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

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

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

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

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

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

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

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

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

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

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

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

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0700.

Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).


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except that at least 50 percent of the funds granted must benefit primarily persons of low and moderate income unless the Secretary otherwise makes a finding of compelling need. The following waivers and alternative requirements are in response to written requests from the State of Mississippi.

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

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

Except as described in notices regarding this grant, the statutory and regulatory provisions governing the CDBG program for states, including the State of Mississippi, provide an explanation of related alternative requirements, if additional explanation is necessary.

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

Eligibility

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

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

Compensation for disaster-related losses. The State plans to provide compensation to homeowners who lived outside the floodplain and whose homes were damaged by flooding during the covered disasters, if the homeowners agree to meet the stipulations of the published program design. The Department is waiving the 1974 Act and associated regulations to make this use of grant funds eligible.

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

Program Income

A combination of CDBG provisions limits the flexibility available to the state for the use of program income. Prior to 2002, program income earned on disaster grants has usually been program income in accordance with the rules of the regular CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The 1974 Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The 1974 Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the state, in all circumstances, the choice of whether or not a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant’s alternative requirements and waivers and to remain under the state’s discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state’s annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Relocation Requirements

HUD is providing a limited waiver of the relocation requirements. HUD may provide additional waivers on a case-by-case basis if the grantee chooses to fund a flood buyout program with both HUD and Federal Emergency Management Agency (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
must give reasonable priority for the balance of its funds to activities which will primarily benefit persons of low and moderate income. Because the data and HUD experience indicate that it is possible that the actual operations of the grant may produce a result in conformance with the 50 percent overall benefit requirement, HUD expects the grantee to maintain low- and moderate-income benefit documentation for each activity providing such benefit.

**Timely Distribution of Funds**

The state CDBG program regulation regarding timely distribution of funds is at 24 CFR 570.494. This provision is designed to work in the context of an annual program in which almost all grant funds are distributed to units of general local government. Because the state may use its disaster recovery grant funds to carry out activities directly, and because Congress expressly allowed the state to carry out activities which result from replacing all such units, the requirement would impede the state CDBG program regulation. The state has designated this as its "income-blind" manner because the disaster affected households without regard to income. HUD and the state have examined the available post-disaster housing need data, and HUD agrees that one of the state's compelling needs for assistance in the disaster-affected area is to help re-establish homeowners outside the floodplain who suffered major uninsured flood damage. The State has designated this as its "primary need.") The state has agreed to examine other housing needs and to pursue other sources of funding to provide assistance for other compelling housing needs, such as for homeless and special needs populations, for low-income renters, and for uninsured low-income homeowners. HUD considered the data and the state's justification for its request. Based on the compelling need presented, HUD is granting the state a waiver of the requirement that at least 50 percent of the supplemental CDBG grant funds primarily benefit persons of low and moderate income, to the extent necessary to permit Mississippi to carry out the activities contained in its March 31, 2006, action plan submission, provided that the state

acquired by the unit of general local government or tribe or subrecipient of a state, a tribe or a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;

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

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

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

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

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

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

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

**Waivers and Alternative Requirements**

1. *Program income waivers and alternative requirement.* 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent that they conflict regarding timely distribution of funds is at 24 CFR 570.494. This provision is designed to work in the context of an annual program in which almost all grant funds are distributed to units of general local government. Because the state may use its disaster recovery grant funds to carry out activities directly, and because Congress expressly allowed this grant to be available until expended, HUD is waiving this requirement. However, HUD expects the State of Mississippi to expediently obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

The following alternative requirement applies instead:

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

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

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

(iii) Gross income from the use or rental of real or personal property

2. *Program income does not include the following:* (i) The total amount of funds which is less than $25,000 received in a single year that is retained by a unit of general local government, tribe or subrecipient; (ii) Amounts generated by activities eligible under section 105(a)(15) of the Act and carried out by an entity under the authority of section 105(a)(15) of the Act.
Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the Treasury, except as provided in paragraph (b) of this section.

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

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

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

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

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

(b) Revolving funds.

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

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

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

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

2. Housing-related eligibility waivers.

42 U.S.C. 5305(a) is waived to the extent necessary to allow down payment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

3. Compensation for loss of housing.

42 U.S.C. 5305(a) is waived to the extent necessary to allow compensation for unreimbursed loss of housing caused by the disaster. The grantee must undertake any compensation activity in accordance with the state’s approved action plan and published program design.

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

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

6. Waiver of one-for-one replacement of units damaged by disaster. 42 U.S.C. 5301(d) is hereby waived to remove the one-for-one replacement requirements for occupied and vacant occupable lower-income dwelling units that may be demolished or converted to a use other than for housing; and to remove the relocation benefits requirements contained at 42 U.S.C. 5304(d) to the extent they differ from those of the Uniform Relocation Act. Also, 24 CFR 42.375 is waived to remove the requirements implementing the above-mentioned statutory requirements regarding replacement of housing, and 24 CFR 42.350, to the extent that these regulations differ from the regulations contained in 49 CFR part 24. 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.

7. Overall benefit. 42 U.S.C. 5301(c) and 5304(b)(3), and 24 CFR 570.484 and 24 CFR 91.325(b)(4)(i) with respect to the overall benefit requirement are waived for the CDBG disaster recovery grant covered by this notice to the extent necessary to permit Mississippi to carry out the activities contained in its March 31, 2006, action plan submission, provided that the state must give reasonable priority for the balance of its funds to activities which will primarily benefit persons of low and moderate income. HUD expects the grantee to maintain low- and moderate-income benefit documentation for each activity providing such benefit.

8. Waiver of requirement for timely distribution of funds. 24 CFR 570.494 regarding timely distribution of funds is waived.

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

heading ‘Community Development Block Grants Fund’ and notwithstanding any other provision of law, not more than $250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers.”

Finding of No Significant Impact

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


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