rather than the usual CDBG standard of total household income and the limits by total household size. The states have asserted that this proposed documentation would be simpler and quicker for participating lenders to administer, easier to verify, and would not misrepresent the amount of low- and moderate-income benefit provided. Upon consideration, HUD is granting this waiver, which also was granted for recovery in lower Manhattan following September 11, 2001, and in certain states following the Gulf Coast hurricanes of 2005. Due to the significant breadth of many states' economic development programs, this waiver will play a key role in

streamlining the documentation process because it allows collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

Section 414 of the Stafford Act—States of Louisiana and Texas. In addition to the above, the states of Louisiana and Texas have also requested a waiver of section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, for their disaster recovery programs. Section 414 directs that persons who were displaced by a disaster be considered to be displaced by a federal action, as defined under the Uniform Relocation Act (URA), if the property in which they were living prior to the disaster is assisted with certain federal funds. Today's **Federal Register** Notice grants, in part, the request that the Secretary waive that section and provides alternative requirements more consistent with the purpose of the Second 2008 Act, which is to assist and support disaster recovery in the areas most affected by the effects of the disasters in 2008.

Several states suffered significant destruction in the wake of Hurricanes Ike and Gustav, and the reconstruction will likely last for many years to come—much like in the Gulf Coast states affected by the hurricanes in 2005. For programs or projects covered by this waiver ("covered programs or projects") that are initiated within 3 years after the applicable disaster, each state receiving this waiver must comply with one of the two alternative requirements (for programs or projects initiated after the 3-year period, the alternative requirements would not apply; only the waiver would be applicable):

Alternative One

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

Alternative Two

If the state determines that the first alternative would substantially conflict

with meeting the disaster recovery purposes of the Second 2008 Act, the state may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster. Such determinations must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

1. A description of the class(es) of persons eligible for assistance, including all persons displaced from their residences by particular, enumerated, or by all, effects of the disaster, and including all persons still receiving temporary housing assistance from FEMA for the covered disaster(s);
2. A description of the types and amount of financial assistance to be offered, if any;
3. A description of other services to be made available, including, at minimum, outreach efforts to eligible persons and housing counseling providing information about available housing resources. Outreach efforts and housing counseling information should be provided in languages other than English to persons with limited English proficiency; and
4. Contact information and a description of any applicable application process, including any deadlines.
5. If the program or project involves rental housing, the re-housing plan must also include the following:
 - (i) Placement services for former and prospective tenants;
 - (ii) A public registry of available rental units assisted with CDBG disaster recovery and/or other funds; and
 - (iii) Application materials, award letters, and operating procedures requiring property owners to make reasonable attempts to contact their former residential tenants and offer a unit, upon completion, to those tenants meeting the program's eligibility requirements.

(iv) Persons in physical occupancy who are displaced by a HUD-assisted disaster recovery project will continue to be eligible for URA assistance.

Justification for Waiver

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

- Hurricanes Ike and Gustav caused significant destruction that resulted in massive displacements and decimated the region's affordable housing stock. Continued ambiguity on section 414's applicability may cause substantial delays in long-term recovery, particularly in Texas and Louisiana; and

- Simplify the administration of disaster recovery projects or programs initiated years following the disaster.

Persons displaced by the effects of the disaster may continue to apply for assistance under the states' approved disaster recovery programs, which are designed to bring affordable housing to the affected areas. This waiver does not address programs or projects receiving other HUD funding, or funding from other federal sources.

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

Eligibility—buildings for the general conduct of government—States of Indiana, Louisiana, and Texas. The states of Indiana, Louisiana, and Texas requested a limited waiver of the prohibition on funding buildings for the general conduct of government. HUD has considered the request and agrees that it is consistent with the overall purposes of the 1974 Act for requesting states to be able to use the grant funds under this notice to repair or reconstruct buildings used for the general conduct of government and that the states have selected in accordance with the method described in their Action Plans for Disaster Recovery and that they have determined have substantial value in promoting disaster recovery. However, as stated by the Second 2008 Act, funds allocated under today's **Federal Register Notice**, or the February 13, 2009, **Federal Register Notice** (74 FR 7244), may not be used for activities reimbursable by or for which funds are made available by FEMA or the Army Corps of Engineers. Further, none of the funds may be used as the required match, share, or contribution for another federal program.

Public benefit for certain economic development activities—States of Iowa, Louisiana, and Texas. The states of Iowa, Louisiana, and Texas have requested a waiver of the public benefit standards for their economic development activities. The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the annual aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or

the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. Essentially, the public benefit standards are a proxy for all the other possible public benefits provided by an assisted activity. These dollar thresholds were set more than a decade ago and, under disaster recovery conditions (which often require a larger investment to achieve a given result), can be too low and, thus, impede recovery by limiting the amount of assistance the grantee may provide to a critical activity. States requesting this waiver have made public in their Action Plans the disaster recovery needs each activity is addressing and the public benefits expected.

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

Housing incentives to encourage housing resettlement consistent with local recovery plans; States of Louisiana and Texas. The states of Louisiana and Texas may offer disaster recovery or mitigation housing incentives to promote suitable housing development or resettlement in particular geographic areas. By "resettlement," HUD is referring to resettling the community as a whole, which may include buyouts and relocation, as well as repopulation initiatives if part of a recovery plan. In the past, the state of New York successfully used an incentive program to induce rapid and stable resettlement of lower Manhattan following September 11, 2001. Also, the city of Grand Forks, North Dakota, provided a very affordable soft-second loan as an incentive to help induce households to resettle within the city during its recovery. Any state choosing to provide incentives must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. Generally, incentives are offered in addition to other programs or funding (such as insurance), to try to influence individual residential location decisions, when these decisions are in doubt. For example, a grantee may offer an incentive payment (possibly in

addition to buyouts) for households that volunteer to relocate within a particular period of time, or who choose to resettle outside a 100- or 500-year floodplain. Note, however, that if the grantee requires the funds to be used for a particular purpose by the household receiving the assistance, then the activity will be that required use, not an eligible incentive. The Department is waiving 42 U.S.C. 5305(a) and associated regulations to make these uses of grant funds eligible.

Compensation for disaster-related losses. The states of Louisiana and Texas plan to provide compensation to certain homeowners whose homes were affected during the covered disasters, if the homeowners agree to meet the stipulations of the state's or subawardee's published program design. Such stipulations may not include requirements related to how the homeowner may use the funds, because then the assisted activity would be that required use, not compensation. Such programs were carried out by the states of Louisiana and Mississippi following the 2005 hurricanes. A strength of these compensation programs is that they may be able to disburse funding more quickly than traditional CDBG rehabilitation programs. However, a major weakness is the lack of certainty about whether an assisted homeowner will use the granted assistance in a way that supports the community's long-term recovery goals. Very little data exists to verify the degree to which compensation funds have been used for reconstruction or rehabilitation. Existing data suggest that a certain percentage of those receiving assistance fail to comply with the program stipulations. By contrast, a rehabilitation program is typically able to demonstrate that all or nearly all of its assisted households reside (after receiving assistance) in reconstructed or rehabilitated homes, according to the grantee's standards. Therefore, HUD is granting this compensation waiver together with alternative requirements. HUD will disapprove an action plan if a compensation program is not adequately justified in accordance with these alternative requirements. Any state deciding to assist a compensation activity must address in its action plan and program design:

- (1) How the state will ensure that compensation payments will result in disaster recovery or economic revitalization;
- (2) Why a housing rehabilitation or reconstruction or buyouts program is not a more appropriate choice; and
- (3) How the state determined the appropriate compensation amount(s).

Further, any state choosing to provide compensation assistance must also carry out an evaluation of outcomes of the program, for a statistically valid sample of the program participants, within a year of providing the final payment.

Three-month limitation on emergency grant payments. In response to the state of Iowa's request, HUD is waiving 42 U.S.C. 5305(a) to allow it to extend interim mortgage assistance to qualified individuals for up to 20 months. The state is currently operating an Interim Mortgage Assistance Program, limited to a maximum of 3 months and a maximum of \$1,000 per month. It has now been almost 12 months since the original flooding event occurred but many families still require this assistance. Furthermore, it will still be several months before FEMA buyout decisions will be made and implemented. Therefore, to permit the state of Iowa to adequately assist households through this period, and to be consistent with the state funding that has been supplied separately for this purpose, HUD will waive the normal 3-month limitation, to provide a total of 20 months of Interim Mortgage Assistance to qualified individuals.

Summary of States Receiving Waivers

Texas. Texas has requested and HUD has approved the following waivers and alternative requirements for funds provided to the state under the Second 2008 Act (Pub. L. 110-329): (1) Documentation of job retention, (2) section 414 of the Stafford Act, (3) eligibility of buildings for the general conduct of government, (4) public benefit for certain economic development activities, and (5) compensation for disaster-related losses or housing incentives to resettle in disaster-affected communities. Texas has justified each request and documented the need for each waiver.

Iowa. Iowa has requested and HUD has approved the following waivers and alternative requirements: (1) Documentation of job retention, (2) public benefit for certain economic development activities, and (3) three-month limitation on emergency grant payments. Iowa has justified each request and documented the need for each waiver. The waivers granted by this Notice will apply to funds received under the First 2008 Act (Pub. L. 110-252), and to all funds received under the Second 2008 Act (Pub. L. 110-329).

Louisiana. Louisiana has requested and HUD has approved the following waivers and alternative requirements for funds provided to the state under the Second 2008 Act: (1) Documentation of job retention, (2) section 414 of the

Stafford Act, (3) eligibility of buildings for the general conduct of government, (4) public benefit for certain economic development activities, and (5) compensation for disaster-related losses or housing incentives to resettle in disaster-affected communities.

Louisiana has justified each request and documented the need for each waiver.

Indiana. Indiana has requested and HUD has approved a waiver regarding the eligibility of buildings for the general conduct of government for all funds received under the First 2008 Act, 2008 (Pub. L. 110-252). Note, this waiver has been neither requested nor approved for funds received under the Second 2008 Act (Pub. L. 110-329).

Application for Allocations Under the Second 2008 Act

The waivers and alternative requirements streamline the pre-grant process and set the guidelines for states' applications for their allocations. Each grantee receiving an allocation under the Second 2008 Act (which includes allocations made under this Notice, as well as those made under the February 13, 2009, Notice) is required, with the exception of California, to submit and/or amend its Action Plan for Disaster Recovery to program all of each state's allocations by September 30, 2009. The state of California (which did not receive an allocation under the February 13, 2009, Notice) is required to submit an Action Plan for Disaster Recovery by December 30, 2009. Any allocation not applied for by these dates may be added to the funds available under the DREF and reallocated. If any grantee fails to meet the requirement to program its allocations within the relevant timelines, HUD, on the first business day after that deadline, will commence an action to recapture the funds.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

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

2. The waivers provided in the February 13, 2009, **Federal Register** Notice (74 FR 7244) are granted and the alternative requirements of that Notice apply to all the states receiving an

allocation of grant funds under this Notice. Each of the states has requested, in writing, that HUD grant it the waivers and alternative requirements of that Notice.

3. *Planning activities.* For CDBG disaster recovery-assisted general planning activities that will guide recovery in accordance with the First 2008 Act (Pub. L. 110-252) and the Second 2008 Act (Pub. L. 110-329), the State CDBG program rules at 24 CFR 570.483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies for all First 2008 Act and Second 2008 Act grantees.

4. *National Objective Documentation for Economic Development Activities.* 24 CFR 570.483(b)(4)(i) is waived to allow the states of Texas, Iowa, and Louisiana to establish low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family.

5. *Section 414 of the Stafford Act.* Section 414 of the Stafford Act, 42 U.S.C. 5181 (including its implementing regulation at 49 CFR 24.403(d)), is waived to the extent that it would apply to CDBG disaster recovery-funded programs or projects initiated within 3 years of the incident-date of Hurricane Ike or Hurricane Gustav (as applicable) by the states of Texas and Louisiana under an approved Action Plan for Disaster Recovery for its grants under the Second 2008 Act, provided that such program or project was not planned, approved, or otherwise under way prior to the disaster.

a. For all programs or projects covered by this waiver ("covered programs or projects") that are within 3 years after the applicable disaster, the states of Texas and Louisiana must comply with one of the following two alternative requirements (for programs or projects initiated after the 3-year period, the alternative requirements would not apply; only the waiver would be applicable): (1) Relocation Assistance. The state may provide relocation assistance to a former residential occupant whose former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance must be offered in a manner consistent with the URA, as amended, and its

implementing regulations, except as modified by prior waivers and alternative requirements granted to the states. (2) Re-housing Plan. If the state determines that the first alternative would substantially conflict with meeting the disaster recovery purposes of the Second 2008 Act, the grantee may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster. Such a determination must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

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

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

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

(iv) Contact information for additional program information;

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

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

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

B. Placement services for former and prospective tenants; and

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

b. Eligible Project Costs. The costs of relocation assistance and the reoccupancy plan are eligible project costs in the same manner and to the same extent as other project costs authorized under the Second 2008 Act. For covered programs or projects involving affordable rental housing, the relocation and planning costs required by this Notice may be paid from funds reserved for the affordable rental housing stock in the impacted areas under the Second 2008 Act.

c. Persons in physical occupancy who are displaced by a HUD-assisted disaster

recovery project will continue to be eligible for URA assistance.

6. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow the states of Texas and Louisiana to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible and that the state selects in accordance with its approved Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery. The state of Indiana may use funds allocated under the September 11, 2008, **Federal Register** Notice (73 FR 52870) or December 19, 2008, **Federal Register** Notice (73 FR 77818) to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible.

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

8. *Compensation for disaster-related losses.* HUD is granting a compensation waiver together with alternative requirements for the states of Louisiana and Texas. Either state deciding to assist a compensation activity must address the following in its action plan and program design:

a. How the state will ensure that compensation payments will result in disaster recovery or economic revitalization;

b. Why a housing rehabilitation or reconstruction or buyouts program is not a more appropriate choice than providing housing compensation. The state must compare and contrast schedules, delivery costs, and projected recovery resulting from each type of activity; and

c. How the state determined the appropriate compensation amount(s). Further, any state choosing to provide compensation assistance must also carry out and publish an evaluation of outcomes of the program for a statistically valid sample of the program participants within a year of providing

the final compensation payment. If the state also provides rehabilitation assistance, it must include in its evaluation a comparison of the results of the compensation and rehabilitation activities.

9. *Housing incentives to encourage housing resettlement consistent with local recovery plans.* The states of Louisiana and Texas may offer disaster recovery or mitigation housing incentives to promote suitable housing development or resettlement in particular geographic areas. Any state choosing to provide incentives must maintain documentation at least at a programmatic level describing how the amount of assistance was determined to be necessary and reasonable. Note that if the grantee requires the funds to be used for a particular purpose by the household receiving the assistance, then the activity will be that required use, not an eligible incentive. The Department is waiving 42 U.S.C. 5305(a) and associated regulations to make these uses of grant funds eligible.

10. *Three-month limitation on emergency grant payments.* 42 U.S.C. 5305(a) is waived so that Iowa may extend interim mortgage assistance to qualified individuals for up to 20 months. This waiver applies to funds received under the First 2008 Act (Pub. L. 110-252), and to funds received under the Second 2008 Act (Pub. L. 110-329).

Duration of Funding

Availability of funds provisions in 31 U.S.C. 1551-1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510), limit the availability of certain appropriations for expenditure. This limitation may not be waived. However, the Second 2008 Act directs that these funds be available until expended unless, in accordance with 31 U.S.C. 1555, the Department determines that the purposes for which the appropriation has been made have been carried out and no disbursement has been made against the appropriation for 2 consecutive fiscal years. In such a case, the Department shall close out the grant prior to expenditure of all funds.

Catalog of Federal Domestic Assistance

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

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the

environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at telephone number 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

Dated: July 20, 2009.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

Appendix 1—Allocation Methodology Detail

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110-329), enacted on September 30, 2008, appropriated \$6.5 billion through the CDBG program for “necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring during 2008 for which the President declared a major disaster.”

It went on to say that “such funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers” and that “none of the funds * * * may be used * * * as a matching requirement, share, or contribution for any other Federal program.” It also stated that “not less than \$650,000,000 from funds made available on a pro-rata basis according to the allocation made to each State” shall be used for affordable rental housing.

Finally, the statute called for “not less” than 33 percent of the funds to be allocated within 60 days of enactment (that is, by November 28th) based “on the best estimates available of relative damage and anticipated assistance from other Federal sources.”

Schedule for Allocations

While Congress appropriated \$6.5 billion, \$377,139,920 has been rescinded, \$6.5 million has been set aside for HUD administrative costs, and \$2,145,000,000 was allocated in November 2008. This allocation distributes the remaining \$3,971,360,080, with a \$311,603,923 set-aside to the Disaster Recovery Enhancement Fund.

Disasters in 2008

There were 76 major disasters that occurred in 2008 in 35 states, Puerto Rico, and the Virgin Islands. Data on damaged housing are available for 36 disasters from FEMA and Small Business Administration (SBA); business loss data are available for 39 disasters from SBA; and 72 disasters have data on the cost FEMA and states are estimated to spend on infrastructure and other Public Assistance costs.

Available Data

The data HUD staff have identified as being available to calculate “relative damage and anticipated assistance from Federal sources” at this time for the targeted disasters come from the following data sources:

- FEMA Individual Assistance program data concerning housing unit damage;
- SBA for management of its disaster assistance loan program for housing repair and replacement;
- SBA for management of its disaster assistance loan program for business real estate repair and replacement, as well as content loss; and
- FEMA estimated and obligated amounts under its Public Assistance program, including the federal and state cost share.

Formula

This formula “allocates” the full \$6,116,360,080 available for allocation under this appropriation and then subtracts out the \$2,145,000,000 that was previously allocated and the \$311,602,923 set-aside reserve fund (on a pro-rata basis). HUD has adopted this practice to adjust grants to reflect better data than were available at the time of the November 2008 allocation and to treat disasters occurring after November equally with disasters that occurred earlier in the year.

The formula mechanics are as follows: \$6,116,360,080

$$* \left[\frac{\text{(State sum of HUD-calculated unmet housing, business, and infrastructure needs)}}{\text{(All disaster sum of HUD-calculated unmet housing, business, and infrastructure needs)}} \right]$$

$$* \left[\frac{\text{(State Per Seriously Damaged Home Challenge Score)}^a}{\text{(Basic Allocation National Weighted Challenge Score)}} * (20\% \text{ power})^b \right]$$

—State total: November \$2.145 billion allocation

* Pro-rata adjustment after minimum grant threshold and reserve grant set-aside

^aNo state can have its grant adjusted up or down by more than 10 percent using this factor.

^bMathematically, each state’s challenge factor is divided by the weighted national rate (14.7) and multiplied by 0.2 (that is, if a state’s ratio was above 1; for example, 1.5 would become 1.10, $[1 + ((1 - 0.5) * 0.2)]$; if the ratio was below 1, for example, 0.5 would become 0.9 $[1 - ((1 - 0.5) * 0.2)]$).

This allocation does not duplicate funding already provided under the Supplemental Appropriations Act of 2008 (Pub. L. 110–252, 122 Stat. 2323), enacted on June 30, 2008, which appropriated \$300 million for disasters that were declared and occurred in May and June of 2008. This current allocation subtracts out of the unmet housing and business need estimates the amount of funds allocated for housing and business under the 2008 June appropriation.

Calculating Unmet Housing Needs

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage are based on home inspection data for FEMA’s Individual Assistance program. For unmet housing needs, the FEMA data are supplemented by SBA data from its Disaster Loan Program. HUD calculates “unmet housing needs” as the number of housing units with unmet needs, multiplied by the estimated cost to repair those units, minus the amount of repair funding already provided by FEMA, where:

- The number of owner-occupied units with unmet needs are units FEMA housing inspectors determined would require more than \$3,000 to become habitable and were determined by FEMA to be eligible for a repair or replacement grant (now up to \$30,300, earlier disasters in the year had a cap of \$28,800). In general, when HUD refers to units “seriously damaged,” it is

referring to units with a FEMA damage assessment of \$3,000 or greater.

- The number of rental units with unmet needs are units FEMA housing inspectors determined would require more than \$3,000 to become habitable AND are occupied by households with an income reported to FEMA of less than \$20,000. The use of the \$20,000 income cut-off for calculating rental unmet needs is in response to the statutory language that emphasized the use of the funds for affordable rental housing.

- Each of the FEMA inspected units are categorized by HUD into one of five categories:
 - Minor-Low: Less than \$3,000 of FEMA-inspected damage
 - Minor-High: \$3,000 to \$7,999 of FEMA-inspected damage
 - Major-Low: \$8,000 to \$14,999 of FEMA-inspected damage
 - Major-High: \$15,000 to \$28,800 of FEMA-inspected damage
 - Severe: Greater than \$28,800 of FEMA-inspected damage or -determined destroyed.

Note: FEMA has recently raised its maximum grant to \$30,300. For this first round allocation, HUD continues to use the \$28,800 as the threshold, because it applied for most of the declared disasters.

- The average cost to fully repair a home for a specific disaster within each of the damage categories noted above is calculated using the average real property damage repair costs determined by the SBA for its disaster loan program for the subset of homes inspected by both SBA and FEMA. Because SBA is inspecting for full repair costs, it is presumed to reflect the full cost to repair the home, which is generally more than FEMA estimates on the cost to make the home habitable. If fewer than 100 SBA inspections are made for homes within a FEMA damage category, the estimated damage amount in the category for that disaster has a cap applied at the 75th percentile of all damaged units for that category for all disasters and has a floor applied at the 25th percentile.

- The base amount of unmet housing needs is then increased by 20 percent to reflect an assumed premium associated with the additional costs needed to run a repair program with CDBG funding.

Calculating Infrastructure Needs

As noted above, the statute for this allocation states that “such funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers” and that “none of the funds * * * may be used * * * as a matching requirement, share, or contribution for any other Federal program.” In past disasters, unmet infrastructure need has been calculated at the required match portion for the public assistance program. Because these funds cannot be used as match, we must identify a proxy for what infrastructure activities are likely to require funding beyond FEMA’s Public Assistance funding and the state match requirement. To best proxy unmet needs that would exceed what FEMA and state match will pay for under the Public Assistance program, this allocation uses only a subset of the Public Assistance damage estimates reflecting the categories of activities most likely to require CDBG funding above the Public Assistance and State Match requirement. Those activities are the following categories: C—Roads and Bridges; D—Water Control Facilities; E—Public Buildings; F—Public Utilities; and G—Recreational—Other. Categories A (Debris Removal) and B (Protective Measures) are largely expended immediately after a disaster and reflect interim recovery measures, rather than the long-term recovery measures the CDBG funds are generally used for. “Unmet” infrastructure needs assume that the subset categories of Public Assistance needs will have state aggregate costs 25 percent higher than that covered by FEMA or the state match requirement.

	Disasters with project(s)	Total estimate	Percent
Public Assistance Total	75	\$5,322,992,430	
A_Debris_Removal	71	1,185,035,209	22

	Disasters with project(s)	Total estimate	Percent
B_Protective Measures	75	995,171,090	19
C_Roads_Bridges	73	494,369,300	9
D_Water_Control_Facilities	43	57,455,582	1
E_Public_Buildings	69	1,509,980,683	28
F_Public_Uilities	74	837,448,078	16
G_Recreational_Other	64	243,532,488	5

FEMA Extract: April 14, 2009.

Calculating Economic Revitalization Needs

Based on SBA disaster loans to businesses, HUD used the sum of real property and real content loss of small businesses not receiving an SBA disaster loan. This is adjusted upward by the proportion of applications that were received for a disaster for which content and real property loss were not calculated because the applicant had inadequate credit or income. For example, if a state had 160 applications for assistance, and if 150 had calculated needs and 10 were denied in the pre-processing stage for not enough income or poor credit, the estimated unmet need calculation would be increased as $(1 + 10/160)$, multiplied by the calculated unmet real content loss.

SBA business loan data shows that verified real estate damage and content loss not approved for an SBA loan equaled \$972 million. Across all of the disasters there were 17,157 applications for a business disaster loan from SBA. No inspections were done (and loss calculated) for 14 percent of those applications. SBA maintains information on why an application was denied. There are dozens of reasons for such denials, but the most common relate to income and credit. Of those denied at the pre-processing stage 59 percent were denied because of a low credit score and 10 percent for not being able to establish repayment ability. The remaining applications denied in pre-processing are largely denied for being ineligible for the program or similar reasons. For the applications that get

processed and a loss determined but are subsequently not approved, the reasons for not being approved are 38 percent for inability to repay, 2 percent for poor credit, and dozens of other reasons, but mostly because the applications are withdrawn by the applicant.

Because applications denied for poor credit or inadequate income are the most likely measure of requiring the type of assistance available with CDBG recovery funds, the calculated unmet business needs for each state are adjusted upwards by the proportion of total applications that were denied at the pre-process stage because of poor credit or inability to show repayment ability.

Calculating Challenge To Recover

The 2005 hurricanes damaged more than 1.2 million homes. One year after the disaster, 90 percent of those homes were occupied. It is in the areas that homes were vacant a year after the storms that the recovery has been especially slow, and a large number of those homes vacant a year after the storms continue to remain vacant. As described in more detail below, two variables are very strong predictors of whether a home becomes vacant and remains vacant over an extended period of time. Those variables are the percent of homes with serious damage within the neighborhood (Census Tract is the proxy) and if a home received very severe damage.

The vast majority of households impacted by a disaster are able to return to their homes within a relatively short time frame. For those households displaced longer than a year and for the neighborhoods where that displacement

occurs, the recovery challenges are much more pronounced. For example, areas may decide not to build back and to build elsewhere, using buyout programs and other strategies. Alternatively, homes built back might need to be built to a higher standard of construction to better resist future disasters. These are factors not accounted for in the basic repair costs calculated in the needs calculations for housing, infrastructure, and economic revitalization. To account for these above normal recovery needs that are associated with only the most severe of disasters, HUD has used data from Hurricanes Katrina, Rita, and Wilma to develop a model for estimating if a home is at a high or low risk for overcoming these recovery challenges. There are many reasons why a recovery might not happen for a particular house, but just two factors can predict 34 percent of the variance between homes. According to the model, any home with serious damage (FEMA-estimated damage of greater than \$5,200 in a 2005 disaster) had about a one percent risk for being vacant for some period during the 43 months following the disaster. A home with severe damage (more than 50 percent damaged) had an additional 20 percent risk, and if that home was in a Census Tract where many other homes had major or severe damage, it had an additional risk of that proportion of homes affected, multiplied by 34 percent. Such a risk factor can be a useful tool for adjusting grants so that states with a higher per-damaged home risk score get relatively more than states with a relatively lower per-damaged home risk score.

	Unstandardized coefficients	Std. Error	Standardized coefficients	t	Sig.
	B		Beta		
(Constant)	0.010695	0.000909	11.76848	5.77E-32
Percent of homes in Census Tract with serious damage	0.347154	0.001615	0.375916	214.9506	0
Home with severe damage	0.195913	0.001158	0.295827	169.1555	0

Dependent Variable: A time weighted average vacancy risk due to the 2005 Hurricanes =

[16 * (1 - ratio of 12-2006 active address rate to 2005 pre-storm active address rate)

14 * (1 - ratio of 2-2008 active address rate to 2005 pre-storm active address rate)

10 * (1 - ratio of 12-2008 active address rate to 2005 pre-storm active address rate)
 3 * (1 - ratio of 3-2009 active address rate to 2005 pre-storm active address rate)]
 Divided by 43 months. (the longer the vacancy the higher the average score)

R-square: 0.340
 N: 287,190

To adjust for this greater recovery challenge, the results of the analysis above are used in the following model for 2008:

Vacancy Risk Score =
 0.010695 (Constant)
 + 0.347154 Percent of homes in Census Tract with serious damage
 + 0.195913 Home with major-high or severe damage

The risk score is then aggregated for each disaster and divided by the total number of housing units with more than very minor damage. That is, we determine a per-damaged home recovery challenge risk score. Such a risk factor can be a useful tool for adjusting grants so that states with a higher risk for long-term recovery challenges get a somewhat higher grant because of this risk.

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 BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5282-N-04]

Notice of Proposed Information Collection: Comment Request; Community Development Block Grant Recovery (CDBG-R) Program

AGENCY: Office of Community Planning and Development, Department of Housing and Urban Development.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: October 13, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management

Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4176, Washington, DC 20410; telephone 202-402-8048 (this is not a toll-free number) or e-mail Ms. Deitzer at Lillian.L.Deitzer@hud.gov for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Steve Johnson, Director, Entitlement Communities Division, Office of Block Grant Assistance, 451 7th Street, SW., Room 7282, Washington, DC 20410; telephone (202) 708-1577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Department submitted to OMB for emergency processing a proposed information collection for the Community Development Block Grant Recovery (CDBG-R) program. It was approved by OMB on April 17, 2009 and expires on October 31, 2009. Since HUD will be using the form (SF 424) beyond the emergency clearance time period, this is a resubmission to OMB under the normal paperwork clearance process for a three-year approval.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Community Development Block Grant Recovery Program.

OMB Control Number, if Applicable: 2506-0184.

Description of the Need for the Information and Proposed Use: This request identifies the estimated reporting burden associated with information that CDBG-R grantees will report in IDIS for CDBG-R assisted activities, recordkeeping requirements,

and reporting requirements. Section 1512 of the Recovery Act requires that not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains: (1) The total amount of recovery funds received from that agency; (2) the amount of recovery funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including the name of the project or activity; a description of the project or activity; an evaluation of the completion status of the project or activity; an estimate of the number of jobs created and the number of jobs retained by the project or activity; and for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act and name of the person to contact at the agency if there are concerns with the infrastructure investment. Not later than 30 calendar days after the end of each calendar quarter, each agency that made Recovery Act funds available to any recipient shall make the information in reports submitted publicly available by posting the information on a Web site.

Agency Form Numbers: Not applicable.

Members of the Affected Public: Eligible CDBG grantees (metropolitan cities, urban counties, nonentitlement counties in Hawaii, and States).

Estimation of the total numbers of hours needed to prepare the information collection including number of responses, frequency of responses, and hours of responses: The number of respondents is 1,196. The proposed frequency of the response to the collection is on a quarterly basis. The total estimated burden is 28,704 quarterly hours.

Status of the proposed information collection: This submission is an extension of a previously approved emergency information collection. The current OMB approval expires on October 31, 2009.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 6, 2009.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

[FR Doc. E9-19485 Filed 8-13-09; 8:45 am]

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