

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4959-N-01]

## Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees Under the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of allocation method, waivers granted, alternative requirements applied, and statutory program requirements.

**SUMMARY:** This notice advises the public of the allocation method for grant funds, the list of grantees and proposed grant amounts, and the waivers of regulations and statutory provisions granted to CDBG disaster recovery grantees for the purpose of assisting in the recovery from the federally declared disasters that occurred between August 31, 2003 and October 1, 2004. As described in the **SUPPLEMENTARY INFORMATION** section of this notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose. This notice describes the fund allocation basis, lists the provisions being waived and alternative requirements specified, and notes statutory changes affecting program design and implementation.

**DATES:** *Effective Date:* December 15, 2004.

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

### SUPPLEMENTARY INFORMATION:

#### Authority To Grant Waivers

The Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005 (Pub. L. 108-324, approved October 13, 2004) appropriates \$150 million in Community Development Block Grant funds for disaster relief, long-term recovery, and mitigation directly related to the effects of the covered disasters. The Act authorizes

the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, 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.

The Secretary finds that the following waivers and alternative requirements are necessary to facilitate the use of these funds for their required purposes. The Secretary also finds that such uses of funds, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the HUD Reform Act, regulatory waivers must be justified and published in the **Federal Register**. The Department is also using this notice to provide information about other ways in which the requirements for this grant vary from regular CDBG program rules. Therefore, HUD is using this notice to make public alternative requirements and to note the applicability of disaster recovery-related statutory provisions. Compiling this information in a single notice creates a helpful resource for grant administrators and HUD field staff.

Except as described in this notice for states, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570 subpart I, shall apply to the use of these funds. Except as described in this notice for Indian tribes, the statutory and regulatory provisions governing the Indian Community Development Block Grant program for Indian tribes and not related to the funding application and selection process will apply, including those at 24 CFR 1003 *et seq.*

#### Allocations

Public Law 108-324 (signed October 13, 2004) provides \$150 million of supplemental appropriation for the CDBG program for:

use only for disaster relief, long-term recovery, and mitigation in communities affected by disasters designated by the President between August 31, 2003 and October 1, 2004, except those activities reimbursable by the Federal Emergency Management Agency or available through the Small Business Administration. \* \* \*

The law further notes:

That all funds under this heading shall be awarded by the Secretary to states (including Indian tribes for all purposes under this heading) to be administered by each state in conjunction with its community development block grants program: Provided further, That notwithstanding 42 U.S.C. 5306(d)(2), states are authorized to provide such assistance to entitlement communities.

HUD has developed an allocation method based on data available from the Small Business Administration (SBA) and the Federal Emergency Management Agency (FEMA) on unmet housing, business, and public assistance needs for all designated areas in covered major disaster declarations. To receive funding, a state must submit a plan in accordance with this notice describing how funds will be used to address its greatest unmet need(s) and listing expected accomplishments. HUD may reallocate to other funded states any funds not used by a state or recaptured from a state.

The Congressional conference report (H.Rep.108-773) directs HUD to provide funds "to areas facing the greatest need." Thus, the allocation reflects the relative recovery needs among the grantees having disasters that received Presidential declarations between August 31, 2003 and October 1, 2004. This weighting is designed to direct funds to the areas of greatest need, with an emphasis on housing.

The basic allocation formula is:

- 50 percent of the funds go toward unmet housing needs;
- 25 percent of the funds go toward unmet business needs;
- 25 percent of the funds go toward unmet public assistance needs.

Each state will receive its allocation based on its proportion of the unmet need aggregated from all covered disasters in that state relative to the sum of the unmet need for all states with declared disasters.

In addition to allocating the funds based on proportion of unmet need, HUD has established a minimum grant threshold. The minimum grant amount was set to ensure that grantees would receive sufficient funding to make significant progress toward the statutory objective of long-term disaster recovery. If any state would have otherwise been allocated less than \$1.5 million under the allocation formula described above, it will not receive a grant allocation and the remaining funds will be reallocated proportionate to need to the grantees receiving grants greater or equal to \$1.5 million.

The proposed allocations are as follows:

State	Disaster type	Amount reserved
Alabama .....	Hurricane Ivan (FEMA-DR-1549) .....	\$10,965,311
California .....	Wildfires (1498). San Simeon earthquake (1505), flooding from levee break (1529) .....	10,547,928
Florida .....	Hurricane Charley (1539) .....	.....
	Hurricane Frances (1545) .....	.....
	Hurricane Ivan (1551) .....	.....
	Hurricane Jeanne (1561) .....	.....
	Subtotal Florida .....	100,915,626
Maryland .....	Hurricane Isabel (1492) .....	2,737,133
	Hurricane Isabel (1490), Tropical Storm Frances (1546), .....	.....
North Carolina ..	Hurricane Ivan (1553) .....	4,569,982
Ohio .....	Landslide, mudslides, severe storm, flooding (1507, 1519, 1556) .....	1,971,541
Pennsylvania ....	Tropical Storms Henri & Isabel (1497), severe storms & flooding (1538), Tropical Depressions Frances & Ivan (1555 & 1557). .....	2,528,243
Puerto Rico .....	Severe storms, flooding, mudslides, & landslides (1501), Tropical Storm Jeanne (1552) .....	7,998,964
Virginia .....	Hurricane Isabel (1491), severe storms and flooding (1502), severe storms, tornadoes & flooding (1525), Tropical Depression Gaston (1544). .....	5,724,016
West Virginia ....	Hurricane Isabel (1496), severe storms, flooding, landslides (1500, 1522, 1536, 1538) .....	2,041,256

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

The Department is compelled to enforce the provision of the appropriations statute that requires funds be used only for disaster relief, long-term recovery, and mitigation. The Department is also compelled to follow the conference report direction that funds be directed to areas with greatest need. Each grantee will describe in its Action Plan for Disaster Recovery how each use of funds meets these requirements. HUD will monitor compliance with this direction and may be compelled to consider disallowing expenditures if it finds uses of funds are not disaster-related or are clearly not for greatest needs. HUD encourages grantees to contact HUD field offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery or if they have any questions regarding meeting these requirements.

The appropriations act treats Indian tribes as states for "all purposes under this heading." As a result, the balance of this Notice will use the term "grantee" to mean a state or Indian tribe receiving a disaster recovery grant under this Notice. The terms "state" and "Indian tribe" will be used when necessary to distinguish between the two.

#### Waiver Justification

This section of the notice briefly describes the necessary basis for each waiver and provides an explanation of related alternative requirements, if additional explanation is necessary. This *Waiver Justification* section also highlights some of the statutory items and alternative requirements described in the *Applicable Rules, Statutes*,

#### *Waivers and Alternative Requirements*

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

The waivers, alternative requirements, and statutory changes apply only to the CDBG supplemental disaster recovery funds appropriated in Public Law 108-324. They provide additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation.

#### *Pre-Grant Process*

The first group of waivers and alternative requirements concerns the pre-grant process, including citizen participation, the Action Plan for Disaster Recovery, fund distribution, and the overall benefit criteria.

Pursuant to explicit authority in the appropriations act, an overall benefit waiver allows for up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums and blight national objectives, rather than the 30 percent allowed in the regulation. The Housing and Community Development Act requires grantees to give maximum feasible

priority to funding activities that benefit persons of low and moderate income, prevent or eliminate slums and blight, or meet community needs of particular urgency. Because major disaster damage to community development and housing is without regard to income, and income-producing jobs are often lost for a period of time following a disaster, HUD is waiving this requirement to give grantees maximum flexibility to carry out recovery activities within the confines of the CDBG program national objectives. The requirement that every activity meet one of the three national objectives is not waived.

The regulatory waiver allowing distribution of funds by a state to entitlement communities and Indian tribes is consistent with the provision of the appropriations law that specifically allows distribution of disaster recovery grant funds to entitlement communities and is also consistent with waivers granted for previous similar disaster recovery cases.

HUD is waiving the requirement for consistency with the consolidated plan because the effects of a major disaster usually alter a grantee's priorities for meeting housing, employment, and infrastructure needs. HUD is limiting the scope of the waiver for consistency with the consolidated plan; it applies only until the grantee first updates its consolidated plan following the disaster.

HUD is waiving the action plans requirements and substituting a streamlined Action Plan for Disaster Recovery. These actions will allow rapid implementation of disaster recovery grant programs and ensure conformance with provisions of the appropriations act. Where possible, the streamlined disaster recovery Action Plan, including certifications, does not repeat common action plan elements the

grantee has already committed to carry out as part of its annual CDBG submission.

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

#### *Eligibility and Allowable Costs*

The requirements under this heading in the *Applicable Rules, Statutes, Waivers, and Alternative Requirements* section include activity eligibility waivers, alternative requirements, and notes about the applicability of grant-related disaster recovery provisions of law. Justification for the waivers follows.

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

The limited waiver of the anti-pirating clause allows the flexibility to provide assistance to a business located in another state if the business was displaced from the grantee's jurisdiction by the disaster and the business wishes to return. This waiver is necessary to allow a grantee affected by a major disaster to rebuild its employment base.

The waiver of the state match for program administration requirement is provided so that the state has the flexibility to direct money to other recovery needs rather than being restricted to using the funding for administration.

#### *Relocation Requirements*

HUD is providing a limited waiver of the relocation requirements. HUD will consider providing additional waivers on a case-by-case basis if a grantee chooses to fund a flood buyout program with both HUD and FEMA funds and requires the waivers to develop a workable program design.

HUD is waiving the one-for-one replacement of low- and moderate-income housing units demolished or converted using CDBG funds requirement for housing units damaged by one or more disasters. HUD is waiving this requirement because it

does not take into account the large, sudden changes a major disaster may cause to the local housing stock or local economy. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage grantees from acquiring, converting, or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified timeframe.

#### *Reporting*

HUD is waiving the annual reporting requirement because the Congressional conferees requested quarterly reports from HUD on activities funded with these grants. To ensure that HUD can comply with this request, HUD is requiring each grantee to report quarterly to HUD using the online Disaster Recovery Grant Reporting system.

#### *Match*

There are no waivers in this section.

#### *Certifications*

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

#### **Applicable Rules, Statutes, Waivers, and Alternative Requirements**

##### *Pre-grant Process*

1. *General note.* Prerequisites to a grantee's receipt of CDBG disaster recovery assistance include adoption of a citizen participation plan; publication of its proposed Action Plan for Disaster Recovery; public notice and comment; and submission to HUD of an Action Plan for Disaster Recovery, including certifications. Except as described in this notice for states, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR 570 subpart I, shall apply to the use of these funds. Except as described in this notice for Indian tribes, the statutory and regulatory provisions governing the Indian Community Development Block Grant program for Indian tribes and not related to the funding application and selection process will apply, including those at 24 CFR 1003 *et seq.*

2. *Overall Benefit waiver and alternative requirement.* The requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484 (for states), and 24 CFR 1003.208 (for tribes) that 70 percent of funds are for activities that benefit low- and moderate-income persons are waived to stipulate that at least 50 percent of disaster recovery grant funds are for activities that benefit low and moderate income persons.

3. *Consolidated Plan waiver.* Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(6), that housing activities undertaken with CDBG funds be consistent with the strategic plan, are waived. Further, 24 CFR 570.903, which requires HUD to annually review grantee performance under the consistency criteria, is also waived. The waiver of consistency with the consolidated plan applies only until the grantee first updates the consolidated plan priorities following the disaster or until the completion of all grant activities, whichever comes first.

4. *Citizen participation waiver and alternative requirement.* Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 1003.604, and 24 CFR 91.115(b) with respect to citizen participation requirements are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at either the state or local government level, but do require providing a reasonable opportunity for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for this grant are:

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

b. In the action plan, each grantee will specify the criteria for determining what changes in the grantee's activities constitute a substantial amendment to the plan. At a minimum, adding or deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change. Any action plan may be modified or amended by the grantee in accordance with the same procedures required in this notice for the preparation and submission of an Action Plan for Disaster Recovery.

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

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

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

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

a. The greatest recovery needs resulting from the covered disaster that have not been addressed by insurance proceeds, federal assistance or any other funding source;

b. The grantee's overall plan for disaster recovery;

c. Expected Federal, non-Federal public, and private resources, and their relationship, if any, to activities to be funded with CDBG disaster recovery assistance; and

d. The state's method of distribution. The method of distribution shall include a description of:

(1) All criteria used to select applications from local governments for funding, including the relative importance of the criteria (does not apply to tribal grantees), and including

a description of how the disaster recovery grant resources will be allocated to areas of greatest need among all funding categories and the threshold factors and grant size limits that are to be applied, or

(2) The projected uses for the CDBG disaster recovery funds by project, program or activity and geographic area, and

(3) How the allocation method or use of funds (project, program or activity) described in accordance with subparagraphs (A) or (B) above will result in uses of grant funds related to disaster relief or recovery from specific effects of the disaster(s); and

(4) Sufficient information so that units of general local government will be able to understand and comment on the action plan and be able to prepare responsive applications (does not apply to tribal grantees).

e. Monitoring standards and procedures (if a state will apply those already developed for the consolidated plan under section 24 CFR 91.330, so affirm);

f. Required certifications (see the applicable *Certifications* section of this notice);

g. The specific sources from which the match requirement (see the *Non-Federal Public Matching Funds Requirement* section of this notice) will be achieved; and

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

6. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties.* The appropriations law allows a grantee to distribute disaster recovery grant funds to metropolitan cities and urban counties (*i.e.*, "entitlement communities"). Section 5302(a)(7) of title 42, *United States Code* (definition of "nonentitlement area") and provisions of 24 CFR part 570 that would prohibit states electing to receive CDBG funds from distributing such funds to units of general local government in entitlement communities and to Indian tribes, are waived, including 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in entitlement areas and to Indian tribes. The appropriations law supersedes the statutory distribution prohibition at 42 U.S.C. 5306(d)(1) and (2)(A).

Alternatively, the state is required to distribute funds without regard to a local government or Indian tribe status under any other CDBG program.

#### *Eligibility and Allowable Costs*

7. *Note that use of grant funds must relate to the covered disaster.* In addition to being eligible under 42 U.S.C. 5305(a) or this notice and meeting a CDBG national objective, activities funded under this notice must also be related to disaster relief, long-term recovery, and mitigation in communities affected by Presidentially declared disasters occurring between August 31, 2003, and September 30, 2004.

8. *Note on duplication of benefits and disaster impact.* Pursuant to the appropriations act and the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5155), no entity may receive disaster recovery grant assistance with respect to any part of a disaster loss that is reimbursable by FEMA or eligible for Small Business Administration (SBA) assistance or as to which it has received financial assistance under any other program or from insurance or any other source. For example, a grantee may not use funds under this notice for activity costs that are reimbursable or for which funds are made available by FEMA or SBA. Further, the grantee may not provide CDBG disaster recovery grant assistance to a project or activity underway prior to a Presidential disaster declaration during the time period specified in the appropriations act unless the disaster directly impacted the project.

9. *Program income alternative requirement.* If, under 24 CFR 570.489(e)(3) a state determines that a state grant recipient is continuing a disaster recovery grant assisted activity from which program income is derived, it must permit the recipient to retain the program income. For such continuing activities, the program income will retain its CDBG disaster recovery grant identity and be covered by this notice. However, if the state does not make such a determination, then program income earned by the activity will be regular CDBG program income under the provisions of 24 CFR 570.489(e) and disaster recovery grant requirements and waivers will no longer apply.

For Indian tribes that are state grant recipients or HUD grantees, the regulations at 24 CFR 1003.503 will govern program income generated by a disaster recovery grant activity. Program income generated by disaster recovery grant activities will retain its CDBG disaster recovery grant identity and be covered by this notice until the state or HUD, as applicable, closes out its grant with the tribe.

If a grantee receives disaster recovery grant program income (*e.g.*, if a state

requires a state grant recipient to remit the funds to the state), the program income will retain its CDBG disaster recovery grant identity and be covered by this notice until the HUD closes out the disaster recovery grant to the state.

10. *Housing-related eligibility waivers.* Section 5305(a) of title 42, *United States Code* and 24 CFR 570.482(a) through (d) are waived to the extent necessary to allow down payment assistance for up to 100% of the down payment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

11. *Waiver and modification of the anti-pirating clause to permit assistance to help a business return.* Section 5305(h) of title 42 *United States Code* is hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of a Presidentially declared disaster between August 31, 2003, and September 30, 2004, and has since moved in whole or in part from the affected area to continue business.

12. *Note on reimbursement of CDBG formula funds.* The appropriations law authorizes the use of CDBG disaster recovery grant funds to reimburse expenditures incurred from the regular CDBG program allocation used to achieve the same purposes as the disaster recovery grant appropriation.

13. *Waiver of the limitation on planning and administrative costs and alternative requirement.* Section 5306(d)(3)(A) of title 42 *United States Code* and 24 CFR 570.489(a)(1) concerning the use of disaster recovery grant funds for state administrative costs, including the matching funds requirements are waived. The amount of grant funds used to pay administrative costs incurred by a state in carrying out its responsibilities under this notice shall not exceed 2 percent of the aggregate of the state's disaster recovery grant. The grantee may use no more than 20 percent of the sum of any CDBG disaster recovery grant, plus program income, for planning and program administrative costs, including administration and planning by state grant recipients.

#### *Relocation Requirements*

15. *Waiver of one-for-one replacement of units damaged by disaster.* One-for-one replacement requirements at 42 U.S.C. 5304(d)(2) and 24 CFR 570.488, 570.606(c) and 42.375(a) are waived for low- and moderate-income dwelling units (1) damaged by the disaster, (2) for which CDBG funds are used for demolition, and (3) which are not suitable for rehabilitation. These requirements are waived provided the

grantee assures HUD it will use all resources at its disposal to ensure no displaced homeowner will be denied access to decent, safe and sanitary suitable replacement housing because he or she has not received sufficient financial assistance. Also, state grant recipients must provide such assurances to the state.

#### *16. Notes on flood buyouts:*

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

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

c. Future Federal assistance to owners remaining in floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154(a)) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person

has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

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

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

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

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

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

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

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

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

d. The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the

property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

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

#### Reporting

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

The alternative requirement is that

a. Each grantee must enter its Action Plan for Disaster Recovery into HUD's Web-based Disaster Recovery Grant Reporting (DRGR) system. As additional detail about uses of funds becomes available to the grantee, the grantee must enter this detail into DRGR, in sufficient detail to serve as the basis for acceptable performance reports.

b. Each grantee must submit a quarterly performance report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and that expenditure reported. Each quarterly report will include information about the uses of funds including (but not limited to) the project name, activity, location, national objective, funds budgeted and expended, the funding source and total amount of any non-CDBG disaster funds (including matching funds), numbers of properties and housing units, beginning and ending dates of activities, and numbers of low- and moderate-income persons or households benefiting. Quarterly reports must be submitted using HUD's Web-based Disaster Recovery Grant Reporting (DRGR) system. At least annually (*i.e.*, with every fourth submission), the report shall include a financial reconciliation of funds budgeted and expended, calculation of administrative and public service limitations, and of the overall percent of benefit to low- and moderate-income persons.

18. *Information collection approval note.* HUD has approval from OMB for 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 August 31, 2007. 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.

#### Non-Federal Public Matching Funds Requirement

19. *Match note.* In accordance with the appropriations act (Pub. L. 108–324) each grantee shall provide not less than 10 percent in non-Federal public matching funds or its equivalent value (other than administrative costs) for any HUD disaster recovery grant funds it receives from that appropriation. Each grantee will provide match payments that meet the following criteria.

a. Match contributions must be made to disaster recovery activities related to covered disasters.

b. 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.

c. 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 based on a professional appraisal.

d. The grantee must make match contributions before all CDBG disaster recovery grant funds are expended. Match contributions must total not less than 10 percent of the disaster recovery grant funds drawn from the grantee's line of credit, excluding funds drawn for administrative and planning costs.

e. Grantees may not count administrative and planning costs toward the required non-Federal public matching funds or equivalent value.

f. Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award, including any other disaster recovery grant, may not count as satisfying the matching contribution requirement for a HUD Disaster Recovery grant.

g. 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 disaster recovery funded activity, all repayment, interest, or other return on the loan must be treated as CDBG program income.

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

(1) Contributions made with or derived from Federal resources of funds, regardless of when the Federal resources or funds were received or expended. CDBG funds (defined at 24 CFR 570.3) are Federal funds for this purpose;

(2) Contributions made with private resources or funds, regardless of when the private resources or funds were received or expended;

(3) The interest rate subsidy attributable to the Federal tax exemption on financing or the value attributable to Federal tax credits;

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

(1) Credit a cash contribution when the funds are expended for a disaster-related activity or at the time the grantee awards disaster recovery grant funds if the activity was completed before the award of CDBG disaster recovery funds.

(2) Credit the subsidy value of a below-market interest rate loan at the time of the loan closing.

(3) 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 grantee or state grant recipient or other public entity officially waives, forgoes, or defers the taxes, fees, or other charges.

(4) 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 disaster-recovery-grant-assisted or disaster-related activity.

(5) Credit the direct cost of relocation payments and services at the time that the payments and services are provided.

j. For projects involving more than one grantee, the grantee that makes the match contribution may decide to retain the match credit or permit the other grantee to claim the credit.

#### Certifications

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

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

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

c. The state certifies that it is complying with requirements regarding drug-free workplace required by 24 CFR part 24, subpart F, together with the appropriate forms.

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

e. The state certifies that the Action Plan for Disaster Recovery is authorized under state law and that the state possesses the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this notice.

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

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

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

i. The state certifies that:

(1) It has consulted with affected units of local government in counties designated in covered major disaster declarations in the nonentitlement, entitlement and tribal areas of the state in determining the method of distribution of funding; and

(2) Each unit of general local government to be distributed funds will be required to identify its disaster recovery needs, including the needs of low-income and moderate-income families, and the disaster recovery activities to be undertaken to meet these needs.

j. The state certifies that it has complied with each of the following criteria:

(1) Funds will be used solely for disaster relief, long-term recovery, and mitigation related to a major disaster declared by the President between August 31, 2003, and October 1, 2004.

(2) Funds will be provided to areas facing the greatest need.

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

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

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

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

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

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against

any individuals engaged in non-violent civil rights demonstrations; and

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

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

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

21. *Certifications for Indian tribes, waiver and alternative requirement.* Instead of following paragraph 20, above, each Indian tribe will make the following certifications.

a. The tribe certifies that 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. The tribe certifies that it will provide the drug-free workplace required by 24 CFR part 24, subpart F.

c. The tribe certifies that it will comply with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

d. The tribe certifies that it possesses the legal authority to apply for the disaster recovery grant and execute the proposed program.

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

f. Prior to submission of its application to HUD, that it has met the citizen participation requirements of this notice.

g. 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 24 CFR 570.483(b)).

h. The tribe certifies that it will comply with all applicable laws.

#### *Duration of Funding*

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 (Pub. L. 101–510), limit the availability of certain appropriations for

expenditure. This limitation may not be waived. HUD may place shorter deadlines on the expenditure of those funds by grant agreement conditions.

*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.

*Finding of No Significant Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules

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

Dated: December 6, 2004.

**Roy A. Bernardi,**

*Deputy Secretary.*

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