

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-5309-N-01]**

**Notice of Program Requirements for  
Community Development Block Grant Program  
Funding Under the American Recovery and Reinvestment Act of 2009**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public of the statutory and regulatory waivers granted to grantees under the American Recovery and Reinvestment Act of 2009 (Recovery Act).

The Recovery Act appropriated \$1 billion in Community Development Block Grant (CDBG) funds to states and local governments to carry out, on an expedited basis, eligible activities under the CDBG program. HUD is authorized by statute to specify alternative requirements and make regulatory waivers for this purpose. This notice also explains statutory issues affecting program design and implementation. The Department is also using this notice to provide grantees information about other ways in which the requirements for this grant vary from regular CDBG program rules. Except as described in this Notice, the statutory and regulatory provisions governing the CDBG program apply to this program.

**DATES:** Entitlement grantees, Insular Areas, and non-entitlement counties in Hawaii are to submit the substantial amendments to their program year (PY) 2008 action plans to their HUD field office by June 5, 2009. States are to submit the substantial amendments to their PY2008 action plans to their HUD field office by June 29, 2009. The deadline for the Homelessness Prevention and Rapid Re-housing Program (HPRP) funding pursuant to

HUD's March 19, 2009, Federal Register notice is May 18. Grantees that wish to submit a single substantial amendment for both programs must do so by May 18, 2009.

**FOR FURTHER INFORMATION CONTACT:** Stanley Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410; telephone 202-708-3587 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339. Interested parties may also visit the CDBG-R web page on HUD's Recovery Act website, <http://www.hud.gov/recovery/>, for updated information and resources. Questions regarding the CDBG-R program may be submitted to [HudRecoveryAct@hud.gov](mailto:HudRecoveryAct@hud.gov).

**SUPPLEMENTARY INFORMATION:**

Authority to Provide Alternative Requirements and Grant Regulatory Waivers

Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-005, approved February 17, 2009) appropriates \$1 billion to carry out the CDBG program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.) (the HCDA) on an expedited basis. These funds will be distributed to grantees that received CDBG funding in Fiscal Year (FY) 2008 in accordance with the provisions of 42 U.S.C. 5306. The grant program under Title XII is commonly referred to as the CDBG Recovery (CDBG-R) program. When referring to a provision of the appropriations statute itself, this notice will refer to the Recovery Act; when referring to the grants, grantees, assisted activities, and implementation rules, this notice will use the term CDBG-R.

In administering CDBG-R funds, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use by the recipient of these funds except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that such waiver is necessary to expedite or facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute. Such regulatory relief as HUD deemed necessary and is authorized to provide under 24 CFR 5.110 and 24 CFR 91.600 to permit implementation of CDBG-R is provided in this notice.

The Secretary finds that the alternative requirements outlined in Section II. of this notice are necessary to expedite the use of these funds for their required purposes.

Except as described in this notice, statutory and regulatory provisions governing the CDBG program, including those at 24 CFR part 570 subpart I for states and those at 24 CFR part 570 subparts A, C, D, E, F, J, K, and O for CDBG entitlement communities, as appropriate, shall apply to the use of these funds. Subpart M, concerning the Section 108 Loan Guarantee program, is not applicable to CDBG-R. Other sections of the notice will provide further details of the changes, the majority of which deal with adjustments necessitated by Recovery Act provisions to expedite the use of CDBG-R funds.

#### Ensuring Responsible Spending of Recovery Act Funds

Funding available under the Recovery Act has clear purposes – to stimulate the economy through measures that modernize the Nation’s infrastructure, improve energy efficiency, and expand educational opportunities and access to health care. In implementing the Recovery Act, Federal agencies are undertaking unprecedented measures to ensure transparency and accountability in the use of the funds. Concurrently, Federal agencies must

ensure that the funds are employed in a prudent manner consistent with applicable program requirements.

The Department desires that CDBG-R grantees carefully evaluate proposed projects for consistency with the overarching goals of the Recovery Act, especially the above-cited purposes. To this extent, HUD strongly urges grantees to use CDBG-R funds for hard development costs associated with infrastructure activities that provide basic services to residents or activities that promote energy efficiency and conservation through rehabilitation or retrofitting of existing buildings. While the full range of CDBG activities is available to grantees, the Department strongly suggests that grantees incorporate consideration of the public perception of the intent of the Recovery Act in identifying and selecting projects for CDBG-R funding.

On March 20, 2009, President Obama issued a memorandum to the heads of executive branch agencies, entitled “Ensuring Responsible Spending of Recovery Act Funds”. (This memorandum was published in the Federal Register on March 25 at 74 FR 12531.) This memorandum lays out principles and steps that federal agencies are to take to ensure responsible distribution and use of Recovery Act funds. Grantees should ensure that the activities that they select for CDBG-R funding adhere to the expectations of this notice, particularly those of Section 2(c).

The Department must emphasize the following points to recipients of CDBG-R funds. Certain specified activities and/or projects may not be funded with CDBG-R funds pursuant to the Recovery Act and this includes swimming pools, golf courses, zoos, aquariums, and casinos or other gambling establishments. Other activities generally prohibited under regulations governing the regular CDBG program are also prohibited under CDBG-R. This

includes prohibitions on the construction of buildings for the general conduct of government, political activities, purchase of equipment, and operating and maintenance expenses. Other CDBG restrictions may also apply including bans on assistance to professional sports teams, recreational facilities that serve a predominantly higher income clientele, and general promotional activities for the grantee.

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#### I. ALLOCATIONS

**A. Formula: Allocation.** The Recovery Act appropriates \$1 billion of CDBG funding and is distributing \$980 million to grantees that received CDBG funding in FY2008. Pursuant to provisions of the Recovery Act, HUD has reserved \$10 million to address its administrative costs and has allocated \$10 million to the Indian CDBG program, as required by 42 U.S.C.

5306(a). Any unit of local government that did not apply for its FY2008 funds is not eligible to receive CDBG-R funding. The formulas for the allocation of CDBG-R funds are the same as the formulas used for the annual allocation of CDBG funds to the states, entitlement grantees, and Insular Areas. On February 25, 2009, HUD announced the list of the CDBG-R allocations, and these may be found at <http://www.hud.gov/recovery/cdblock.cfm>.

**B. Formula: Reallocation.** To expedite the use of CDBG-R funds, the Department is specifying alternative requirements to 42 U.S.C. 5306(c) and 42 U.S.C. 5306(d)(3)(C). The Department has determined that it is necessary to employ an alternative reallocation process in order to expedite grantees' timely use of any reallocated funds. Under the existing provisions of 42 U.S.C. 5306, funds that become available for reallocation would be reallocated as part of the process for allocating the next fiscal year's appropriation of regular CDBG funding; this means any unawarded CDBG-R funds would not get reallocated until sometime in federal fiscal year 2010. To expedite the reallocation process, HUD is adopting the following procedure instead.

If a unit of general local government, State, or Insular Area receiving an allocation of CDBG-R funds under this notice fails to submit a substantial amendment to its program year 2008 action plan for its grant allocation by the deadlines specified in Section II.A.4. of this notice, or submits an application for less than the total allocation amount, or if HUD is unable to approve any entity's submission, HUD may notify the jurisdiction of the cancellation of all or part of its allocation amount. Once HUD determines the amount of funds (if any) that are not awarded to any jurisdictions, the Secretary will establish performance criteria by which to award these funds to other entities. These criteria will be

published in the Federal Register. However, these criteria will be established only if funds become available for reallocation.

## **II. ALTERNATIVE REQUIREMENTS AND REGULATORY WAIVERS**

This section of the notice provides a justification for alternative requirements and describes the necessary basis for each regulatory waiver. The section also highlights some of the statutory provisions applicable to the grants. This background narrative is followed by the CDBG-R requirement(s).

Each grantee eligible for a CDBG-R grant has already received an annual allocation of FY2008 CDBG funds, has carried out needs hearings, has a consolidated plan, an annual action plan, a citizen participation plan, a monitoring plan, an analysis of impediments to fair housing choice, and has made CDBG certifications. The consolidated plan already discusses housing needs related to up to four major grant programs: CDBG; Home Investment Partnerships Program (HOME); Emergency Shelter Grants (ESG); and Housing Opportunities for Persons With AIDS (HOPWA). A grantee's annual action plan describes the activities budgeted under each of those annual programs.

The CDBG-R grant is a supplemental appropriation. As such, HUD is treating a grantee's use of its CDBG-R grant to be a substantial amendment to its current approved consolidated plan and PY2008 annual action plan. (For grantees that received an allocation under the Neighborhood Stabilization Program (NSP), this will constitute a second substantial amendment to the PY2008 annual action plan.) Treating the CDBG-R as a substantial amendment and requiring grantees to amend the PY2008 annual action plan will expedite the distribution of CDBG-R funds, while ensuring citizen participation on the specific use of the funds. HUD is also waiving the consolidated plan regulations to the

extent necessary to adjust the reporting requirements for the use of CDBG-R funds to comply with the Recovery Act.

These waivers and alternative requirements apply only to the grant funds appropriated under the Recovery Act and not to the use of regular formula allocations of CDBG funds, even if they are used in conjunction with CDBG-R funds for a project. The waivers and alternative requirements provide expedited program implementation and implement statutory requirements unique to this supplemental appropriation.

#### **A. Pre-Grant Process**

Pursuant to Recovery Act provisions, HUD is treating CDBG-R funds as a special allocation of CDBG funding. HUD is requiring grantees to provide a substantial amendment to their PY2008 annual action plans. To receive CDBG-R funding, each CDBG grantee must submit to HUD a substantial amendment to its action plan in accordance with this notice, by the deadlines specified in Section II.A.4. of this notice. This submission will include a signed standard federal form SF-424, signed certifications, and a substantial action plan amendment meeting the requirements of paragraph 2. below. Grantees may immediately begin to prepare and submit substantial amendments to their action plans for CDBG-R funds, in accordance with this notice.

HUD will consider any existing cooperation agreements between a local government and an urban county governing FY2008 CDBG funding (for purposes of either an urban county or a joint program) to automatically cover CDBG-R funding as well. These cooperation agreements will continue to apply to the use of CDBG-R funds for the duration of the CDBG-R grant. For example, a local government presently has a cooperation agreement covering participation in an urban county for federal FYs 2007, 2008, and 2009.



The local government may choose to discontinue its participation with the county at the end of the applicable qualification period for purposes of regular CDBG entitlement funding. However, the county will still be responsible for any CDBG-R projects funded in that community, and for any CDBG-R funding the local government receives from the county, until those funds are expended and the funded activities are completed.

Each grantee will have until the deadlines specified in paragraph 4. below to complete and submit a substantial amendment to its annual action plan. HUD encourages grantees, during development of their action plan amendments, to contact HUD field offices for guidance in complying with these requirements.

In the regular CDBG program, a grantee is required to provide 30 calendar days for soliciting comments from its citizens before it submits an annual action plan to HUD. Then, HUD has 45 calendar days to accept or reject the plan. To expedite the process and to ensure that the CDBG-R grants are awarded in a timely manner, while preserving a reasonable citizen participation process, HUD is waiving the requirement that the grantee follow its citizen participation plan for this substantial amendment. HUD is shortening the minimum time for citizen comments to 7 calendar days and requiring the substantial amendment materials to be posted on the grantee's official website as the materials are developed, published, and submitted to HUD. Grantees are cautioned that, despite the expedited application and plan process, they are still responsible for ensuring that all citizens have equal access to information about activities assisted with CDBG-R funds. In addition, grantees must ensure that non-English speaking persons and persons with disabilities have access to copies of substantial amendments. Since not all citizens have internet access, HUD

encourages grantees to make copies of substantial amendments available in public places such as libraries and government buildings.

HUD will not require states to follow their existing citizen participation plan requirements, either for the state's development of this substantial amendment or for the development of funding proposals by units of general local government. The citizen participation pursuant to CDBG-R will be conducted at the state level and must assure that citizens and units of general local government have an opportunity to comment on all proposed activities to be undertaken with these funds. HUD is therefore waiving the provisions of 24 CFR 91.115(e) and 24 CFR 570.486(a). However, states are encouraged to establish alternative procedures for units of general local government that will provide reasonable citizen access to information and participation in the local decision-making process. To facilitate the timely development of states' substantial amendments, HUD is waiving 42 U.S.C. 5306(d)(2)(C)(1)(iv) and 24 CFR 91.110 to the extent necessary to eliminate the requirement that a state must consult with units of local government in determining the expected use of CDBG-R funds.

Pursuant to the overall objectives of the Recovery Act to assure that funds are in communities assisting in economic recovery, HUD is waiving 24 CFR 91.320 (d) and 24 CFR 91.320(k)(1)(i) to the extent necessary to require states to submit a list of activities in lieu of developing a method of distribution.

Substantial amendments to grantees' action plans are not normally approved by HUD, but may be submitted to HUD as they occur or at the end of the program year. 24 CFR 91.505(c) is waived to the extent necessary to require submission of the substantial

amendment to the action plan to HUD for approval in accordance with this notice no later than the deadlines specified in paragraph 4. below.

HUD is waiving provisions of 24 CFR 91.500(b) and (d) to provide for the following modified action plan approval procedures. HUD will review each grantee's submission for completeness and consistency with the purposes of the Cranston-Gonzalez National Affordable Housing Act, the Recovery Act and the requirements of this notice, and will disapprove incomplete or inconsistent action plan amendments. 24 CFR 91.500(d) permits jurisdictions to revise or resubmit a plan within 45 days after written notification of disapproval; it also states that HUD must respond to approve or disapprove the plan within 30 days of receiving the resubmission. HUD will allow revision and resubmission of a disapproved action plan in accordance with 24 CFR 91.500 so long as the resubmission is received by HUD 15 calendar days or less following the date of first disapproval, and any further resubmissions in response to subsequent disapprovals are received no later than close of business on July 20, 2009 for entitlement communities, Insular Areas or non-entitlement counties in Hawaii. The deadline for states is August 13, 2009.

The substantial amendment to the action plan and citizen participation alternative requirement will permit an expedited grant-making process, but one that still provides for public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG-R grant funds.

#### Requirement

##### **1. General.**

- a. Except as described in this notice, statutory and regulatory provisions governing the CDBG program for states, entitlement communities, Insular Areas, and non-entitlement

counties in Hawaii, as applicable, shall apply to the use of these funds. Non-entitlement counties in the state of Hawaii and Insular Areas should follow the requirements for entitlement communities.

b. To receive its grant allocation, a grantee must submit to HUD, by the deadlines in paragraph 4. below, a substantial amendment to its PY2008 action plan, in accordance with the consolidated plan procedures for a substantial amendment under the annual CDBG program as modified by this notice, or HUD may cancel the entire amount allocated for that grantee and reallocate the funds. 24 CFR 91.505(c) is waived to the extent necessary to require submission of the substantial amendment to HUD for approval.

c. 24 CFR 91.500(b) and (d) are waived to the extent necessary to implement alternative procedures for HUD review and approval of grantees' action plan amendments. In addition to the criteria in 24 CFR 91.500(b), HUD may disapprove a plan if it is inconsistent with the requirements of the Recovery Act or the requirements of this notice. HUD may disapprove a plan if it determines that the description of activities, as required in paragraphs 2.a. and 2.b. below, does not adequately describe how an activity will address the Recovery Act. This alternative requirement will allow revision and resubmission of a disapproved action plan in accordance with 24 CFR 91.500(d) so long as the first resubmission is received by HUD 15 calendar days or less following the date of first disapproval, and any further resubmissions in response to subsequent disapprovals are received no later than close of business on July 20, 2009 for entitlement communities, Insular Areas or non-entitlement counties in Hawaii. The deadline for states is August 13, 2009.

d. After HUD processes and approves the plan amendment and both HUD and the grantee have signed the grant agreement, HUD will establish the grantee's line of credit in the amount of the grantee's CDBG-R funds included in the action plan amendment.

**2. Contents of a CDBG-R Action Plan Substantial Amendment.**

a. The required elements in the CDBG-R substantial amendment to the annual action plan for entitlement communities, Insular Areas, and non-entitlement counties in Hawaii are:

- i. Pursuant to 24 CFR 91.220(d), (e) and (l), a description of the activities the jurisdiction will undertake with these funds to address priority needs and objectives. 24 CFR 91.220(l)(ii) is waived. The grantee shall instead identify any other Recovery Act funding to be used in conjunction with each activity and total activity budget from all funding sources. In addition, grantees must provide information concerning CDBG-R assisted activities in an electronic spreadsheet provided by HUD. The information that must be reported in the spreadsheet includes activity name, activity description, CDBG-R dollar amount budgeted, eligibility category, national objective citation, additional Recovery Act funds for the activity received from other programs, and total activity budget. An electronic copy of the spreadsheet and the format will be available on HUD's recovery website at <http://www.hud.gov/recovery>. Grantees must include a paper copy of the spreadsheet in their substantial amendment and must submit an electronic version of the completed spreadsheet to CDBG-R@hud.gov.
- ii. A description of how the distribution and uses of the grantee's CDBG-R funds will meet the requirements of Title XII of Division A and Section 1602 of the Recovery Act: that, in selecting projects to be funded, recipients shall give

- priority to projects that can award contracts based on bids within 120 calendar days from the date the funds are made available to the recipients; and that for CDBG-R funds being used for infrastructure investments, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 calendar days after February 17, 2009.
- iii. For each activity, a written description of how the use of CDBG-R funds for the activity will maximize job creation and economic benefit in relation to the CDBG-R funds obligated, and will address the Recovery Act, by:
- (A) Preserving and creating jobs and promoting economic recovery;
  - (B) Assisting those most impacted by the recession;
  - (C) Providing investment needed to increase economic efficiency;
  - (D) Investing in transportation, environmental protection, or other infrastructure that will provide long-term economic benefits;
  - (E) Minimizing or avoiding reductions in essential services; or
  - (F) Fostering energy independence.
- iv. For each activity, the number of full- and part-time jobs estimated to be created and retained by the activity (including permanent, construction and temporary jobs).
- v. A description of the activities that will be carried out with CDBG-R funds that promote energy conservation, smart growth, green building technologies, or reduced pollution emissions.
- vi. Information on how to contact grantee program administrators, so that citizens and other interested parties know who to contact for additional information.

- vii. A signed standard federal form SF-424, and signed certifications as specified in section II.H. of this notice.
- b. The required elements in the CDBG-R substantial amendment to the annual action plan required for States are:
- i. A description of the activities that will be undertaken with these funds to address priority needs and objectives, and outcome measures pursuant to 24 CFR 91.320(c). The grantee shall identify any other Recovery Act funding to be used in conjunction with each activity and total activity budget from all funding sources. In addition, grantees must provide information concerning CDBG-R assisted activities in an electronic spreadsheet provided by HUD. The information that must be reported in the spreadsheet includes activity name, activity description, CDBG-R dollar amount budgeted, eligibility category, national objective citation, additional Recovery Act funds for the activity received from other programs, and total activity budget. An electronic copy of the spreadsheet and the format will be available on HUD's recovery website at <http://www.hud.gov/recovery>. Grantees must include a paper copy of the spreadsheet in their substantial amendment and must submit an electronic version of the completed spreadsheet to CDBG-R@hud.gov. HUD waives 24 CFR 91.320(d) and 24 CFR 91.320(k)(1)(i) to the extent necessary to require states to provide a list of activities it intends to fund with the CDBG-R allocation.
  - ii. A description of how the distribution and uses of the grantee's CDBG-R funds will meet the requirements of Title XII of Division A and Section 1602 of the Recovery Act: that, in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date the funds are

made available to the recipients; and that for CDBG-R funds being used for infrastructure investments, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 calendar days after February 17, 2009.

iii. For each activity, a written description of how the use of CDBG-R funds for the activity will maximize job creation and economic benefit in relation to the CDBG-R funds obligated, and will address the Recovery Act, by:

- (A) Preserving and creating jobs and promoting economic recovery;
- (B) Assisting those most impacted by the recession;
- (C) Providing investment needed to increase economic efficiency;
- (D) Investing in transportation, environmental protection, or other infrastructure that will provide long-term economic benefits;
- (E) Minimizing or avoiding reductions in essential services; or
- (F) Fostering energy independence.

iv. For each activity, the number of full- and part-time jobs estimated to be created and retained by the activity, which will include permanent, construction and temporary jobs.

v. A description of activities that will be carried out with CDBG-R funds to promote energy conservation, smart growth, green building techniques or reduced pollution emissions.

vi. Information on how to contact grantee or unit of general local government program administrators so that citizens and other interested parties will know who



to contact for additional information.

- vii. A signed standard federal form SF-424, and signed certifications as specified in section II.H. of this notice.

**3. Citizen Participation Alternative Requirement.** HUD is providing an alternative requirement to 42 U.S.C. 5304(a)(2) and (3), to expedite distribution of grant funds and to provide for expedited citizen participation for the CDBG-R substantial amendment. Provisions of 24 CFR 570.302, 24 CFR 570.486(a), 24 CFR 91.105(k) and 91.115(i), with respect to following the citizen participation plan, are waived to the extent necessary to allow implementation of the requirements below. In addition, for States, 24 CFR 91.110 is waived to the extent necessary to eliminate the requirement that a state must consult with units of local government in determining the state's method of distribution in its substantial amendment.

a. 24 CFR 91.105(k) and 24 CFR 91.115(i) are being waived to specify that the grantee will provide no fewer than 7 calendar days for citizen comment (rather than 30 days) for its CDBG-R substantial amendment. At the time of submission to HUD, each grantee will post its action plan amendment and any subsequent CDBG-R amendments on its official website along with a summary of citizen comments received within the 7-day comment period. HUD encourages the grantee to make copies of the substantial amendment available in public places such as libraries and government buildings. In addition, the grantee must ensure that non-English speaking persons and persons with disabilities have access to copies of substantial amendments.

b. The regulation at 24 CFR 91.505(c)(1) states that a grantee may submit a copy of an amendment to its action plan to HUD as it occurs or at the end of the program year. 24 CFR

91.505 is waived to require each grantee to submit the substantial amendment to its action plan for CDBG-R funds no later than the deadlines specified in paragraph 4. below.

**4. Submission Deadlines.** Except as otherwise provided in this paragraph, entitlement grantees, Insular areas and non-entitlement counties in Hawaii are to submit their substantial amendments to their 2008 action plans to their HUD field office by June 5, 2009. States are to submit the substantial amendments to their PY2008 action plans to their HUD field office by June 29, 2009. The deadline for the substantial amendment for HPRP is May 18, 2009; therefore, grantees that wish to submit a single substantial amendment for both programs must do so by May 18, 2009.

Any grantee that will be submitting its program year 2009 action plan between the date of this notice and June 5, 2009, may wish to consider ways in which it can combine the citizen participation and submission steps for its CDBG-R substantial amendment with those for its 2009 action plan. Any entitlement grantee or non-entitlement county in Hawaii with a program year start date of July 1 or earlier, and which has not yet submitted its program year 2009 action plan to its field office as of the date of this notice, may submit its CDBG-R substantial amendment to its 2008 action plan simultaneously with the submission of its program year 2009 action plan. However, in no case can such an entitlement grantee or non-entitlement county in Hawaii submit its CDBG-R action plan amendment later than June 5, 2009. States that submit their substantial amendment to 2008 action plans by June 29, 2009, will need to submit the 2009 action plan by its original deadline. However, the abbreviated citizen participation process provided in this notice applies only to CDBG-R substantial amendments, not to the submission of program year 2009 action plans. Existing regulatory citizen participation requirements continue to apply to action plans submitted for regular

CDBG funding, even if a grantee wishes to submit its CDBG-R substantial amendment simultaneously with its program year 2009 action plan.

A grantee's failure to meet the submission deadlines for CDBG-R, as applicable, may constitute grounds for the Department to cancel the grantee's CDBG-R funding allocation pursuant to the provisions of section I.B. of this notice.

## **5. Program Design Considerations**

Although the Recovery Act applies additional or alternative requirements upon CDBG-R funding that do not exist in the regular CDBG program, this additional appropriation is otherwise subject to all regular CDBG program requirements. HUD has minimized the number of additional changes between CDBG-R and regular CDBG program requirements, to maximize grantees' flexibility in administering these funds. The Recovery Act also contains language which, while not stating explicit mandates, makes clear that Congress intends the use of Recovery Act appropriations to be targeted to address current economic conditions. For example, Section 1602 of the Recovery Act states that, "Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit." While grantees have the full range of CDBG eligible activities at their disposal for CDBG-R, Congress clearly intends that CDBG-R funds should primarily be invested in economic development, housing, infrastructure and other public facilities activities that will quickly spur further economic investment, increased energy efficiency, and job creation or retention. In selecting activities for CDBG-R funding, grantees should keep in mind that some eligible activities under the Housing and Community Development Act are unlikely to substantively address the intent of the Recovery Act.

At the same time, the broad purpose language of the Recovery Act does not expand the list of eligible activities beyond those specified by the Housing and Community Development Act. Some uses of funds suggested by the Recovery Act's broad purpose language do not necessarily fit into any CDBG eligible activity category, and may not be eligible for CDBG-R funding. However, HUD has determined that the purpose language and overall intent of the Act, particularly regarding local fiscal stabilization, supersedes the requirement at 42 U.S.C. 5301(c) that CDBG funding not be used to substantially replace the amount of local financial support previously provided to community development activities.

The Recovery Act also makes clear that grantees are to identify projects that can achieve the Recovery Act purposes AND can be quickly implemented. Language at Title XII of Division A of the Recovery Act, which appropriates the CDBG-R funds, states that, "...in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date the funds are made available to the recipients." Section 1602 of the Recovery Act further states, "In using funds made available in this Act for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of this Act."

Grantees should not assume that their normal CDBG funding distribution procedures can meet the goals for obligation of funds described above. For example, if a grantee's existing activity selection process mandates a lengthy Request For Proposals, lengthy procurement actions, or other process that would take months to produce funding recommendations, grantees should explore what local waiver authority or emergency

procedures they can implement to expedite the process. This may particularly be necessary with some states, for which deviations from existing procedures could require state rule-making. Some Urban County funding procedures that distribute funds on a proportional basis among all participating jurisdictions could result in funding awards that are too small to be used expeditiously and productively by the participating jurisdictions.

Grantees may have already identified activities that were approved to receive funding out of the grantee's FY2009 funding allocation. Grantees should consider whether any of these activities meet the additional CDBG-R requirements, and if so, whether their implementation schedules could be accelerated so that they could instead be funded with CDBG-R funds. However, moving an activity from a grantee's 2008 or 2009 program year regular CDBG program to the CDBG-R program, and replacing that moved activity with a new activity, would trigger a substantial amendment to a grantee's already-approved 2008 or 2009 action plan. This would trigger additional citizen participation requirements beyond those required for the CDBG-R substantial amendment.

States should consider whether their existing method of distribution processes can be employed to fund worthwhile activities that fell below the funding cut-off line from their program year 2008 distribution process, or to fund applications already submitted for their program year 2009 distribution process.

HUD encourages grantees to use CDBG-R funds for discrete, stand-alone activities whenever possible. As noted elsewhere in this notice, final guidance on reporting requirements and applicability of the Davis-Bacon Wage Rate Act has not yet been issued. Amending a construction contract to add CDBG-R funding to an existing project (particularly one that is not otherwise federally funded) may subject the entire project to

Recovery Act reporting and other compliance requirements. Grantees should also avoid using CDBG-R funds to initiate a new project that cannot be completed within the expenditure deadline for the CDBG-R program or that will require the commitment of future years' allocations of regular CDBG funds.

However, HUD recognizes that the additional increment of CDBG-R funding may not be enough for some grantees to fully fund a new activity. (The amount of additional funding allocated to grantees equals about 27 percent of their FY2008 regular CDBG allocation.) Grantees should consider whether it is possible to issue a new contract to use CDBG-R funds to fund an additional increment of work or services beyond that which is already under contract or otherwise underway. For example:

- A grantee may have performed engineering and environmental review work on a project to replace sanitary sewers, but scaled back the project before awarding a construction contract due to funding constraints. Because engineering work has already been done, it may be time- or cost-effective for the grantee to issue a separate construction contract for the blocks of sewers that were excluded from the existing contract.
- A grantee may use CDBG-R funds to finance the rehabilitation of several apartment buildings that are on the waiting list for assistance under the grantee's CDBG rental housing rehabilitation loan program.
- A grantee might consider physical improvements to a water treatment plant that will reduce the energy costs of the plant's operations or will conserve water resources.
- A grantee that had to pare back funding for an activity (compared to the subrecipient's original funding request or prior levels of service) might execute a subrecipient agreement to provide CDBG-R funds that will restore the activity to "full funding" levels.

CDBG-R funding will be tracked separately from a grantee's regular CDBG funding in the Integrated Disbursement and Information System (IDIS), will have separate funding contract language, and will have a different grant number from a grantee's regular CDBG funding. Grantees are cautioned against commingling regular CDBG and CDBG-R funds. However, this does not prevent a grantee from using CDBG-R funding in conjunction with an existing activity funded with regular CDBG funds, where the additional funding will be covered under a new contract or subrecipient agreement. Grantees will need to set up this additional increment of funding as a separate activity in IDIS.

Grantees who wish to use CDBG-R funds to expand an ongoing or already-under-construction project should keep the following additional considerations in mind.

*Environmental review procedures:* HUD legislation and regulations (24 CFR 58.22) prohibit CDBG grantees and any party to the development process from committing HUD or non-HUD assistance to a project until the environmental compliance review process has been successfully completed. In adding CDBG-R funds to an existing project, grantees must carefully consider the implications of the Part 58 definition of a commitment of federal funds. No new environmental review is required when a CDBG-R project has been reviewed previously by the same responsible entity, no change to the project activities or location or size results from additional funding, and no new environmental conditions have been discovered. HUD regulations and law prohibit the commitment of HUD and non HUD assistance to a project until the environmental compliance review is successfully completed. Therefore, because Recovery Act projects must expend their CDBG-R funds in such a short timeframe, it is very important to begin and complete your environmental compliance review as soon as possible. Grantees are urged to contact their Field Environmental Officer, and to

visit the HUD environmental website for more detailed information on environmental clearance: <http://www.hud.gov/offices/cpd/energyenviron/environment/compliance/qa/clearance.cfm>

*Labor Standards applicability:* HUD will issue guidance concerning the applicability of prevailing wage requirements at a later date. For more information about the federal labor standards requirements in HUD programs, please visit the Office of Labor Relations website at [www.hud.gov/offices/olr](http://www.hud.gov/offices/olr).

## **B. Reimbursement for Pre-Award Costs**

### Background

CDBG-R grantees will need to move forward rapidly to prepare the CDBG-R substantial amendment and to undertake other administrative actions, including environmental reviews. Therefore, HUD is granting permission to states and entitlement jurisdictions receiving a direct allocation of CDBG-R funds to incur pre-award costs associated with the development of the substantial amendment to the action plan as if each was a new grantee preparing to receive its first allocation of CDBG funds.

Grantees may also take advantage of the provisions of 24 CFR 570.200(h) regarding activity-specific pre-award costs. Grantees may incur costs prior to grant award for specific activities, as of the date the grantee submits its CDBG-R action plan substantial amendment to HUD. Where a grantee amends an existing construction contract or issues a new contract in order to use CDBG-R funding to expand an existing activity, the date on which the CDBG-R costs are considered incurred for purposes of 24 CFR 570.200(h) will generally be the date of the new or amended contract, not the date that funds were initially obligated for the original project.



A number of entitlement grantees have used the provisions of 24 CFR 570.200(h)(1)(v) to incur pre-award costs against their regular CDBG program, where payments will be made from future years' CDBG allocations. HUD has determined that it is not consistent with the requirements of the Recovery Act to allow CDBG-R funds to be used as payment for pre-award activity costs that grantees incurred under their regular CDBG funds. HUD therefore finds good cause to waive 24 CFR 570.200(h) to the extent necessary to implement this prohibition.

#### Requirement

24 CFR 570.200(h) is waived to the extent necessary to allow entitlement jurisdictions receiving a direct CDBG-R allocation under this notice to incur pre-award costs as if each was a new grantee preparing to receive its first allocation of CDBG funds. In accordance with OMB Circular A-87, Attachment B, paragraph 31, 24 CFR 570.200(h) is similarly applied to States. A CDBG-R grantee will be allowed to incur costs necessary to develop the CDBG-R substantial amendment to its action plan and undertake other administrative actions necessary to receive its grant, prior to the costs being included in the final plan, and to incur activity-specific costs as of the date the substantial is submitted to HUD, provided that the other conditions of 24 CFR 570.200(h) are met. For units of general local governments funded by a state, 24 CFR 570.489(b) applies unmodified. 24 CFR 570.200(h) is waived to the extent necessary to prohibit a grantee from using CDBG-R funds for reimbursement of pre-award costs incurred against the grantee's regular CDBG funding.

#### **C. Recovery Act Requirements for CDBG-R Expenditures**

Title XII of Division A of the Recovery Act requires that in selecting CDBG-R projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 calendar days from the date the funds are made available to the recipients.

Section 1602 of the Recovery Act requires that grantees shall use grant funds in a manner that maximizes job creation and economic benefit. Section 1602 also states that, when CDBG-R funds are being used for infrastructure investments, grantees must give preference to activities that can be started and completed expeditiously, including a goal to obligate at least 50 percent of the funds for activities that can be initiated within 120 days of enactment of the Recovery Act.

HUD has defined the term “use” for purposes of these requirements to mean obligation of funds. HUD is adopting the definition of “obligation” as it appears in 24 CFR 85.3 for all grantees, including states, to mean the amount of orders placed, contracts and sub-grants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

Section 1605 of the Recovery Act requires that all iron, steel and manufactured goods used in construction, alteration, repair, or maintenance of a public building or public work project assisted with funds under the Recovery Act must be produced in the United States, unless the Secretary finds that: the requirement is inconsistent with public interest; those goods are not reasonably available or produced in sufficient quantity in the U.S.; or the use of the goods will increase the project cost by more than 25 percent. Grantees must request a waiver of this provision if, in the process of carrying out an eligible activity, one of these conditions arises. If the Secretary determines that it is necessary to waive this requirement, he must publish in the Federal Register a detailed written justification why the requirement

was waived; therefore, all grantees are expected to adhere to these provisions. These requirements must be applied consistent with U.S. obligations under international agreements. To streamline compliance with the provision of Section 1605 in determining the project cost using American-made materials, grantees may want to consider acquiring two cost estimates with bids: one with only American-made materials and the other with any materials.

Section 1604 of the Recovery Act prohibits CDBG-R funds from being used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. In applying this prohibition, HUD will interpret the definitions of these terms broadly. This requirement is further discussed in section II.E. of this notice.

Section 1512 of the Recovery Act requires that for each activity carried out with CDBG-R funds, grantees must report on the number of jobs estimated to be created or retained. This reporting requirement applies to all activities, and is unrelated to the reporting of jobs for purposes of meeting the low- and moderate-income benefit national objective requirements. This requirement is further discussed under section II.G of this notice.

As part of the CDBG-R substantial amendment, grantees will be required to submit certifications regarding these requirements.

#### **D. Program Income Requirements**

Any program income generated from the use of CDBG-R funds will be treated as program income to the regular CDBG program, not as program income to the CDBG-R program. HUD is waiving a number of statutory and regulatory provisions to implement this requirement, many of which are described in Section F. below. 24 CFR 85.21 and 24 CFR 570.504 (for entitlements) and 24 CFR 570.489(e)(3) and 31 CFR part 205 (for states),

require grantees and subrecipients to disburse program income before requesting additional cash withdrawals of regular CDBG funds from the U.S. Treasury. Those requirements will not apply to the drawdown of CDBG-R funds.

In the regular CDBG program, 24 CFR 570.301(b) provides for float-funded activities and guarantees, a short-term financing mechanism which allows a grantee to use undisbursed funds in its line of credit and CDBG program account that are budgeted in action plans for one or more other activities that do not need the funds immediately. Each activity carried out using the float must meet all CDBG requirements and must be expected to produce program income in an amount at least equal to the amount of float so used. Because program income generated from CDBG-R activities will not be treated as program income to the CDBG-R program, grantees may not use CDBG-R funds to assist any float-funded activity or guarantee. 24 CFR 570.301(b) is therefore waived.

## **E. Eligibility, Allowable Costs, and National Objective Waivers**

### Background

*Overall low- and moderate-income benefit alternative requirements:* The requirement that 70 percent of funds are for activities that benefit low- and moderate-income persons [found at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.200(a)(3) and 24 CFR 570.484] will apply to the use of CDBG-R funds. A grantee must ensure that 70 percent of its CDBG-R grant be expended for activities that benefit low- and moderate-income persons. Compliance with the overall benefit requirement must be demonstrated separately for the CDBG-R grant and not in combination with regular CDBG funding or commitments under the Section 108 Loan Guarantee program; thus, there is no option for selecting the timeframe for compliance.

*Urgent need national objective criteria:* In the regular CDBG program, to meet the urgent need national objective pursuant to 24 CFR 570.208(c) and 24 CFR 570.483(d), the recipient must certify: that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health and welfare of the community which are of recent origin or recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funds are not available. In the regular State CDBG program, the local government provides this certification and the State makes the determination of the same. For CDBG-R, HUD is eliminating the recordkeeping requirement that grantees document the nature, degree and timing of seriousness of the condition to be addressed by the activity if the urgent need is based on current economic conditions. HUD will accept a grantee's certification that current economic conditions are of recent origin and constitute a serious and immediate threat to the welfare of the community. However, the grantee must still demonstrate that it is unable to finance the activity on its own, and that other sources of funding are not available. For the State CDBG program, states may make this certification on behalf of units of general local government.

*Limitations on public services activities:* In the regular CDBG program, entitlement grantees are permitted to obligate no more than 15 percent of their annual CDBG allocation plus 15 percent of the prior program year's program income for public service activities. States are permitted to expend no more than 15 percent of each annual CDBG allocation plus program income for public service activities. HUD is providing an alternative requirement because there will be no program income attributed to CDBG-R, and because CDBG-R is to be treated as a separate appropriation of funds. Compliance with the public service cap must be demonstrated separately based on each grantee's total CDBG- R grant allocation and not

in combination with its regular CDBG funding or program income. For both states and entitlements, compliance will be demonstrated based on expenditures of CDBG-R funds, not on obligations as in the regular CDBG entitlement program. HUD is waiving 42 U.S.C. 5305(a)(8) to exclude program income from the amount of funds on which the cap is based. Other provisions of that section remain in place.

*Limitations on planning and general administration activities:* Pursuant to 24 CFR 570.200(g), in the regular CDBG program, a CDBG entitlement grantee is permitted to obligate no more than 20 percent of its annual CDBG allocation plus program income for planning and administrative costs as defined in 24 CFR 570.205 and 24 CFR 570.206. Pursuant to 24 CFR 570.489(a)(3), a state and its funded units of general local government are, in aggregate, permitted to expend no more than 20 percent of the state's annual grant plus program income for planning and administrative costs as defined at 42 U.S.C. 5305(a)(12), 5305(a)(13) and 5306(d)(3). HUD is providing an alternative requirement because there will be no program income attributed to CDBG-R, and because CDBG-R is to be treated as a separate appropriation of funds. Compliance with the planning and administration costs cap must be demonstrated separately based on each grantee's total CDBG- R grant allocation and not in combination with its regular CDBG funding or program income. For CDBG-R, up to 10 percent of a CDBG-R grant directly provided to a jurisdiction (State, entitlement community, Insular Area or non-entitled county in Hawaii) may be used for general administration and planning activities. For all grantees, including states, the 10 percent limitation applies to the grant as a whole. States should note that the 10 percent limitation includes any funds the State expends for technical assistance to units of general local government and non-profit organizations pursuant to 42 U.S.C. 5306(d)(5) and

(6). Consistent with Recovery Act provisions to expedite the use of CDBG-R funds, HUD is waiving the requirement for matching State administrative funds. Requiring states to match administrative funds may considerably slow down the expenditure of CDBG-R funds in states struggling to stabilize their budgets.

*Public benefit standards:* In the regular CDBG program, the public benefit standards at 24 CFR 570.209(b), (c) and (d) (for entitlement grantees) and 24 CFR 570.482(f) and (g) (for states) apply to economic development projects under the authority of 24 CFR 570.203, 24 CFR 570.204, 24 CFR 570.208(a)(4)(vi)(F)(2), 24 CFR 570.483(b)(4)(vi)(F)(2), and 42 U.S.C. 5305(a)(2), (14), (15), or (17), respectively. HUD is waiving portions of these regulations to expedite the timely use of funds by grantees. HUD will presume that activities that meet the requirements and Congressional intent of the Recovery Act provide sufficient public benefit. Grantees are still encouraged to provide economic assistance at the lowest possible cost per job, or cost per low- and moderate-income beneficiary.

Activities identified in these regulations as providing insufficient public benefit remain ineligible for CDBG-R funding: general promotion of the community as a whole; assistance to professional sports teams; assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons; acquisition of land for which the specific proposed use has not yet been identified; and assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient. (Those ineligible activities are in

addition to those which the Recovery Act specifically prohibits: casinos, other gambling establishments, aquariums, zoos, golf courses, or swimming pools.) Furthermore, HUD is not waiving the provisions of 24 CFR 570.209(a) (for entitlement grantees) and 24 CFR 570.482(e) (for states) regarding underwriting guidelines.

*Relationship of CDBG-R to the Section 108 Loan Guarantee program:* In the Section 108 program, 24 CFR 570.705(a)(2)(i) permits a CDBG grantee to borrow an amount of up to five times of its most recent CDBG grant for a Section 108 loan. 24 CFR 570.705(b) permits CDBG funds to be used as a pledge of security for the repayment of Section 108 loans. 24 CFR 570.705(c) permits the use of CDBG funds to repay funds borrowed under the Section 108 program. The Section 108 program is intended to provide longer-term project financing and requires a pledge of CDBG future funds over the life of the loan guarantee, whereas CDBG-R is a one-time appropriation of funds of limited duration. CDBG-R funds may not be used as a pledge of security for the repayment of Section 108 loans, may not be used to securitize borrowing under the Section 108 program, may not be used as repayment for funds borrowed under the Section 108 program, and may not be counted toward a grantee's maximum Section 108 borrowing authority.

### Requirements

1. 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.200(a)(3) and 24 CFR 570.484 are waived to the extent necessary to require that CDBG-R funds shall principally benefit persons of low and moderate income in a manner that ensures that not less than 70 percent of such funds are used for activities that benefit such persons, exclusive of any other funds received by the



grantee under 42 U.S.C. 5306 or as a result of a guarantee or a grant under 42 U.S.C. 5308.

A grantee must meet this requirement over the life of its CDBG-R grant.

2. 24 CFR 570.506(b)(12)(i) and (iii) are waived, and 24 CFR 570.208(c), 24 CFR 570.483(d), and 24 CFR 570.490(a) and (b) are waived to the extent necessary to allow grantees to certify that an activity is designed to address current economic conditions which pose a serious and immediate threat to the welfare of the community. HUD has determined that current economic conditions are of recent origin and pose a serious and immediate threat to the economic welfare of communities. States may provide this certification on behalf of units of general local government. Grantees must maintain other documentation specified in these regulations.

3. 42 U.S.C. 5306(a)(8), 24 CFR 570.201(e)(1) and 24 CFR 570.201(e)(2) are waived to the extent necessary to require that no more than 15 percent of CDBG-R funds shall be expended for eligible public service activities, exclusive of any other funds received by the grantee under 42 U.S.C. 5306. A grantee must meet this requirement over the life of this grant.

4. 42 U.S.C. 5306(d)(3), (5) and (6), 24 CFR 570.200(g) and 24 CFR 570.489(a) are waived to the extent necessary to establish the following requirement: No more than 10 percent of CDBG-R funds shall be expended for eligible planning and general administration activities as defined in 42 U.S.C. 5305(a)(12), 5305(a)(13) and 5306(d)(3), and in 24 CFR 570.205 and 24 CFR 570.206, exclusive of any other funds received by the grantee under 42 U.S.C. 5306. For states, this 10 percent limitation includes technical assistance eligible under 42 U.S.C. 5306(d)(5) and (6). A grantee must meet this requirement over the life of this grant. For states, this requirement applies in total to the state and all entities it funds.

5. The requirements at 42 U.S.C. 5306(d)(3)(A) and 24 CFR 570.489(a) are waived to the extent necessary to eliminate the state match requirement for general administrative costs.
6. 42 U.S.C. 5305(e)(3), 24 CFR 570.209, 24 CFR 570.482(f), 24 CFR 570.490(a) and 24 CFR 570.506(c) are waived to the extent necessary to permit grantees to carry out economic development projects without meeting the public benefit standards, except that 24 CFR 570.209(b)(3)(ii)(A) through (E) and 24 CFR 570.482(f)(4)(ii)(A) through (E) are not waived.
7. 42 U.S.C. 5308 and Subpart M of 24 CFR Part 570 are waived to the extent that they are not applicable to the use of CDBG-R funds.
8. Uses of grant funds must constitute an eligible use under the Recovery Act. In addition to being an eligible CDBG-R use of funds, each activity funded under this notice must also be eligible under 42 U.S.C. 5305(a) and Subparts C and I of Part 570, and meet a CDBG national objective under Subparts C and I of Part 570, as modified by this notice. Activities not listed as eligible under 42 U.S.C. 5305(a), and activities that are specifically listed as ineligible under 24 CFR 570.207 and 24 CFR 570.482, are ineligible for CDBG-R funding. The last sentence of 42 U.S.C. 5301(c) is waived.
9. Pursuant to Section 1604 of the Recovery Act, CDBG-R funds may not be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

## **F. Timeliness of Use and expenditure of CDBG-R funds**

### Background

In accordance with the Recovery Act, HUD has imposed a grant period and expenditure deadline of September 30, 2012, to ensure that the use of CDBG-R funds is expedited. To that end, HUD has waived a number of regulatory and statutory provisions.

The timely expenditure regulatory requirements for the entitlement CDBG program will not apply to CDBG-R funds. These funds will not be included in determining compliance with the requirements of 24 CFR 570.902. However, income generated from CDBG-R activities will be treated as program income to grantees' regular CDBG program, and thus will be included in timely expenditure compliance determinations. In selecting and designing activities for CDBG-R funding, grantees should consider the indirect effects on their compliance with the timely expenditure requirements for their regular CDBG funding. The timely distribution regulatory requirements for states will not apply to CDBG-R funds.

#### Requirement

The timely distribution or expenditure requirements of 42 U.S.C. 5304(e) and 24 CFR 570.494 and 570.902 are waived to the extent necessary to allow the following alternative requirement: All CDBG-R grantees must expend their entire allocation of CDBG-R funds by September 30, 2012. Any funds not expended by September 30, 2012, will be recaptured by HUD and returned to the U.S. Treasury.

### **G. Reporting**

#### Background

HUD requires timely and accurate reporting on each CDBG-R grant in IDIS. HUD will use the information from IDIS to exercise oversight for compliance with the requirements of this notice and for prevention of fraud, waste, and abuse of funds. The Recovery Act imposes greater (and more frequent) reporting requirements than those that apply to grantees' regular CDBG funding.

Section 1512 of the Recovery Act requires that not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a federal agency shall

submit a report to that agency that contains: (1) the total amount of recovery funds received from that agency; (2) the amount of recovery funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including the name of the project or activity; a description of the project or activity; an evaluation of the completion status of the project or activity; an estimate of the number of jobs created and the number of jobs retained by the project or activity; and for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act and name of the person to contact at the agency if there are concerns with the infrastructure investment. Not later than 30 calendar days after the end of each calendar quarter, each agency that made Recovery Act funds available to any recipient shall make the information in reports submitted publicly available by posting the information on a website.

Grantees' agreements with subrecipients or units of general local government must contain a special contract condition requiring them to comply with the reporting requirements established for CDBG-R funding. All grantees, subrecipients and contractors desiring to participate in the CDBG-R program must obtain a Data Universal Numbering System (DUNS) number. A DUNS number may be requested via the web at: [http://www.grants.gov/applicants/request\\_duns\\_number.jsp](http://www.grants.gov/applicants/request_duns_number.jsp). HUD will post guidance on its website regarding how to obtain a DUNS number.

Title XV, Section 1512 of the Recovery Act states that funding recipients that are required to report information per subsection (c)(4) of the Recovery Act (detailed information on any subcontracts or subgrants awarded by the recipient to include the data

elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 allowing aggregate reporting on awards below \$25,000 or to individuals) must register with the Central Contractor Registration (CCR) database. CCR is the primary registrant database for the U.S. Federal government. CCR collects, validates, stores, and disseminates data in support of agency acquisition missions. Registration information on the CCR website can be found at <http://www.ccr.gov/startregistration.aspx>. A CCR User Account Guide can be found at <http://www.ccr.gov/doc/UserAccount.pdf>. CCR frequently asked questions can be found at <http://www.ccr.gov/FAQ.aspx#accounts>.

Additional information regarding subrecipients, other organizations, and contractors receiving CDBG-R funding will also be required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282) and to ensure accountability and transparency as cited in Title XV of the Recovery Act. This may include, but is not limited to, address and contact information as well as more detailed information about the entity and its award under this activity.

The regular CDBG reporting requirements as well as the additional CDBG-R reporting requirements will be strictly enforced. HUD reserves the right to restrict access to grantees' CDBG-R funds for delinquent, incomplete, or inaccurate reporting. Each CDBG-R activity, regardless of eligibility category and national objective, will not only report on the regular CDBG accomplishments and performance measures for that activity but also on the number of jobs created and retained, if applicable. (Grantees should note that this jobs reporting requirement applies to all activities and has nothing to do with low- and moderate-income benefit national objective compliance based on job creation or retention.)

The Recovery imposes additional reporting requirements including, but not limited to, information on the environmental review process, the expected completion of the activity, the type of activity, and the location of the activity. The Department has not yet determined how these reporting requirements will be implemented. HUD will establish and disseminate reporting requirements for CDBG-R assisted activities at a later date.

To collect these data elements and to meet its reporting requirements, HUD is requiring each grantee to report on its CDBG-R funds to HUD using IDIS.

#### Requirements

1. Performance report alternative requirement. The Secretary may specify the form and timing of reports provided by the grantee under both 42 U.S.C. 5304(e) (the HCD Act) and 42 U.S.C. 12708 (NAHA). Therefore, the consolidated plan regulation at 24 CFR 91.520 is waived and the alternative reporting form and timing for the CDBG-R funds is that:
  - a. For infrastructure investments made by State and local governments, report the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act and name of the person to contact at the agency if there are concerns with the infrastructure investment.
  - b. Provide detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.
  - c. Information must be submitted using HUD’s IDIS system. Pursuant to Section 1512 of the Recovery Act, grantees must enter the data into IDIS on a quarterly basis for generation of

reports by HUD or other entities. 24 CFR 570.495 and 24 CFR 570.910 are waived to the extent necessary to allow HUD to restrict access to funds in IDIS for any grantee that fails to fully comply with CDBG-R reporting requirements.

d. Throughout 24 CFR parts 91 and 570, all references to “annual” requirements such as submission of plans and reports are waived to the extent necessary to allow the provisions of this notice to apply to CDBG-R funds, with no recurring annual requirements other than those related to civil rights and fair housing certifications and requirements.

## **H. Certifications**

### Background

Because this is a separate appropriation of funds, the certifications that are required for the CDBG program must also be submitted for the CDBG-R program; they are listed at 24 CFR 91.225 for entitlement communities and 24 CFR 91.325 for States. HUD is waiving the requirements that grantees follow their existing citizen participation plan, and that a state consult with units of general local government in preparation of its substantial amendment. Therefore, HUD is also waiving the certifications associated with these requirements.

HUD is requiring additional certifications in addition to the certifications that are normally required. The additional certifications are tailored to CDBG-R grants. Although the CDBG-R is being implemented as a substantial amendment to the 2008 annual action plan, HUD is requiring submission of this additional set of certifications.

### Requirements

Certifications for states and for entitlement communities.

1. Each jurisdiction will sign and submit the certifications at 24 CFR 91.225(a) and (b), or 24 CFR 91.325(a) and (b) as applicable, except that 24 CFR 91.225(b)(1), 24 CFR

91.225(b)(4)(ii), 24 CFR 91.325(b)(1), 91.325(b)(2)(i) and (v), and 24 CFR 91.325(b)(4)(ii) are waived. 24 CFR 91.225(b)(4)(iii) and 24 CFR 91.325(b)(4)(iii) are waived to the extent necessary to eliminate the phrase “including Section 108 loan guarantee funds” from the certifications.

2. Each jurisdiction will also sign and submit the following certifications:

a. a certification that the jurisdiction will comply with Title XII of Division A of the American Recovery and Reinvestment Act of 2009.

b. a certification that in selecting projects to be funded, the grantee will give priority to projects that can award contracts based on bids within 120 days from the date the funds are made available to the recipients, and will ensure maximum job creation and economic benefit.

c. a certification that when CDBG-R funds are being used for infrastructure investments, the grantee will give preference to quick-start and finish activities, including a goal to use at least 50 percent of the funds for activities within 120 days of enactment of the Recovery Act.

d. a certification that all iron, steel and manufactured goods used in construction, alteration, repair, or maintenance of a public building or public work project assisted with CDBG-R funds under the Recovery Act must be produced in the United States unless the Secretary finds that: (1) the requirement is inconsistent with public interest; (2) those goods are not reasonably available or produced in sufficient quantity in the U.S.; (3) or the use of the goods will increase the project cost by more than 25 percent.

e. a certification from the Governor, mayor, or other chief executive, as appropriate, that any infrastructure investments have received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate



use of taxpayer dollars. Alternatively, a grantee's chief elected official may certify that infrastructure investments will receive the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars.

f. a certification that, for activities carried out with CDBG-R funds using the urgent need national objective where the urgent need is the current economic conditions, the activity is alleviating current economic conditions which pose a threat to the economic welfare of the community in which the activity is being carried out, the recipient is unable to finance the activity on its own, and other sources of funding are not available.

g. a certification stating that the aggregate use of CDBG-R funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent of the grant is expended for activities that benefit such persons over the life of the CDBG-R grant.

### **I. Paperwork Reduction Act**

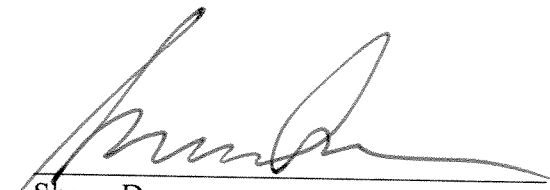
The information collection requirements in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2506-0184. In accordance with the Paperwork Reduction Act, HUD may not

conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

### **J. Environmental Impact**

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this issuance 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(2)(C)). The FONSI is available for public inspection between the hours of 8:00 a.m. and 5:00 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

Dated: 5/4/09

  
Shaun Donovan  
Secretary

[FR-5309-N-01]