

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Chapter V

[Docket No. FR-4254-N-01]

### HUD Disaster Recovery Initiative

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

**ACTION:** Notice of disaster recovery funds availability and waivers.

**SUMMARY:** The 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters, with respect to the HUD Disaster Recovery Initiative grant funds, requires the publication of a Notice governing the use of such funds in conjunction with any program administered by the Federal Emergency Management Agency (FEMA) for buyouts of structures in disaster areas. This Notice addresses that requirement and provides other guidance on the use of those funds.

**EFFECTIVE DATE:** June 12, 1997.

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

#### SUPPLEMENTARY INFORMATION:

### I. Empowering Communities for Recovery

#### A. Purpose

1. This Notice describes policies and procedures applicable to the HUD Disaster Recovery Initiative.

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

3. HUD's Disaster Recovery Initiative helps communities impacted by disasters receiving Presidential declarations. When other agencies cannot assist, HUD steps in with gap

funding for recovery activities—providing the glue that holds together the sometimes disconnected pieces of disaster recovery. Because Federal government resources will never be sufficient to cover costs of total recovery, HUD's program requires a partnership of Federal, State and local governments, the business community and citizens.

4. HUD Disaster Recovery funds are intended to support the activities of other Federal agencies and cannot be used for activities reimbursable or for which funds are made available by the Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA), or the U.S. Army Corps of Engineers (USACE).

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

1. An objective of the program is the redevelopment of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, especially for persons of low and moderate income.

2. A grantee must use at least 50 percent of its HUD Disaster Recovery funds for activities that benefit persons of low and moderate income. The Secretary may waive this requirement only on a case-by-case basis. HUD will consider such a waiver after receiving a request from a grantee that includes a justification that establishes good cause for the waiver and reflects a public purpose.

#### C. Definitions

Regulatory references are in title 24 of the Code of Federal Regulations (CFR), unless otherwise cited.

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

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

*Chief Executive Officer of a State or unit of general local government* means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit

of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of a unit of general local government.

*City* means the following:

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

*Grantee* means:

- a. A City that receives no less than \$200,000 under the disaster formula allocation, has the capacity to carry out this program, and remaining disaster recovery needs; or that is in a State in which HUD administers its community development program.
- b. A County that receives no less than \$200,000 under the disaster formula allocation, has the capacity to carry out this program, and remaining disaster recovery needs; or that is in a State in which HUD administers its community development program. The county may designate a local government or governments to carry out the program on its behalf.

c. A State government that receives a HUD Disaster Recovery grant allocation that includes funds calculated for places that would have received an allocation below the minimum grant size.

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

HUD means the Department of Housing and Urban Development.

**Income.** For the purpose of city and county grantees determining whether a family or household is low- and moderate-income, grantees may select any of the three definitions listed below for each activity, except that integrally related activities of the same type and qualifying under the same paragraph of § 570.208(a) shall use the same definition of income. The option to choose a definition does not apply to activities that qualify under § 570.208(a)(1) (Area benefit activities), except when the recipient carries out a survey under § 570.208(a)(1)(vi). Activities qualifying under § 570.208(a)(1) generally must use the area income data supplied to recipients by HUD.

a. The three definitions are as follows:

i. **Annual income** as defined under the Section 8 Housing Assistance Payments program at § 813.106 (except that if the HUD Disaster Recovery Initiative assistance being provided is homeowner rehabilitation, the value of the homeowner's primary residence may be excluded from any calculation of Net Family Assets); or

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

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

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

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

from the HUD Disaster Recovery grant-assisted activity shall not be considered in calculating estimated annual income.

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

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

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

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

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

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

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

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

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

**State** means any State of the United States, or an instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

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

#### D. Allocation of Funds

1. \$500 million has been appropriated for the HUD Disaster Recovery Initiative under Title II, Chapter 10 of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters (Pub. L. 105-18; approved June 12, 1997) (the 1997 Supplemental Appropriations Act).

2. HUD will generally allocate funds to grantees based on a formula that reflects disaster recovery needs that are not met by other Federal programs provided that the grantee has the capacity to carry out this program, and on remaining needs.

#### E. Submission Requirements

1. Prerequisites to a grantee's receipt of a HUD Disaster Recovery grant include a citizen participation plan; publication of Plan proposals by grantees; notice and comment; and submission of an Action Plan for Disaster Recovery.

2. Each city or county grantee must submit to HUD, for approval, an Action Plan for Disaster Recovery that describes:

- a. The recovery needs resulting from the covered disaster;
- b. The grantee's overall plan for recovery;
- c. Expected Federal, non-Federal public, and private resources, and their relationship, if any, to activities to be funded with HUD Disaster Recovery funds;
- d. The projected uses for the HUD Disaster Recovery funds; and
- e. In the case of a new HUD grantee, it should describe how expenditure of its funds fits within a current local or State recovery plan.

3. The city or county grantee must describe monitoring standards and procedures pursuant to § 91.230 and include certifications pursuant to:

- a. § 91.225(a)(1), affirmatively furthering fair housing;
- b. § 91.225(a)(3), drug-free workplace;
- c. § 91.225(a)(4), anti-lobbying;
- d. § 91.225(a)(7), acquisition and relocation, except as waived;
- e. § 91.225(b)(1), citizen participation, except as waived;
- f. § 91.225(b)(5), excessive force;
- g. § 91.225(b)(6), compliance with anti-discrimination laws;
- h. § 91.225(b)(7), compliance with lead-based paint procedures; and
- i. § 91.225(b)(8), compliance with applicable laws.

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

- a. The recovery needs resulting from the covered disaster;

b. The grantee's overall plan for recovery;

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

d. The State's method of distribution.

5. A State grantee may distribute HUD Disaster Recovery funds to units of general local government, including city and county grantees that otherwise receive HUD Disaster Recovery funds, and to Indian tribes.

6. The State grantee must describe monitoring standards and procedures pursuant to § 91.330 and include certifications pursuant to:

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

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

c. § 91.325(a)(4), anti-lobbying;

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

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

f. § 91.325(b)(1), citizen participation, except as waived;

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

h. § 91.325(b)(5), compliance with antidiscrimination laws;

i. § 91.325(b)(6), excessive force;

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

7. Citizen participation

a. In order to permit public examination and appraisal of the Action Plan for Disaster Recovery, to enhance the public accountability of grantees, and to facilitate coordination of activities with different levels of government, the grantee (or unit of general local government receiving a grant from a State) shall in a timely manner—

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

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

iii. Provide citizens or, as appropriate, units of general local government with reasonable notice of, and opportunity to

comment on, any substantial change proposed to be made in the use of funds received under this grant from one eligible activity to another or in the method of distribution of such funds.

In preparing the Action Plan for Disaster Recovery, the grantee shall consider any such comments and views and may, if deemed appropriate by the grantee, modify the proposed Action Plan for Disaster Recovery. The Action Plan for Disaster Recovery shall be made available to the public, and a copy shall be furnished to the Secretary together with the certifications required under sections 3. and 5. above. Any Action Plan for Disaster Recovery may be modified or amended from time to time by the grantee in accordance with the same procedures required in this paragraph for the preparation and submission of such Action Plan for Disaster Recovery.

b. A HUD Disaster Recovery grant may be made only if the grantee certifies that it is following a detailed citizen participation plan that:

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

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

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

This paragraph may not be construed to restrict the responsibility or authority of the grantee for the development and execution of its HUD Disaster Recovery Initiative.

#### *F. Eligible Activities*

1. Grantees may not use HUD Disaster Recovery funds for activities reimbursable or for which funds are made available by the Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA), or the U.S. Army Corps of Engineers (USACE).

2. Disaster Recovery funds may be used for activities that are relevant to disaster recovery, as described in this Notice. Grantees must use funds appropriated under Title II, Chapter 10 of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters (Pub. L. 105-18) for buyouts, relocation, long-term recovery, and mitigation related to a covered disaster. These funds will supplement, not replace, Federal Emergency

Management Agency (FEMA) and other Federal funds. Those activities include:

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

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

c. Debris removal, clearance, and demolition;

d. Rehabilitation or reconstruction of residential and non-residential structures;

e. Acquisition, construction, reconstruction, or installation of public facilities and improvements, such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes;

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

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

h. Provision of public services, limiting costs to no more than 25 percent of the grant amount;

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

j. Provision of assistance to profit-motivated businesses to carry out economic development or recovery activities that benefit the public through job creation/retention; and

k. Planning and administration costs up to 20 percent of the grant (e.g., planning, urban environmental design and policy-planning-management-capacity building activities and payment of reasonable program administration costs for: general management, oversight and coordination; public information; fair housing activities; indirect costs charged to the HUD Disaster Recovery Initiative under a cost allocation plan prepared in accordance with OMB Circulars A-21, A-87, or A-122 as applicable; and submission of applications for Federal programs; as well as,

l. Acquisition, construction, or reconstruction of buildings for the general conduct of government damaged or destroyed as a direct result of a Presidentially declared disaster; and

m. Construction of new replacement housing by units of general local government damaged or destroyed as a direct result of a Presidentially declared disaster.

3. *Determination of eligibility.* An activity may be assisted in whole or in part with HUD Disaster Recovery funds

only if all of the following requirements are met:

a. *Compliance with section F.* Each activity must meet the eligibility requirements of section F of this notice.

b. *Compliance with national objectives.* Grant recipients under the HUD Disaster Recovery Initiative must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities that will carry out one of the national objectives of benefit to low- and moderate-income families or aid in the prevention or elimination of slums or blight; the projected use of funds may also include activities that the recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Consistent with the foregoing, each recipient must ensure, and maintain evidence, that each of its activities assisted with HUD Disaster Recovery funds meets one of the three national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are contained at § 570.208.

c. *Compliance with the primary objective.* The primary objective of the HUD Disaster Recovery Initiative is the redevelopment of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, especially for persons of low and moderate income. In determining the percentage of funds expended for such activities:

i. Costs of administration and planning eligible under section F.1. of this notice will be assumed to benefit low- and moderate-income persons in the same proportion as the remainder of the HUD Disaster Recovery funds and, accordingly, shall be excluded from the calculation;

ii. Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under § 570.208(a)(3) must be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including HUD Disaster Recovery grant and non-HUD Disaster Recovery grant costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low- and moderate-income persons.

iii. Funds expended for any other activities qualifying under § 570.208(a)

must be counted for this purpose in their entirety.

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

4. *Special policies governing facilities.* The following special policies apply to:

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

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

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

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

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

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

a. *Definition of special assessment.* The term "special assessment" means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

b. *Special assessments to recover capital costs.* Where HUD Disaster Recovery funds are used to pay all or part of the cost of a public

improvement, special assessments may be imposed as follows:

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

ii. Special assessments to recover the non-HUD Disaster Recovery grant portion may be made provided that HUD Disaster Recovery funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that HUD Disaster Recovery funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate-income persons if the grant recipient certifies that it does not have sufficient HUD Disaster Recovery funds to pay the assessments in behalf of all of the low- and moderate-income owner-occupant persons. Funds collected through such special assessments are not program income.

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

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

ii. The installation of the public improvement meets a criterion for national objectives in § 570.208 (a)(1), (b), or (c); and

iii. The requirements of § 570.200(c)(2)(ii) are met.

6. *Limitation on planning and administrative costs.*

a. No more than 20 percent of the sum of any grant, plus program income, shall be expended for planning and program administrative costs, paragraph F.1.k. HUD will consider requests for waiver and modification of this limitation under extraordinary disaster recovery circumstances on a case-by-case basis.

b. *State administrative costs.* The State is responsible for the administration of its HUD Disaster Recovery Initiative. The amount of HUD Disaster Recovery funds used to pay administrative costs incurred by the State in carrying out its responsibilities under this program shall not exceed 2 percent of the aggregate of the State's grant.

7. *Reimbursement for pre-award costs.* The effective date of the grant agreement is the program year start date.

a. Prior to the effective date of the grant agreement, a recipient may incur costs beginning on or after the incident date of the Presidentially declared disaster, and then after the effective date of the grant agreement pay for those costs using its HUD Disaster Recovery funds, provided that for city and county grantees:

i. The activity for which the costs are being incurred is included in its Action Plan for Disaster Recovery prior to the costs being paid;

ii. Citizens are advised of the extent to which these pre-award costs will affect the HUD Disaster Recovery funds;

iii. The costs and activities funded are in compliance with the requirements of this initiative and with the Environmental Review Procedures stated in 24 CFR part 58;

iv. HUD Disaster Recovery grant payments for pre-award costs will be made during a time no longer than the next 24 months following the effective date of the grant agreement or amendment in which the activity is first included; and

v. The total amount of pre-award costs to be paid during any program year pursuant to this provision is no more than the greater of 25 percent of the amount of the grant made for that year or \$300,000.

b. Upon the written request of the recipient, HUD may authorize payment of pre-award costs for activities that do not meet the criteria at paragraphs 7.a.iv or 7.a.v. of this section, if HUD determines, in writing, that there is good cause for granting an exception upon consideration of the following factors, as applicable:

i. Whether granting the authority would result in a significant contribution to the goals and purposes of the HUD Disaster Recovery Initiative;

ii. Whether failure to grant the authority would result in undue hardship to the recipient or beneficiaries of the activity;

iii. Whether granting the authority would not result in a violation of a statutory provision;

iv. Whether circumstances are clearly beyond the recipient's control; or

v. Any other relevant considerations.

8. *Activities outside the jurisdiction of the unit of general local government.*

HUD Disaster Recovery funds may assist an activity located outside the jurisdiction of the unit of general local government that receives the HUD Disaster Recovery funds, provided the unit of general local government determines that the activity is meeting

its disaster recovery needs and reasonable benefits accrue to residents of the jurisdiction.

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

HUD provides guidelines to assist the recipient to evaluate and select activities to be carried out for economic development purposes. These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are mandatory, but the guidelines for evaluating projects costs and financial requirements are not. They may be found at § 570.482 (e) and (f) for States and at § 570.209 for cities and counties. HUD may consider the waiver of such standards on a case-by-case basis upon submission of a written justification as to why the recipient cannot meet the requirement and a proposed alternative that assures at least a minimum level of public benefit.

#### *H. Ineligible Activities*

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

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

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

a. *Purchase of equipment.* The purchase of equipment with HUD Disaster Recovery funds is generally ineligible.

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

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

iii. *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. HUD Disaster Recovery funds may be

used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A-21, A-87 or A-122, as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with HUD Disaster Recovery funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service.

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

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

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

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

### *I. Criteria for National Objectives*

The criteria at § 570.483 and § 570.208 shall be used for States and for cities and counties, respectively, to determine whether a HUD Disaster Recovery Initiative-assisted activity complies with one or more of the national objectives.

### *J. Treatment of Program Income*

For cities and counties, program income generated by HUD Disaster Recovery Initiative becomes program income to the grantee's CDBG program, not to its HUD Disaster Recovery grant. (For new grantees, not participating in the CDBG program, program income is governed by the provisions of § 570.426). Therefore, any program income generated by HUD Disaster Recovery funds is to be included in cost cap calculations and program requirements for use of the CDBG funds. However, for States, the program income shall be returned to the State as program income for the year in which the State redistributes those funds.

### *K. Acquisition (Buyouts) of Flood-Damaged Properties*

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

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

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

### *3. Buyout of Undamaged Properties.*

a. Many buyout projects contain some properties that were undamaged by the floods. Local administrators sometimes seek to offer buyouts to owners of

undamaged properties to maximize clearance of the floodplain. Purchase of such properties with HUD Disaster Recovery funding is permitted if the properties are incidental to the project as a whole.

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

### *5. Future Federal Assistance to Owners Remaining in Floodplain.*

a. Section 582 of the National Flood Insurance Reform Act of 1994 (in Title V of Pub. L. 103-325) (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person that has failed to meet this requirement.

b. Section 582 also implies a responsibility for a grantee that receives HUD Disaster Recovery funds or that, under section 122 of the Act, designates annually appropriated CDBG funds for

disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

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

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

ii. Maintain flood insurance in accordance with applicable Federal law with respect to such property.

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

d. *Failure To Notify.* If a transferor fails to make notification and, subsequent to the transfer of the property:

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

ii. The property is damaged by a flood disaster; and

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

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

f. The term "Federal disaster relief assistance" applies to HUD or other Federal assistance for disaster relief in "flood disaster areas." This prohibition applies only to when the new disaster relief assistance was given for a loss caused by flooding. It does not apply to disaster assistance caused by other sources (i.e., earthquakes, fire, wind,

etc.). The term "flood disaster area" is defined in section 582(d)(2) to mean an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

#### *L. Other Program Requirements*

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

#### *2. Labor standards.*

In part because Davis-Bacon requirements are not applicable to Federal Emergency Management Agency (FEMA) disaster grants, it is necessary to clarify the applicability of Davis-Bacon requirements in relationship to the use of HUD Disaster Recovery funds in disaster recovery efforts. This section of this Notice addresses Davis-Bacon applicability to use of HUD Disaster Recovery funds to reimburse property owners for construction work either completed or in process at the time use of those funds is contemplated.

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

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

b. *Volunteers.* Section 110(b) of the Act provides for the use of volunteer

labor on construction work subject to Federal labor standards. Volunteers may be utilized to the extent permitted under the regulations in 24 CFR part 70.

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

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

i. Neither the owner nor the city or county grantee, or for States, the unit of general local government, contemplated use of or reimbursement by HUD Disaster Recovery funds for the rehabilitation(s) before or during the time construction work was underway; and

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

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

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

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

#### *3. National Flood Insurance Program.*

a. Cities and counties may not use HUD Disaster Recovery Initiative funding in flood hazard areas for acquisition or construction projects in communities that have been identified by FEMA as nonparticipating, noncompliant communities under the National Flood Insurance Program. Specific guidance can be found in the references in paragraph 3.b. for cities and counties. Though State-administered formula programs are statutorily exempt from flood insurance purchase requirements, HUD strongly encourages States to adopt a similar policy if they have the authority to do so. Listings of participating, nonparticipating, and suspended communities are in the FEMA Federal Insurance Administration's "National Flood Insurance Program Community Status Book," available on the World Wide Web at <http://www.fema.gov/home/fema/csb.htm> for viewing or downloading. FEMA's revised publication, "Mandatory Purchase of Flood Insurance Guidelines," reflecting new provisions of the National Flood Insurance Reform Act of 1994 is also available on the World Wide Web at <http://www.fema.gov/nfip/mpurfi.htm>.

b. Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) provides that no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes (as defined under section 3(a) of said Act (42 U.S.C. 4003(a)), one year after a community has been formally notified of its identification as a community containing an area of special flood hazard, for use in any area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. Notwithstanding the date of HUD approval of a city's or county's Action Plan for Disaster Recovery funds shall



not be expended for acquisition or construction purposes in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59–79, or less than a year has passed since FEMA notification to the community regarding such hazards; and, where the community is participating, flood insurance is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012(a).)

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

1. Title II, Chapter 10 of the 1997 Supplemental Appropriations Act provides that in administering these amounts, the Secretary may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds, except for statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, and labor standards, upon a finding that such waiver is required to facilitate the use of such funds, and would not be inconsistent with the overall purpose of the statute. As noted, the Secretary may not waive statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, or labor standards. The procedures set forth in this notice reflect the waiver of the statutory and regulatory requirements that the Secretary considered necessary for the implementation of the HUD Disaster Recovery Initiative, and that are authorized to be waived under Title II, Chapter 10 of the 1997 Supplemental Appropriations Act. The statutory and regulatory requirements that have been waived pertain to requirements governing consolidated planning submissions, CDBG program requirements, acquisition and relocation requirements, and other program related requirements. Appendix A to this notice lists the specific statutory and regulatory requirements that have been waived and sets forth the reasons for the waivers. With respect to the waivers of these statutory and regulatory requirements, no further action need be taken by the grantees.

2. HUD may issue additional waivers (beyond those already waived by the Secretary in the implementation of this

initiative) deemed appropriate under this authority. HUD will consider additional waivers on a case-by-case basis, as requested by grantees. Such waivers will receive expedited review.

3. Grantees should give priority to projects that benefit low- and moderate-income individuals to the maximum extent possible.

## II. Ensuring the Public Trust

### A. Program Administrative, Recordkeeping and Reporting Requirements

The program administrative requirements at §§ 570.489–570.492 for States and at §§ 570.500–570.513 for cities and counties, which are not otherwise waived, shall apply, except that, with respect to reporting:

1. States must submit a Performance Evaluation Report (PER) pursuant to 24 CFR 91.520, separately for the HUD Disaster Recovery Initiative, similar in all other respects to that which is required for the CDBG program regulated at 24 CFR part 570. The first PER for the HUD Disaster Recovery Initiative will be due ninety (90) days after the 12-month period following the effective date of the grant and each 12-month period thereafter until all funds are spent. The PER must include a special narrative that discusses how the State assured that activities met the requirements of this Notice with respect to the buyout of structures in a disaster area.

2. Cities and counties must submit a Performance Report for the HUD Disaster Recovery Initiative in accordance with 24 CFR 91.520. The Performance Report will be due ninety (90) days after each 12-month period following the effective date of the grant each year until all funds are spent. The final Performance Report will be due ninety (90) days after all funds are spent. It also must include a special narrative that discusses how the city or county assured that activities met the requirements of this Notice with respect to the buyout of structures in a disaster area.

3. In addition, Congress has required that quarterly reports be submitted on all disbursements and use of funds for or associated with buyouts. Therefore, each grantee must submit a quarterly report, as HUD will prescribe, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter after grant award. That report will include information on the project name, activity, location, national objective, funds budgeted and expended, non-HUD Disaster Recovery Initiative Federal source and funds,

numbers of properties and housing units, and numbers of low- and moderate-income households. HUD will seek approval from OMB for any new information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### B. Cost Principles

1. *Direct and Indirect Cost principles.* Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with OMB Circulars A–87, “Cost Principles for State, Local and Indian Tribal Governments”; A–122, “Cost Principles for Non-profit Organizations”; or A–21, “Cost Principles for Educational Institutions,” as applicable.<sup>1</sup> All items of cost listed in Attachment B of these Circulars that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under the HUD Disaster Recovery Initiative, except for the following:

- i. Depreciation methods for fixed assets shall not be changed without HUD’s specific approval or, if charged through a cost allocation plan, the Federal cognizant agency.
- ii. Fines and penalties (including punitive damages) are unallowable costs to the HUD Disaster Recovery Initiative.
- iii. Pre-award costs for city and county grantees are limited to those authorized under § 570.200(h).

2. *Uniform administrative requirements and cost principles.* The city or county grantee, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR part 85 and OMB Circulars A–87, A–110 (implemented at 24 CFR part 84), A–122, A–133 (implemented at 24 CFR part 45), as applicable, as they relate to the acceptance and use of Federal funds, HUD Disaster Recovery grants. The applicable sections of 24 CFR parts 84 and 85 are set forth at § 570.502. States shall comply with the applicable requirements of § 570.489 that are not otherwise waived.

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

<sup>1</sup> These circulars are available from the American Communities Center by calling the following toll-free numbers: (800) 998–9999 or (800) 483–2209 (TTY).



consultants is governed by the following:

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

b. *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36 and are not subject to the Level IV limitation.

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

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

a. Public Law 88-352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and implementing regulations in 24 CFR part 1.

b. Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act. Furthermore, for each grantee receiving a HUD Disaster Recovery grant, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.

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

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

1. No person in the United States shall on the ground of race, color, religion, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected

to discrimination under, any program or activity funded in whole or in part with HUD Disaster Recovery funds made available pursuant to the Act. For purposes of this requirement, "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient, or by any unit of government, subrecipient, or private contractor receiving HUD Disaster Recovery grant funds or loans from the recipient. "Funded in whole or in part with HUD community development funds" means that HUD Disaster Recovery funds have been transferred by the recipient or a subrecipient to an identifiable administrative unit and disbursed in a program or activity. The term "recipient" means recipient as defined in § 1.2(f).

2. *Specific discriminatory actions prohibited and corrective actions.* a. A recipient may not, under any program or activity, directly or through contractual or other arrangements, on the ground of race, color, religion, national origin, or sex:

i. Deny any individual any facilities, services, financial aid or other benefits provided under the program or activity.

ii. Provide any facilities, services, financial aid or other benefits that are different, or are provided in a different form, from that provided to others under the program or activity.

iii. Subject an individual to segregated or separate treatment in any facility in, or in any matter of process related to receipt of any service or benefit under the program or activity.

iv. Restrict an individual in any way in access to, or in the enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

v. Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition that the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

vi. Deny an individual an opportunity to participate in a program or activity as an employee.

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

particular race, color, religion, national origin, or sex.

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

d. i. In administering a program or activity funded in whole or in part with HUD Disaster Recovery funds regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin or sex, or if there is sufficient evidence to conclude that such discrimination existed, the recipient must take remedial affirmative action to overcome the effects of prior discrimination. The word "previously" does not exclude current discriminatory practices.

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

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

e. Notwithstanding anything to the contrary, nothing contained herein shall be construed to prohibit any recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

3. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) or with respect to an otherwise qualified handicapped person as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or

activity funded in whole or in part with HUD Disaster Recovery funds. HUD regulations implementing the Age Discrimination Act are contained in 24 CFR part 146 and the regulations implementing section 504 are contained in 24 CFR part 8.

#### *E. Environmental Review Requirements*

1. Prior to the commitment of any HUD Disaster Recovery funds, grantees must comply with the regulations in 24 CFR part 58. These regulations require: the analysis of potential environmental impacts; consultation with interested parties; and public notification of the results of the analysis and intent to request release of funds from HUD. Also, they require that the State or local government assume compliance with these rules by execution of the grant agreement with HUD, and a State or local government certification that it will comply with all the applicable Federal environmental laws.

2. *Disaster Recovery Assistance in a Flood Plain.* a. Grantees must follow the eight-step decision-making process required by Executive Order 11988, Flood Plain Management, codified for HUD programs at § 55.20. The Order covers the proposed acquisition, construction, improvement, disposition, financing, and use of property in a flood plain. Other related Federal environmental laws and authorities noted at § 58.5 may also apply.

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

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

4. *Joint Environmental Assessments between HUD and Other Federal Agencies.* a. In addition to the provisions of § 58.33, the following special procedures may be employed

when a project related to recovery from a covered disaster is jointly funded by HUD and other Federal agencies.

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

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

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

e. If an assessment showing no significant environmental impact is adopted by a State or local government administering the provisions of 24 CFR

part 58, it must formally record its adoption pursuant to § 58.38, prepare a statement that the proposed HUD funding of the proposed project produces no significant environmental impact (FONSI), and follow the provisions for release of funds as stated in subpart H of 24 CFR part 58, including notice to the public and the statutory waiting period.

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

1. *General policy for minimizing displacement.* Consistent with the other goals and objectives of the HUD Disaster Recovery Initiative, grantees (or States or State recipients, as applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this program.

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

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

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

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

(3) Before the date described in paragraph 2.b.i.(1) or (2), if either HUD or the grantee (or State, as applicable) determines that the displacement

directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

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

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

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

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

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

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

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

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

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

3. *Optional relocation assistance.* In connection with the use of HUD Disaster Recovery funds for buyouts, a grantee may provide (or the State may permit the State recipient to provide, as applicable) relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraphs 2. or 3. The grantee may also provide (or the State may also permit the State recipient to provide, as applicable) relocation assistance to persons receiving

assistance under paragraphs 2. or 3. of this section at levels in excess of those required by these paragraphs. Unless such assistance is provided under State or local law, the grantee (or State recipient, as applicable) shall provide such assistance only upon the basis of a written determination that the assistance is appropriate. The grantee (or State recipient, as applicable) must adopt a written policy available to the public that describes the relocation assistance that the grantee (or State recipient, as applicable) has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

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

5. *Appeals.* If a person disagrees with the determination of the grantee (or the State recipient, as applicable) concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the grantee (or the State recipient, as applicable). The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee's decision to the HUD Field Office. For purposes of State HUD Disaster Recovery funds, a low- or moderate-income household may file a written request for review of the State recipient's decision with the State.

6. *Responsibility of grantee or State.* a. The grantee (or State, if applicable) is responsible for ensuring compliance with these requirements, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this section. For purposes of State HUD Disaster Recovery funds, the State shall require State recipients to certify that they will comply with the requirements of this section.

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

c. The grantee (or State and State recipient, as applicable) must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

#### *G. Employment and Contracting Opportunities*

1. Grantees shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086,

and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264) (Equal Employment Opportunity) and the implementing regulations at 41 CFR chapter 60; and

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

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

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

b. Affirmative steps include:

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

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

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

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

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

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

#### *Lead-Based Paint*

1. *Requirements for city and county grantees.* City and county grantees shall comply with the requirements of § 570.608.

2. *Requirements for State grantees.* States shall comply with the provisions of § 570.487(c).

#### *Architectural Barriers Act and the Americans With Disabilities Act*

1. The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure

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

2. The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

#### *J. Constitutional Prohibition*

1. In accordance with First Amendment church/state principles, as a general rule, HUD Disaster Recovery Grant assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities.

2. The following restrictions and limitations therefore apply to the use of HUD Disaster Recovery funds.

a. HUD Disaster Recovery funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or purposes that will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph 2.b. of this section with respect to rehabilitation

and under paragraph 2.d. of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with HUD Disaster Recovery funds at no more than fair market value for a non-religious use.

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

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

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

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

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

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

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

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

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

c. As a general rule, HUD Disaster Recovery funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the recipient or subrecipient from

which the HUD Disaster Recovery funds are derived that, in connection with the provision of such services:

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

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

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

iv. Where the public services provided under paragraph 2.c. are carried out on property owned by the primarily religious entity, HUD Disaster Recovery funds may also be used for minor repairs to such property that are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the HUD Disaster Recovery grant expenditure for the public services.

#### *K. Political Activities*

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

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

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

#### *M. Conflict of Interest*

1. In the procurement of supplies, equipment, construction, and services by city and county grantees and by their subrecipients, the conflict of interest provisions in §§ 85.36 and 84.42, respectively, shall apply. States and their recipients shall be governed by the provisions of § 570.489(g).

2. In all cases not governed by 24 CFR 85.36 and 84.42, the following provisions shall apply. Such cases include the acquisition and disposition

of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to §§ 570.203, 570.204, or 570.703(i)).

3. *Conflicts prohibited.* The general rule is that no persons described in paragraph 4. who exercise or have exercised any functions or responsibilities with respect to HUD Disaster Recovery Initiative activities, or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a HUD Disaster Recovery grant, or have a financial interest in any contract, subcontract, or agreement with respect to a HUD Disaster Recovery grant, or with respect to the proceeds of the HUD Disaster Recovery Initiative-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

4. *Persons covered.* The conflict of interest provisions of paragraph 2. of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving HUD Disaster Recovery funds.

5. *Exceptions.* Upon the written request of a city or county grantee, HUD may grant an exception to the provisions of paragraph 2. of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of paragraph 5.a., taking into account the cumulative effects of paragraph 5.b. State grantees shall follow the provisions of § 570.489(h) covering exceptions to the provisions of paragraph 2.

a. *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

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

ii. An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

b. *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the

recipient has satisfactorily met the requirements of paragraph 5.a., HUD shall conclude that such an exception will serve to further the purposes of the HUD Disaster Recovery Initiative and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

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

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

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

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

v. Whether the interest or benefit was present before the affected person was in a position as described in paragraph b. of this section;

vi. Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

vii. Any other relevant considerations.

#### *N. Performance Reviews and Dispute Resolution and Enforcement Actions*

The provisions of 24 CFR subparts I and O apply to States and to cities and counties, respectively, regarding HUD's review of grantee performance, resolution of disputes regarding grantee performance, and adjudicative, remedial and enforcement actions that HUD may take to resolve noncompliance matters.

#### **Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers for the HUD Disaster Recovery Initiative are as follows: 14.218; 14.219; 14.228.

Dated: September 3, 1997.

**Jacquie M. Lawing,**

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

#### **Appendix A—Waiver of Requirements for Community Development Block Grant Funds Under the 1997 Emergency Supplemental Appropriations Act for Recovery From Natural Disasters (Public Law 105-18)**

Title II, Chapter 10 of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters (the Act), appropriates \$500 million in Community Development Block Grant (CDBG) funds to use for buyouts, relocation, long-term recovery, and mitigation in communities affected by the flooding in the upper Midwest and other covered natural disasters.

With respect to these supplemental funds, the Act authorizes the Secretary of HUD 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 the use by the recipient of these funds, except for statutory requirements related to civil rights, fair housing and nondiscrimination, the environment, and labor standards, upon a finding that such waiver is required to facilitate the use of such funds, and would not be inconsistent with the overall purpose of the statute."

In conjunction with this statutory provision and pursuant to 24 CFR 5.110, the Department has determined that it has good cause to waive certain regulatory provisions governing the use of Disaster Recovery Initiative funds. Therefore, to facilitate the use of the Disaster Recovery Initiative funds appropriated under Chapter 10 of the Act, the following provisions have been waived for the reasons set forth below. These waivers apply to activities funded under the Act with Disaster Recovery Initiative funds.

#### **Consolidated Submissions for Community Planning and Development Programs**

##### *Description of Requirements Waived*

- Citizen participation requirements at 42 U.S.C. 5304(a), 42 U.S.C. 5306(d)(5)(C), 24 CFR 91.105(c) and 91.115(c), to the extent that expedited amendment of the grantee's Consolidated Plan is necessary to ensure timely delivery of assistance, except that grantees must provide alternative procedures for public notice of funding availability, as approved by HUD.

*Justification:* To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary.

- The requirements at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 24 CFR 91.220, 24 CFR 91.235, 24 CFR 31.320 and 24 CFR 570.420(d).

*Justification:* To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary. These requirements concern the submission of an Annual Action Plan (for cities, counties and states receiving annual allocations of regular CDBG funding); 24 CFR 91.235 contains the requirements for Abbreviated Consolidated Plans (for non-entitled units of general local government not receiving CDBG funding through a state). 42

U.S.C. 5304(m) contains the requirement for submission of a Community Development Plan describing a grantee's priority non-housing community development needs. Paragraph I. E. of the **Federal Register** Notice implementing the Disaster Recovery Initiative establishes streamlined, alternative planning and submission requirements for Disaster Recovery Initiative funding which meet the intent of the National Affordable Housing Act and the Housing and Community Development Act. All city, county and state grantees which receive formula allocations of CDBG funding have already met the statutory and regulatory requirements for the five-year strategic plan in the Consolidated Plan.

- Citizen participation requirements at 42 U.S.C. 5304(a)(2) and (a)(3) (A) through (E), 24 CFR 91.100 through 91.115, 24 CFR 570.405(h), 24 CFR 570.431 and 24 CFR 570.486(a).

*Justification:* To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary. Paragraph I. E. of the **Federal Register** Notice implementing the Disaster Recovery Initiative establishes streamlined, alternative citizen participation requirements for Disaster Recovery Initiative funding which meet the intent of the National Affordable Housing Act and the Housing and Community Development Act.

#### Community Development Block Grant Program

##### Description of Requirements Waived

- The definition of a "unit of general local government" at 42 U.S.C. 5302(a)(1) and 24 CFR 570.3.

*Justification:* The statutory and regulatory definitions of a unit of general local government have, over time, become outdated. The definition includes the Trust Territory of the Pacific Islands. Since this definition was first enacted, all jurisdictions within the Trust Territory of the Pacific have become independent nations. The definition of a unit of general local government included in the **Federal Register** Notice implementing the Disaster Recovery Initiative excludes the Trust Territory of the Pacific.

- Requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.200(a)(3) (for cities and counties) and 24 CFR 570.484 (for States) that 70 percent of funds, over a period not to exceed three years, are for activities that benefit low and moderate income persons.

- *Justification:* Because the damage to community development and housing is without regard to income, it is important to give grantees maximum flexibility to carrying activities within the confines of the CDBG program national objectives. Paragraph I.B.2 of the **Federal Register** Notice implementing the Disaster Recovery Initiative establishes alternative requirements for complying with the statutory mandate that each grantee's program principally (at least 50%) benefit low- and moderate-income persons.

- Requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.200(a)(3) for the CDBG entitlement program and 570.484 for the State CDBG program that 70 percent of funds, over a period not to exceed three

years, are for activities that benefit low and moderate income persons.

*Justification:* Because the damage to community development and housing is without regard to income, it is important to give grantees maximum flexibility to carrying activities within the confines of the CDBG program national objectives.

- Requirements at 42 U.S.C. 5305(a), 24 CFR 570.200 (a)(1) and (e) through (h), 24 CFR 570.201 through 570.207, and 24 CFR 570.482 (a) through (d), concerning activities eligible for funding under the Disaster Recovery Initiative.

*Justification:* To give maximum flexibility to grantees in addressing the wide variety of needs resulting from natural disasters, the Department has established alternative requirements for eligible activities at paragraph I.F.1 of the **Federal Register** Notice implementing the Disaster Recovery Initiative. These requirements will ensure compliance with the eligibility requirements of Title II, Chapter 10 of Public Law 105-18, and will ensure accountability in the use of funds.

- Prohibitions on new housing construction at 24 CFR 570.207(b)(3) and modifying 42 U.S.C. 5305(a) to provide for the use of such designated funds for new housing construction.

24 CFR 570.207(b)(3) prohibits use of funds for new housing construction except for assisted housing under section 17 of the United States Housing Act of 1937, housing constructed by a special subrecipient, pursuant to § 570.204(a), and last resort housing under the Uniform Relocation Act pursuant to 49 CFR Part 24.

*Justification:* If a large number of housing units are destroyed as a result of the disaster, the flexibility to permit grantees to directly provide new construction assistance would be essential in furthering the purposes of disaster recovery.

- Restrictions on the repair or reconstruction of buildings used for the general conduct of government at 42 U.S.C. 5305 (a)(2) and (a)(14), and 24 CFR 570.207(a)(1).

*Justification:* Required if there is significant damage to public buildings. Waiver of this provision would permit repair and reconstruction.

- The 50 percent of downpayment limitation on direct homeownership assistance for low or moderate income homebuyers at 42 U.S.C. 5305(a)(24)(D).

*Justification:* Required to provide additional assistance to low/moderate income disaster victims in instances in which direct homeownership assistance with 50 percent of a downpayment is insufficient.

- The limitation on the amount of funds used for public services at 42 U.S.C. 5305(a)(8) and 24 CFR 570.201 (e)(1) or (2), as applicable to the affected grantee, to hereby modify those provisions to allow an increase of 10 percent above the previous limitation.

*Justification:* Disaster response may require additional level of public services and public services not previously provided by grantees during emergency and recovery periods, e.g., day care, housing counseling, legal services, health services, safety services.

- Provisions of 42 U.S.C. Chapter 69—Community Development and 24 CFR part 570 that would prohibit States electing to receive CDBG funds from distributing such funds to units of general local government in entitlement communities and to Indian tribes, including 42 U.S.C. 5306(d) (1) and (2)(A) and 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in nonentitlement areas and to Indian tribes.

*Justification:* This provides the State the flexibility necessary to meet a wide range of recovery needs in any areas of the State, including those in entitlement communities and on Indian reservations, that have been affected by the disaster.

- Requirements that the State grantees must match the amount of CDBG funds used for the administration of the State's CDBG program at 42 U.S.C. 5306(d)(3)(A) and 24 CFR 570.489(a)(1) with respect to funds designated for disaster recovery under 42 U.S.C. 5321.

*Justification:* Waiving these provisions would prevent undue hardship on the State and further the purposes of disaster recovery.

- Requirements at 24 CFR 570.480(a), 570.481(a) and 570.486(b).

*Justification:* These provisions describe requirements which are specific to States' administration of CDBG funding for non-entitlement areas. 24 CFR 570.480(a) indicates that other subparts of Part 570 are generally not applicable to the State CDBG program; 24 CFR 570.481(a) indicates that HUD will defer to States' interpretations of the definitions of terms contained in 42 U.S.C. 5300 et. seq.; 24 CFR 570.486(b) governs activities serving beneficiaries outside the jurisdiction of the unit of general local government. HUD is waiving a number of statutory definitions for purposes of the Disaster Recovery Initiative. HUD has determined that it is necessary to apply certain program requirements of the Disaster Recovery Initiative uniformly to city, county and State grantees. Where possible, the **Federal Register** Notice implementing the Disaster Recovery Initiative retains the administrative flexibility provided to States in the State CDBG program.

- Requirements of 42 U.S.C. 5306(d)(3)(A) and 24 CFR 570.489(a) concerning the use of Disaster Recovery Initiative funds for State administrative costs, including matching funds requirements.

*Justification:* Waiving these provisions would prevent undue hardship on States and would further the purposes of disaster recovery, by eliminating the requirement that Disaster Recovery Initiative funds spent on State administrative costs be matched with State funding. Paragraph I.F.6.b of the **Federal Register** Notice implementing the Disaster Recovery Initiative establishes alternative requirements for States' use of funds for costs incurred in administering this funding.

- The provisions at 42 U.S.C. 5304(j) and 24 CFR 570.489(e), for the State CDBG program, that require States to allow units of local government to retain program income. All program income will be returned to the State and will become program income for

the year in which the State redistributes those funds.

*Justification:* Waiver of this provision will also allow States to quickly utilize all program income for other eligible activities.

- Requirements of 42 U.S.C. 5306(d)(2)(C)(iii) concerning restrictions on a State's ability to limit activities eligible for funding.

*Justification:* Waiving these requirements will increase State grantees' flexibility in prioritizing and responding to disaster recovery needs.

#### **Acquisition and Relocation Requirements for CDBG Disaster Supplemental Funds**

##### *Description of Requirements Waived*

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

Requires that all occupied and vacant occupiable low/moderate income dwelling units that are demolished or converted to a use other than as low/moderate income dwelling units in connection with a CDBG activity must be replaced with low/moderate income dwelling units.

*Justification:* Not waiving this provision would discourage grantees from demolition and clearance of dwelling units that would otherwise be appropriate for CDBG assistance. Such inaction would inhibit recovery efforts and add to health and safety problems.

- Relocation requirements at 42 U.S.C. 5304(d)(2)(iii) and (iv) and 24 CFR 570.606(c)(2), in order to permit a grantee to meet all or part of its obligation to provide relocation benefits to displaced persons under sections 204 and 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et. seq) (URA).

The statutory requirements of the URA are also applicable to the administration of FEMA's assistance, and disparities in rental assistance payments for activities funds by HUD and that agency will thus be eliminated.

*Justification:* 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)(iii) and (iv) and implementing regulations at 24 CFR 570.606(c)(2). 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, respectively. The waiver assures uniform and equitable treatment for all such tenants under the URA, as qualified by this waiver.

- Requirements at 49 CFR 24.2(d)(8)(ii), 24.402(b)(2) and 24.404, 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.

*Justification:* The failure to suspend these requirements would impede disaster recovery. To the extent that a tenant has been paying rents 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.

- Requirements of Sections 204 and 205 of the URA, and 49 CFR Part 24, 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 who elects to relocate to rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate) provided that the renter 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.

*Justification:* Failure to grant the waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. The change conforms URA policy with Section 104(d) relocation assistance.

- Requirements of Section 202(b) of the URA and 49 CFR 24.302, to the extent that they require a grantee to offer a person displaced from a dwelling unit 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 are reasonable for the jurisdiction and take 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 24.303(a)(1).

*Justification:* Failure to suspend this provision would impede disaster recovery by requiring grantees to offer allowances that do not reflect 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.

- Requirements of Section 414 of the Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5181) so that Uniform Relocation Act provisions do not apply when a homeowner displaced by the disaster is assisted.

Section 414 states: "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act."

*Justification:* Failure to waive Section 414 would impede disaster recovery, discouraging grantees from the acquisition, demolition or rehabilitation of disaster-damaged housing because of excessive costs that would result from replacement housing payments made to former homeowners displaced by the disaster. Homeowners actually displaced by a HUD-assisted disaster recovery project will continue to receive URA assistance. Homeowners displaced by the disaster may apply for assistance under available disaster recovery programs.

#### **Other Applicable Requirements**

- Requirements of 12 U.S.C. 1701u, 24 CFR 570.607(b) and 24 CFR part 135, concerning the requirements of Section 3 of the Housing and Urban Development Act of 1968.

*Justification:* Waiving these requirements will increase grantees' flexibility in responding to disaster recovery needs and will increase the efficiency with which activities may be implemented to meet those needs. However, in the **Federal Register** Notice implementing the Disaster Recovery Initiative funding, HUD encourages grantees to give priority to the hiring of local low- and moderate-income persons and contractors in carrying out its activities.

- Requirements of 24 CFR 570.612 and 24 CFR part 52, concerning applicability of Executive Order 12372 regarding intergovernmental consultation and review of activities proposed for Federal funding.

*Justification:* Waiving these requirements will increase grantees' flexibility in responding to disaster recovery needs and will increase the efficiency with which activities may be implemented to meet those needs.

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