

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5051-N-08]

Additional Waivers Granted to and Alternative Requirements for the State of Mississippi Under Public Law 109-148

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 grant, upon the request of the state grantee. This Notice describes the additional waivers approved by HUD for a \$600 million infrastructure program to be funded from the disaster recovery grant made to the State of Mississippi under the subject appropriations act.

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

A 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) (the 2006 Act), that 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 2006 Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, 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 the 2006 Act are in response to a request from the State of Mississippi.

For reasons described below, the Secretary finds that the following waivers and alternative requirements are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended (the 1974 Act), 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**.

Except as described in this and other notices applicable to this grant, 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 appropriations act cited above, 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 State of Mississippi and alternative requirements already specified for CDBG disaster recovery grant funds provided under P.L. 109-148 apply. The notices in which these prior waivers and alternative requirements applicable to Mississippi are:

- 71 FR 7666, published February 13, 2006;
- 71 FR 34457, published June 14, 2006;
- 71 FR 62372, published October 24, 2006;
- 71 FR 63337, published October 30, 2006; and
- 72 FR 10020, published March 6, 2007.

The provisions of this Notice do not apply to funds provided under the annual CDBG program or to the grant made under Public Law 109-234. The provisions provide additional flexibility in program design and implementation, and implement statutory requirements unique to this appropriation.

Overall Benefit to Low- and Moderate-Income Persons

The State of Mississippi has repeated its request that the Secretary waive the requirement that 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. The Secretary has responded to the state's prior requests by waiving the overall benefit requirement to the extent necessary to permit funding of certain activities in identified action plans.

To grant this waiver, the Secretary must find that it is "not inconsistent" with the CDBG program's primary purpose. This purpose is stated at 42 U.S.C. 5301(c):

"The primary objective of this chapter and of the community development program of each grantee under this chapter is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income."

Further, Public Law 109-148 stipulates that, to decrease or eliminate the overall benefit requirement below 50 percent, the Secretary of HUD must also make a finding of "compelling need" for the waiver.

Waivers of the overall benefit test described above are identified in the table below.

TABLE—MS ACTIVITIES WITH OVERALL BENEFIT WAIVERS AND ALTERNATIVE REQUIREMENTS

Activity or program	Budget	Waiver date	National objective
Economic Development and Community Revitalization.	\$500,000,000	March 6, 2007	By project, either urgent need or low/mod.
Regional Infrastructure Program—Master Plan and Emergency Infrastructure.	\$33,075,000	October 24, 2006 ...	Urgent need.
Ratepayer and Windpool Mitigation	\$410,000,000	October 24, 2006 ...	Urgent need.

TABLE—MS ACTIVITIES WITH OVERALL BENEFIT WAIVERS AND ALTERNATIVE REQUIREMENTS—Continued

Activity or program	Budget	Waiver date	National objective
Compensation for housing loss	\$3.4 billion for Phase I of homeowner program, since amended to approximately \$1 billion.	June 14, 2006	Urgent need or low/mod.

The State of Mississippi's current request is for a waiver of overall benefit requirements so that the proposed \$600 million infrastructure program will not cause the state to fail to meet the requirement. This program follows a CDBG-funded master plan for infrastructure recovery whose goals include extending water and sewer service into areas with lower exposure to future natural disasters while helping the state recover from the effects of Hurricane Katrina.

As mentioned in a prior Notice (71 FR 62372, published October 24, 2006), to allow for recovery from severe ice storms, the Secretary allowed the State of Maine an overall benefit waiver that permitted the State of Maine to use its entire grant to assist private utilities with uninsured service restoration costs. In analyzing that request, HUD considered how low- and moderate-income persons would benefit from the proposed activity. Logically, a utility grid or service area cannot be restored for one income group alone, and a disaster that damages infrastructure regionally affects almost everyone in an area, regardless of income. There was no practical methodology in the Maine example for allocating costs among income groups. HUD found that Maine's waiver supported an activity that

resulted in providing long-term disaster recovery benefit to a large number of low- and moderate-income persons. In this context, because the CDBG program and the disaster supplemental legislation largely leave the selection of activities to the grantees, HUD granted the waiver based on acceptance of the state's policy decision that this activity met both the purposes of the CDBG Act, and was necessary for the affected community to meet its unmet disaster recovery needs.

The case of the infrastructure program in Mississippi meets many of the same conditions that existed in Maine. As in Maine, people across a widespread region of Mississippi were affected regardless of income, and the proposed restoration and recovery infrastructure projects will enable recovery across wide geographic areas. The planned Mississippi projects under the master plan depart from the Maine case in that the Mississippi plan focuses not only on restoration of service to some heavily impacted areas, but also on guiding settlement during the recovery into locations that were less affected by the storm, likely to be less affected by future events, and likely to have more affordable housing and access to required insurance in the long-term. According to the state, this pattern of

leading redevelopment away from the coast will provide the backbone for a long-term recovery that will provide more suitable living opportunities for residents of the Mississippi coastal area. Based on HUD review of the published plan at <http://www.msgulfregionplan.org/>, the master plan provides both for restoration of infrastructure in certain impacted locations that are critical to recovery, and for long-term recovery in feasible locations further from the coast but still within the coastal labor market areas. According to the master plan, most of the selected inland locations did not have adequate utility services for the population they had prior to the disaster, let alone the population surge they have experienced as former coastal residents moved inland after the hurricanes. The planned infrastructure also allows for some further long-term economic expansion in the most impacted counties, should they recover.

In considering the effects of granting the Mississippi waivers, HUD reviewed the income data from the Census and provided by the state on the percentages of low- and moderate-income persons for the service area of each of the projects identified in the master plan and proposed for funding under this grant.

Mississippi planned water and sewer project descriptions	Total population of the service area	Low/mod population of the service area
Water Projects		
W1—Pearl River—Poplarville Regional Water Supply System	5,700	2,721
W2—Pearl River—Picayune Regional Water Supply System	18,476	6,891
W3—Hancock—Pearlington—Port Bienville Regional Water Supply System, W4—Hancock Pearlinton Water Distribution System	1,931	849
W5—Hancock—Kiln Regional Water Supply, W6—Hancock—Kiln Water Distribution System, W7—Hancock—Eastern Hancock County Regional Water Supply, W8—Hancock—Hancock County Water and Sewer District Water Distribution System, W9—Hancock—Waveland U.S. 90 Water System Improvements	25,295	12,029
W10—Stone—Southern Stone County Regional Water System	1,564	606
W11—Harrison—Central Harrison County Regional Water Supply, W18—Harrison—Eastern Harrison County Regional Water Supply	19,362	8,693
W12—Harrison—Pass Christian Water System Improvements, W13—Harrison—Western Harrison County Regional Water Supply, W14—Harrison—Long Beach Water System, W15—Harrison—North Gulfport/Lyman Regional Water Supply	55,406	18,949
W16—Harrison—Gulfport VA Area Water System Improvements, W17—Harrison—South Gulfport Regional Water Supply, W19—Harrison—Biloxi Broadwater Water System Improvements	3,469	1,643
W20—Jackson—Western Jackson County Regional Water Supply, W21—Jackson—Ocean Springs Water Transmission Improvements	8,501	3,745
W22—Jackson—Gautier Water Transmission Improvements	15,156	5,232
W23—Jackson—Eastern Jackson County Regional Water System	5,772	2,393
W24—Jackson—Moss Point—Three Rivers Regional Water Treatment and Transmission System	10,239	4,501

Mississippi planned water and sewer project descriptions	Total population of the service area	Low/mod population of the service area
W25—Jackson—Pascagoula—River Park Water Transmission Improvements	471	156
W26—Jackson—Pascagoula—Chibley Water Transmission Improvements	3,927	1,580
W27—Jackson—Pascagoula—Beach Boulevard Water Transmission Improvements	3,232	945
Sewer Projects		
S1—Pearl River—Poplarville Regional WWTF and Transmission System	6,170	2,403
S2—Pearl River—Picayune Regional WWTF and Transmission System	1,931	849
S3—Hancock—Western Regional WWTF	21,270	9,101
S4—Hancock—Pearlington Wastewater Collection System	1,052	554
S5—Hancock—Northern Regional WWTF	5,173	1,911
S6—Hancock—Kiln Wastewater Collection System	829	312
S7—Hancock—Bay St. Louis—Cedar Point and I-10 Wastewater System Improvements	17,539	7,494
S8—Stone—Wiggins Regional WWTF and Transmission System	2,721	1,281
S9—Stone—South Stone County WWTF	2,264	843
S10—Harrison—Saucier WWTF and Riverbend/Robinwood Forest Transmission System, S11—Harrison—East Central Harrison County Regional WWTF	7,726	3,244
S12—Harrison—DeLisle WWTF, Long Beach/Pass Christian WWTF, and Transmission System	4,422	1,988
S13—Harrison—Pass Christian Wastewater System Improvements, S14—Harrison—West Gulfport Regional Interceptor, S16—Harrison—Long Beach Wastewater System Improvements	30,966	10,450
S15—Harrison—West Gulfport Regional Transmission System	4,078	1,550
S17—Harrison—Gulfport VA Area Wastewater System Improvement	7,486	3,646
S18—Harrison—South Gulfport Regional Transmission System	5,936	2,075
S21—Harrison—Biloxi Broadwater Wastewater System Improvements	5,962	2,768
S19—Harrison—South Woolmarket WWTF and Transmission Mains	16,853	5,694
S20—Harrison—D'Iberville WWTF and Transmission System, S22—Harrison—D'Iberville Waterfront Wastewater System Improvements	7,509	3,136
S23—Jackson—West Jackson Regional WWTF and Transmission Mains, S24—Jackson—Ocean Springs Wastewater Transmission Improvements, S25—Jackson—Gulf Park and Ocean Beach Areas Transmission Improvements	29,018	7,756
S26—Jackson—North Jackson County Decentralized WWTFs	5,975	2,018
S27—Jackson—Gautier Wastewater Transmission Improvements, S28—Jackson—Gautier Regional WWTF Improvements	16,113	5,654
S29—Jackson—Escatawpa Regional WWTF Improvements	15,751	7,349
S30—Jackson—Pascagoula—River Park Wastewater Transmission Improvements, S31—Jackson—Pascagoula—Shortcut Road Transmission System Improvements, S32—Jackson—Pascagoula—Chibley Wastewater Transmission Improvements, S33—Jackson—Pascagoula—Beach Boulevard Wastewater Transmission Improvement	3,044	1,425

Note about the table: Because some of the project service areas overlap, the numeric columns were not totaled. Nevertheless, despite qualifying under the “urgent need” national objective, the projects proposed under the master plan will generate benefits to low- and moderate-income persons for a long period of time for a relatively small amount of funds per person served. The data demonstrate the classic pattern also illustrated in the cases in which HUD granted prior waivers of this provision to Maine and the City of Grand Forks, North Dakota, in which the grantee would be unable to provide the infrastructure to support disaster recovery for low- and moderate-income households without also benefiting a majority of persons who are not income-qualified. In the Mississippi case, as in prior this ones, HUD has determined that granting this waiver will result in provision of disaster recovery benefits to low- and moderate-income persons that cannot be provided only to low- and moderate-income persons, or in such a way as to assure that the majority of

persons served are income-qualified. Further, HUD has determined that, in the context of using supplemental funds appropriated for the purpose of supporting recovery from a major disaster, granting this waiver is consistent with the overall purpose of the 1974 Act.

Based on the above and the compelling need presented by the State of Mississippi for the activities already included in the Action Plan for Disaster Recovery for the grant made under Public Law 109-148, HUD is granting the state a waiver of the requirement that at least 50 percent of the supplemental CDBG grant funds provided under Public Law 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 March 26, 2007, Action Plan submission for Regional Infrastructure, 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 any activity assisted with this grant that directly provides such a benefit. This waiver of overall benefit requirements does not alter previous waivers of the overall benefit requirements or cover activities that may be added or modified under a substantial amendment to the activities mentioned in the Action Plan submissions 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 expects the state to continue these efforts.

HUD expects the state to principally benefit low- and moderate-income persons in activities where such design is feasible and reasonable, and to design its activities to otherwise meet the “slum-blight” or urgent-need national objective.

HUD also reminds the state that, pursuant to the instruction in Public Law 109-148, all waivers in this Notice must be reconsidered on the 2-year anniversary date 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 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; 71 FR 63337, published October 30, 2006; and 72 FR 10020, published March 6, 2007; and

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

2. *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 26, 2007, Action Plan submissions, provided that:

a. The state must give reasonable priority for the balance of its funds to activities that 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.

3. *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 Regulations Division, 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, please schedule an appointment to review the finding 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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