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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5696-N-04]

Additional Waivers and Alternative Requirements for Hurricane Sandy Grantees in Receipt of Community Development Block Grant Disaster Recovery Funds

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

ACTION: Notice.

SUMMARY: Previously, the Department allocated $5.4 billion of Community Development Block Grant disaster recovery (CDBG–DR) funds appropriated by the Disaster Relief Appropriations Act, 2013 for the purpose of assisting recovery in the most impacted and distressed areas declared a major disaster due to Hurricane Sandy (*see* 78 FR 14329, published in the Federal Register on March 5, 2013). This notice provides additional waivers and alternative requirements.

DATES: This notice is effective: **[Insert date 5 days from date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Stan Gimont, Director, 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 Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Gimont at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.) E-mail inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

III. Catalog of Federal Domestic Assistance

IV. Finding of No Significant Impact

I. Background

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2, approved January 29, 2013)(Appropriations Act) makes available $16 billion in Community Development Block Grant (CDBG) funds for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (Stafford Act), due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013.

On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG disaster recovery (CDBG-DR) grants under the Appropriations Act to $15.18 billion. In a Federal Register notice published March 5, 2013 (78 FR 14329), the Department allocated $5.4 billion after analyzing the impacts of Hurricane Sandy and identifying unmet needs. A subsequent notice, providing additional guidance, waivers, and alternative requirements for Hurricane Sandy grantees was published by the Department on April 19, 2013

(78 FR 23578). This notice provides additional waivers and alternative requirements to several Hurricane Sandy grantees—the State of New York and the State of New Jersey.

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The 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 the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

This section provides additional waivers and alternative requirements to several Hurricane Sandy grantees. For each waiver and alternative requirement described in this notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act. Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities. Under the requirements of the Appropriations Act, regulatory waivers must be published in the **Federal Register** no later than five days before the effective date of such waiver.

1. *Waiver to permit some activities in support of the tourism industry (State of New York only).* In the notice published on April 19, 2013, the Department granted the State of New York a waiver to allow the State to fund certain tourism activities within the counties most impacted

and distressed by Hurricane Sandy. This notice broadens that waiver to allow the State to fund certain tourism activities within counties receiving a Presidential disaster declaration in response to Hurricane Irene and/or Tropical Storm Lee.

Tourism in Irene/Lee-impacted counties generates approximately $14 billion each year. In the 30 counties affected by Hurricane Irene and Tropical Storm Lee, 11,000 businesses were impacted, accounting for 138,000 jobs. During this same time period, 13 of the impacted counties (located in the Adirondacks, Southern Tier and Central New York) experienced an economic loss of approximately $108 million in direct visitor spending and positive impact on state and local taxes. Without this waiver, the State estimates that the economic recovery in these areas will continue to significantly lag behind the pre-storm average growth rates, resulting in job loss and business closures.

Thus, HUD is broadening its previous waiver: 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived only to the extent necessary to allow the State to expend up to $3 million (of the $30 million already approved by the Department) for the tourism industry to promote tourism in counties in receipt of a Presidential disaster declaration in response to Hurricane Irene and/or Tropical Storm Lee. Thus, this notice allows CDBG-DR funds to be used to promote a community or communities in general, provided the assisted activities are designed to support tourism within areas designated major disaster areas as a result of Hurricane Irene or Tropical Storm Lee. In addition, per the April 19, 2013, notice, the State of New York may use CDBG-DR funds to promote a community or communities in general, provided the assisted activities are designed to support tourism to the most impacted and distressed areas related to the effects of Hurricane Sandy. This waiver will expire at the end of the State's two-year expenditure period.

2. *Use of ‘‘uncapped’’ income limits (State of New Jersey only)*. The State of New Jersey plans to initially target disaster recovery funds to low- and moderate-income households and has enaged in targeted outreach to ensure these households, particularly in high cost areas, can receive recovery funding. To ensure that all eligible households that are low- and moderate-income have equal access to resources, the State requested a waiver to allow all of the nine most impacted counties within the State to use HUD's "uncapped income limits" to better reflect the population of low- and moderate-income households in those areas.

The Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105–276) enacted a provision that directed the Department to grant exceptions to at least 10 jurisdictions that are currently ‘‘capped" under HUD's low and moderate-income limits. Under this exception, a number of CDBG entitlement grantees may use ‘‘uncapped’’ income limits that reflect 80 percent of the actual median income for the area. Typically, average incomes (and thus the cost of living, including home values) in these entitlement grantees are significantly higher than in surrounding areas. By using uncapped income limits, grantees are better able to identify and assist those households considered to be low- to moderate-income for that particular area.

In the Federal Register notice dated March 5, 2013, the Department noted that the uncapped limits apply to disaster recovery activities funded pursuant to this notice in jurisdictions covered by the uncapped limits, including jurisdictions that receive disaster recovery funds from the State. While there are New Jersey counties that were most impacted by Hurricane Sandy that currently use the "uncapped" income limits, there are several that do not use the uncapped limits. The State's efforts to target CDBG resources to low- and moderate-income households means that those counties that already have the uncapped income limits (and thus more households that may be designated as low- and moderate-income) have a greater

likelihood of receiving funding than counties that do not have the uncapped income limits despite having similar income demographics.

This notice imposes an alternative requirement to the applicable US median family income cap on income limits that will apply to the State of New Jersey. The alternative requirement extends the exemption permitting the use of the uncapped income limits to all of the nine most impacted counties that were impacted by Hurricane Sandy within the State of New Jersey to ensure that households that are low- and moderate-income have equal opportunities to access funds. More information about this exemption can be found on HUD's website at http://www.hud.gov/offices/cpd/systems/census/lowmod/uncapped.cfm.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the disaster recovery grants under this notice is 14.269.

IV. 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(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing or

Speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-9339.

Date: July 26, 2013

Mark Johnston
Deputy Assistant Secretary for Special Needs Programs

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