

This process is conducted in accordance with 5 CFR 1320.10.

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

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

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

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

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

**OMB Number:** 1651-0111.

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

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

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

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

**Type of Review:** Extension (with change).

**Affected Public:** Individuals.

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

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

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

**Estimated Time per Response (ESTA):** 15 minutes.

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

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

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

Dated: February 6, 2009.

**Tracey Denning,**

*Agency Clearance Officer, Information Services Branch.*

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**BILLING CODE 9111-14-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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

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

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

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

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

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

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

#### FOR FURTHER INFORMATION CONTACT:

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

#### SUPPLEMENTARY INFORMATION:

##### Authority To Grant Waivers

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

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

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

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

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

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

#### *Additional Waivers*

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

#### **Allocations**

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

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

The Second 2008 Act further notes:

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

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

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

In determining the allocations, HUD focused on two factors:

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

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

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

A state included in the subsequent announcement may immediately

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

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

Recovery in accordance with this Notice.

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

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

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

The Second 2008 Act also directs the Secretary to:

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

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

#### **Waiver Justification**

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

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

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

#### **Application for Allocations Under the Second 2008 Act**

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

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

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

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

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

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

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

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

## Citizen Participation

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

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

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

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

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

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

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

## Administration Limitation

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

## Use of Subrecipients

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

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

## Reporting

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

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

**Eligibility—Housing Related**

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

**Anti-Pirating**

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

**Expanded Distribution and Direct Action**

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

**Relocation Requirements**

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

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

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

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

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

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

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

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

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

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

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

#### Program Income

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

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

#### Certifications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Program income.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**b. Revolving funds.**

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

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

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

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

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

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

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

**Reporting**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Relocation Requirements**

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

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

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

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

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

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

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

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

22. *Notes on flood buyouts:*

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

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

c. Future federal assistance to owners remaining in floodplain.

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

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

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

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

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

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

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

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

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

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

assistance provided with respect to the property.

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

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

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

#### Certifications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Duration of Funding

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

### Catalog of Federal Domestic Assistance

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

### Finding of No Significant Impact

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

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

Dated: February 10, 2009.

**Shaun Donovan,**

*Secretary.*

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

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

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

### Sport Fishing and Boating Partnership Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

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

**DATES:** The meeting will be held on Monday, March 2, 2009, from 1 p.m. to 5 p.m. and Tuesday, March 3, 2009 from 8:30 a.m. to 1:30 p.m. (Eastern Time). Members of the public wishing to participate in the meeting must notify Douglas Hobbs by close of business on Monday, February 23, 2009, per instructions under **SUPPLEMENTARY INFORMATION**.

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

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

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

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