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Part IV

Department of Housing and Urban Development

**Additional Common Waivers Granted to
and Alternative Requirements for CDBG
Disaster Recovery Grantees Under Public
Laws 109-148 and 109-234; Notice**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5089-N-05]

Additional Common Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees 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 disaster recovery grants, upon the request of the state grantee(s). This Notice describes the additional waivers for the disaster recovery grants made to the States of Alabama, Florida, Louisiana, Mississippi, and Texas (the States), which are the Community Development Block Grant Program (CDBG) disaster recovery grantees under the subject appropriations acts.

DATES: *Effective Date:* August 29, 2007.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number (202) 708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. FAX inquiries may be sent to Ms. Kome at (202) 401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The first federal Fiscal Year (FY) 2006 supplemental appropriation for the CDBG program was 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). The second 2006 supplemental appropriation was 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 appropriates \$5.2 billion in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. These 2006 Acts (collectively "the supplemental Acts") 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 or guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by a state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The waiver authorizations differ in that while Public Law 109-148 directs that the Secretary "shall" make the waivers in response to a state's request and a consistency finding; Public Law 109-234 states that the Secretary "may" make such waivers.

The following waivers and alternative requirements for funds provided under either 2006 Act are in response to requests from all five states receiving CDBG disaster recovery grants under those Acts. In accordance with the

states' earlier requests for administrative consistency to the extent feasible (noted in 71 FR 63337, published October 30, 2006), each waiver or alternative requirement will apply to assistance provided under either Act.

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, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

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**. Further, under the supplemental Acts, the Secretary must publish, in the **Federal Register**, any waiver of any statute or regulation that the Secretary administers pursuant to Title I of the Housing and Community Development Act of 1974, no later than 5 days before the effective date of such waiver.

Except as described in this and other notices applicable to these grants, statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the 2006 Acts, HUD will reconsider every waiver in this Notice on the 2-year anniversary of the day this Notice is published.

Waiver Justification

In general, waivers already granted to the States of Alabama, Florida, Louisiana, Mississippi, and Texas 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 appear are shown in the table below.

| Notice | Publication date | Applicability |
|---------------------------------|------------------|--|
| 71 FR 7666, FR-5051-N-01 | 02/13/2006 | Common Allocation/Application for \$11.5 billion. |
| 71 FR 34448, FR-5051-N-02 | 06/14/2006 | State of Alabama. |
| 71 FR 34451, FR-5051-N-04 | 06/14/2006 | State of Louisiana. |
| 71 FR 34457, FR-5051-N-03 | 06/14/2006 | State of Mississippi. |
| 71 FR 43622, FR-5051-N-05 | 08/01/2006 | State of Texas. |
| 71 FR 51678, FR-5051-N-06 | 08/30/2006 | State of Florida. |
| 71 FR 62372, FR-5051-N-07 | 10/24/2006 | State of Mississippi. |
| 71 FR 63337, FR-5089-N-01 | 10/30/2006 | Common Allocation/Application, and Applicability of Prior Waivers for \$5.2 billion. |
| 72 FR 10014, FR-5089-N-03 | 03/06/2007 | State of Louisiana. |
| 72 FR 10020, FR-5089-N-03 | 03/06/2007 | State of Mississippi. |

The provisions of this Notice do not apply to funds provided under the regular CDBG program or other HUD or federally funded programs. The

provisions provide additional flexibility in program design and implementation and implement statutory requirements unique to these appropriations.

Section 414 of the Stafford Act

The states have requested a waiver of section 414 of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, as amended, for all their disaster recovery programs. This Notice grants, in part, the states' requests that the Secretary waive that section and provides alternative requirements more consistent with the purpose of the supplemental Acts, which is to assist and support disaster recovery in the areas most impacted by the effects of the hurricanes of 2005 in the Gulf Coast. Hurricanes Katrina, Rita, and Wilma resulted in unprecedented destruction in the Gulf States, which will require reconstruction for many years (and possibly decades) to come. The Department has surveyed other federal agencies' administration of section 414 and found varying interpretations for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. The five Gulf States, in the meantime, are launching programs, such as rental rehabilitation, that could be affected by this statute and urgently need a conclusion and clear direction in order to restore affordable rental housing to the devastated areas. Therefore, to avoid possible risk to the recovery effort by further delay in providing the States with a definitive answer, the Department is issuing this Notice, which includes a partial statutory waiver and specifies alternative requirements. For programs or projects covered by this waiver ("covered programs or projects") that are initiated within 3 years after the applicable disaster, the State must select one of the two alternative requirements specified in this Notice.

Alternative One

The state may provide relocation assistance to a former residential occupant whose former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance must be offered in a manner consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and its implementing regulations, except as modified by applicable waivers and alternative requirements.

Alternative Two

If the state determines that the first alternative would substantially conflict with meeting the disaster recovery purposes of the supplemental Acts, the state may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster. Such

determinations must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

1. A description of the class(es) of persons eligible for assistance, including all persons displaced from their residences by particular enumerated, or all, effects of the disaster, and including all persons still receiving temporary housing assistance from FEMA for the covered disaster(s);

2. A description of the types and amount of financial assistance to be offered, if any;

3. A description of other services to be made available, including, at minimum, outreach efforts to eligible persons and housing counseling providing information about available housing resources. Outreach efforts and housing counseling information should be provided in languages other than English to persons with limited English proficiency; and

4. Contact information and a description of any applicable application process, including any deadlines.

5. If the program or project involves rental housing, the re-housing plan must also include the following:

(i) Placement services for former and prospective tenants;

(ii) A public registry of available rental units assisted with CDBG disaster recovery and/or other funds; and

(iii) Application materials, award letters, and operating procedures requiring property owners to make reasonable attempts to contact their former residential tenants and offer a unit upon completion to those tenants meeting the program's eligibility requirements.

Justification for Waiver

The reasons for granting this waiver are several, and are ably represented by the States in their requests. The principal reasons are highlighted here:

- Hurricanes Katrina, Rita, and Wilma caused unprecedented destruction in the Gulf Coast region. The magnitude of destruction resulted in massive displacements and decimated the region's affordable housing stock. Continued ambiguity on section 414's applicability may cause substantial delays in long-term recovery along the Gulf Coast, particularly in Louisiana, Mississippi, and Texas;

- URA assistance may duplicate insurance proceeds and federal, state, or local housing assistance that has already been disbursed; and

- Simplify the administration of disaster recovery projects or programs initiated years following the disaster.

Persons in physical occupancy who are displaced by a HUD-assisted disaster recovery project will continue to be eligible for URA assistance. Persons displaced by the effects of the disaster may continue to apply for assistance under the States' approved disaster recovery programs, which are designed to bring affordable housing to the affected areas. This waiver does not address programs or projects receiving other HUD funding, or funding from other federal sources.

A state may already be performing some elements of a re-housing plan, such as providing a public rental registry or undertaking outreach and placement services to those former residents still receiving FEMA housing assistance. Description in the re-housing plan of how those existing efforts will be available for covered programs or projects may be used in satisfying the requirements of this Notice.

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 Public Law 109-234 (the "supplemental Acts") and already published in the **Federal Register**.

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

2. *Section 414 of the Stafford Act waiver and alternative requirements.*

a. Section 414 of the Stafford Act, 42 U.S.C. 5181 (including its implementing regulation at 49 CFR 24.403(d)), is waived to the extent that it would apply to CDBG disaster recovery-funded programs or projects initiated at least one year after Hurricanes Katrina, Rita, or Wilma (as applicable) by the States of Alabama, Florida, Louisiana, Mississippi, and Texas under an approved Action Plan for Disaster Recovery for its grants under Public Law 109-148 or Public Law 109-234; provided that such program or project was not planned, approved, or otherwise underway prior to the disaster.

b. For all programs or projects covered by this waiver ("covered programs or projects") that are initiated within 3 years after the applicable disaster, the States of Alabama, Florida, Louisiana, Mississippi, and Texas must comply with one of the following two alternative requirements:

1. *Relocation Assistance.* The state may provide relocation assistance to a former residential occupant whose

former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance must be offered in a manner consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and its implementing regulations, except as modified by prior waivers and alternative requirements granted to the States.

2. *Re-housing Plan.* If the state determines that the first alternative would substantially conflict with meeting the disaster recovery purposes of the supplemental Acts, the grantee may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster. Such a determination must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

i. A description of the class(es) of persons eligible for assistance, including all residents displaced from their residences by certain enumerated or all effects of the covered disaster, and including all disaster-displaced residents still receiving temporary housing assistance from FEMA for the covered disasters;

ii. A description of the types and amount of financial assistance to be provided, if any;

iii. A description of other services to be made available, including, at minimum, outreach efforts to eligible

persons and housing counseling that provide information about available housing resources;

iv. Contact information for additional program information;

v. A description of any applicable application process, including any deadlines; and

vi. If the program or project covered by this waiver involves rental housing, the grantee shall establish procedures for the following:

A. Application materials, award letters, and operating procedures that require property owners to make reasonable attempts to contact their former tenants and to offer a unit upon completion to those tenants meeting the program's eligibility requirements;

B. Placement services for former and prospective tenants; and

C. A public registry of available rental units assisted with CDBG disaster recovery and/or other funds.

c. Eligible Project Costs. The cost of relocation assistance and the re-occupancy plan are eligible project costs in the same manner and to the same extent as other projects costs authorized under the supplemental Acts. For covered programs or projects involving affordable rental housing, the relocation and planning costs required by this Notice may be paid from funds reserved for the affordable rental housing stock in the impacted areas under Public Law 109-234.

2. *Information collection approval note.* The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB), in accordance with the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2506-0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information, unless the collection displays a valid control number.

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(2)(C)). 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, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the FONSI must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Dated: August 16, 2007.

Roy A. Bernardi,

Deputy Secretary.

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