

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4482-N-01]

### 1999 HUD Disaster Recovery Initiative

**AGENCY:** Office of Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice provides requirements to govern the use of \$20 million in Community Development Block Grant (CDBG) funds for additional unmet disaster recovery needs.

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

#### SUPPLEMENTARY INFORMATION:

#### I. Empowering Communities for Recovery

##### A. Purpose

1. This Notice describes policies and procedures applicable to the HUD Disaster Recovery Initiative (DRI) for funds appropriated under the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277, 112 Stat. 2681, approved October 21, 1998).

2. When a community is hit hard by a natural disaster, there is often a long, difficult process of recovery. Most impacted areas never fully recover because of limited resources. HUD is uniquely positioned to support other Federal agencies in assisting States and communities with disaster recovery, because of its mission and experience as the Federal Government's agency for addressing a broad spectrum of needs related to community viability (e.g., housing, economic and community development).

3. HUD's Disaster Recovery Initiative helps communities impacted by natural disasters receiving Presidential declarations.

4. DRI funds are intended to support the activities of other Federal agencies and cannot be used for activities reimbursable or for which funds are made available by the Federal Emergency Management Agency (FEMA), the Small Business

Administration (SBA), or the U.S. Army Corps of Engineers (Corps of Engineers).

##### B. Authority

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277, 112 Stat. 2681, approved October 21, 1998).

##### C. Benefiting Persons of Low and Moderate Income

1. DRI funds are provided by a supplemental appropriation under the Community Development Block Grant program authority of title I of the Housing and Community Development Act of 1974, (42 U.S.C. 5301 *et seq.*). Use of those funds is governed by that Act and regulations at 24 CFR part 570, except as modified by this notice and a separate notice of waivers and modifications appearing elsewhere in today's **Federal Register**. The primary objective of that program is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, especially for persons of low and moderate income. States and State grant recipients should give maximum feasible priority to funding activities that benefit persons of low and moderate income.

2. A State must use more than 50 percent of its DRI funds for activities that benefit primarily persons of low and moderate income. The Secretary may waive this requirement only on a case-by-case basis and only upon making a finding of a compelling need to do so. HUD will consider such a waiver only after it receives a request from a State that includes a justification that establishes a compelling need for the waiver. The compelling need must reflect a public purpose directly related to disaster recovery, and the justification must include a determination by the State, with supporting documentation, that there is no practicable alternative course of action to otherwise targeting funds to activities which principally benefit persons of low and moderate income. As required by statute, HUD will provide an explanation of the finding of compelling need to the Congressional Committees on Appropriations.

##### D. Definitions

Regulatory references are in title 24 of the Code of Federal Regulations (CFR), and will be cited by section (§), unless otherwise cited.

*1999 Supplemental Appropriations Act* means the Omnibus Consolidated and Emergency Supplemental

Appropriations Act, 1999 (Public Law 105-277, 112 Stat. 2681, approved October 21, 1998).

*Act* means title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*).

*Buildings for the general conduct of government* means city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. Such term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various non-legislative functions or services provided by government at decentralized locations.

*City* means the following:

- a. Any unit of general local government that is classified as a municipality by the United States Bureau of the Census, or
- b. Any other unit of general local government that is a town or township and that, in the determination of the Secretary:
  - i. Possesses powers and performs functions comparable to those associated with municipalities;
  - ii. Is closely settled; and
  - iii. Contains within its boundaries no incorporated places as defined by the United States Bureau of the Census that have not entered into cooperation agreements with the town or township for a period covering at least 3 years to undertake or assist in the undertaking of essential community development and housing assistance activities. The determination of eligibility of a town or township to qualify as a city will be based on information available from the United States Bureau of the Census and information provided by the town or township and its included units of general local government.

*Director* means the Director of the Federal Emergency Management Agency.

*Disaster* means a major disaster declared by the President under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*) in Federal fiscal year 1998 or 1999.

*Family* means all persons living in the same household who are related by birth, marriage or adoption.

*FEMA* means the Federal Emergency Management Agency.

*Household* means all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related

or unrelated persons who share living arrangements.

*HUD* means the U.S. Department of Housing and Urban Development.

*Income.* For the purpose of State grant recipients determining whether a family or household is of low and moderate income, such recipients may select any of the three definitions listed below for each activity. However, integrally related activities of the same type and qualifying under the same paragraph of § 570.483(b) shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under § 570.483(b)(1) (Area benefit activities), except when the recipient carries out a survey under § 570.483(b)(1)(I). Activities qualifying under § 570.483(b)(1), at the discretion of the State, must use the area income data supplied by HUD or survey data which is methodologically sound.

a. The three definitions are as follows:

i. "Annual income" as defined for the Public Housing and Section 8 programs at § 5.609 (except that if the DRI assistance being provided is homeowner rehabilitation, the value of the homeowner's primary residence may be excluded from any calculation of Net Family Assets); or

ii. Annual Income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

- (1) Wages, salaries, tips, commissions, etc.;
- (2) Self-employment income from own non-farm business, including proprietorships and partnerships;
- (3) Farm self-employment income;
- (4) Interest, dividends, net rental income, or income from estates or trusts;
- (5) Social Security or railroad retirement;
- (6) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;
- (7) Retirement, survivor, or disability pensions; and

(8) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

iii. Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

b. Estimate the annual income of a family or household by projecting the prevailing rate of income of each person at the time assistance is provided for the individual, family, or household (as applicable). Estimated annual income shall include income from all family or

household members, as applicable. Income or asset enhancement derived from the DRI grant-assisted activity shall not be considered in calculating estimated annual income.

*Indian tribe* means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos and any Alaska Native Village, of the United States that is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512) before its repeal.

*Low-and moderate-income household* means a household having an income equal to or less than the Section 8 low-income limit established by HUD.

*Low-and moderate-income persons* means a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD. Unrelated individuals will be considered as one-person families for this purpose.

*Low-income household* means a household having an income equal to or less than the Section 8 very low-income limit established by HUD.

*Low-income person* means a member of a family that has an income equal to or less than the Section 8 very low-income limit established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

*Moderate-income household* means a household having an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD.

*Moderate-income person* means a member of a family that has an income equal to or less than the Section 8 low-income limit and greater than the Section 8 very low-income limit, established by HUD. Unrelated individuals shall be considered as one-person families for this purpose.

*Secretary* means the Secretary of Housing and Urban Development.

*Small business* means a business that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 631, 636, 637).

*State* means any State of the United States, and the Commonwealth of Puerto Rico, or an instrumentality thereof approved by the Governor. Additionally, except as pertains to environmental review responsibilities under Part 58, for these 1999 Supplemental Appropriations Act funds only, the term "State" also includes an Indian tribe.

*State grant recipient* means a unit of general local government that receives a

DRI grant through a State. Additionally, for these 1999 Supplemental Appropriations Act funds only, the term "State grant recipient" also includes Indian tribes.

*Unit of general local government* means any city, county, town, township, parish, village or other general purpose political subdivision of a State; a combination of such political subdivisions recognized by the Secretary; and the District of Columbia.

*Unmet need* means projects identified by the Director as those which have not or will not be addressed by other Federal disaster assistance programs, and need that is not addressed by activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency, the Small Business Administration, or the Army Corps of Engineers.

#### *E. Allocation and Expenditure of Funds*

1. \$250 million has been appropriated for the 1999 HUD Disaster Recovery Initiative under division B, title IV, Chapter 7 of the 1999 Supplemental Appropriations Act. Title IV of the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106-31, 113 Stat. 57, approved May 21, 1999) rescinded \$230 million of these funds. The \$20 million balance of these funds has been made available for obligation by HUD until October 1, 2002. States are responsible to HUD for the timely expenditure of funds in accordance with any expenditure deadlines HUD may include as grant agreement conditions.

2. The 1999 Supplemental Appropriations Act requires that HUD allocate funds to States, based on unmet needs identified by the director of FEMA as those which have not or will not be addressed by other Federal disaster assistance programs. HUD has used the following procedures in allocating the funds.

a. In calculating allocations, HUD will use data identified by FEMA from State, and Federal sources as unmet needs (or surrogates for unmet needs) in four areas: housing, business recovery, mitigation, and public works and facilities.

b. The allocation calculations will include appropriate weights and adjustment factors. The weightings of the unmet needs categories are at following ratios: housing, 40 percent; business recovery, 20 percent; mitigation, 20 percent; and public works and facilities, 20 percent.

c. HUD has set minimum grant amounts for the allocation of funds at the lesser of \$1.5 million or the amount of unmet need identified by FEMA from State sources, except such minimum

shall not apply to funds allocated under paragraph e.

d. HUD may calculate the allocation of funds to States in one or more groupings of, or individual, disaster declarations, as it deems appropriate.

e. HUD may allocate up to \$20 million in accordance with paragraph 2 of the notice published March 10, 1999, at 64 FR 11943, which amends paragraph I.E.2.e. of the notice published October 22, 1998 (63 FR 56764), to state, "If a State certifies that it has determined that the unmet needs data previously submitted to FEMA are inaccurate or significantly incomplete, within 45 days of publication of this notice, the Governor may request HUD, in consultation with FEMA, to accept, review, and identify as unmet needs, a revised State submission of such needs. Those needs must be related to a disaster declared during fiscal year 1998 or declared prior to the date of this notice during fiscal year 1999. Such request must be accompanied by the revised unmet needs data in the same format as previously prescribed by FEMA and by a justification for reconsideration."

3. The appropriation accounting provisions in 31 U.S.C. 1551-1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), limit the availability of certain appropriations for expenditure. With respect to the funds appropriated for the 1999 HUD Disaster Recovery Initiative, this statute requires the withdrawal from the States' lines of credit any DRI funds appropriated under the 1999 Supplemental Appropriations Act that the States have not expended before October 1, 2007. This limitation may not be waived. HUD may place shorter deadlines on the expenditure of those funds via grant agreement conditions.

4. The 1999 Supplemental Appropriations Act requires that each State administer the DRI funds "in conjunction with its Federal Emergency Management Agency program or its community development block grants program or by the entity designated by its Chief Executive Officer to administer the HOME Investment Partnerships program." Whichever agency the governor designates to administer the DRI funds must have the capacity to comply with all applicable requirements of this notice in a timely manner. Whichever State agency administers the DRI funds should coordinate with the agency or agencies that administer the other two programs named above.

#### *F. Non-Federal Public Matching Funds Requirement*

1. The 1999 Supplemental Appropriations Act requires that "each State shall provide not less than 25 percent in non-Federal public matching funds or its equivalent value (other than administrative costs)" for any 1999 HUD Disaster Recovery Initiative grant funds which it receives.

2. Match contributions must be made to DRI-funded recovery projects related to covered disasters.

3. Match may be provided by any public entity from non-Federal cash (e.g., general or dedicated revenues), real estate, or other similar assets owned or controlled by the public entity or the value of public improvements and public facilities activities, or force account undertaken.

4. Match funds must be reasonably valued. For example, base the value of cash grants on the dollar value of the grant; value below market interest rate loans on the present discounted cash value of the amount of subsidy; value taxes forgiven for future years based on the present discounted cash value of the revenue foregone; and value a donation of real estate titled to the State or State grant recipient based on a professional appraisal.

5. The State must make match contributions before all DRI funds are expended. Match contributions must total not less than 25 percent of the disaster grant funds drawn from the State's line of credit, excluding funds drawn for administrative and planning costs.

6. States may not count administrative costs toward the required non-Federal public matching funds or equivalent value.

7. Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award, including any other DRI grant or Community Development Block Grant, may not count as satisfying the matching contribution requirement for the HUD Disaster Recovery Initiative.

8. Match contributions must be contributed permanently to a disaster-related activity. To receive match credit for the full amount of a loan made with non-Federal public funds to a DRI funded activity, all repayment, interest, or other return on the loan must be treated as CDBG program income.

9. The following are examples that do not count toward meeting a grantee's matching contribution requirement:

a. Contributions made with or derived from Federal resources or funds, regardless of when the Federal resources or funds were received or expended.

Use of CDBG funds (defined at § 570.3) under section 105(a)(9) of the Act for payment of the non-Federal share required in connection with a Federal grant-in-aid program is permissible;

b. Contributions made with or derived from private resources or funds, regardless of when the private resources or funds were received or expended;

c. The interest rate subsidy attributable to the Federal tax exemption on financing or the value attributable to Federal tax credits;

10. Contributions are credited at the time the contribution is made and reported to HUD quarterly, as follows:

a. Credit a cash contribution when the funds are expended for a disaster-related activity or at the time the State awards DRI funds if the activity was completed before the award of DRI funds;

b. Credit the subsidy value of a below-market interest rate loan at the time of the loan closing;

c. Credit the value of State or local taxes, fees, or other charges that are normally and customarily imposed but waived, foregone, or deferred at the time the State or State grant recipient or other public entity officially waives, forgoes, or defers the taxes, fees, or other charges;

d. Credit the value of donated land or other real property at the time ownership of the property is transferred to the public entity carrying out the DRI-assisted or disaster-related activity;

e. Credit the direct cost of relocation payments and services at the time that the payments and services are provided.

11. For DRI-assisted projects involving more than one State, the State that makes the match contribution may decide to retain the match credit or permit the other State to claim the credit.

#### *G. Submission Requirements*

1. Prerequisites to a State's receipt of a DRI grant include a citizen participation plan; publication of its proposed Action Plan; notice and comment; and submission of an Action Plan for Disaster Recovery.

2. Each State must submit to HUD, for approval, an Action Plan for Disaster Recovery that describes:

a. The recovery needs resulting from the covered disaster;

b. The State's overall plan for recovery;

c. Expected Federal, non-Federal public, and private resources, and their relationship, if any, to activities to be funded with DRI funds;

d. The State's method of distribution;

e. Units of general local government receiving State distributions;

f. The proposed uses for the DRI funds for each unit of general local government and Indian tribe receiving State distributions;

g. An explanation of why other federal disaster assistance programs do not cover the costs of unmet needs identify to FEMA;

h. An explanation of how the disaster impacted the proposed projects; and

i. The specific sources from which the match requirement will be achieved.

2A. Indian tribes, only, may omit from their Action Plans items 2(d) and 2(e) above.

3. A State must only distribute DRI funds to units of general local government, including cities (both CDBG metropolitan cities and non-metropolitan cities) and counties (including CDBG urban counties), and to Indian tribes that have the capability to carry out disaster recovery activities. Indian tribes may carry out activities directly and must meet the requirements of this notice placed on State grant recipients, except as exempted.

4. Each State must describe monitoring standards and procedures pursuant to § 91.330 and include certifications pursuant to:

a. Section 91.325(a)(1), affirmatively furthering fair housing;

b. Section 91.325(a)(3), drug-free workplace;

c. Section 91.325(a)(4), anti-lobbying;

d. Section 91.325(a)(5), authority of the State to carry out the program;

e. Section 91.325(a)(7), acquisition and relocation, except as waived;

f. Section I.G.5. of this notice, citizen participation;

g. Section 91.325(b)(2), consultation with local governments;

h. Section 91.325(b)(5), compliance with anti-discrimination laws;

i. Section 91.325(b)(6), excessive force;

j. Section 91.325(b)(7), compliance with applicable laws.

4A. Instead of following paragraph G.4., above, each Indian tribe must describe monitoring standards and procedures and certify that:

a. It will comply with the requirements of Title II of Public Law 90-284 (25 U.S.C. 1301) (the Indian Civil Rights Act) and any applicable anti-discrimination laws;

b. It will provide the drug-free workplace required by 24 CFR part 24, subpart F;

c. It will comply with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part;

d. It will comply with all applicable laws;

e. It possesses the legal authority to apply for the DRI grant and execute the proposed program;

f. Except as waived, it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24;

g. Prior to submission of its application to HUD, it has met the citizen participation requirements of Section I.G.5. of this notice;

h. The Action Plan for Disaster Recovery has been developed so that more than 50 percent of the funds received under this grant will be used for activities that benefit low- and moderate-income persons (as the term "activities benefiting low- and moderate-income persons" is used at § 570.483(b)).

5. Citizen participation.

a. In order to permit public examination and appraisal of the Action Plan for Disaster Recovery, to enhance the public accountability of grantees, and to facilitate coordination of activities with different levels of government, the State and State grant recipients shall in a timely manner—

i. Furnish citizens or, as appropriate, units of general local government information concerning the amount of funds available for proposed DRI grant activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income;

ii. Publish a proposed Action Plan for Disaster Recovery in such manner to afford affected citizens and units of general local government an opportunity to examine its content and to submit comments on the proposed disaster recovery plan and on the community development performance of the grantee; and

iii. Provide citizens and units of general local government with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of funds received under this grant from one eligible activity to another or in the method of distribution of such funds.

In preparing the Action Plan for Disaster Recovery, the State shall consider any such comments and views and may, if it deems appropriate, modify the proposed Action Plan for Disaster Recovery. The Action Plan for Disaster Recovery shall be made available to the public, and a copy shall be furnished to HUD together with the certifications required under section I.G.4. or 4A., above. Any Action Plan for

Disaster Recovery may be modified or amended from time to time by the State in accordance with the same procedures required in this paragraph for the preparation and submission of such Action Plan for Disaster Recovery.

b. A DRI grant may be made only if the State certifies that it is following, and that it will require its State grant recipients to follow, a detailed citizen participation plan that:

i. Provides for and encourages citizen participation, with particular emphasis on areas in which DRI funds are proposed to be used;

ii. Provides citizens with information and records relating to the grantee's proposed use of funds, and relating to the actual use of DRI funds; and

iii. Identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

This paragraph may not be construed to restrict the responsibility or authority of the State for the development and execution of its DRI Action Plan.

#### H. Determining Eligibility of Activities

An activity may be assisted in whole or in part with DRI funds only if all of the following requirements are met:

1. Neither the State nor its State grant recipients may use DRI funds for activities reimbursable or for which funds are made available by FEMA, SBA, or the Corps of Engineers.

2. Any project underway prior to a Presidentially declared disaster may not receive DRI funds unless the disaster directly impacted the project.

3. *Compliance with national objectives.* States receiving allocations under the HUD Disaster Recovery Initiative must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities that:

a. Will benefit to low- and moderate-income families;

b. Will aid in the prevention or elimination of slums or blight; or

c. May also include activities that the State and its State grant recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

d. Consistent with the foregoing, each State and State grant recipient must ensure, and maintain evidence, that each of its activities assisted with DRI funds meets one of the three above

national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are contained at § 570.483.

4. *Compliance with the primary objective.* In using HUD Disaster Recovery Initiative funds under the authority of the Act, the State must meet the primary objective of the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, especially for persons of low and moderate income. To meet the primary objective, more than 50 percent of the funds in each grant must be used for activities that principally benefit persons of low and moderate income as determined by the criteria under § 570.483(b), unless waived under section I.C.2. When calculating the percentage of funds expended for such activities:

a. Costs of administration and planning eligible under section I.H.6. of this notice will be assumed to benefit low- and moderate-income persons in the same proportion as the remainder of the DRI funds and, accordingly, shall be excluded from the calculation;

b. Funds expended for the acquisition, new construction, reconstruction, or rehabilitation of property for housing that qualifies under § 570.483(b)(3) must be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including DRI grant and non-DRI grant costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low- and moderate-income persons.

c. Funds expended for any other activities qualifying under § 570.483(b) must be counted for this purpose in their entirety.

5. *Compliance with environmental review procedures.* The environmental review procedures set forth at 24 CFR part 58 must be completed for each activity (or project as defined in 24 CFR part 58), as applicable.

6. *Eligible activities.* DRI funds may be used for activities carried out by a State grant recipient that are relevant to disaster recovery, as described in this Notice. States and State grant recipients must use funds appropriated under the 1999 Supplemental Appropriations Act only for disaster relief, long-term recovery, and mitigation activities related to a covered disaster in communities affected by a Presidentially declared disaster that is designated during Federal fiscal year 1998 or 1999. Such communities must

be in areas included in such declarations. These funds will supplement, not replace, FEMA and other Federal funds. To the extent the use of funds does not violate the restriction at section I.H., eligible activities include:

a. Acquisition of real property (including the buying out of flood-prone properties and the acquisition of relocation property);

b. Relocation payments and assistance for displaced persons, businesses, organizations, and farm operations;

c. Debris removal, clearance, and demolition to the extent that these activities are not eligible under FEMA's Public Assistance program;

d. Rehabilitation or reconstruction of residential and non-residential buildings and improvements;

e. Acquisition, construction, reconstruction, or installation of public works, facilities and improvements, such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes, to the extent that these activities are not eligible under FEMA's Public Assistance program;

f. Code enforcement in deteriorated or deteriorating areas, e.g., disaster areas;

g. Assistance to facilitate homeownership among low- and moderate-income persons, e.g., downpayment assistance, interest rate subsidies, loan guarantees;

h. Provision of public services, if such services are new or an increased level of services, limiting costs to no more than 15 percent of the grant amount;

i. Activities relating to energy conservation and renewable energy resources, incorporated into recovery;

j. Provision of assistance to profit-motivated businesses to carry out economic development recovery activities that benefit the public by:

i. Creating or retaining jobs for low- and moderate-income persons;

ii. Preventing or eliminating slums and blight;

iii. Meeting urgent needs;

iv. Creating or retaining community-owned businesses;

v. Assisting businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or

vi. Providing related technical assistance;

k. Planning and administration costs up to 20 percent of the grant (e.g., planning, urban environmental design and policy-planning-management-capacity building activities and payment of reasonable program administration costs for: general management, oversight and

coordination; public information; fair housing activities; indirect costs charged to the HUD Disaster Recovery Initiative under a cost allocation plan prepared in accordance with OMB Circulars A-21, A-87, or A-122 as applicable; and submission of applications for Federal programs; as well as,

l. Any other activity authorized under section 105(a) of the Housing and Community Development Act of 1974, as amended, not waived by this notice or subsequently, provided that it relates to recovery from a covered Presidentially declared disaster. The Department may grant waivers permitting States and State grant recipients to undertake additional activities with DRI funds if they are consistent with the requirements of division B, title IV, chapter 7 of Public Law 105-277 after a full consideration of a waiver request.

7. *Special policies governing facilities.*

The following special policies apply to:

a. *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the HUD Disaster Recovery Initiative may be provided with DRI funds even if it is part of a multiple use building containing ineligible uses, if:

i. The facility that is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

ii. The recipient can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

b. *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with DRI funds, but charges such as excessive membership fees, which will have the effect of precluding low- and moderate-income persons from using the facilities, are not permitted.

8. *Special assessments under the HUD Disaster Recovery Initiative.* The following policies relate to special assessments under the HUD Disaster Recovery Initiative:

a. *Definition of special assessment.*

The term "special assessment" means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a

public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

b. *Special assessments to recover capital costs.* Where DRI funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

i. Special assessments to recover the DRI funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

ii. Special assessments to recover the non-DRI grant portion may be made provided that DRI funds are used to pay the special assessment in behalf of all properties owned and occupied by low- and moderate-income persons.

However, DRI funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate-income persons if the State or State grant recipient certifies that it does not have sufficient DRI funds to pay the assessments in behalf of all of the low- and moderate-income persons who are owner-occupants. Funds collected through such special assessments are not program income.

c. *Public improvements not initially assisted with DRI funds.* The payment of special assessments with DRI funds constitutes HUD Disaster Recovery assistance to the public improvement. Therefore, DRI funds may be used to pay special assessments provided:

i. The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this initiative, including environmental, citizen participation, and Davis-Bacon requirements;

ii. The installation of the public improvement meets a criterion for national objectives in paragraph I.H.3.a., b. or c.; and

iii. The requirements of paragraph I.H.8.b.ii. are met.

9. *Limitation on planning and administrative costs.*

a. No more than 20 percent of the sum of any grant to a State, plus program income, shall be expended for planning and program administrative costs under section I.H.6.k.

b. *State administrative costs.* The State is responsible for the administration of its HUD Disaster

Recovery Initiative. The amount of DRI funds used to pay administrative costs incurred by the State in carrying out its responsibilities under this program shall not exceed 2 percent of the aggregate of the State's grant. This paragraph 9.b. does not apply to Indian tribes.

10. *Reimbursement for pre-award costs.* The effective date of the grant agreement is the date HUD obligates the appropriated funds by executing the grant agreement.

a. Prior to the effective date of the grant agreement, a State grant recipient may incur costs beginning on or after the incident date of the Presidentially declared disaster, and then charge those costs to DRI grant funds, provided that:

i. The State permits such use;

ii. Such funds do not reimburse costs paid with other Federal grant funds; and

iii. The costs and activities funded are in compliance with the requirements of this initiative and with the Environmental Review Procedures stated in 24 CFR part 58 including the prohibition contained in § 58.22(a) on commitment of HUD assistance and non-HUD funds prior to HUD approval of the Request for Release of Funds and the certification of the responsible entity for activities that require an environmental review.

11. *Activities outside the jurisdiction of the unit of general local government.* DRI funds may assist an activity located outside the jurisdiction of the unit of general local government that receives the DRI funds as a State grant recipient, provided the unit of general local government determines that the activity is meeting its disaster recovery needs.

#### *I. Guidelines for Evaluating and Selecting Economic Development Projects*

HUD provides guidelines to assist the recipient to evaluate and select activities to be carried out for economic development recovery purposes under paragraph H.6.j. These guidelines are composed of two components: Guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are mandatory, but the guidelines for evaluating projects costs and financial requirements are not. The guidelines and standards may be found at § 570.482(e) and (f). HUD may consider the waiver of such standards on a case-by-case basis upon submission of a written justification as to why the recipient cannot meet the requirement and a proposed alternative that assures at least a minimum level of public benefit.

#### *J. Ineligible Activities*

##### *1. General government expenses.*

Except as otherwise specifically authorized in this Notice, or under OMB Circular A-87, expenses required to carry out the regular responsibilities of the State or unit of general local government are not eligible for assistance.

2. The following activities may not be assisted with DRI funds unless authorized under provisions of section 105(a)(15) of the Act.

a. *Purchase of equipment.* The purchase of equipment with DRI funds is generally ineligible.

i. *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A-21, A-87 or A-122 as applicable for an otherwise eligible activity is an eligible use of DRI funds. However, the purchase of construction equipment for use as part of a solid waste disposal facility is eligible.

ii. *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible.

iii. *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. DRI funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A-21, A-87 or A-122, as applicable) for such items when necessary for use by a State grant recipient or its subrecipients in the administration of activities assisted with DRI funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service.

b. *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the HUD Disaster Recovery Initiative. For example, the use of DRI funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible, even if no other costs of providing such a service are assisted with such funds.

Examples of ineligible operating and maintenance expenses are:

i. Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with disabilities, parking and other public facilities and improvements. Examples of maintenance and repair activities for which DRI funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

ii. Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

c. *Income payments.* The general rule is that DRI funds may not be used for income payments. For purposes of the HUD Disaster Recovery Initiative, "income payments" means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency grant payments made over a period of up to three consecutive months to the provider of such items or services on behalf of an individual or family.

3. *Use of DRI funds as a non-Federal cost-share for Corps of Engineers projects.* The use of more than \$250,000 in DRI funds as a non-Federal cost-share for any project funded by the Secretary of the Army through the Corps of Engineers is ineligible.

4. *Prohibition on use of DRI funds for employment relocation activities.* No DRI funds may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from one area to another, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

#### K. Treatment of Program Income

Any program income generated by HUD Disaster Recovery Initiative becomes program income to the State's CDBG program, not to its DRI grant. Such program income shall be returned to the State as program income for the year in which the State redistributes those funds. Therefore, any program income generated by DRI funds is to be included in cost cap calculations and program requirements for use of the CDBG funds. For States not participating in the CDBG program, program income received by the State after closeout of its grant is not subject to any Federal requirement.

#### L. Acquisition (Buyouts) of Flood-Damaged Properties

1. *Payment of pre-flood values for buyouts.* HUD Disaster Recovery Initiative State grant recipients have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or flood plain. In using DRI funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

2. *Duplication of benefits and optional relocation payments with buyouts.*

a. Optional relocation assistance should only be provided to the extent necessary for displaced persons to relocate in a "comparable replacement dwelling," as defined in 42 U.S.C. 4601(10) and 49 CFR 24.2(d), except as provided by HUD with prior approval on a case by case basis when sufficient cause exists due to extraordinary erosive economic impact of relocation, and shall not exceed an amount equal to the housing replacement cost minus:

- i. Net proceeds from any flood insurance payment (proceeds net of the cost of documented repairs of flood damage);
- ii. Personal tax savings that result from an owner's tax deduction of capital loss on displacement property;
- iii. FEMA Hazard Mitigation Grant Program acquisition proceeds, and
- iv. SBA disaster loan assistance.

3. *Buyout of undamaged properties.* Many buyout projects contain some properties that were undamaged by the floods. Local administrators sometimes seek to offer buyouts to owners of undamaged properties to maximize clearance of the flood plain. Purchase of such properties with DRI funding is permitted if the properties are incidental to the project as a whole.

4. *Ownership and maintenance of acquired property.*

Any property acquired with DRI 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 will 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.

5. *Future Federal assistance to owners remaining in flood plain.*

a. Section 582 of the National Flood Insurance Reform Act of 1994 (in Title V of Pub. L. 103-325) (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 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.

b. Section 582 also implies a responsibility for a grantee that receives DRI funds or that, under section 122 of the Act, 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.

c. *Duty to notify.* In the event of the transfer of any property described in paragraph e, 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.

d. *Failure to notify.* The transferor must reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property, if a transferor fails to make notification 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.

e. 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.

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

#### M. Other Program Requirements

1. *General.* This section I.M. enumerates laws that HUD will treat as applicable to the HUD Disaster Recovery Initiative grants to States and State grant recipients, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which HUD has enforcement responsibility. The absence of mention herein of any other statute for which HUD does not have direct enforcement responsibility is not intended to be taken as an indication that, in HUD's opinion, such statute or Executive Order is not applicable to activities assisted with DRI funds. States are governed by applicable laws.

2. *Labor standards.* In part because Davis-Bacon requirements are not

applicable to FEMA disaster grants, it is necessary to clarify the applicability of Davis-Bacon requirements in relationship to the use of DRI funds in disaster recovery efforts. This section of this Notice addresses Davis-Bacon applicability to use of DRI funds to reimburse property owners for construction work either completed or in process at the time use of those funds is contemplated. In accordance with the authority under section 107(e)(2) of the Act, HUD has waived the labor standards requirements of Indian tribes under DRI.

In accordance with Section 110(a) of the Act, construction work financed in whole or in part with DRI funds is subject to Federal labor standards provisions including the payment of Davis-Bacon prevailing wage rates. Additionally, such work is subject to the requirements of the Copeland Act governing the certification and submission of weekly payroll reports and prohibiting kick-backs and other impermissible deductions from wages, and the overtime requirements of the Contract Work Hours and Safety Standards Act. The requirements found in Department of Labor (DOL) regulations for Davis-Bacon administration and enforcement (29 CFR parts 1, 3, 5, 6, and 7) also apply.

a. *Applicability.* DRI activities are subject to program policies and parameters for Federal labor standards applicability at § 570.603. The labor provisions apply to rehabilitation of residential property only if such property contains 8 or more units.

b. *Volunteers.* Section 110(b) of the Act provides for the use of volunteer labor on construction work subject to Federal labor standards. Volunteers may be utilized to the extent permitted under the regulations in 24 CFR part 70.

c. *Work in progress.* In accordance with 29 CFR 1.6(g), if DRI funds are approved after start of construction (*e.g.*, rehabilitation), Davis-Bacon requirements apply to the construction work. In such cases, the appropriate Davis-Bacon wage decision and contract standards must be incorporated into the contract specifications retroactively to the date of award or to the start of construction, if there is no contract award. However, HUD may request, and the DOL may approve, a wage determination effective on the date the DRI funding is approved (*i.e.*, not retroactively to the start of construction), provided that HUD considers and DOL agrees that it is necessary and proper in the public interest to prevent injustice or undue hardship, and provided further that there is no evidence of intent to apply

for Federal funding or assistance prior to contract award or start of construction, as appropriate.

d. *Reimbursement for completed construction work.* When DRI funds are proposed to reimburse property owners for construction work performed and fully completed as disaster damage rehabilitation, Federal labor standards provisions (*i.e.*, Davis-Bacon wage rates and related requirements) are not applicable to the completed work provided that:

i. Neither the owner nor the unit of general local government contemplated use of or reimbursement by DRI funds for the rehabilitation(s) before or during the time construction work was underway; and

ii. No other Federal funding requiring the payment of Davis-Bacon wage rates was used to carry out the work.

In these cases, the use of DRI funds to reimburse owners for completed rehabilitation does not constitute financing of construction work within the meaning of the labor standards provisions of section 110 of the Act.

e. *Davis-Bacon Streamlining.* The HUD Office of Labor Relations has instituted a number of streamlining measures that significantly reduce the paperwork/recordkeeping burdens commonly attributed to Davis-Bacon projects. In addition, Labor Relations headquarters and field staff are committed to providing expedited processing on all matters related to DRI activities.

Note that most forms of DRI assistance to homeowners would not trigger Davis-Bacon requirements. Grantees should contact Richard S. Allan, Assistant to the Secretary for Labor Relations (Acting), or Jade M. Banks at (202) 708-0370 for assistance in determining whether and to what extent Davis-Bacon requirements apply to specific activities undertaken with DRI funds. Information about Federal labor standards provisions and HUD programs is also available on the HUD Homepage at: [http://www.hud.gov/olr/olr\\_int2.html](http://www.hud.gov/olr/olr_int2.html).

3. *National Flood Insurance Program.* State DRI grants are subject to sections 102(a) and 202(a) of the Flood Disaster Protection Act of 1973, respectively for the requirements for assisted property owners to purchase flood insurance and the effect of nonparticipation of the community in the flood insurance program. These requirements cannot be waived.

a. State grant recipients may not use HUD Disaster Recovery Initiative funding in flood hazard areas for acquisition or construction projects in communities that have been identified by FEMA as nonparticipating,

noncompliant communities under the National Flood Insurance Program. Specific guidance can be found in the references in section I.M.3.b. Listings of participating, nonparticipating, and suspended communities are in the FEMA Federal Insurance Administration's "National Flood Insurance Program Community Status Book," available on the World Wide Web at <http://www.fema.gov/home/fema/csb.htm> for viewing or downloading. FEMA's revised publication, "Mandatory Purchase of Flood Insurance Guidelines," reflecting new provisions of the National Flood Insurance Reform Act of 1994 is also available on the World Wide Web at <http://www.fema.gov/nfip/mpurfi.htm>.

b. Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C. 4003(a)), one year or more after a community has been formally notified of its identification as a community containing an area of special flood hazard, for use in any area that has been identified by the Director of FEMA as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of a State's Action Plan for Disaster Recovery, funds shall not be expended for acquisition or construction purposes in an area that has been identified by FEMA as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59-79, or less than a year has passed since FEMA notification to the community regarding such hazards; and, where the community is participating, flood insurance is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a).)

*N. Waiver of Statutory and Regulatory Requirements That Would Otherwise Apply to the HUD Disaster Recovery Initiative*

1. Division B, title IV, chapter 7 of the 1999 Supplemental Appropriations Act, provides that in administering these amounts, the Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds, except for statutory

requirements related to civil rights, fair housing and nondiscrimination, the environment, and labor standards, upon a finding that such waiver is required to facilitate the use of such funds, and would not be inconsistent with the overall purpose of the statute. As noted, the Secretary may not waive statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, or labor standards. Also, as provided in implementing language in section I.C.2. in this notice, the statute requires that more than 50 percent of the funds must benefit primarily persons of low and moderate income unless HUD makes a finding, based on a State's request, that there is a compelling need to waive such requirement. The procedures set forth in this notice reflect the waiver of the statutory and regulatory requirements that the Secretary considered necessary for the implementation of the HUD Disaster Recovery Initiative, and that are authorized to be waived under division B, title IV, chapter 7 of the 1999 Supplemental Appropriations Act. The statutory and regulatory requirements that have been waived pertain to requirements governing consolidated planning submissions, CDBG program requirements, acquisition and relocation requirements, and other program related requirements appears elsewhere by notice in today's **Federal Register**. HUD has published a notice listing the specific statutory and regulatory requirements that have been waived and setting forth the reasons for the waivers. With respect to the waivers of these statutory and regulatory requirements, no further action need be taken by the grantees.

2. HUD may issue additional waivers (beyond those already waived by the Secretary in the implementation of this initiative) deemed appropriate under this authority. HUD will consider additional waivers on a case-by-case basis, as requested by grantees. Such waivers will receive expedited review.

3. States and State grant recipients should give priority to projects that benefit low- and moderate-income individuals to the maximum extent practicable.

**II. Ensuring the Public Trust**

*A. Program Administrative, Recordkeeping and Reporting Requirements*

The program administrative requirements at §§ 570.489-570.492, which are not otherwise waived, shall apply, except that, with respect to reporting:

1. States must submit a Performance Evaluation Report (PER) pursuant to 24 CFR 91.520, separately for the HUD Disaster Recovery Initiative, similar in all other respects to that which is required for the CDBG program regulated at 24 CFR part 570. HUD will compile this PER for the HUD Disaster Recovery Initiative from the quarterly reports submitted under paragraph 2 below, except that, with the final quarterly report submitted prior to grant closeout, States must also include with the PER a special narrative that discusses how the State assured that activities met the requirements of this notice with respect to the buyout of structures in a disaster area.

2. Congress has required that quarterly reports be submitted regarding the actual projects, localities and needs for which funds have been provided. HUD must also receive reporting information for program management purposes. Therefore, each State must submit a quarterly 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 that expenditure reported. Each quarterly report will include information on the project name, activity, location, national objective, funds budgeted and expended, non-HUD Disaster Recovery Initiative Federal source and funds, numbers of properties and housing units, and numbers of low- and moderate-income households. Quarterly reports must be submitted using HUD's web-based Disaster Recovery Initiative Grant Reporting system. Annually (i.e., with every fourth submission), the report shall include a financial reconciliation of funds budgeted and expended, and calculation of the overall percent of benefit to low- and moderate-income persons. HUD has sought approval from OMB for new information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). OMB approval is under OMB control number 2506-0165, which expires on May 31, 2001. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

*B. Cost Principles*

1. *Direct and indirect cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with OMB Circulars A-87, "Cost Principles for State, Local and

Indian Tribal Governments;" A-122, "Cost Principles for Non-profit Organizations;" or A-21, "Cost Principles for Educational Institutions," as applicable. All items of cost listed in Attachment B of these Circulars that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under the HUD Disaster Recovery Initiative, except for the following:

- i. Depreciation methods for fixed assets shall not be changed without HUD's specific approval or, if charged through a cost allocation plan, the Federal cognizant agency.
- ii. Fines and penalties (including punitive damages) are unallowable costs to the HUD Disaster Recovery Initiative.
- iii. Pre-award costs for State grant recipients are limited to those authorized under § 570.489(b).

2. *Uniform administrative requirements and cost principles.* The State and State grant recipients, their agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of OMB Circulars A-87 and A-133 (implemented at 24 CFR part 45), as applicable. States shall also comply with the applicable requirements of § 570.489 that are not otherwise waived or modified by this notice.

3. *Consultant activities.* Consulting services are eligible for assistance for professional assistance in program planning, development of community development objectives, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

a. *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with DRI funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule. Such services shall be evidenced by written agreements between the parties that detail the responsibilities, standards, and compensation.

b. *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in § 570.489(g) and are not subject to the Level IV limitation.

*C. Public Law 88-352 and Public Law 90-284; Affirmatively Furthering Fair Housing; Executive Order 11063*

1. The following requirements apply to HUD Disaster Recovery Initiative:

- a. Public Law 88-352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR part 1.
- b. Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, for each grantee receiving a DRI grant, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within the State, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard and assuring that State grant recipients comply with their certifications to affirmatively further fair housing.

2. Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

3. Paragraphs C.1. and C.2., above, do not apply to Indian tribes, which are instead governed by the requirements of the Indian Civil Rights Act (25 U.S.C. 1301-1303, Title II of the Civil Rights Act of 1968).

#### *D. Section 109 of the Act*

1. No person in the United States shall on the ground of race, color, religion, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with DRI funds made available pursuant to the Act. "Funded in whole or in part with HUD community development funds" means that DRI funds have been transferred by the State grant recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity.

2. *Specific discriminatory actions prohibited and corrective actions.*

a. A recipient may not, under any program or activity, directly or through contractual or other arrangements, on

the ground of race, color, religion, national origin, or sex:

- i. Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity.
- ii. Provide any facilities, services, financial aid or other benefits that are different, or are provided in a different form, from that provided to others under the program or activity.
- iii. Subject an individual to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.
- iv. Restrict an individual in any way in access to, or in the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.
- v. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition that the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.
- vi. Deny an individual an opportunity to participate in a program or activity as an employee.

b. A recipient may not use criteria or methods of administration that have the effect of subjecting persons to discrimination on the basis of race, color, religion, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, religion, national origin, or sex.

c. A recipient, in determining the site or location of housing or facilities provided in whole or in part with funds, may not make selections of such site or location that have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, religion, national origin, or sex; or that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act.

d.i. In administering a program or activity funded in whole or in part with DRI funds regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin or sex, or if there is sufficient evidence to conclude that such discrimination existed, the recipient must take remedial affirmative action to overcome the effects of prior discrimination. The word "previously"

does not exclude current discriminatory practices.

ii. In the absence of discrimination, a recipient, in administering a program or activity funded in whole or in part with DRI funds, may take any nondiscriminatory affirmative action necessary to ensure that the program or activity is open to all without regard to race, color, religion, national origin or sex.

iii. After a finding of noncompliance or after a recipient has a firm basis to conclude that discrimination has occurred, a recipient shall not be prohibited from taking any eligible action to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy prior discriminatory practice or usage.

e. Notwithstanding anything to the contrary, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes.

Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

3. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) or with respect to an otherwise qualified handicapped person as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with DRI funds. HUD regulations implementing the Age Discrimination Act are contained in 24 CFR part 146 and the regulations implementing section 504 are contained in 24 CFR part 8.

4. Paragraphs D.1. and D.2., above, do not apply to Indian tribes, which are governed by the Indian Civil Rights Act.

#### *E. Environmental Review Requirements*

1. Prior to the commitment of any DRI funds, grantees must comply with the regulations in 24 CFR part 58. These regulations require: The analysis of potential environmental impacts; consultation with interested parties; and public notification of the results of the analysis and intent to request release of funds from HUD. State grant recipients must assume the responsibility for environmental reviews under the Disaster Recovery Initiative. States administering DRI funds must assume the responsibilities set forth in § 58.18 for overseeing the State grant recipients'

compliance with environmental review requirements, including receiving requests for release of funds (RROF) and environmental certifications from State grant recipients and objections from government agencies and the public in accordance with subpart H of 24 CFR part 58. Indian tribes must forward to the responsible HUD field office the environmental certification, the RROF and any objections received, and must recommend to HUD whether to approve or disapprove the certification and RROF.

#### *2. Disaster recovery assistance in a floodplain.*

a. The State grant recipient must follow the eight-step decision-making process required by Executive Order 11988, Floodplain Management, as codified for HUD programs at § 55.20. The Order covers the proposed acquisition, construction, improvement, disposition, financing, and use of property in a floodplain. Other related Federal environmental laws and authorities noted at § 58.5 may also apply.

b. The Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) jointly issued a memorandum on February 18, 1997 entitled "Floodplain Management and Procedures For Evaluation and Review of Levee and Associated Restoration Projects," which emphasizes the need to consider nonstructural alternatives, *e.g.*, "buyouts," in flood disaster recovery activities and the need for coordination among all levels of government.

3. Environmental assessments and reviews may be tiered to eliminate duplication and to save time and resources. For other Federal programs, environmental assessments and reviews are not carried out by the State grant recipients as they are for the HUD Disaster Recovery Initiative, but are usually undertaken by Federal staff or contractors. Therefore, the State grant recipients must coordinate with other Federal agencies, *e.g.*, FEMA, to tier environmental assessments and reviews for activities funded by programs of both Federal agencies.

#### *4. Joint environmental assessments between HUD and other Federal agencies.*

a. In addition to the provisions of § 58.33, the following special procedures may be employed when HUD and other Federal agencies jointly fund a project related to recovery from a covered disaster.

b. A State grant recipient administering Federal environmental requirements for the HUD Disaster Recovery Initiative may enter into

cooperating agreements with other Federal agencies to prepare an environmental assessment for a HUD Disaster Recovery Initiative-funded project. The cooperating agreement will identify the project, all Federal agencies party to the agreement (including the State grant recipient acting for HUD under the provisions of 24 CFR part 58), which agency will be the lead agency and prepare the environment assessment, and the scope of the assessment, including the size and area of potential impact. The lead agency will prepare the assessment, using its own CEQ-approved procedures, and conduct all required reviews, consultations and public notifications under applicable related laws and authorities.

c. The provisions of 24 CFR part 58 would apply if a State grant recipient administering a HUD-funded program that is subject to part 58 (*e.g.*, the HUD Disaster Recovery Initiative) is the lead agency.

d. If the State grant recipient that assumes the HUD environmental review responsibilities is not the lead agency, then that government must review the completed environmental assessment that was prepared by a lead agency under the cooperating agreement. If the review of the document determines that the information is not accurate or complete or does not meet the requirements of 24 CFR part 58, a State grant recipient administering the provisions of 24 CFR part 58 must reject the assessment and prepare its own independent assessment as required in 24 CFR part 58. A State grant recipient acting as a cooperating agency remains responsible for review under authorities that may be unique to HUD-assisted projects under part 58, *i.e.*, HUD environmental standards in 24 CFR part 51 and HUD policy regarding toxic or hazardous materials. However, if a lead agency's assessment meets the requirements of part 58, except for a lack of coverage of these particular areas, the cooperating agency need not reject the assessment. In these cases, the cooperating agency may add its own review of these areas and its own findings regarding the overall environmental impact of the project.

e. If an assessment showing no significant environmental impact is adopted by a State grant recipient administering the provisions of 24 CFR part 58, it must formally record its adoption pursuant to § 58.38, prepare a statement that the proposed HUD funding of the proposed project produces no significant environmental impact (FONSI), and follow the provisions for release of funds as stated

in subpart H of 24 CFR part 58, including notice to the public and the statutory waiting period.

*F. Displacement, Relocation, Acquisition, and Replacement of Housing*

1. *General policy for minimizing displacement.* Consistent with the other goals and objectives of the HUD Disaster Recovery Initiative, and Executive Order 11988 on Floodplain Management, a State shall assure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this program.

2. *Relocation assistance for displaced persons at URA levels.*

a. A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of, 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655).

b. *Displaced person.*

i. For purposes of paragraph 2. of this section, the term “displaced person” means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, or acquisition for an activity assisted under this initiative. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(1) After notice by the State grant recipient to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as applicable) for grant, loan, or loan guarantee funds under this initiative that are later provided or granted.

(2) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(3) Before the date described in paragraph 2.b.i.(1) or (2), if the State grant recipient determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(4) If the person is the tenant-occupant of a dwelling unit and any one of the following two situations occurs:

(a) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(b) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

ii. Notwithstanding the provisions of paragraph 2.b.i., the term “displaced person” does not include:

(1) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the State grant recipient must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(2) A person who moves into the property after the date of the notice described in paragraph 2.b.i.(1) or (2) of this section, but who received a written notice of the expected displacement before occupancy.

(3) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(4) A person who the State grant recipient determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

iii. A grantee (or State or State recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

3. *Optional relocation assistance.* In connection with the use of DRI funds for buyouts, a State may permit a State grant recipient to provide relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraphs 2. The State may also permit the State grant recipient to provide relocation assistance to persons receiving assistance under paragraph 2. of this section at levels in excess of those required by this paragraph. Unless such assistance is provided under State or local law, the State grant recipient shall provide such assistance only upon the basis of a written determination that the assistance is appropriate. The State grant recipient must adopt a written

policy available to the public that describes the relocation assistance that the State grant recipient has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

4. *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

5. *Appeals.* If a person disagrees with the determination of the State grant recipient concerning the person’s eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with that government. The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling, where grant, loan or guarantee funds are provided by a State, may file a written request for further review of the State grant recipient’s decision to the State.

6. *Responsibility of the State.*

a. The State is responsible for ensuring compliance with these requirements, notwithstanding any third party’s contractual obligation to the State grant recipient to comply with the provisions of this section. For purposes of State DRI funds, the State shall require State grant recipients to certify that they will comply with the requirements of this section.

b. The cost of assistance required under this section may be paid from local public funds, funds provided under this initiative, or funds available from other sources.

c. The State and State grant recipient must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

*G. Employment and Contracting Opportunities*

1. Grantees shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264) (Equal Employment Opportunity) and the implementing regulations at 41 CFR chapter 60; and

2. Though requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135, are waived, HUD encourages each grantee to give priority to the hiring of local low and moderate income persons and contractors in carrying out its disaster recovery activities.

3. *Contracting with small and minority firms, women's business enterprises and labor surplus area firms.*

a. The State and State grant recipient must take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

b. Affirmative steps include:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using the services and assistance of SBA and the Minority Business Development Agency of the U.S. Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs (1) through (5) above.

*H. Lead-Based Paint*

States shall comply with the provisions of § 570.487(c).

*I. Architectural Barriers Act and the Americans With Disabilities Act*

1. The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this initiative after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101–19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR part 40 for residential structures, and Appendix A to 41 CFR part 101–19, subpart 101–19.6, for general type buildings).

2. The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides

comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

*J. Constitutional Prohibition*

1. In accordance with First Amendment church/State principles, as a general rule, DRI grant assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities.

2. The following restrictions and limitations therefore apply to the use of DRI funds.

a. DRI funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or purposes that will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph 2.b. of this section with respect to rehabilitation and under paragraph 2.d. of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with DRI funds at no more than fair market value for a non-religious use.

b. DRI funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

i. The building (or portion thereof) that is to be improved with the HUD Disaster Recovery Initiative assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

ii. The HUD Disaster Recovery Initiative assistance is provided to the lessee (and not the lessor) to make the improvements;

iii. The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

iv. The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

v. The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

vi. The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

vii. The lessee must remit the amount received from the lessor under paragraph b.vi. of this section to the recipient or subrecipient from which the DRI funds were derived.

viii. The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, *e.g.*, homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph c.

c. As a general rule, DRI funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the State grant recipient or subrecipient from which the DRI funds are derived that, in connection with the provision of such services:

i. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

ii. It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

iii. It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

iv. Where the public services provided under paragraph 2.c. are

carried out on property owned by the primarily religious entity, DRI funds may also be used for minor repairs to such property that are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the DRI grant expenditure for the public services.

#### K. Political Activities

DRI funds may not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with DRI funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

#### L. Use of Debarred, Suspended, or Ineligible Contractors or Subrecipients

The requirements set forth in 24 CFR part 24 apply to this program.

#### M. Procurement

When procuring property or services to be paid for in whole or in part with DRI funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for State grant recipients, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by section II.N. of this notice and § 570.489(h).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, executive orders and implementing regulations. The State may adopt procurement standards in § 85.36, and may adopt procurement standards in § 85.36 for its State grant recipients that are also CDBG entitlement communities regardless of whether the State adopts such standards for other State grant recipients. Indian tribes must follow the procurement standards in § 85.36.

#### N. Conflict of Interest

1. *Applicability.* In the procurement of supplies, equipment, construction, and services by the States, State grant recipients, and subrecipients, the conflict of interest provisions in section II.M. shall apply. In all cases not governed by section II.M., this section II.N. shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with DRI funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

2. *Conflicts prohibited.* Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph 3. of this section who exercise or have exercised any functions or responsibilities with respect to HUD Disaster Recovery Initiative-assisted activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

3. *Persons covered.* The conflict of interest provisions for paragraph 2. apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, or of a State grant recipient, or of any designated public agencies, or subrecipients which are receiving DRI funds.

4. *Exceptions: Threshold requirements.* Upon written request by the State, an exception to the provisions of paragraph 2. of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the State may be granted by HUD on a case-by-case basis. In all other cases, the State may grant such an exception upon written request of the State grant recipient provided the State shall fully document its determination in compliance with all requirements of paragraph 4.a., including the State's position with respect to each factor at paragraph 5., and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the State or State

grant recipient, as appropriate. An exception may be considered only after the State or State grant recipient, as appropriate, has provided the following:

a. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

b. An opinion of the attorney for the State or the State grant recipient, as appropriate, that the interest for which the exception is sought would not violate State or local law.

5. *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the requirements of paragraph 4. have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

a. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

b. Whether an opportunity was provided for open competitive bidding or negotiation;

c. Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

d. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;

e. Whether the interest or benefit was present before the affected person was in a position as described in this paragraph 5.

f. Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

g. Any other relevant considerations.

#### O. Performance Reviews and Dispute Resolution and Enforcement Actions

The provisions of 24 CFR subpart I apply to States, regarding HUD review of grantee performance, resolution of disputes regarding grantee performance, and adjudicative, remedial and enforcement actions that HUD may take to resolve noncompliance matters.

#### Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD

regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General

Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers for the 1999 HUD

Disaster Recovery Initiative are as follows: 14.219; 14.228.

Dated: December 21, 1999.

**Joseph D'Agosta,**

*General Deputy Assistant Secretary for  
Community Planning and Development.*

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