

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****[Docket No. FR-5089-N-04]****Additional Waivers Granted to and Alternative Requirements for the State of Mississippi Under Public Laws 109-148 and 109-234****AGENCY:** Office of the Secretary, HUD.**ACTION:** Notice of waivers and alternative requirements.

**SUMMARY:** As described in the Supplementary Information section of this Notice, HUD is authorized by statute to waive statutory and regulatory requirements and specify alternative requirements for this purpose, upon the request of the state grantees. This Notice describes the additional waivers for the disaster recovery grants made to the State of Mississippi under the subject appropriations acts.

**DATES:** *Effective Date:* March 12, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Clifford Taffet, Acting Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-2684. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. FAX inquiries may be sent to Mr. Taffet at (202) 708-1744. (Except for the "800" number, these telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:****Authority To Grant Waivers**

The first federal fiscal year 2006 supplemental appropriation for the Community Development Block Grant (CDBG) program was in the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109-148, approved December 30, 2005) which appropriated \$11.5 billion for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of the covered disasters.

The second 2006 supplemental appropriation was in Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109-234, approved June 15, 2006) which appropriated \$5.2 billion in Community Development Block Grant funds also for

necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of the covered disasters. The 2006 Acts each authorize 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, 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. The following additional waivers and alternative requirements for funds provided under either or both 2006 Acts are in response to requests from the State of Mississippi. (A waiver or alternative requirement will apply to assistance provided under either Act unless otherwise specified in 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 (42 U.S.C. 5301 et seq.) (the 1974 Act), or the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. 12721 et seq.).

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**.

Except as described in this and other notices applicable to these grants, statutory and regulatory provisions governing the Community Development Block Grant program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the appropriations acts cited above, HUD will reconsider every waiver in this Notice on the two-year anniversary of the day this Notice is published.

**Waiver Justification**

In general, waivers already granted to the State of Mississippi and alternative requirements already specified for CDBG disaster recovery grant funds provided under Public Law 109-148 and Public Law 109-234 apply. The notices in which these prior waivers and alternative requirements applicable to Mississippi appear are 71 FR 7666, published February 13, 2006; 71 FR 34457, published June 14, 2006; 71 FR 62372, published October 24, 2006, and

71 FR 63337, published October 30, 2006.

The provisions of this Notice do not apply to funds provided under the annual CDBG program. The provisions provide additional flexibility in program design and implementation for the disaster recovery grants.

*Housing incentives to resettle in Mississippi.* The state may offer disaster recovery or mitigation housing incentives to promote housing development or resettlement in particular geographic areas. The Department is waiving the 1974 Act and associated regulations to the extent necessary to make this use of grant funds eligible.

*Eligibility—buildings for the general conduct of government.* The State requested an eligibility waiver to allow it to fund buildings for the general conduct of government under the economic development programs in its Action Plan. The requested change will allow the State to assist construction, reconstruction, or rehabilitation of such buildings when the assistance meets the criteria in the Action Plan. HUD considered the state's request and agrees that it is consistent with the overall purposes of the 1974 Act for the state to be allowed to use the grant funds under this notice to fund critical projects involving repair of buildings for the general conduct of government that the state has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery.

*Public benefit for certain economic development activities.* For its economic development programs, the state has requested a waiver of the public benefit standards for its economic development activities.

The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the annual aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. Essentially, the public benefit standards are a proxy for all the other possible public benefits provided by an assisted activity. These dollar thresholds were set more than a decade ago and under disaster recovery conditions (which often require a larger investment to achieve a given result), can be too low and thus impede recovery by limiting the amount of assistance the grantee may provide to a

critical activity. The State has made public in its Action Plan the disaster recovery needs each activity is addressing and the public benefits expected.

After consideration, this Notice waives the public benefit standards for the cited activities, except that the State shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, (c) the average amount of assistance per job and activity or program, and (d) the types of jobs. As a conforming change for the same activities or programs, HUD is also waiving paragraph (g) of 24 CFR 570.482 to the extent its provisions are related to public benefit.

*Overall benefit to low- and moderate-income persons.* The State of Mississippi has asked the Secretary to waive the requirement that at least 50 percent of the CDBG funds received by the state under the grant made under Public Law 109-148 be for activities that benefit persons of low and moderate income (see 71 FR 7666, published February 13, 2006, for the waiver granted under Public Law 109-148 to the original 70 percent requirement, and 71 FR 34457 and 71 FR 62372 for additional waivers specific to Mississippi). With this Notice, HUD is not replacing the October 24 waiver and alternative requirements but adding to them. (Substantial amendments to the State's program after the date of this notice may trigger further updates.)

In considering the waiver request, HUD applied the logic and principles used in the October 24 waiver to the economic development activities under the State's Economic Development program, approved December 19, 2006.

HUD also considered that the State has, to some extent, followed the Department's recommendation that it make a reasonable effort to address the recovery needs of its low- and moderate-income residents. The State designed its economic development grants and loans selection criteria to consider benefit to persons of low and moderate income. Further, it has funded Phase II of the homeowner assistance program and reconstruction of public housing, both designed to primarily or entirely benefit income eligible persons. However, the State has not yet published Action Plan amendments describing the uses of all grant funds.

HUD considered the data and the state's justification for its request. Considering that the State has not yet budgeted all of its grant funds in the Action Plan, it has a large amount of unbudgeted funds, it will be reallocating previously budgeted funds, and a

substantial number of low- and moderate-income persons were impacted by the disaster, HUD decided that it still does not have enough information to conclude that the State has compelling need for a waiver of overall benefit for the entire grant at this time.

Based on the compelling need presented for the activities already included in the Action Plan for Disaster Recovery for the grant made under Pub. L. 109-148, HUD is modifying the waiver granted in the October 24 Notice to grant the state a waiver of the requirement that at least 50 percent of the supplemental CDBG grant funds provided under Pub. L. 109-148 primarily benefit persons of low and moderate income, to the extent necessary to permit Mississippi to carry out the activities contained in its Action Plan amendment dated December 15, 2006, provided that the State must give reasonable priority for the balance of its funds to activities that will primarily benefit persons of low and moderate income. HUD expects the grantee to maintain low- and moderate-income benefit documentation for each activity providing such benefit. This waiver of overall benefit does not cover activities added or modified under a substantial amendment to the activities mentioned in the Action Plan submission listed above.

Previously, the State agreed to examine other housing needs and to pursue other sources of funding to provide assistance for other compelling housing needs, such as for homeless and special needs populations, for low-income renters, and for uninsured low-income homeowners. HUD notes that Phase II addresses some of these needs. The Department expects the State to continue these efforts.

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

1. *General note.* Except as described in this Notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are:

a. Those governing the funds appropriated under Public Law 109-148 and already published in the **Federal Register**, including those in Notices 71 FR 7666, published February 13, 2006; 71 FR 34457, published June 14, 2006; 71 FR 62372, published October 24, 2006; and 71 FR 63337, published October 30, 2006.

b. Those governing the Community Development Block Grant program for states, including those at 42 U.S.C. 5301 et seq. and 24 CFR part 570.

2. *Eligibility—buildings for the general conduct of government.* 42

U.S.C. 5305(a) is waived to the extent necessary to allow the state to use the grant funds under this notice to assist construction, reconstruction, or rehabilitation of buildings for the general conduct of government that the State has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the State has determined have substantial value in promoting disaster recovery.

3. *Eligibility—incentives to resettle in Mississippi.* 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible incentives to resettle in Mississippi in accordance with the state's approved Action Plan and published program design.

4. *Public benefit standards for economic development activities.* For economic development activities designed to create or retain jobs or businesses, the public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived, except that the grantee shall report and maintain documentation on the creation and retention of (a) total jobs, (b) number of jobs within certain salary ranges, (c) average amount of assistance provided per job by activity or program, and (d) types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

5. *Overall benefit.* 42 U.S.C. 5301(c) and 5304(b)(3), and 24 CFR 570.484 and 24 CFR 91.325(b)(4)(ii) with respect to the overall benefit requirement are waived to the extent necessary to permit Mississippi to carry out the activities contained in its March 31, June 28, and July 12, 2006, Action Plan submissions, and its submission dated December 15, 2006, provided that:

a. The State must give reasonable priority for the balance of its funds to activities which will primarily benefit persons of low and moderate income; and

b. The State will maintain documentation of the low- and moderate-income benefit attributable to each assisted activity, if feasible, and report on such benefit to HUD as part of the regular quarterly reports.

6. *Information collection approval note.* 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, which expires August 31, 2007. 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.

**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 Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban

Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

Dated: February 27, 2007.

**Pamela H. Patenaude,**

*Assistant Secretary for Community Planning and Development.*

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