

**STATE OF WEST VIRGINIA**  
**DISASTER DECLARATION AS OF JULY 8, 2008**  
**FEMA-1769-DR**

## TABLE OF CONTENTS

- Section 1: West Virginia Action Plan**
- Section 2: Map and List of Impacted Communities**
- Section 3: Federal Regulations**
- Section 4: Citizen Participation Information**
- Section 5: Form 424 and Certifications**

**ACTION PLAN  
HUD DISASTER RECOVERY INITIATIVE GRANT**

**A. BACKGROUND:**

The State of West Virginia is eligible to receive a \$3,127,935 HUD Disaster Recovery Initiative (DRI) Grant to help communities recover from severe storms, tornadoes, flooding, mudslides, and landslides (FEMA-1769-DR). The objective of this Action Plan is to assist local units of government in areas covered by a declaration of major disaster under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act with expenses related to disaster relief, long-term recovery, restoration of infrastructure, and housing and economic restoration projects related to the covered disasters.

**B. AVAILABILITY OF FUNDS**

The State expects to receive \$3,127,935 from the HUD Disaster Recovery Initiative Grant 2008 appropriation to be distributed as follows:

Projected Use of Fiscal Year 2008 DRI Funds:

1.	State Administration	\$ 156,396.75
2.	DRI Projects	\$ 2,971,538.25

Program income is defined in 24 CFR 570.489(e) as gross income received by a local unit of government that was generated from the use of DRI funds. If less than \$25,000 is received in a single year by a local unit of government, those funds may be treated as miscellaneous income and will not be subject to the requirements of the DRI program. If \$25,000 or more in program income is received in a single year by a local unit of government, that generated program income will be treated as additional DRI funds and is subject to all requirements of the DRI program. This program income will be used to continue the same activity from which it was derived or be subject to recapture by the State.

**C. STATE'S METHOD OF DISTRIBUTION:**

**1. Allocation of HUD Disaster Recovery Grant Funds**

The West Virginia Development Office will distribute funds on a competitive basis within the declared boundaries of FEMA-1769-DR. The Regional Planning and Development Councils within the affected areas have been active in assisting local units of government with flood recovery efforts and must be consulted prior to the submission of the application. Projects in the State Disaster Recovery Action Plan for use of HUD Disaster Recovery Initiative funds must be located within the local units of government listed in Section 2. All local units of government within these boundaries are eligible to apply.

## 2. Method of Distribution

- (a) General local units of government must identify disaster recovery needs and prioritize potential projects. Citizen participation is required but has been streamlined to require a minimum 7-day comment period for citizens within the local unit of government's jurisdiction, as well as ongoing information about the use of Grant funds. The State of West Virginia will publish this Final Action Plan on the WVDO website under <http://www.wvdo.org/community/appforms.html> Disaster Recovery Initiative Program. The final version that is to be submitted to HUD on March 13, 2009, will include all comments received during the specified comment period, as well as the responses. The State is accepting the Hazard Mitigation Plans approved by the West Virginia Office of Emergency Services as noted in the local citizen participation plan.
- (b) This Action Plan has been forwarded to all local units of government in the declared disaster areas and to all Regional Planning and Development Councils for review and approval. (This includes County Commissions and municipalities.)
- (c) The State will review all applications based on the following criteria:
- (1) All proposed activities must meet one of the HUD-required national objectives as detailed below:
    - Benefit to low- and moderate-income families (**priority will be given to projects that meet this national objective**);
    - Aid in the elimination of slums or blight; or
    - Urgent need (eliminate a condition that poses a serious and immediate threat to the health or welfare of the community).
  - (2) Degree to which the project will correct identified deficiencies or achieve compliance with required standards.
  - (3) Degree to which the project will promote sound short- and long-term recovery planning, especially land-use decisions that reflect responsible floodplain management; removal of regulatory barriers to reconstruction, and prior coordination with planning of other state and federal programs and entities.
  - (4) Emphasize all construction methods be of high quality and durability, energy efficient, sustainable, mold resistant, and will

promote enactment and enforcement of modern building codes and mitigation of flood risk, where appropriate.

- (5) Degree to which the project meets local and regional planning goals.
- (6) Readiness of the project to proceed, if funded.
- (7) Applicant's capacity to administer the funds.
- (8) Degree to which the proposed activities address the following areas of interest:
  - Reduction in the number of repetitive loss structures.
  - Reduction in the number of substantially damaged structures.
  - Reduction in the number of structures located in the floodplain.
  - Other eligible criteria outlined under 2008 Supplemental Community Development Block Grant Appropriations, Federal Register dated September 11, 2008.
- (d) As provided for in the Supplemental Appropriations Act, the funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency or the Army Corps of Engineers.
- (e) The State published this Action Plan in such a manner to afford affected citizens and general local units of government an opportunity to examine its content and to submit comments on the proposed disaster recovery activities. The DRAFT Action Plan HUD Disaster Recovery Initiative Grant was posted on-line on March 2, 2009, at <http://www.wvdo.org/community/appforms.html> Disaster Recovery Initiative Program, which allowed for a 7-day comment period. We requested that all comments be received in writing either by mail to Jeanna Bailes, Manager, Project Development Section, Community Development Division, West Virginia Development Office, Building 6, Room B-553, Charleston, West Virginia 25305-0311 or e-mail at [jbailes@wvdo.org](mailto:jbailes@wvdo.org). Comments were to be received by close of business on March 9, 2009.
- (f) No comments were received.
- (g) The State will forward the State Action Program to HUD for approval on March 13, 2009.
- (h) Upon approval, HUD will provide the State with a grant agreement.

- (i) After the HUD/State grant agreement is executed, the State will obligate the funds as planned, provided the applications fulfill the requirements of the federal regulations.

### 3. Ceilings and Deadlines

For the purposes of this Action Plan, the funding application ceiling will be \$500,000. The only exception that will be granted to this ceiling is in the case where a structure or structures, contiguous to the original project area, would remain in the floodway without additional funds. These requests will be considered on a case-by-case basis and must be submitted with the application.

- (a) Review Process: The West Virginia Development Office in partnership with the West Virginia Office of Emergency Services will review all applications. The review will be based on the Action Plan criteria. Only those applications that best meet the review criteria detailed in this Action Plan will be considered for funding.
- (b) Full Applications: ONE ORIGINAL AND ONE COPY must be postmarked by July 31, 2009.
- (c) All full applications must be submitted as detailed above to:

Tom Saunders, DRI Specialist  
West Virginia Development Office  
Community Development Division  
Building 6, Room 553  
Charleston, West Virginia 25305-0311

### D. RECOVERY NEEDS FOR HUD DISASTER RECOVERY ASSISTANCE:

Multiple recovery needs exist in the flood-impacted areas. Immediately following the events, FEMA and SBA resolved much of the immediate public facility, housing, and business needs. In addition, the State's Office of Emergency Services coordinated State funding to address the most pressing critical needs. Recovery planning was immediately undertaken to address long-range mitigation needs utilizing FEMA and EDA funding. HUD funds were not made available until several months following the immediate crisis. Remaining needs at this time for use of the HUD funding, with its limitations imposed by national objectives, include acquisition/relocation, drainage improvements to mitigate and minimize future flooding, water and sewer improvements, and other community facility needs. Other locally driven needs remain varied.

The State reserves the right to recapture all unexpended funds remaining upon project completion. Further, the State reserves the right to recapture

funds from projects that are not moving in a timely manner. Those dollars will then be reallocated to current projects or will be awarded to the next project on the list from the universe of applications received by the July 31, 2009, deadline.

#### **E. ACQUISITION/RELOCATION/DISPLACEMENT:**

The State plans to engage in voluntary acquisition and optional relocation activities (in a form often called "buyouts") by using waivers related to acquisition and relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (URA) and the replacement of housing and relocation assistance provisions under section 104(d) of the HCD Act. The state asked for a waiver to help promote the acquisition of property and the replacement of housing in a timely and efficient manner.

Section 104(d) of Title I of the Housing and Community Development Act of 1974 contains requirements for a residential anti-displacement and relocation assistance plan. Each State recipient must adopt, make public, and certify to the State that it is following a "residential anti-displacement and relocation assistance plan." The Federal Register at 24 CFR, Part 570.488, sets forth relocation, displacement, replacement housing, and real property acquisition policies and requirements applicable to the State Small Cities Block Grant program.

#### **F. AMENDMENTS**

The state shall amend its action plan if the method of distribution contained in the action plan submitted to HUD is to be changed and if an activity is added or deleted. The State shall determine the necessary changes; prepare the proposed amendment; provide citizens and general local units of government with reasonable notice of, and an opportunity to comment on, the proposed amendment; consider comments received; make the action plan available to the public at the time it is submitted to HUD; and submit the amended action plan to HUD before the State may implement changes embodied in the amendment. The State is not required to notify the public when it makes any plan amendment that is not substantial.

#### **G. RECORDKEEPING**

The grantee shall establish and maintain such records as may be necessary to facilitate review and audit by the State under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other federal requirements, the content of records maintained by the State shall be sufficient to: enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the state; and show how activities funded are consistent with the descriptions of activities proposed for

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

#### **H. MONITORING STANDARDS AND PROCEDURES:**

The West Virginia Development Office will monitor compliance with this Action Plan and project implementation. Upon project approval, a grant agreement will be entered into between the State and the local unit of government. This agreement will require projects to be executed and carried out using the State SCBG requirements at 24 CFR Part 570, Subpart I, as it applies to the use and management of these funds (exceptions detailed in enclosure). Desk review of project performance and progress will be made with each request for funds submitted to the State. The project database will be updated on a monthly basis. The HUD program rules require quarterly reports to be submitted to HUD. The State will institute risk analysis, and on-site monitoring will be conducted by the State on an "as needed" basis as determined from either desk reviews and the specific uses of the funds or citizen complaints.

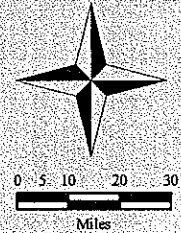
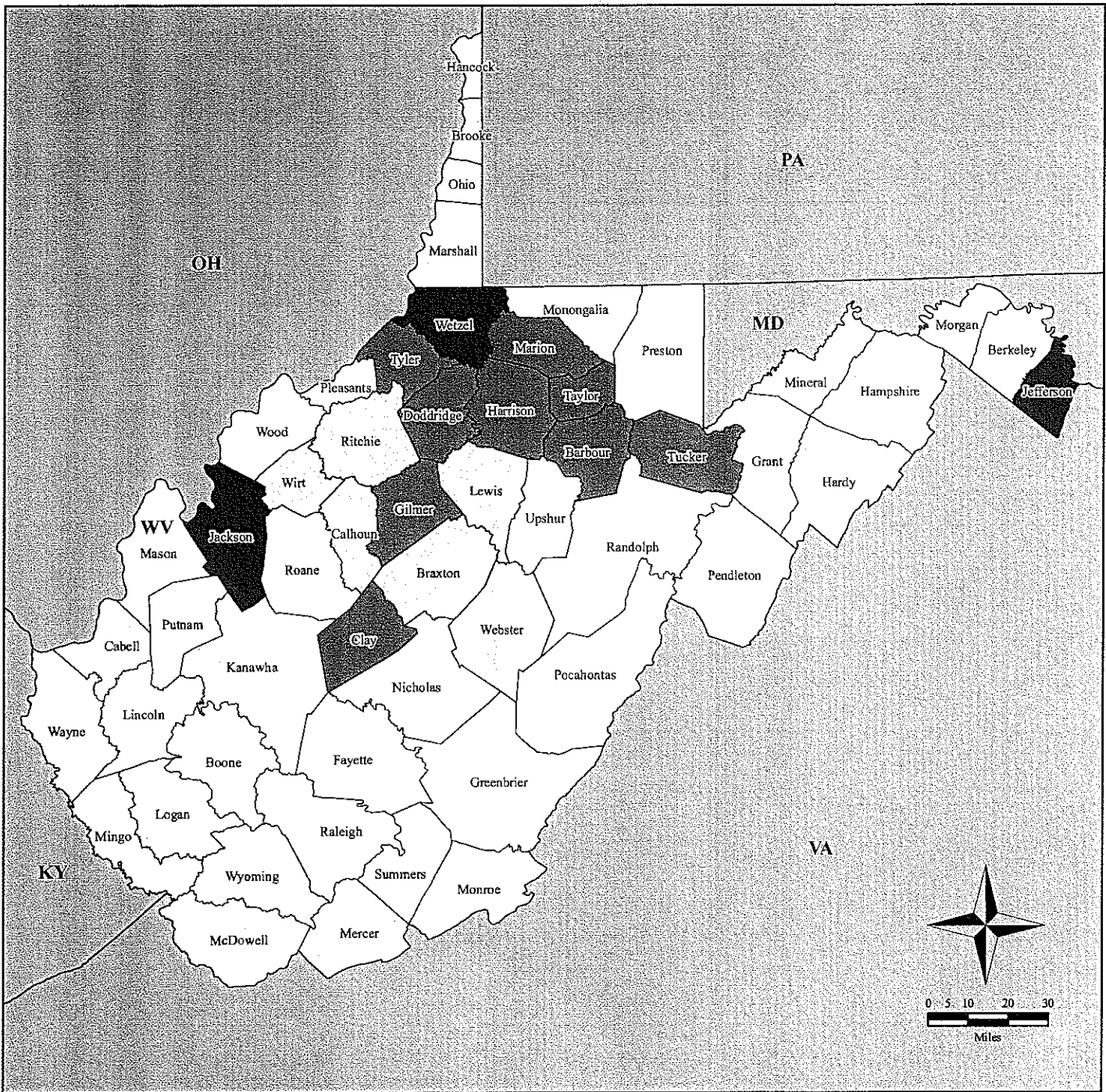
The State will be extremely cautious in considering any waivers related to basic financial management requirements. Grantees meeting the thresholds established by OMB Circular A-133 will be audited in compliance with that circular. Those not meeting the threshold requirements of OMB Circular A-133 will be audited in accordance with State Tax Department requirements. Upon project completion, a Final Performance Report will be submitted to the State for acceptance.

#### **I. CITIZEN PARTICIPATION PLAN:**

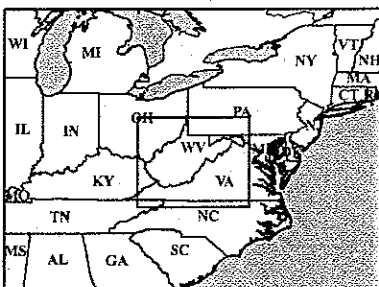
The citizen participation requirements upon the State (24 CFR 91.115) are waived except the State must provide alternative procedures for public notice of funding availability. The Hispanic representation in West Virginia makes up 1% of its overall population. Upon request, the State will make special accommodation to provide these documents in a form accessible to persons with disabilities and/or non-English speaking persons.



# FEMA-1769-DR, West Virginia Disaster Declaration as of 07/08/2008



**Location Map**



**Legend**

Designated Counties	
	No Designation
	Public Assistance
	Individual Assistance
	Individual Assistance and Public Assistance

*All counties are eligible  
for Hazard Mitigation*



**FEMA**

*ITS Mapping & Analysis Center  
Washington, DC  
07/09/08 -- 07:24 AM EDT*

*Source: Disaster Federal Registry Notice  
Amendment No. 2 - 07/08/2008*

## List of Impacted Communities

COUNTY	CITY/TOWN	REGION
Barbour	City of Philippi	VII
Barbour	Town of Belington	VII
Barbour	Town of Junior	VII
Braxton	Town of Burnsville	VII
Braxton	Town of Flatwoods	VII
Braxton	Town of Gassaway	VII
Braxton	Town of Sutton	VII
Calhoun	Town of Grantsville	V
Clay	Town of Clay	III
Doddridge	Town of West Union	VI
Gilmer	City of Glenville	VII
Gilmer	Town of Sand Fork	VII
Harrison	City of Bridgeport	VI
Harrison	City of Clarksburg	VI
Harrison	City of Salem	VI
Harrison	City of Shinnston	VI
Harrison	City of Stonewood	VI
Harrison	Town of Anmoore	VI
Harrison	Town of Lost Creek	VI
Harrison	Town of Lumberport	VI
Harrison	Town of Nutter Fort	VI
Harrison	Town of West Milford	VI
Jackson	City of Ravenswood	V
Jackson	City of Ripley	V
Jefferson	City of Charles Town	IX
Jefferson	City of Ranson	IX
Jefferson	Town of Bolivar	IX
Jefferson	Town of Harpers Ferry	IX
Jefferson	Town of Shepherdstown	IX
Lewis	City of Weston	VII
Lewis	Town of Jane Lew	VII
Marion	City of Fairmont	VI
Marion	City of Mannington	VI
Marion	City of Pleasant Valley	III
Marion	Town of Barrackville	VI
Marion	Town of Fairview	VI
Marion	Town of Farmington	VI
Marion	Town of Grant Town	VI
Marion	Town of Monongah	VI
Marion	Town of Rivesville	VI
Marion	Town of White Hall	VI
Marion	Town of Worthington	VI

Ritchie	City of Pennsboro	V
Ritchie	Town of Auburn	V
Ritchie	Town of Cairo	V
Ritchie	Town of Ellenboro	V
Ritchie	Town of Harrisville	V
Ritchie	Town of Pullman	V
Taylor	City of Grafton	VI
Taylor	Town of Flemington	VI
Tucker	City of Parsons	VII
Tucker	City of Thomas	VII
Tucker	Town of Davis	VII
Tucker	Town of Hambleton	VII
Tucker	Town of Hendricks	VII
Tyler	City of Sistersville	V
Tyler	Town of Friendly	V
Tyler	Town of Middlebourne	V
Tyler	City of Paden City	V
Webster	Town of Addison	IV
Webster	Town of Camden-On-Gauley	IV
Webster	Town of Cowen	IV
Webster	Town of Webster Springs/Addison	IV
Wetzel	City of New Martinsville	X
Wetzel	Town of Hundred	XI
Wetzel	Town of Pine Grove	X
Wetzel	Town of Smithfield	XI
Wirt	Town of Elizabeth	V

to (202) 395-6974. Comments must be submitted on or before October 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, facsimile number (202) 646-3347, or e-mail address [FEMA-Information-Collections@dhs.gov](mailto:FEMA-Information-Collections@dhs.gov).

Dated: September 5, 2008

**John A. Sharetts-Sullivan,**

*Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. E8-21136 Filed 9-10-08; 8:45 am]

BILLING CODE 9110-11-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2008-0010]

#### National Fire Academy Board of Visitors

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Committee Management; Notice of Open Federal Advisory Committee Meeting.

**SUMMARY:** The National Fire Academy Board of Visitors will meet on October 2-4, 2008.

**DATES:** The meeting will take place Thursday, October 2, 2008, from 8:30 a.m. to 4 p.m., e.s.t.; Friday, October 3, 2008, from 9 a.m. to 5 p.m., e.s.t.; and Saturday, October 4, 2008, from 9 a.m. to 11:30 a.m., e.s.t. Comments must be submitted by Thursday, October 9, 2008.

**ADDRESSES:** Members of the public who wish to obtain information for the public meeting may contact Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section by September 30, 2008. Members of the public may participate by coming to the National Emergency Training Center, Building H, Room 300, Emmitsburg, Maryland. Members of the general public who plan to participate in the meeting should contact Teressa Kaas as listed in the **FOR FURTHER INFORMATION CONTACT** section, on or before September 30, 2008. Requests to have written material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by September 30, 2008.

Send written material to Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727. Comments must be identified by Docket ID FEMA-2008-0010 and may be submitted by *one* of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** [FEMA-RULES@dhs.gov](mailto:FEMA-RULES@dhs.gov). Include Docket ID in the subject line of the message.

- **Fax:** (866) 466-5370.

- **Mail:** Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

**Instructions:** All submissions received must include the Docket ID for this action. Comments received will be posted without alteration at [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Teressa Kaas, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, telephone (301) 447-1117, fax (301) 447-1173, and e-mail [teressa.kaas@dhs.gov](mailto:teressa.kaas@dhs.gov).

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463). The National Fire Academy Board of Visitors will be holding a meeting for purposes of reviewing U.S. Fire Administration/National Fire Academy Program activities, including the status of campus maintenance and capital improvements, the budget update, the annual Ethics Briefing, the Learning Management System update, the National Fire Programs update, the Education, Training and Partnerships update, the Academy update, and Board discussions and new items. This meeting is open to the public.

The Chairperson of the National Fire Academy Board of Visitors shall conduct the meeting in a way that will, in his judgment, facilitate the orderly conduct of business. During its meeting, the committee welcomes public comment; however, comments will be permitted only during the public comment period. The Chairperson will make every effort to hear the views of all interested parties. Please note that the meeting may end early if all business is completed.

## Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Teressa Kaas as soon as possible.

Dated: September 5, 2008.

**Denis G. Onieal,**

*Superintendent, National Fire Academy, U.S. Fire Administration, Federal Emergency Management Agency.*

[FR Doc. E8-21127 Filed 9-10-08; 8:45 am]

BILLING CODE 9110-17-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5250-N-01]

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

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

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

**SUMMARY:** This Notice advises the public of the initial allocation for grant funds for CDBG disaster recovery grants for the purpose of assisting in the recovery in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters. As described in the **SUPPLEMENTARY INFORMATION** section of this Notice, HUD is authorized by statute and regulations to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantees. This Notice also describes the common application, eligibility, and administrative waivers and the common alternative and statutory requirements for the grants. **DATES:** *Effective Date:* September 16, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800-877-

8339. Facsimile inquiries may be sent to Ms. Kome at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

#### SUPPLEMENTARY INFORMATION:

##### Authority To Grant Waivers

The Supplemental Appropriations Act, 2008 (Pnb. L. 110-252, approved June 30, 2008) (Supplemental Appropriations Act) appropriates \$300 million, to remain available until expended, in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters. The Supplemental Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead based paint), upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. Additionally, regulatory waiver authority is provided by 24 CFR 5.110, 91.600, and 570.5. The following application and reporting waivers and alternative requirements are in response to requests from each of the states receiving an allocation under this Notice.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), regulatory waivers must be justified and published in the **Federal Register**.

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

##### Additional Waivers

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

##### Allocations

The Supplemental Appropriations Act provides \$300 million of supplemental appropriation for the CDBG program for:

Necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of

the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters.

The law further notes:

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

HUD computes allocations based on data that is generally available covering all the eligible affected areas. Two challenges arose in making this allocation. First, the statute gave very little guidance on what states are to receive funding, so HUD had to determine the eligible universe of grantees. The appropriation calls for funding "recent natural disasters." Since this appropriation was enacted on June 30, 2008, and was developed while there was significant awareness of flooding in the Midwest, the Department's primary assumption was that the funds were targeted to the Midwest flooding. However, there were also several other severe storms, flooding, and tornado events that received major disaster declarations during the same time frame. There were no declared disasters in April 2008, which allows for a natural break and argues that "recent disasters" is most likely to be those occurring after this lull. Therefore, HUD is defining "recent natural disasters" to be all major natural disasters that occurred and were declared from May 1, 2008, through June 30, 2008. This would limit the eligibility for an allocation to disasters in the states shown below.

TABLE 1—FEDERALLY DECLARED DISASTERS IN MAY AND JUNE 2008

No.	Declared date	State	Title
1773	25-Jun-08	Missouri	Severe Storms and Flooding.
1772	25-Jun-08	Minnesota	Severe Storms and Flooding.
1771	24-Jun-08	Illinois	Severe Storms and Flooding.
1770	20-Jun-08	Nebraska	Severe Storms, Tornadoes, and Flooding.
1769	19-Jun-08	West Virginia	Severe Storms, Tornadoes, Flooding, Mudslides, and Landslides.
1768	14-Jun-08	Wisconsin	Severe Storms, Tornadoes, and Flooding.
1766	8-Jun-08	Indiana	Severe Storms and Flooding.
1763	27-May-08	Iowa	Severe Storms, Tornadoes, and Flooding.
1762	26-May-08	Colorado	Severe Storms and Tornadoes.
1760	23-May-08	Missouri	Severe Storms and Tornadoes.
1758	20-May-08	Arkansas	Severe Storms, Flooding, and Tornadoes.
1756	14-May-08	Oklahoma	Severe Storms, Tornadoes, and Flooding.
1755	9-May-08	Maine	Severe Storms and Flooding.
1753	8-May-08	Mississippi	Severe Storms and Flooding.

HUD is aware that other federal programs, such as Federal Emergency Management Agency (FEMA) Public Assistance and Small Business Administration (SBA) loans, exist to support disaster recovery. Compared to the number of major disaster declarations, the number of times Congress has appropriated CDBG supplemental disaster recovery funds is very small. The Department believes it is reasonable to limit the allocations to places experiencing a significant need for additional federal assistance to facilitate long-term recovery and generally applies a funding threshold, in this case, of \$2 million. Thus, it is very likely that not all of the eligible universe will be funded.

The second challenge in allocating supplemental disaster appropriations is the trade off of a timely allocation versus having the most complete data needed to make a fully informed allocation. CDBG disaster recovery assistance is intended to fund long-term disaster recovery. States need to know relatively quickly how much they are to receive so that they can begin developing their recovery plans. However, a fair allocation generally depends on having good data similarly collected for all eligible states so that the needs of each state are fully taken into consideration. In this case, where funds were appropriated at a time when some of the disasters were still ongoing, the data for most disasters and thus most states is still incomplete. Complete data to make a full allocation may not be available until mid- to late September at the earliest. However, HUD believed it was unreasonable to hold funds that are currently needed as the Department waits for more complete data. As such, HUD is making a two-stage allocation: \$100 million was allocated on August 4, 2008, to the three most affected states and the remaining funds will be allocated in mid-September or October when more complete data are available. Enough data were available from FEMA, SBA, and other sources to make reasonable initial allocation to the states with the most severe damage due to the incidents noted in the table above. The Department was concerned that the first stage of the two-stage allocation not over-fund a grantee. Currently, the Department can say with confidence that the following grants would not be over-funding the disaster recovery needs of the states receiving allocations.

State	Amount allocated
Wisconsin .....	5,000,000

As soon as better data are available, HUD will compute allocations for the remaining \$200 million and announce them. A state included in that announcement may immediately proceed to prepare and submit an Action Plan for disaster recovery in accordance with this Notice, although HUD will not be able to make the grant until the allocations are published in the **Federal Register**. Therefore, HUD commits to determining, announcing, and publishing the additional allocations swiftly once the data are available.

HUD will invite each grantee receiving an allocation under the Supplemental Appropriations Act to submit an Action Plan for Disaster Recovery in accordance with this Notice.

The Supplemental Appropriations Act requires funds be used only for disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of recent natural disasters. The statute directs that each grantee will describe in its Action Plan for Disaster Recovery how the use of the grant funds will address long-term recovery and infrastructure restoration. HUD will monitor compliance with this direction and may be compelled to disallow expenditures if it finds uses of funds are not disaster-related, or funds allocated duplicate other benefits. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery or if they have any questions regarding meeting these requirements.

As provided for in the Supplemental Appropriations Act, the funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency or the Army Corps of Engineers.

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

The Supplemental Appropriations Act also directs the Secretary to:

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

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

**Waiver Justification**

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

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

The waivers, alternative requirements, and statutory changes described in this Notice apply only to the CDBG supplemental disaster recovery funds appropriated in the Supplemental Appropriations Act, not to funds provided under the regular CDBG program. These actions provide additional flexibility in program design and implementation and implement statutory requirements unique to this appropriation.

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

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

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

Pursuant to explicit authority in the Supplemental Appropriations Act, HUD

State	Amount allocated
Indiana .....	\$10,000,000
Iowa .....	85,000,000

is granting an overall benefit waiver that allows for up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums and blight national objectives, rather than the 30 percent allowed in the annual state CDBG program. The primary objective of Title I of the Housing and Community Development Act and of the funding program of each grantee is "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." The statute goes on to set the standard of performance for this primary objective at 70 percent of the aggregate of the funds used for support of activities producing benefit to low- and moderate-income persons. Since extensive damage to community structures and housing affected those with varying incomes, and income-producing jobs are often lost for a period of time following a disaster, HUD is waiving the 70 percent overall benefit requirement, leaving the 50 percent requirement, to give grantees even greater flexibility to carry out recovery activities within the confines of the CDBG program national objectives. HUD may only provide additional waivers of this requirement if it makes a finding of compelling need. The requirement that each activity meet one of the three national objectives is not waived.

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

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

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

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

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

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

#### **Citizen Participation**

The citizen participation waiver and alternative requirements will permit a more streamlined public process, but one that still provides for reasonable public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG disaster recovery grant funds. The waiver removes the requirement at both the grantee and state grant recipient levels for public hearings or meetings as the method for disseminating information or collecting citizen comments. Instead, grantees are encouraged to employ innovative methods to communicate with citizens and solicit their views on proposed uses of disaster recovery funds, and then to indicate in the Action Plan how it has addressed these views.

#### **Administration Limitation**

State program administration requirements must be modified to be consistent with the Supplemental

Appropriations Act, which allows up to five percent of the grant to be used for the state's administrative costs. The provisions at 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap state administration expenditures and require a dollar for dollar match of state funds for administrative costs exceeding \$100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow the state to exceed the overall planning, management and administrative cap of 20 percent.

#### **Use of Subrecipients**

The State CDBG program rule does not make specific provision for the treatment of the entities called "subrecipients" in the CDBG entitlement program. The waiver allowing the state to carry out activities directly creates a situation in which the state may use subrecipients to carry out activities in a manner similar to entitlement communities rather than using a method of distributing funds to local governments. HUD and its Office of Inspector General have long identified the use of subrecipients as a practice that increases the risk of abuse of funds. HUD's experience is that this risk can be successfully managed by following the CDBG entitlement requirements and related guidance. Therefore, HUD is requiring that a state taking advantage of the waiver allowing it to carry out activities directly must follow the alternative requirements drawn from the CDBG entitlement rule and specified in this Notice when using subrecipients.

#### **Reporting**

HUD is waiving the annual reporting requirement because the Congress requires quarterly reports from the grantees and from HUD on various aspects of the uses of funds and of the activities funded with these grants. Many of the data elements the grantees will report to Congress quarterly are the same as those that HUD will use to exercise oversight for compliance with the requirements of this Notice and for prevention of fraud, abuse of funds, and duplication of benefits. To collect these data elements and to meet its reporting requirements, HUD is requiring each grantee to report to HUD quarterly using the online Disaster Recovery Grant Reporting (DRGR) system, which uses a streamlined, Internet-based format. HUD will use grantee reports to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; to reconcile budgets, obligations, fund draws, and expenditures; and to calculate

applicable administrative and public service limitations and the overall percent of benefit to low- and moderate-income persons, and as a basis for risk analysis in determining a monitoring plan.

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

#### Eligibility—Housing Related

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

#### Anti-Pirating

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

#### Relocation Requirements

The states' plan to engage in voluntary acquisition and optional relocation activities (in a form often called "buyouts") by using waivers related to acquisition and relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (URA) and the replacement of housing and relocation assistance provisions under section 104(d) of the HCD Act. The

states asked for waivers to help promote the acquisition of property and the replacement of housing in a timely and efficient manner.

CDBG funds are federal financial assistance so their use in projects that involve acquisition of property necessary for a federally assisted project, or that involve acquisition, demolition, or rehabilitation that force a person to move permanently, are subject to the URA and the government-wide implementing regulations found at 49 CFR part 24. The URA provides assistance and protections to individuals and businesses affected by Federal or federally assisted projects. HUD is waiving the following URA requirements to help promote accessibility to suitable decent, safe, and sanitary housing for Midwest flooding victims.

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

A limited waiver of the URA implementing regulations to the extent that they require grantees to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. The failure to suspend these one-size-fits-all requirements could impede disaster recovery. To the extent that a tenant has been paying 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.

The URA and implementing regulations to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate) provided that the 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. 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 provides access to an additional relocation resource option.

The URA and implementing regulations 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. Failure to suspend this provision would impede disaster recovery by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established moving expense and dislocation allowance.

In addition to the URA waivers, HUD is waiving requirements of section 104(d) of the HCD Act dealing with one-for-one replacement of low- and moderate-income housing units demolished or converted in connection with a CDBG-assisted development project for housing units damaged by one or more disasters. HUD is waiving this requirement because it does not take into account the large, sudden changes a major disaster may cause to the local housing stock, population, or local economy. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage grantees from acquiring, converting, or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified timeframe. HUD is also waiving the relocation assistance requirements contained in section 104(d) of the HCD Act to the extent they differ from those of the URA (42 U.S.C. 4601 *et seq.*). This change will simplify implementation while preserving statutory protections for persons displaced by projects assisted with CDBG disaster recovery grant funds.



Iowa has indicated that an additional reason for these waivers is related to its decision to administer some buyouts that will include in the same project funds under this notice and FEMA mitigation funding. 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)(A)(iii) and (iv) and implementing regulations at 24 CFR 42.350. These alternative relocation benefits, available to low- and moderate-income displacées opting to receive them in certain HUD programs, require the calculation of similar rental assistance payments on the basis of 60 months, rather than 42 months, thereby creating a disparity between the available benefits offered by HUD and FEMA (although not always an actual cash difference). The waiver assures uniform and equitable treatment by allowing the URA benefits requirements to be the standard for assistance under this notice.

#### Program Income

A combination of CDBG provisions limits the flexibility available to the states for the use of program income. Prior to 2002, program income earned on disaster recovery grants has usually been program income in accordance with the rules of the regular CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the State CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The HCD Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The HCD Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the states, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for

activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster recovery grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

#### Certifications

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

#### Applicable Rules, Statutes, Waivers, and Alternative Requirements

##### Pre-Grant Process

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

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

3. Direct grant administration by states and means of carrying out eligible activities. Requirements at 42 U.S.C. 5306 are waived to the extent necessary to allow a state to use its disaster recovery grant allocation directly to carry out state-administered activities eligible under this Notice. Activities eligible under this Notice may be undertaken, subject to state law, by the

recipient through its employees, or through procurement contracts, or through loans or grants under agreements with subrecipients, or by one or more entities that are designated by the chief executive officer of the state. Unless a waiver provides otherwise, activities made eligible under section 105(a)(15) of the HCD Act, as amended, may only be undertaken by entities specified in that section, whether the assistance is provided to such an entity from the state or from a unit of general local government.

#### 4. Consolidated Plan waiver.

Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(6), that housing activities undertaken with CDBG funds be consistent with the strategic plan, are waived. Further, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. These waivers apply only until the time that the grantee first updates the consolidated plan priorities following the disaster.

5. Citizen participation waiver and alternative requirement. Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, and 24 CFR 91.115(b) with respect to citizen participation requirements are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at either the state or local government level, but do require providing a reasonable opportunity (at least 7 days) for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for this grant are:

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

b. In the action plan, each grantee will specify its criteria for determining what

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

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

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

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

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

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

a. The effects of the covered disasters, especially in the most impacted areas and populations, and the greatest

recovery needs resulting from the covered disasters that have not been addressed by insurance proceeds, other federal assistance or any other funding source;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Duplication of benefits. In general, 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance

and Emergency Relief Act, as amended) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which he has received financial assistance under any other program or from insurance or any other source. The Supplemental Appropriations Act stipulates that funds may not be used for activities reimbursable by or for which funds have been made available by the Federal Emergency Management Agency or by the Army Corps of Engineers.

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

a. Section 5302(a)(7) of title 42, U.S.C. (definition of "nonentitlement area") and provisions of 24 CFR part 570 that would prohibit a state from distributing CDBG funds to units of general local government regardless of their status in the entitlement CDBG program and to Indian tribes, are waived, including 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in entitlement areas and to state or Federally recognized Indian tribes. The state is required instead to distribute funds to the most affected and impacted areas related to the consequences of the covered disaster(s) without regard to a local government or Indian tribe status under any other CDBG program.

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

12. Program income alternative requirement. 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent necessary to allow additional flexibility in the administration of program income. The requirements that are retained are republished here for the convenience of the grantees.

a. Program income.

(1) For the purposes of this subpart, "program income" is defined as gross income received by a state, a unit of general local government, a tribe or a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Revolving funds.

(1) The state may establish or permit units of general local government or tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in

carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

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

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

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

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

13. Note that use of grant funds must relate to the covered disaster(s). In addition to being eligible under 42 U.S.C. 5305(a) or this Notice and meeting a CDBG national objective, the Supplemental Appropriations Act requires that activities funded under this Notice must also be for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as a result of the recent natural disaster or disasters listed in this Notice for which the state received a funding allocation.

13a. Note on change to administration limitation. Up to five percent of the grant amount may be used for the state's administrative costs. The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap state administration expenditures, limit a state's ability to charge a *de minimis* application fee for grant applications for activities the state carries out directly, and require a dollar for dollar match of state funds for administrative costs exceeding \$100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow the state to exceed the overall planning, management and administrative cap of 20 percent.

#### Reporting

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

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

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

15. Use of subrecipients. The following alternative requirement applies for any activity that a state

carries out directly by funding a subrecipient:

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

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

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

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

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

prevent a recurrence. The state shall establish remedies for noncompliance by any designated public agencies or units of general local governments and for its subrecipients.

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

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

#### Relocation Requirements

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

a. One-for-one replacement requirements at 42 U.S.C. 5304(d)(2) and (d)(3), and 24 CFR 42.375(a) are waived for 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.

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

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

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

paying 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. Before using this waiver, the state must establish a definition of "demonstrable hardship."

e. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate) provided that the 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.

f. The requirements of section 202(b) of the URA and 49 CFR 24.302 are waived to the extent that they require a grantee to offer a person displaced from a dwelling 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.

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

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor

exceptions, no new structure may be erected on the property and no subsequent application for Federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity.

c. Future Federal assistance to owners remaining in floodplain.

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

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

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

(i) Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the

property is not so insured as of the date on which the property is transferred; and

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

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

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

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

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

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

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

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

#### Certifications

24. Certifications for state governments, waiver and alternative requirement. Section 91.325 of title 24

of the Code of Federal Regulations is waived. Each state must make the following certifications prior to receiving a CDBG disaster recovery grant:

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

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

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

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

e. The state certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for this grant.

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

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

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

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

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

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

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

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

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

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

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

(2) A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility

or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

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

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

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

#### Duration of Funding

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

#### Catalog of Federal Domestic Assistance

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

#### Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th Street, SW., Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be

scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

Dated: September 8, 2008.

**Roy A Bernardi,**

*Deputy Secretary.*

[FR Doc. E8-21092 Filed 9-10-08; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-920-1430-FR; WYW-27997; 8-08807]

#### Notice of Realty Action: Recreation and Public Purposes Act Classification of Public Lands in Park County, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 90.00 acres of public land in Park County, Wyoming. Park County proposes to use the land for a sanitary landfill.

**DATES:** Interested parties may submit comments regarding the proposed conveyance or classification of the lands until *October 27, 2008*.

**ADDRESSES:** Send written comments to the Field Manager, Cody Field Office, P.O. Box 518, Cody, Wyoming 82414.

**FOR FURTHER INFORMATION CONTACT:** Mike Stewart, Field Manager, Bureau of Land Management, Cody Field Office, at (307) 578-5915.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 7 of the Taylor Grazing Act, (43 U.S.C. 315f), and Executive Order No. 6910, the following described public land in Park County, Wyoming, has been examined and found suitable for classification for lease and conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*):

#### Sixth Principal Meridian, Wyoming

T. 52 N., R. 101 W.,  
Sec. 20, W $\frac{1}{2}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ .

The land described contains 90.00 acres, more or less.

In accordance with the R&PP Act, Park County filed an application to purchase the above-described 90.00 acres of public land which has been

leased for solid waste disposal purposes since 1971. The land was classified for lease under the provisions of the R&PP Act. Before the conveyance can occur, the land must be classified for conveyance under the provisions of the R&PP Act. Additional detailed information pertaining to this application, plan of development, and site plan is in case file W-27997, located in the BLM Cody Field Office at the above address.

The land is not needed for any Federal purpose. The conveyance is consistent with the Cody Resource Management Plan dated November 8, 1990, and would be in the public interest. The patent, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The patent will be subject to all valid existing rights documented on the official public land records at the time of patent issuance.

**Classification Comments:** Interested parties may submit comments involving the suitability of the land for municipal and recreation uses. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments:** Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

**Confidentiality of Comments:** Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we



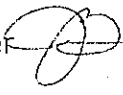
## WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard, East • Charleston, WV 25305-0311  
(304) 558-2234 • (800) 982-3386  
[www.wvopenforbusiness.com](http://www.wvopenforbusiness.com)

### MEMORANDUM

**\*\*TIME SENSITIVE\*\***

TO: Local Units of Government  
All Regional Planning and Development Councils

FROM: Jeanna Bailes, Manager   
Project Development

DATE: February 27, 2009

RE: Fiscal Year 2008 Disaster Recovery Initiative (DRI) Program  
FEMA-1769-DR: West Virginia Disaster Declaration as of 7-8-09

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Please be advised that the State of West Virginia is eligible to receive \$3,127,935 in HUD Disaster Recovery Initiative Grant to help communities recover from severe storms, tornadoes, flooding, mudslides, and landslides that took place in May and June of 2008. A DRAFT Action Plan has been prepared and is available online for review at [www.wvdo.org/community/appforms.html](http://www.wvdo.org/community/appforms.html). We welcome any and all comments. All comments must be provided in writing either by mail to myself at the above noted address, or via e-mail at [jbailes@wvdo.org](mailto:jbailes@wvdo.org). Those comments MUST BE RECEIVED BY CLOSE OF BUSINESS ON MARCH 9, 2009.


The objective of this Action Plan is to assist the Local Units of Government in the declared disaster areas with long-term recovery, restoration of infrastructure, and mitigation projects related to the covered disasters.

If you have any questions or require any additional information, please feel free to contact me or Tom Saunders at (304) 558-2234.





**MEMORANDUM**

**TO:** West Virginia Newspapers  
**FROM:** Jeanna Bailes   
Manager, Project Development  
**DATE:** February 20, 2009  
**RE:** REQUEST/INSTRUCTIONS FOR PUBLICATION OF PUBLIC NOTICE  
(DISPLAY AD)

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Please publish the attached advertisement **one time, preferably in the morning paper**, after February 25, 2009, but no later than March, 1, 2009. Due to the lateness of this request, please notify us as to whether this deadline can be met and if so, the date on which you plan to publish the notice. The dimensions should be **no larger than 3 columns x 6.5 inches** in the main body of the newspaper with a border. We ask that costs are kept to a minimum. **In addition, the attached Fair Housing Symbol must be included near the bottom of the notice.**

Our office is required to obtain a proof and price **prior** to publication. Please provide this information to Amanda McNealy by e-mail at [amcnealy@wvdo.org](mailto:amcnealy@wvdo.org), phone at (304) 558-2234, or fax at (304) 558-3248.

**Note: This is not a legal ad – This must be a display ad.**

Please render your invoice after publication as follows:

1. **Invoice** – Original and three (3) copies showing date, number of words, the rate per word, as well as your Federal Employment Identification Number.
2. **Certification of Publication** – Original and three (3) copies, with newspaper clipping attached to each. All certifications must be fully executed.

The above steps must be taken before your invoice can be paid by the state. Please submit invoice to:

Ms. Amanda McNealy  
Community Development Division  
West Virginia Development Office  
State Capitol Complex  
Building 6, Room 553  
Charleston, WV 25305

**PUBLIC NOTICE**  
**ACTION PLAN**  
**HUD DISASTER RECOVERY FUNDS**

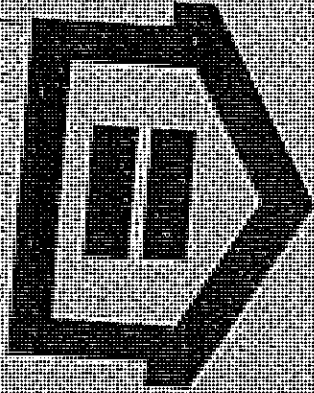
Notice is hereby given about the availability of \$3,127,935 of HUD Community Development Block Grant Disaster Recovery Funds. This Notice advises the public of the initial allocation of grant funds for CDBG disaster recovery grants for the purpose of assisting in the recovery in areas covered by a declaration of major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The funds allocated to West Virginia will be distributed to communities impacted by the federally declared disasters that occurred between May 1, 2008 through June 30, 2008. Units of Local Government impacted by FEMA-1769-DR are eligible to apply for these funds.

The Disaster Recovery Action plan sets forth the intended method of distribution, application ceilings, and deadlines. Copies of the proposed Action Plan will be made available to all units of local government and the Regional Planning and Development Council office in each region by March 2, 2009. The Plan may also be reviewed online at [www.wvdo.org](http://www.wvdo.org), and/or a copy obtained from:

**West Virginia Development Office**  
Capitol Complex  
Building 6, Room B-553  
Charleston, WV 25305-0311  
Phone/TDD: (304) 558-2234

Written comments are encouraged and must be received by close of business on March 9, 2009. All comments and questions should be directed to:

**Jeanna Bailes, Manager**  
Project Development Section  
Community Development Division  
West Virginia Development Office  
Building 6, Room B-553  
Charleston, West Virginia 25305-0311  
Phone/TDD: (304) 558-2234  
e-mail: [jbailes@wvdo.org](mailto:jbailes@wvdo.org)



## NEWSPAPERS

Charleston-Gazette

Circulation: 50,317

Phone: 304-348-5100

Fax: 304-348-1233

Area: Kanawha Valley and surrounding areas

The Journal

Circulation: 23,000

Phone: 304-263-8931

Fax: 304-267-2903

Area: Eastern Panhandle

Wheeling New-Register

Circulation: 25,000

Phone: 304-233-0100

Fax: 304-233-0327

Area: Northern Panhandle

The Dominion Post

Circulation: 23,500

Phone: 304-292-6301

Fax: 304-292-3704

Area: North/Central

The Register-Herald

Circulation: 36,000

Phone: 304-255-4400

Fax: 304-255-4427

Area: Southern

The State Journal

Circulation: 10,000


Phone: (304) 344-1630

Fax: (304) 343-6138

Area: Statewide

**APPLICATION FOR  
FEDERAL ASSISTANCE**

Version 7/03

<b>1. TYPE OF SUBMISSION:</b> Application <input checked="" type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		Pre-application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction	<b>2. DATE SUBMITTED</b>	Applicant Identifier
			<b>3. DATE RECEIVED BY STATE</b>	State Application Identifier
			<b>4. DATE RECEIVED BY FEDERAL AGENCY</b>	Federal Identifier
<b>5. APPLICANT INFORMATION</b>				
Legal Name: STATE OF WEST VIRGINIA		Organizational Unit: Department: WEST VIRGINIA DEVELOPMENT OFFICE		
Organizational DUNS: 13832896		Division: COMMUNITY DEVELOPMENT DIVISION		
Address: Street: MAIN CAPITOL COMPLEX, BUILDING 6, RM 553		Name and telephone number of person to be contacted on matters involving this application (give area code) Prefix: MRS. First Name: JEANNA		
City: CHARLESTON		Middle Name: G.		
County: KANAWHA		Last Name: BAILES		
State: WEST VIRGINIA Zip Code: 25303-0311		Suffix:		
Country: UNITED STATES OF AMERICA		Email: JBAILES@WVDO.ORG		
<b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b> 55-0574804		Phone Number (give area code) (304) 558-2234		Fax Number (give area code) (304) 558-3248
<b>8. TYPE OF APPLICATION:</b> <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) Other (specify) <input type="checkbox"/> <input type="checkbox"/>		<b>7. TYPE OF APPLICANT:</b> (See back of form for Application Types) A Other (specify)		
<b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b> TITLE (Name of Program): HUD - DRI 14-228		<b>9. NAME OF FEDERAL AGENCY:</b> U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT (HUD)		
<b>12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):</b> WEST VIRGINIA		<b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b> DISASTER RECOVERY INITIATIVE GRANT TO ASSIST COMMUNITIES IMPACTED BY FEMA - 1769 - DR		
<b>13. PROPOSED PROJECT</b> Start Date: 04-01-2009 Ending Date: 03-31-2012		<b>14. CONGRESSIONAL DISTRICTS OF:</b> a. Applicant 2ND b. Project 1ST, 2ND, 3RD		
<b>15. ESTIMATED FUNDING:</b>		<b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b>		
a. Federal	\$ 3,127,935 <sup>00</sup>	a. Yes. <input type="checkbox"/> THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:		
b. Applicant	\$ <sup>00</sup>	b. No. <input checked="" type="checkbox"/> PROGRAM IS NOT COVERED BY E. O. 12372		
c. State	\$ <sup>00</sup>	<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		
d. Local	\$ <sup>00</sup>	<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b>		
e. Other	\$ <sup>00</sup>	<input type="checkbox"/> Yes If "Yes" attach an explanation. <input type="checkbox"/> No		
f. Program Income	\$ <sup>00</sup>			
g. TOTAL	\$ 3,127,935 <sup>00</sup>			
<b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.</b>				
a. Authorized Representative				
Prefix MR.	First Name BOBBY	Middle Name		
Last Name LEWIS			Suffix	
b. Title DIRECTOR			c. Telephone Number (give area code) (304) 558-2234	
d. Signature of Authorized Representative 			e. Date Signed 3/11/09	

**2008 HUD Disaster Recovery Community Development Block Grant – States**

**TITLE IV OF THE ROBERT T. STAFFORD  
DISASTER RELIEF & EMERGENCY ASSISTANCE ACT (42 U.S.C. 5121 et seq.)  
AND  
THE SUPPLEMENTAL APPROPRIATIONS ACT, 2008**

**EFFECTIVE DATE: SEPTEMBER 16, 2008**

**CERTIFICATIONS BY THE STATE OF WEST VIRGINIA**

In accordance with applicable statutes, regulations, and notices:

- a. The state certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the state, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.  
(See 24 CFR 570.487(b)(2)(ii).)
- b. The state certifies that it has in effect and is following a residential antidisplacement and relocation assistance plan in connection with any activity assisted with funding under CDBG program.
- c. The state certifies that it is complying with requirements regarding drug-free workplace required by 24 CFR part 24, subpart F, together with the appropriate forms.
- d. The state certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.
- e. The state certifies that the Action Plan for Disaster Recovery is authorized under state law and that the state possesses the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this notice.
- f. The state certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for this grant.
- g. The state certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.
- h. The state certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant), and that each unit of general local

government that is receiving assistance from the state is following a detailed citizen participation plan that satisfies the requirements of Sec. 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

i. The state certifies that: (1) It has consulted with affected units of local government in counties designated in covered major disaster declarations in the nonentitlement, entitlement and tribal areas of the state in determining the method of distribution of funding; and (2) Each unit of general local government to be distributed funds will be required to identify its disaster recovery needs, including the needs of low-income and moderate-income families, and the disaster recovery activities to be undertaken to meet these needs.

j. The state certifies that it has complied with each of the following criteria:

(1) Funds will be used solely for disaster relief, long-term recovery, and mitigation related to a major disaster declared by the President between May 1, 2008, and June 30, 2008.

(2) Funds will be provided to areas facing the greatest need.

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

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

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

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

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

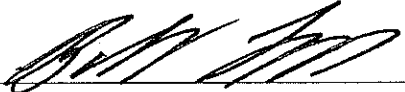
(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individual engaged in non-violent civil rights demonstrations; and

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

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

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

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

Signature  Date 3-11-09

Title Director of Community Development