

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4482-N-02]

1999 HUD Disaster Recovery Initiative Waivers and Modifications of Requirements for Community Development Block Grant Funds Under the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of waivers and modifications.

SUMMARY: Elsewhere in today's **Federal Register**, HUD published a notice governing the allocation and use of funds under the 1999 Disaster Recovery Initiative. In implementing this Initiative, HUD is authorized by statute to waive statutory and regulatory requirements. This notice lists the provisions being waived and provides justifications for these waivers.

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

SUPPLEMENTARY INFORMATION: The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277, 112 Stat. 2681, approved October 21, 1998) (1999 Supplemental Appropriations Act), under division B, title IV, chapter 7, appropriates \$250 million in Community Development Block Grant (CDBG) funds to use for disaster relief, long-term recovery, and mitigation in communities affected by Presidentially declared natural disasters designated during fiscal year 1998 and 1999.

With respect to these supplemental funds, the Act provides that the Secretary of HUD:

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: *Provided further*, That the Secretary may waive the requirements that activities benefit persons of low-and moderate-income, except that at least 50 percent of the funds under this head must benefit primarily persons of low-and moderate-income unless the Secretary makes a finding of compelling need. *Provided further*, That, upon a finding of compelling need, the Secretary must provide an explanation of the finding to the Committees on Appropriations.

In conjunction with these statutory provisions 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 division B, title IV, chapter 7 of the 1999 Supplemental Appropriations Act, the following provisions are 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 91.115(c), to the extent that expedited amendment of the State'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), and 24 CFR 91.320.

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 States receiving annual allocations of regular CDBG funding). 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. Section I.G. of the **Federal Register** notice, published elsewhere in today's **Federal Register**, implementing the Disaster Recovery Initiative establishes streamlined, alternative planning and submission requirements for Disaster Recovery Initiative funding which meet the intent of the Cranston-Gonzalez National Affordable Housing Act and the Housing and Community

Development Act. All State grantees that 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 91.110 and 91.115, and 24 CFR 570.486(a).

Justification: To provide the flexibility to expedite the availability of disaster recovery assistance, if necessary. Section I.G. 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. Such requirements provide for public notice, appraisal, examination, and comment on the activities proposed for the use of DRI funds, but do not specifically require public hearings.

Community Development Block Grant Program

Description of Requirements Waived

Requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A) 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: Grantees should give maximum feasible priority to funding activities that benefit persons of low and moderate income. Because the damage to community development and housing is without regard to income, and income-producing jobs are often lost following a disaster for a period of time, it is important to give grantees maximum flexibility to carry out recovery activities within the confines of the CDBG program national objectives, which are not waived. Also, with mitigation activities such as the buyout of flood-prone properties, it is within the community's interest and consistent with Federal disaster and floodplain policy to reduce the risks to health and safety and to lessen future disaster damage and related costs by buying out all properties with areas at risk, rather than taking a patchwork approach. Section I.C.2 of the **Federal Register** notice implementing the Disaster Recovery Initiative establishes 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. 5305(a) 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 section I.H. of the **Federal Register** notice implementing the Disaster Recovery Initiative. These requirements will ensure compliance with the eligibility requirements of the Act and will ensure accountability in the use of funds.

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.

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 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. The Act permits HUD to specify alternative requirements for purposes of the Disaster Recovery Initiative. 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)(1) 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.H.8.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, except that for States not participating in the CDBG program, program income received by a State after closeout of its grant shall not be subject to any Federal requirement.

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 570.488, 570.606(c) and 42.375(a), 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.

Justification: These requirements provide 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.

These requirements are waived provided the grantee assures HUD it will use all resources at its disposal, including DRI funds authorized to be used for a program of optional relocation assistance under 42 U.S.C. 505(a)(11), to ensure no displaced homeowner will be denied access to decent, safe and sanitary suitable replacement housing because he or she has not received sufficient financial assistance.

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) and 42.350(e), 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).

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

FEMA is subject to the requirements of the URA. Pursuant to this authority, FEMA requires that rental assistance payments be calculated on the basis of the amount necessary to lease or rent comparable housing for a period of 42 months. HUD is also subject to these requirements, but is also covered by alternative relocation provisions authorized under 42 U.S.C. 5304(d)(2)(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, 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 is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

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.

Justification: 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."

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.

Additionally, section 107(e)(2) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5307(e)(2)) authorizes HUD to waive the provisions of section 109 and 110 in connection with grants to Indian tribes. HUD is exercising this authority to now waive labor standards requirements of section 110 (42 U.S.C. 5310) as they would otherwise apply to Indian tribes.

Justification: Waiving the cited labor standards requirements for the use of Disaster Recovery Initiative grants to Indian tribes conforms with Departmental policy for the Indian Community Development Block Grant program.

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

Dated: December 21, 1999.

Joseph D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

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