

be limited to 200 participants. To reserve a seat in advance, please provide a request via email or mail with the contact information of the participant (including name, mailing address, and e-mail address), the meeting(s) to be attended, and include the subject/attention line (or on the envelope if by mail): **Reservation Request for NFIP Reform Meeting**. Advance reservations must be received 3 business days prior to the meeting to ensure processing. Unregistered participants will be accepted after all participants with reservations have been accommodated and will be admitted on a first-come, first-serve basis, provided the 200 person capacity is not exceeded. To submit reservations, please e-mail: [nfip\\_reform@dhs.gov](mailto:nfip_reform@dhs.gov) or send by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** caption.

*Web Site:* [http://www.fema.gov/business/nfip/nfip\\_reform.shtm](http://www.fema.gov/business/nfip/nfip_reform.shtm).

**FOR FURTHER INFORMATION CONTACT:** Michael Grimm, by telephone at 202-646-2878 or by e-mail at [nfip\\_reform@dhs.gov](mailto:nfip_reform@dhs.gov). *Mailing Address:* NFIP Reform, 1800 South Bell Street, Room 970, Arlington, VA 20598-3030.

*Meeting Topics:* Background information about these topics is available on the NFIP Reform Web site. The straw man policy alternatives will also be posted to Docket ID: FEMA-2010-0065.

*Procedure:* This meeting is open to the public.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2010-28424 Filed 11-9-10; 8:45 am]

BILLING CODE 9110-12-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5452-N-01]

### Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for Community Development Block Grant (CDBG) Disaster Recovery Grantees Under the Supplemental Appropriations Act, 2010 (Pub. L. 111-212)

**AGENCY:** Office of the Secretary, HUD.  
**ACTION:** Notice of allocations, waivers, and alternative requirements.

**SUMMARY:** This Notice advises the public of the allocation of CDBG disaster recovery funds for the purpose of assisting the recovery efforts in areas declared a major disaster under title IV of the Robert T. Stafford Disaster Relief

and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of the severe storms and flooding that occurred from March through May, 2010. As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements upon the request of a grantee. Therefore, this Notice describes applicable waivers and alternative requirements, as well as the application process, eligibility requirements, and relevant statutory provisions for grants provided under this Notice.

**DATES:** *Effective Date:* November 15, 2010.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority To Grant Waivers**

The Supplemental Appropriations Act, 2010 (Pub. L. 111-212, approved July 29, 2010) appropriates \$100 million, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by severe storms and flooding from March 2010 through May 2010 for which the President declared a major disaster covering an entire State, or States with more than 20 counties declared major disasters, under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*).

The Supplemental Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead-based paint), upon: (1) A request by the

grantee explaining why such a waiver is required to facilitate the use of such funds or guarantees, and (2) a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974 (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

The Secretary finds that the following waivers and alternative requirements, as described below, are necessary to facilitate the use of these funds for the statutory purposes, and are not inconsistent with the overall purpose of Title I of the HCD Act or the Cranston-Gonzalez National Affordable Housing Act, as amended. Under the requirements of the Supplemental Appropriations Act and the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), regulatory waivers must be justified and published in the **Federal Register**.

##### **Allocations**

This Notice makes available \$50 million of the \$100 million appropriation for the CDBG program for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by severe storms and flooding that occurred from March 2010 through May 2010, for which the President declared a major disaster covering an entire State, or States with more than 20 counties declared major disasters, under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*).

The Supplemental Appropriations Act further notes:

That funds shall be awarded directly to the State or unit of general local government at the discretion of the Secretary \* \* \* *Provided further*, that funds allocated under this heading shall not adversely affect the amount of any formula assistance received by a State or subdivision thereof under the Community Development Fund: *Provided further*, that a State or subdivision thereof may use up to 5 percent of its allocation for administrative costs \* \* \*

Almost all of the prior appropriations to the CDBG disaster recovery program have required funds to be administered through an entity or entities designated by the Governor of each State. In contrast, the Supplemental Appropriations Act, 2010, states that funds may be awarded directly to a State or unit of general local government, at the discretion of the Secretary. Based on the eligible date range specified by Congress,

communities affected by the relevant disasters, and estimates of unmet need, HUD has determined that, in addition to Tennessee, Rhode Island, and Kentucky, multiple units of general local government will also receive a direct allocation under today's Notice. Therefore, except as described in this Notice, statutory and regulatory provisions governing the State CDBG

program shall apply to any State receiving an allocation under this Notice, while statutory and regulatory provisions governing the CDBG entitlement program shall apply to any unit of general local government receiving a direct allocation in this Notice. Applicable State and entitlement regulations can be found at 24 CFR part 570. Unless noted

otherwise, the term "grantee" refers to any grantee—whether State, city, or county—receiving a direct award under this Notice.

HUD computes allocations based on data that are generally available and that cover all the eligible affected areas. As a result, HUD is making the following allocations in today's Notice:

TABLE 1—INITIAL ALLOCATIONS UNDER PUB. L. 111–212

Disaster No.	State	Grantee	Allocation
1912 .....	Kentucky .....	State Government .....	\$13,000,000
1894 .....	Rhode Island .....	City of Cranston .....	1,277,067
1894 .....	Rhode Island .....	City of Warwick .....	2,787,697
1894 .....	Rhode Island .....	State Government .....	8,935,237
1909 .....	Tennessee .....	City of Memphis .....	2,031,645
1909 .....	Tennessee .....	Nashville-Davidson County .....	10,731,831
1909 .....	Tennessee .....	Shelby County .....	1,212,788
1909 .....	Tennessee .....	State Government .....	10,023,735
<b>Total</b> .....	.....	.....	<b>50,000,000</b>

Please see Appendix A for a complete description of the allocation methodology.

Subsequent to this Notice, HUD will make a final review of long-term disaster recovery needs for all States or subdivisions thereof affected by the disasters that occurred between March and May, 2010, to allocate the remaining \$50 million. This review will include unmet housing, infrastructure, and economic revitalization needs.

The Supplemental Appropriations Act requires funds to be used only for specific purposes. The statute directs that each grantee will describe, in an Action Plan for Disaster Recovery, criteria for eligibility and how the use of the grant funds will address long-term recovery, and restoration of infrastructure, housing, and economic revitalization. HUD will monitor compliance with this directive and may disallow expenditures if it finds that funds duplicate other benefits or do not meet a statutory purpose. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery.

As provided for in the Supplemental Appropriations Act, funds may be used as a matching requirement, share, or contribution for any other Federal program. However, the funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency (FEMA) or the Army Corps of Engineers.

**Prevention of Fraud, Abuse, and Duplication of Benefits**

To prevent fraud, abuse of funds, and duplication of benefits under the Supplemental Appropriations Act, this Notice includes specific reporting, written procedures, monitoring, and internal audit requirements applicable to each grantee. Please see the note regarding duplication of benefits at paragraph 27. Also see paragraph 5, sections B–D, under “Applicable Rules, Statutes, Waivers, and Alternative Requirements; Pre-Grant Process,” for these requirements. In addition, the Department will: (1) Institute risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds, (2) be extremely cautious in considering any waiver related to basic financial management requirements; the standard, time-tested CDBG financial requirements will continue to apply, and (3) collaborate with the HUD Office of Inspector General to plan and implement oversight of these funds.

**Waiver Justification**

This section of the Notice briefly describes the basis for each waiver and related alternative requirements, if any. Each grantee under today's Notice may request additional waivers from the Department as needed to address specific needs related to its recovery activities. The Department will respond to requests for waivers of provisions not covered in this Notice, after working with the grantee to tailor its program(s) to best meet its disaster recovery needs.

Each grantee under today's Notice receives an annual CDBG allocation, and therefore has a consolidated plan, citizen participation plan, monitoring plan, and has made CDBG certifications. To facilitate the timeliness of assistance, and expedite community recovery, HUD encourages each grantee to carry out its CDBG disaster recovery activities, to the extent possible, in the context of its ongoing community development programs (for example, by selecting activities consistent with the consolidated plan, by providing overall benefit to at least 70 percent low- and moderate-income persons, and by holding hearings or meetings to solicit public comment).

The waivers, alternative requirements, and statutory changes described in this Notice apply only to the CDBG supplemental disaster recovery funds appropriated in the Supplemental Appropriations Act, and not to funds provided under the regular CDBG program or those provided under any other component of the CDBG program, such as the Neighborhood Stabilization Program. These actions provide additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation.

The following application and reporting waivers and alternative requirements are in response to requests from each grantee under this Notice.

**Application for Allocations Under the Supplemental Appropriations Act, 2010**

These waivers and alternative requirements streamline the pre-grant process and set guidelines for each

grantee's application. HUD encourages each grantee that receives an allocation to submit an Action Plan for Disaster Recovery to HUD as soon as practicable following this Notice. Please see paragraph 5 under "Applicable Rules, Statutes, Waivers, and Alternative Requirements; Pre-Grant Process," for more detailed information regarding the Action Plan requirements.

#### **Overall Benefit to Low- and Moderate-Income Persons**

The primary objective of Title I of the HCD Act and of the funding program of each grantee is the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." 42 U.S.C. 5301(c). The statute goes on to require that 70 percent of the aggregate of a regular CDBG program's funds be used to support activities benefitting low- and moderate-income persons. Many communities that have suffered a Presidentially-declared disaster find this target difficult, if not impossible, to reach. Furthermore, previous disasters, and disasters covered by the Supplemental Appropriations Act, 2010, affect entire communities regardless of income, often causing extensive damage to community structures, housing occupied by persons and families of varying incomes, and infrastructure. Disaster-affected communities are also often faced with the dissolution, or relocation of income-producing jobs.

Therefore, today's Notice provides grantees with greater flexibility to carry out recovery activities and grants an overall benefit waiver that allows for up to 50 percent of the grant to assist activities under the urgent need, or prevention or elimination of slums or blight, national objectives, rather than the 30 percent allowed under the regular CDBG programs.

HUD may provide additional waivers of this requirement only if the Secretary specifically finds a compelling need to further reduce or eliminate the percentage requirement. The requirement that each activity meet one of the three national objectives of the CDBG program is not waived.

#### **Expanded Distribution and Direct Action**

The waivers and alternative requirements allowing distribution of funds by a State to entitlement communities and Indian tribes, and to allow a State to carry out activities directly, rather than distribute all funds to units of local government, are

consistent with waivers granted for previous, similar CDBG disaster recovery supplemental appropriations. HUD believes that, in using statutory language similar to that used for prior CDBG supplemental appropriations, Congress is signaling its intent that the States under this appropriation also be able to carry out activities directly. Therefore, HUD is waiving program requirements in order to support this intent. HUD is also including in this Notice the necessary complementary waivers and alternative requirements related to subrecipients to ensure proper management and disposition of funds during grant execution and at closeout.

Please note that any city or county receiving a direct award under today's Notice will be subject to the standard entitlement regulations. Thus, the waiver and alternative requirement allowing a State to carry out activities directly are inapplicable and unnecessary.

#### **Use of Subrecipients**

The State CDBG program rule does not make specific provision for the treatment of entities called "subrecipients" in the CDBG entitlement program. The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. HUD and its Office of Inspector General have long identified the use of subrecipients as a practice that increases the risk of abuse of funds. However, HUD's experience is that this risk can be successfully managed by following the CDBG entitlement requirements and related guidance. Therefore, a State taking advantage of the waiver to carry out activities directly must follow the alternative requirements drawn from the CDBG entitlement rule and specified in this Notice whenever using a subrecipient. Any city or county receiving a direct award under today's Notice is subject to the standard CDBG entitlement regulations regarding subrecipients.

#### **Consistency With the Consolidated Plan**

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

consolidated plan) following the disaster. At that time, the grantee should also update its Analysis of Impediments, so that it more accurately reflects the impacts of the disaster.

#### **Action Plan for Disaster Recovery**

HUD is waiving the CDBG action plan requirements and substituting an Action Plan for Disaster Recovery. This will allow rapid implementation of disaster recovery grant programs and ensure conformance with provisions of the Supplemental Appropriations Act. Where possible, the Action Plan for Disaster Recovery, including certifications, should not repeat common action-plan elements the grantee has already committed to carry out as part of its annual CDBG submission.

Any grantee receiving an allocation under this Notice will be responsible for compliance with Federal requirements. During the course of the grant, HUD will monitor the grantee's actions and use of funds for consistency with the Action Plan. The grantee may submit an initial partial Action Plan and amend it one or more times subsequently until the Action Plan describes uses for the total grant amount. An Action Plan may also be amended to modify activities.

#### **Citizen Participation**

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

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

developed, published, and submitted to HUD.

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

- Proposed Action Plan for Disaster Recovery published via the usual methods and on the grantee's official Web site for no less than 7 calendar days of public comment;
- Final Action Plan posted on the Internet and submitted to HUD (grant application includes Standard Form 424 (SF-424) and certifications; other parts of the Action Plan may initially be submitted through the Department's Disaster Recovery Grant Reporting (DRGR) system, or by mailing/e-mailing a paper copy);
- HUD expedites review;
- HUD accepts the plan and prepares a cover letter, grant agreement, and grant conditions;
- Grant agreement signed by HUD and immediately transmitted to the grantee;
- Grantee signs and returns the grant agreement;
- HUD establishes the line of credit and the grantee requests and receives DRGR access (if the grantee does not already have it);
- If it has not already done so, grantee enters the Action Plan into DRGR and submits it to HUD. (Funds can be drawn from the line of credit only for an activity that is established in an Action Plan in DRGR.)

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

The Department expects each grantee to make a reasonable effort to notify all affected citizens that the Action Plan is available for comment. Examples of a reasonable effort include electronic mailings, press releases, statements by public officials, media advertisements, and personal contacts with neighborhood representatives. Grantees are cautioned that, despite the expedited application and plan process, they are still responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities. In addition, each grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction. This issue may be particularly applicable to States receiving an award under this Notice. Unlike grantees in the regular State CDBG program, State grantees

under today's Notice may make grants throughout the State, including into CDBG entitlement areas if these entitlements are included in a relevant disaster declaration. Thus, State CDBG staff may not be aware of limited-English-proficient (LEP) speaking populations in those metropolitan jurisdictions. For assistance in ensuring that this information is available to LEP populations, recipients should consult the *Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* published on January 22, 2007, in the **Federal Register** (72 FR 2732).

#### Administration Limitation

For all State grantees under today's Notice, the annual State CDBG program administration requirements must be modified to be consistent with the Supplemental Appropriations Act, which allows up to 5 percent of the grant to be used for administrative costs, whether by the State, by entities designated by the State, by units of general local government, or by subrecipients. The provisions at 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to any State grantee to the extent that they cap administration expenditures and require a dollar-for-dollar match of State funds for administrative costs exceeding \$100,000. However, a State under today's Notice may fund *planning activities* that exceed the 5 percent limitation on general administrative costs. HUD does not waive 24 CFR 570.489(a)(3), which allows a State to spend up to 20 percent of its total allocation on a combination of planning and program administration costs.

Any city or county receiving a direct award under today's Notice is also subject to the 5 percent administrative cap. This 5 percent applies to all administrative costs—whether incurred by the grantee or its subrecipients. However, the provisions at 24 CFR 570.200(g) allow a city or county to fund planning activities that may exceed the 5 percent general administration cap. Thus, similar to a State grantee, a city or county receiving a direct allocation under today's Notice is allowed to spend 20 percent of its total allocation on a combination of planning and program administration costs.

#### Planning

The annual State CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG

program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. These plans may guide long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, for State grantees receiving an award under this Notice, the Department is removing the eligibility requirements at 24 CFR 570.483(b)(5) or (c)(3). Instead, States must comply with 24 CFR 570.208(d)(4) when funding disaster recovery-assisted planning-only grants, or directly administering planning activities that guide recovery in accordance with the Supplemental Appropriations Act. 24 CFR 570.208(d)(4) will apply to any city or county receiving a direct allocation under this Notice.

#### Reporting

HUD is waiving the annual reporting requirement. In the alternative and to ensure consistency between grants allocated under today's Notice and grants allocated previously under the CDBG disaster recovery program, HUD is requiring quarterly reports from each grantee on the uses of the awarded funds, the funded activities, and other various aspects. HUD will use many of the data elements to exercise oversight for compliance with the requirements of this Notice and for prevention of fraud, abuse of funds, and duplication of benefits. To collect these data elements, HUD is requiring each grantee to report to HUD quarterly using the online DRGR system, which uses a streamlined, Internet-based format. Grantees will also use DRGR to record obligations and to make draws of funds from the line of credit established for each grant. HUD will use transactional data from DRGR, and grantee reports, to: (1) Monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (2) reconcile

budgets, obligations, funding draws, and expenditures; (3) calculate applicable administrative and public service limitations and the overall percent of benefit to low- and moderate-income persons; and (4) report to Congress and the public. Furthermore, the grantee reports and DRGR will be used as a basis for risk analysis in determining a monitoring plan.

The grantee must post the quarterly report on an Internet site for its citizens within 3 business days of the report's submission to HUD.

#### **Eligibility—Housing Related**

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

In addition, Metropolitan Nashville and Davidson County has stated that it may be necessary for the community to offer incentives to promote suitable housing development or resettlement in accordance with its comprehensive recovery plan. Generally, incentives are offered in addition to other programs or funding (such as insurance), to try to influence individual residential location decisions, when these decisions are in doubt. For example, a grantee may offer an incentive payment (possibly in addition to buyouts) for households that volunteer to relocate within a particular period of time, or who choose to resettle outside a 100- or 500-year floodplain.

In the past, the State of New York successfully used an incentive program to induce rapid and stable resettlement of lower Manhattan following September 11, 2001. Also, the city of Grand Forks, North Dakota, provided a very affordable soft-second loan as an incentive to help induce households to resettle within the city during its recovery. Therefore, Metropolitan Nashville and Davidson County may provide housing incentives so long as it maintains documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. The Department is waiving 42 U.S.C. 5305(a) and associated regulations to make this

use of grant funds eligible. Please note that this waiver does not permit a compensation program. Additionally, if the Entitlement grantee requires the incentives to be used for a particular purpose by the household receiving the assistance, then the activity will be that required use, and not considered as an incentive.

#### **Eligibility—Emergency Grant Payments**

Upon its request, HUD is waiving 42 U.S.C. 5305(a) so that Metropolitan Nashville and Davidson County may extend interim mortgage assistance to qualified individuals for up to 20 months. Several hundred families are in the position of paying a mortgage and rent while awaiting reconstruction or the implementation of a FEMA-funded hazard mitigation program. Thus, this interim assistance will be critical for many households facing financial hardship.

#### **Eligibility—Buildings for the General Conduct of Government**

Grantees under this Notice (except for the State of Tennessee) have requested a limited waiver of the prohibition on funding buildings for the general conduct of government. HUD has considered the request and agrees that it is consistent with the overall purposes of the 1974 Act for each requesting grantee to be able to use the grant funds under this notice to repair or reconstruct buildings used for the general conduct of government. Provided that the building is selected in accordance with the method described in the grantee's Action Plan for Disaster Recovery, and it has been determined that the building has substantial value in promoting disaster recovery. However, as stated by the Supplemental Appropriations Act, funds allocated under today's Notice may not be used for activities reimbursable by, or for which funds are made available by, FEMA or the Army Corps of Engineers.

#### **Anti-Pirating**

The limited waiver of the job relocation requirements allows a grantee to provide assistance to a business located in another State, or another labor market area within the same State, if the business was displaced from a declared area and wishes to return. This waiver is necessary to allow a grantee affected by a major disaster to reestablish and rebuild its employment base. This waiver will not apply to the City of Cranston.

#### **Relocation Requirements**

The grantees have indicated that they plan to engage in, or wish to facilitate,

voluntary acquisition and relocation activities (in a form often called "buyouts"), by using waivers related to acquisition and relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (URA), and the replacement of housing and relocation assistance provisions under section 104(d) of the HCD Act (42 U.S.C. 5304(d)). The grantees believe these waivers will more effectively assist displaced persons in a timely and efficient manner.

CDBG funds are Federal financial assistance. Therefore, CDBG-assisted programs or projects are subject to the URA and the government-wide implementing regulations at 49 CFR part 24. The URA's protection and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for CDBG-assisted programs or projects. The URA provides assistance and protections to individuals and businesses affected by Federal or federally-assisted projects. HUD is waiving the following URA requirements to help promote accessibility to suitable, decent, safe, and sanitary housing for victims of severe storms and flooding that occurred from March through May, 2010.

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

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

The URA and implementing regulations are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation

to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that the tenant is also provided with referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. This waiver gives grantees an additional relocation resource option.

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

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

demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified time frame. HUD is also waiving the relocation assistance requirements contained in section 104(d) of the HCD Act to the extent that they differ from those of the URA (42 U.S.C. 4601 *et seq.*). This change will simplify implementation while preserving statutory protections for persons displaced by projects assisted with CDBG disaster recovery grant funds.

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

#### **Program Income**

The waivers and alternative requirements pertaining to program income are most significant for State grantees under this Notice. Prior to 2002, program income earned on disaster recovery grants was usually considered program income in accordance with the rules of the regular State CDBG program of the applicable grantee. As a result, the funds lost their disaster recovery identity, and thereby lost use of the waivers and streamlined alternative requirements.

The HCD Act provides that a unit of general local government in receipt of CDBG funds from a State can retain program income if it uses the funds for

additional eligible activities under the annual CDBG program; although the Act also states that under certain circumstances, a State may require the program income to be returned.

This Notice waives the existing statute and regulations to give each State grantee, in all circumstances, the choice of whether a unit of general 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.

Additionally, this Notice addresses the use of program income for both State grantees, and units of general local government receiving a direct allocation under today's Notice. Any program income to the disaster recovery grant generated by activities undertaken directly by the grantee or its agent(s) will retain the original disaster recovery grant's alternative requirements and waivers and remain under the grantee's discretion until grant closeout. At closeout, any program income on hand or received subsequently will become program income to the grantee's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

#### **Economic Development**

Grantees under today's Notice (except for Shelby County) have asked to apply individual salaries or wages-per-job and the income limits for a household of one when documenting the national objective for business assistance activities. This method would replace the usual CDBG standard of total household income and income limits by total household size. The grantees have asserted that this proposed documentation would be simpler and quicker for participating lenders to administer, easier to verify, and would not misrepresent the amount of low- and moderate-income benefit provided. Upon consideration, HUD is granting this waiver. CDBG disaster recovery grantees received this waiver following September 11, 2001, the Gulf Coast hurricanes of 2005, and the Presidentially-declared 2008 disasters. Due to the significant breadth of many State and local economic development programs, this waiver will play a key role in streamlining the documentation process because it allows collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

In addition to national objective documentation, grantees under today's

Notice (except for the State of Tennessee) have requested a waiver of the standard public benefit provisions. The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the annual aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds were set more than a decade ago and, under disaster recovery conditions (which often require a larger investment to achieve a given result), can impede recovery by limiting the amount of assistance the grantee may provide to a critical activity. Requesting grantees will make public in their Action Plans the disaster recovery needs each activity is addressing and the public benefits expected.

After consideration, today's **Federal Register** Notice waives the public benefit standards for the cited activities, except that each grantee requesting the waiver shall report and maintain documentation on the creation and retention of: (a) Total jobs, (b) number of jobs within certain salary ranges, (c) the average amount of assistance per job by activity or program, and (d) the types of jobs. As a conforming change for the same activities or programs, HUD is also waiving paragraph (g) of 24 CFR 570.482 and paragraph (c) of 24 CFR 570.209 to the extent these provisions are related to public benefit.

#### Certifications

HUD is waiving the standard CDBG certifications and substituting an alternative requirement for certifications that are tailored to the CDBG disaster recovery grants.

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

Unless stated otherwise, the following waivers and alternative requirements apply to any State or unit of general local government receiving a direct award under this Notice.

1. *General note.* Prerequisites to a grantee's receipt of CDBG disaster recovery assistance include: (1) Adoption of a citizen participation plan; (2) publication of a proposed Action Plan for Disaster Recovery; (3) public notice and comment; and (4) submission to HUD of an Action Plan for Disaster Recovery, including certifications. Except as described in this Notice, statutory and regulatory provisions

governing the State CDBG program shall apply to any State receiving an allocation under this Notice, while statutory and regulatory provisions governing the CDBG entitlement program shall apply to any unit of general local government receiving a direct allocation in this Notice. Applicable statutory provisions can be found at 42 U.S.C. 5301 *et seq.* Applicable State and entitlement provisions can be found at 24 CFR part 570.

2. *Overall benefit waiver and alternative requirement.* The requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 24 CFR 570.200(a)(3), 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 a grant's funds are for activities that principally benefit low- and moderate-income persons.

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

4. *Consolidated Plan waiver.* Requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5), and 24 CFR 91.225(a)(5), that housing activities undertaken with CDBG funds be consistent with the consolidated plan, are waived. Further, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. These waivers apply only until the grantee first updates its strategic plan priorities (and the full consolidated plan) following the disaster. At that time, the grantee must also update its Analysis of Impediments, so that it more accurately reflects the impacts of the disaster.

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, 24

CFR 91.220, and 24 CFR 91.320 are waived for these disaster recovery grants. Each State or unit of general local government receiving a direct award under this Notice must submit to HUD an Action Plan for Disaster Recovery that describes:

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

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

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

(2) How it will leverage CDBG disaster recovery funds with funding provided by other HUD programs, FEMA (and specifically the Hazard Mitigation Grant Program), the Small Business Administration, the Army Corps of Engineers, the U.S. Department of Agriculture, and other State, local, private, and non-profit sources to generate a more effective and comprehensive recovery;

(3) How it will encourage construction methods that emphasize high quality, durability, energy efficiency, sustainability, and mold resistance, including how it will support adoption and enforcement of modern building codes and mitigation of flood risk, where appropriate; and

(4) How it will provide or encourage provision of adequate, flood-resistant housing for all income groups that lived in the disaster-affected areas prior to the incident date(s) of the applicable disaster(s), including a description of the activities it plans to undertake to address emergency shelter and transitional housing needs of homeless individuals and families (including subpopulations), to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, to help homeless persons make the transition to permanent housing and independent living, and to address the special needs of persons who are not homeless identified in accordance with 24 CFR 91.315(e) or 24 CFR 91.215(e) (as applicable);

C. Monitoring standards and procedures that are sufficient to ensure program requirements, including nonduplication of benefits, are met and

that provide for continual quality assurance, investigation, and internal audit functions with responsible staff reporting independently to the Governor of the State or, at a minimum, to the chief officer of the governing body of any designated administering entity;

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

E. Projected uses of funds.

(1) *Funds awarded to a State; method of distribution.* A State's method of distribution shall describe the method of allocating funds to units of local government and descriptions of specific programs or projects the State will carry out directly, as applicable. The descriptions will include:

(a) When funds are allocated to units of local government, all criteria used to distribute funds, including: (1) The relative importance of each criterion, (2) a description of how the disaster recovery grant resources will be allocated among all funding categories, and (3) the threshold factors and grant size limits that are to be applied; and

(b) The projected uses for the CDBG disaster recovery funds, by responsible entity, activity, and geographic area, when the State carries out an activity directly;

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

(2) *Funds awarded directly to a unit of general local government.* The unit of local government shall describe specific programs and projects it will carry out. The Action Plan will describe:

(a) How the disaster recovery grant resources will be allocated and the relative importance of all criteria by which projects are selected; and

(b) The threshold factors and grant size limits that are to be applied; and

(c) The projected uses for the CDBG disaster recovery funds, by responsible entity, activity, and geographic area; and

(d) How the use of funds described in accordance with the above subparagraphs will result in eligible

uses of grant funds related to long-term recovery from specific effects of the disaster(s), or restoration of infrastructure, housing, and economic revitalization.

(3) *Clarity of Action Plan.* All grantees must include sufficient information so that citizens, units of general local government (where applicable), and other eligible subgrantees or subrecipients will be able to understand and comment on the Action Plan and, if applicable, be able to prepare responsive applications to the grantee. If a grantee submits an action plan that includes sufficient detail and clarity for only a portion of the allocation, HUD may still issue a grant agreement for the entire grant amount. However, HUD will restrict access to the portion of the funds for which the grantee has not clearly described eligible activities.

6. *Citizen participation waiver and alternative requirement.* Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 24 CFR 91.105(b), 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 a State, entitlement, or local government level, but do require providing a reasonable opportunity (at least 7 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for a grant administered under this Notice are:

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

B. Each grantee will specify in its Action Plan criteria for determining what changes in the grantee's activities constitute a substantial amendment to the plan. At a minimum, adding or

deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change. The grantee may modify or substantially amend the Action Plan if it follows the same procedures required in this Notice for the preparation and submission of an Action Plan for Disaster Recovery. Prior to submission of a substantial amendment, the grantee is encouraged to work with the Department to ensure the proposed change is consistent with this Notice, and all applicable regulations and Federal law.

C. The grantee must notify HUD, but is not required to notify the public, when it makes any plan amendment that is not substantial. The Department may acknowledge receipt of the notification via e-mail within 5 business days.

D. The grantee must consider all comments received on the Action Plan or any substantial amendment. A summary of the comments and the grantee's response to each must be submitted to HUD with the Action Plan or substantial amendment.

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

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

7. *Modify requirement for consultation with local governments—applicable to State grantees only.* Currently, the statute and regulations require consultation with affected units of local government in the non-entitlement areas of the State regarding the State's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that any State receiving an allocation under this Notice consult with all disaster-affected units of general local government, including any CDBG-entitlement communities, in determining the use of funds.

8. *Note on change to administration limitation.* Up to 5 percent of the grant amount may be used for administrative costs.

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

B. Any city or county receiving a direct award under today's Notice is also subject to the 5 percent administrative cap. This 5 percent applies to all administrative costs—whether incurred by the grantee or its subrecipients. To the extent necessary, HUD retains the provisions of 24 CFR 570.200(g) which allow a city or county to fund planning activities that may exceed the 5 percent general administration cap. Thus, similar to a State grantee, a city or county receiving a direct allocation under today's Notice is ultimately limited to spending 20 percent of its total allocation on a combination of planning and program administration costs.

9. *Planning activities.* For CDBG disaster recovery-assisted general planning activities that will guide recovery in accordance with the Supplemental Appropriations 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 for any State grantee under this Notice. 24 CFR 570.208(d)(4) will apply to any unit of general local government that receives a direct allocation under this Notice.

10. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties—applicable to State grantees only.*

A. Section 5302(a)(7) of title 42, U.S.C. (definition of “nonentitlement area”) and provisions of 24 CFR part 570 that would prohibit a State from distributing CDBG funds to UGLGs regardless of their status in the entitlement CDBG program and to Indian tribes, are waived, including 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of local government located in entitlement areas, and to State or federally recognized Indian tribes. Instead, the State is required to distribute funds to activities assisting a declared county or counties and eligible under this Notice without regard to the

status of a local government or Indian tribe under any other CDBG program.

B. Additionally, because the State grantees under this appropriation have requested a waiver to carry out activities directly, HUD is applying the regulations at 24 CFR 570.480(c) with respect to the basis for HUD determining whether the State has failed to carry out its certifications so that such basis shall be that the State has failed to carry out its certifications in compliance with applicable program requirements.

11. *Use of subrecipients—applicable to State grantees only.* The following alternative requirement applies for any activity that a State carries out directly by funding a subrecipient:

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

B. 24 CFR 570.502(a), in instances where a State's subrecipients are governmental entities, except that HUD recommends, but does not require, application of the requirements at 24 CFR part 85.

C. 24 CFR 570.502(b), in instances where a State's subrecipients are not governmental entities, except that HUD recommends, but does not require, application of the requirements at 24 CFR part 84.

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

13. *Change of use of real property—applicable to State grantees only.* This waiver conforms the change of use of

real property rule to the waiver allowing a State to carry out activities directly. For purposes of this program, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), “unit of general local government” shall be read as “unit of general local government or State.”

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

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

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

B. Each grantee must submit a quarterly performance report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award and continuing until all funds have been expended and all expenditures reported. Each quarterly report will include information about the uses of funds during the applicable quarter including (but not limited to) the project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the

funding source and total amount of any non-CDBG disaster funds; beginning and ending dates of activities; and performance measures such as numbers of low- and moderate-income persons or households benefiting. Quarterly reports to HUD must be submitted using HUD's Internet-based DRGR system and, within 3 days of submission, be posted on the grantee's official Internet site open to the public.

16. *Housing-related eligibility waivers.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow: (1) Homeownership assistance for households with up to 120 percent of area median income, (2) downpayment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)), and (3) new housing construction.

17. *Housing incentives to resettle in disaster-affected communities.* 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to make eligible incentives to resettle in Metropolitan Nashville and Davidson County. The incentives must be in accordance with Metropolitan Nashville and Davidson County's approved Action Plan and published program design(s). Furthermore, the Entitlement grantee must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. Please note that this waiver does not permit a compensation program. Additionally, if the Entitlement grantee requires the incentives to be used for a particular purpose by the household receiving the assistance, then the activity will be that required use, and not considered as an eligible incentive.

18. *Limitation on emergency grant payments.* 42 U.S.C. 5305(a) is waived so that Metropolitan Nashville and Davidson County can extend interim mortgage assistance to qualified individuals for up to 20 months.

19. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow the grantee to fund the rehabilitation or reconstruction of public buildings that are otherwise ineligible and that are selected in accordance with its approved Action Plan for Disaster Recovery and that are determined have substantial value in promoting disaster recovery. Please note that this waiver is inapplicable to the State of Tennessee.

20. *Waiver and modification of the job relocation clause to permit assistance to help a business return.* 42 U.S.C. 5305(h), 24 CFR 570.210, and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was

operating in the covered disaster area before the incident date of the applicable disaster and has since moved, in whole or in part, from the affected area to another State or to a labor market area within the same State to continue business. Please note that this waiver and modification is inapplicable to the City of Cranston.

21. *URA provisions.*

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

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

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

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

To the extent that a tenant has been paying rent in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required. Before using this waiver, the State must establish a definition of "demonstrable hardship."

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

the period of authorized assistance is at least 42 months.

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

22. *Program income alternative requirement.*

A. Units of general local government receiving a direct allocation under this Notice. Any unit of general local government receiving a direct allocation under this award will be subject to 24 CFR 570.500 and 24 CFR 570.504. However, please note:

(1) Program income that is received and retained by the unit of local government *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.

(2) Program income that is received and retained by the unit of local government *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.

B. State grantees under this Notice. 42 U.S.C. 5304(j), and 24 CFR 570.489(e) are waived to the extent necessary to allow additional flexibility in the administration of program income.

(1) Program income.

(a) For the purposes of this subpart, "program income" is defined as gross income generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section, and received by: (1) A State, unit of local government, or tribe, or (2) a subrecipient of a State, unit of general local government, or tribe. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds).

Program income includes, but is not limited to, the following:

- (i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
- (ii) Proceeds from the disposition of equipment purchased with CDBG funds;
- (iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or a 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, unit of local government, or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

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

- (i) The total amount of funds which is less than \$25,000 received in a single year and retained by a unit of local government, tribe, or subrecipient;
- (ii) Amounts generated by activities eligible under section 105(a)(15) of the HCD Act and carried out by an entity under the authority of section 105(a)(15) of the HCD Act;

(c) A State may permit a unit of local government or tribe which receives or will receive program income to retain the program income, subject to the requirements of paragraph B(1)(c)(ii) of this section. In the alternative, the State may require the unit of local

government or tribe to pay the program income to the State.

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

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

(A) Program income that is received and retained by the unit of 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 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) Unit of local government or tribes, to the maximum extent feasible, should disburse program income that is subject to the requirements of this Notice before requesting additional funds from the grantee for activities, except as provided in paragraph (b) of this section.

(2) Revolving funds.

(a) The State may establish or permit a unit of local government or tribe 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. These activities generate payments, which will be used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

(b) The State may also establish a revolving fund to distribute funds to

units of local government or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of local government to carry out specific activities. These activities generate payments to the fund so that additional grants can be made to units of local government to carry out similar activities going forward. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the U.S. Treasury for payments to units of local government that could be funded from the revolving fund.

(c) A revolving fund established by the State shall not be directly funded or capitalized with grant funds.

(3) 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 local government or Indian tribe within the State.

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

23. *National Objective Documentation for Economic Development Activities.* 24 CFR 570.483(b)(4)(i) and 570.208(a)(4)(i) are waived to allow the grantees under this Notice (except for Shelby County) to establish low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family.

24. *Public benefit for certain economic development activities.* For economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects), the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 24 CFR 570.209(b)(1), (2), (3)(i), (4) are waived. However, grantees shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided

per job, by activity or program; and the types of jobs. Paragraph (g) of 24 CFR 570.482, and 24 CFR 570.209(c), and (d) are also waived to the extent these provisions are related to public benefit. Please note that these waivers and alternative requirements will not apply to the State of Tennessee.

25. *Allow reimbursement for pre-agreement costs.* The provisions of 24 CFR 570.489(b) are applied to permit a State to reimburse itself for otherwise allowable costs incurred on or after the incident date of the covered disaster. Any unit of general local government receiving a direct allocation under this Notice is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself for otherwise allowable costs incurred on or after the incident date of the covered disaster. 24 CFR 570.200(h)(1)(i) will not apply to the extent that it requires pre-agreement activities to be included in a consolidated plan.

The Department expects both State grantees and units of general local government receiving a direct award under this Notice to include all pre-agreement activities in their Action Plans.

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

27. *Duplication of benefits.* In general, section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5155), as amended, prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source.

In order to comply with this law, grantees should ensure that each program provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met. Generally, all sources of assistance should be included in this needs analysis, including, but not limited to, funds received (or to be received) via

insurance, FEMA, the SBA, other local, State, or Federal programs, or recovery support from private charity organizations. However, the Stafford Act prohibition on duplication of disaster recovery assistance does not require the ultimate CDBG award to be reduced by: (1) Private loans; (2) funds provided for a general, non-specific purpose, *i.e.* "disaster recovery"; and (3) other assets or lines of credit available to a homeowner or a business owner. This last category includes, but is not limited to, the following: Checking or savings accounts, stocks, bonds, mutual funds, pension or retirement benefits, credit cards, mortgages or lines of credit, and life insurance. Please note that these items may be held in the name of an individual, or in the name of a business. (Of course, such other resources may be considered as the grantee determines, in accordance with the principles of cost circular OMB A-87, the necessary and appropriate amount of assistance to provide to achieve program purposes.)

In general, please note that CDBG disaster recovery funds should not be used to pay down an SBA loan. Rather, if need remains after an SBA loan has been executed, additional CDBG funds may be used to address that need. However, in certain situations (to be determined and defined by each grantee), SBA loans may be paid down, upon inclusion of this activity in a HUD-accepted Action Plan or Action Plan Amendment.

Last, the Supplemental Appropriations Act stipulates that funds may not be used for activities reimbursable by, or for which funds have been made available by, FEMA or by the Army Corps of Engineers.

28. *Note that use of grant funds must relate to the purposes of the Supplemental Appropriations Act, 2010.* In addition to being eligible under 42 U.S.C. 5305(a) or this Notice, and meeting a CDBG national objective, the Supplemental Appropriations Act requires that activities funded under this Notice must be necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by severe storms and flooding from March through May, 2010, for which the President declared a major disaster covering an entire State, or States with more than 20 counties declared major disasters, under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*).

29. *Notes on flood buyouts.*

A. Payment of pre-flood values for buyouts. Grant recipients under this

Notice have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a floodway or floodplain. In using CDBG disaster recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

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

C. Future Federal assistance to owners remaining in floodplain.

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

abovementioned repair, replacement, or restoration to a person who has failed to meet this requirement.

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

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

(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 shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

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

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

### 30. Procurement.

A. Grants to States. Per 24 CFR 570.489(d), a State must have fiscal and administrative requirements for expending and accounting for all funds. Furthermore, per 24 CFR 570.489(g), a State shall establish requirements for procurement policies and procedures for units of general local government based on full and open competition. All subgrantees of a State (including units of general local government) are subject to the procurement policies and procedures required by the State.

A State may meet the above requirements by adopting 24 CFR part 85. If a State has adopted part 85 in full, it must follow the same policies and procedures it uses when procuring property and services with its non-Federal funds. However, the State must ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations per 24 CFR 85.36(a).

If a State has *not* adopted 24 CFR 85.36(a), but *has* adopted 24 CFR 85.36(b)–(i), the State and its subgrantees must follow State and local law (as applicable), so long as the procurements conform to applicable Federal law and the standards identified in 24 CFR 85.36(b)–(i).

B. Direct grants to units of general local government. Any unit of general local government receiving a direct appropriation under today's Notice will be subject to 24 CFR 85.36(b) through (j).

31. *Timely distribution of funds.* 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived. However, HUD expects each grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner.

32. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or

sponsor, nor is a person required to respond to, a collection of information, unless the collection displays a valid control number.

33. *Certifications waiver and alternative requirement.* Sections 91.325 and 91.225 of title 24 of the Code of Federal Regulations are waived. Each State or unit of general local government receiving a direct allocation under this Notice must make the following certifications prior to receiving a CDBG disaster recovery grant:

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

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

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

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

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

G. The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105 or 91.115, as applicable (except as provided for in notices providing waivers and alternative requirements for this grant). Also, each unit of local government receiving assistance from the grantee must follow a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices

providing waivers and alternative requirements for this grant).

H. Each State receiving a direct award under this Notice certifies that it has consulted with affected units of local government in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the State in determining the method of distribution of funding.

I. The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by severe storms and flooding that occurred between March and May, 2010, for which the President declared a major disaster covering an entire State, or States with more than 20 counties declared major disasters, under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*).

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

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

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

sufficient CDBG funds (in any form) to comply with the requirements of clause (A).

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

K. The grantee certifies that it has and that it will require UGLGs that receive grant funds to certify that they have adopted and are enforcing:

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

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

L. Each State receiving a direct award under this Notice certifies that each State grant recipient or administering entity has the capacity to carry out disaster recovery activities in a timely manner, or the State has a plan to increase the capacity of any State grant recipient or administering entity that lacks such capacity.

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

N. The grantee certifies that it will comply with applicable laws.

**Duration of Funding**

Availability of funds provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510), limit the availability of certain appropriations for expenditure. This limitation may not be waived. However, the Supplemental Appropriations Act for these grants directs that these funds be available until expended unless, in accordance with 31 U.S.C. 1555, HUD determines that the purposes for which the

appropriation has been made have been carried out and no disbursement has been made against the appropriation for 2 consecutive fiscal years. In such a case, HUD shall close out the grant prior to expenditure of all funds.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.218; 14.228.

**Finding of No Significant Impact**

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

**Appendix A—Allocation Methodology Detail**

HUD determined that only four States met the statutory requirements for funding eligibility under Pub. L. 111–212: Tennessee, Rhode Island, Kentucky, and Nebraska each had federally declared disasters due to both flooding and severe storms that occurred between March 1 and May 31, 2010 where either the whole State or at least 20 counties were declared by the President to be major disasters.

HUD made preliminary estimates of unmet needs for each State. In total, HUD estimated across the four disasters nearly \$694 million in remaining unmet needs after taking into account losses already covered by insurance, FEMA Public Assistance, FEMA Individual Assistance, and SBA Business Disaster Loans (*see* Table 1). With only \$50 million allocated by this Notice, awards were made to the three States with the greatest unmet needs—Tennessee, Rhode Island, and Kentucky.

TABLE 1—PRELIMINARY ESTIMATES OF UNMET NEEDS

State	Housing	Infrastructure	Business	Total
Tennessee .....	\$363,412,407	\$64,907,061	\$108,349,875	\$536,669,343
Rhode Island .....	54,111,522	3,290,878	23,910,814	81,313,214
Kentucky .....	60,379,939	3,540,307	10,899,431	74,819,677

TABLE 1—PRELIMINARY ESTIMATES OF UNMET NEEDS—Continued

State	Housing	Infrastructure	Business	Total
Nebraska .....	0	1,186,985	0	1,186,985
Total .....	477,903,868	72,925,231	143,160,120	693,989,220

For Tennessee, Rhode Island, and Kentucky, the amount of unmet needs substantially exceeded the amount available for allocation. Therefore, today's Notice allocated \$13 million to both Rhode Island and Kentucky, and \$24 million to Tennessee.

These base allocations were designed to address a part of the unmet needs existing in each State.

The substate allocations were made to entitlement jurisdictions within the State based on their proportional share of need

within the State, provided that no grant to a local government would be less than \$1 million.

TABLE 2—FORMULA ALLOCATIONS

Disaster No.	State	Grantee	Allocation
1912 .....	Kentucky .....	State Government .....	\$13,000,000
1894 .....	Rhode Island .....	City of Cranston .....	1,277,067
1894 .....	Rhode Island .....	City of Warwick .....	2,787,697
1894 .....	Rhode Island .....	State Government .....	8,935,237
1909 .....	Tennessee .....	City of Memphis .....	2,031,645
1909 .....	Tennessee .....	Nashville-Davidson County .....	10,731,831
1909 .....	Tennessee .....	Shelby County .....	1,212,788
1909 .....	Tennessee .....	State Government .....	10,023,735
Total .....	.....	.....	50,000,000

#### Available Data

The Department identified available data to calculate "relative damage and anticipated assistance from Federal sources" from the following sources:

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

#### Calculating Unmet Housing Needs

The core data on housing damage for both the unmet housing needs calculation and the concentrated damage were based on home inspection data for FEMA's Individual Assistance program. For unmet housing needs, the FEMA data were supplemented by Small Business Administration data from its Disaster Loan Program. HUD calculated "unmet housing needs" as the number of housing units with unmet needs times the estimated cost to repair those units less repair funds already provided by FEMA, where:

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

- The number of rental units with unmet needs were units FEMA housing inspectors determined received more than \$1,000 in personal property damage AND were occupied by households with an income reported to FEMA of less than \$20,000. The use of the \$20,000 income cut-off for calculating rental unmet needs is intended to capture the loss of affordable rental housing.

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

(Please note that FEMA has recently raised its maximum grant amount above \$28,800. For this allocation, HUD continued to use the \$28,800 as the threshold to be consistent with past allocations. FEMA no longer estimates the cost to repair rental properties, it only estimates the cost to replace the personal property of renters. Based on a comparison of personal property loss to real property repair loss of homeowners, HUD has made a rough calculation that personal property loss of renters of \$7,500 or greater equates to Severe real property damage; \$3,500 to \$7,499 equates to Major-High damage; \$2,000 to \$3,499 equals Major-Low damage; \$1,000 to \$1,999 equals Minor-High damage; and less than \$1,000 equals Minor-Low damage.)

- The average cost to fully repair a home for a specific disaster within each of the damage categories noted above was

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

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

#### Calculating Infrastructure Needs

Unmet infrastructure need was calculated as the required match portion for the public assistance program for the categories of activities most likely to require CDBG funding above the Public Assistance and State Match requirement. Those activities were categories: C—Roads and Bridges; D—Water Control Facilities; E—Public Buildings; F—Public Utilities; and G—Recreational-Other. Categories A (Debris Removal) and B (Protective Measures) were largely expended immediately after a disaster and reflect interim recovery measures rather than the long-term recovery measures the CDBG funds are generally used for. Not all disasters have the same match requirements under Public Assistance. Each State's match unmet need infrastructure was calculated at the FEMA determined match requirement.

### Calculating Economic Revitalization Needs

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

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

Dated: November 3, 2010.

**Mercedes M. Márquez,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 2010-28421 Filed 11-9-10; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5450-N-01]

### Federal Housing Administration (FHA): Notice of FHA PowerSaver Home Energy Retrofit Loan Pilot Program: Request for Comments and Expressions of Interest

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces HUD's proposal to conduct an FHA Home Energy Retrofit Loan Pilot Program (Retrofit Pilot Program or Pilot Program) known as FHA PowerSaver. The Consolidated Appropriations Act, 2010 directs HUD to conduct an Energy Efficient Mortgage Innovation pilot program targeted to the single family housing market. The Retrofit Pilot Program is designed by HUD to meet this statutory directive and provides funding to support that effort.

Under the Retrofit Pilot Program, HUD, through FHA-approved lenders, will insure loans for homeowners who are seeking to make energy improvements to their homes. HUD intends to select a limited number of lenders to participate in the Retrofit Pilot Program. The Pilot Program will be for loans originated during a 2-year period, will be restricted to lenders

approved by HUD to participate in the Pilot Program, and will be conducted in geographic areas identified by HUD as optimum locations to conduct the Pilot Program. In making these determinations, HUD will consider the factors and criteria that are proposed in this notice to establish the framework for the Pilot Program, and for which HUD specifically solicits public comment.<sup>1</sup>

For this Pilot Program, HUD will deploy up to \$25 million appropriated by the Act for an Energy Efficient Mortgage Innovation Fund pilot program directed at the single family housing market. HUD will utilize those funds primarily to provide incentive payments with grant funds to participating lenders to support approved activities that deliver bona fide benefits to borrowers, with remaining funds available to support the evaluation of the Pilot Program.

Following the public comment period, HUD will announce the lenders that have been selected to participate in the Pilot Program, the geographic areas in which the Pilot Program will be conducted, and any modifications to the Retrofit Pilot Program made in response to public comment and/or in response to HUD's further consideration of how the pilot program should be structured. At the conclusion of the Pilot Program, HUD will assess the results of the Retrofit Pilot Program, and determine any additional action based on that assessment. HUD will assess the extent to which energy retrofits under the Pilot Program delivered expected benefits in terms of energy reductions, cost savings, and property value improvement, among other results.

In addition to seeking comments on the proposed Pilot Program, HUD invites lenders interested in participating in this Pilot Program to notify HUD of such interest as provided in Appendix A to this notice.

**DATES:** *Comment Due Date:* December 27, 2010.

<sup>1</sup> Section 470 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 3542) provides that: "No demonstration program not expressly authorized in law may be commenced by the Secretary of Housing and Urban Development until (1) a description of such demonstration program is published in the *Federal Register*, which description may be included in a notice of funding availability; and (2) there expires a period of sixty calendar days following the date of such publication, during which period the Secretary shall fully consider any public comments submitted with respect to such demonstration program." The Retrofit Pilot Program is specifically authorized by the Consolidated Appropriations Act, 2010. Accordingly, HUD is not required to solicit comment on this demonstration. Nevertheless, HUD welcomes public comment on the proposed pilot program.

**ADDRESSES: Note:** The following procedures pertain to the submission of general comments on this notice. Lenders interested in participating in this Pilot Program must e-mail their Expressions of Interest to [FHAPowerSaver@hud.gov](mailto:FHAPowerSaver@hud.gov) in accordance with Appendix A of this notice.

Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

**1. Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500.

**2. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

**Public Inspection of Public Comments.** All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal