

Program to the individuals listed in Section VII of the October 10, 2008, Section 202 Demonstration Pre-Development Grant Program NOFA. For technical assistance in downloading and submitting an application package through [http://www.grants.gov/applicants/apply\\_for\\_grants.jsp](http://www.grants.gov/applicants/apply_for_grants.jsp), contact the Grants.gov Help Desk at 1-800-518-GRANTS, or by sending an e-mail to [support@grants.gov](mailto:support@grants.gov).

**SUPPLEMENTARY INFORMATION:** On October 10, 2008 (73 FR 60312), HUD published its NOFA for the Section 202 Demonstration Pre-Development Grant Program, and established December 16, 2008 as the deadline date for the submission of applications. Through the NOFA, HUD is making available approximately \$20 million for pre-development grants to private nonprofit organizations and consumer cooperatives in connection with the development of housing under the Section 202 Supportive Housing for the Elderly program. HUD stated in the October 10, 2008, NOFA that funding awards under the Section 202 Demonstration Pre-Development Grant program would be restricted to applicants selected for Fund Reservation Awards under the FY2008 Section 202 Supportive Housing for the Elderly program.

Today's **Federal Register** publication extends the deadline date for the submission of applications for the Section 202 Demonstration Pre-Development Grant program to February 18, 2009. Similarly, HUD extending the deadline for applicants to submit requests for waivers from the electronic application submission requirements to February 11, 2009. HUD is extending the application submission deadline date to permit it to complete selections under FY2008 Section 202 Supportive Housing for the Elderly program. This extension will ensure that ineligible Section 202 applicants need not go through the expense of preparing and submitting an application for funding under the Section 202 Demonstration Pre-Development Grant program if they are not eligible to receive this funding.

#### **Deadline for Applications**

The application deadline date for the Section 202 Demonstration Pre-Development Grant Program is February 18, 2009. All applications must be received and validated by [Grants.gov](http://Grants.gov) no later than 11:59:59 p.m. Eastern Time on the application deadline date. Refer to the General Section of the SuperNOFA published on March 19, 2008 (72 FR 14882), the FY2008 SuperNOFA published on May 12, 2008 (72 FR

27032), the Notice of HUD's FY2008 SuperNOFA for HUD's Discretionary Programs; Correction for Section 202 and Section 811 Programs published on June 9, 2008 (72 FR 32592), and Section IV of the Section 202 Demonstration Pre-Development Grant Program NOFA published on October 10, 2008 (72 FR 60312), for further information about application, submission, and timely receipt requirements.

Dated: December 5, 2008.

**Brian D. Montgomery,**  
*Assistant Secretary for Housing—Federal Housing Commissioner.*  
[FR Doc. E8-29425 Filed 12-11-08; 8:45 am]  
**BILLING CODE 4210-67-P**

#### **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5251-N-01]

#### **Reconsideration of Waivers Granted to and Alternative Requirements for the State of Mississippi's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of reconsidered waivers, alternative requirements, and statutory program requirements.

**SUMMARY:** This notice describes HUD's reconsideration of some of the additional waivers and alternative requirements applicable to the Community Development Block Grant (CDBG) disaster recovery grant provided to the State of Mississippi for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricane Katrina in 2005. HUD previously published an allocation and application notice on February 13, 2006, applicable to this grant and four others under the same appropriation, and reconsidered the waivers in that notice on August 8, 2008. The original June 14, 2006, notice has now been reconsidered and all waivers are being retained, with the exception of some of the overall benefit waivers.

**DATES:** *Effective Date:* December 17, 2008.

**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 20410-7000, 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. Facsimile 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 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) appropriated \$11.5 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. The State of Mississippi received an allocation of \$5,058,185,000 from this appropriation. The 2006 Act authorized 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 law further provided that the Secretary may waive the requirement that activities benefit persons of low and moderate income, except that at least 50 percent of the funds granted must benefit primarily persons of low and moderate income, unless the Secretary otherwise makes a finding of compelling need. Additionally, regulatory waiver authority is provided by 24 CFR 5.110. The following waivers and alternative requirements came in response to written requests from the State of Mississippi and are being retained, with the exception of some of the overall benefit waivers, after reconsideration.

The Secretary has found that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of 42 U.S.C. 5301 *et seq.*, Title I of the Housing and Community Development Act of 1974, as amended (the 1974 Act); or of 42 U.S.C. 12704 *et seq.*, 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**. The Department is also using this notice to provide information about other ways in which the requirements for this grant vary from regular CDBG program rules. Therefore, HUD is using this notice to make public alternative requirements and to note the applicability of disaster recovery-related statutory provisions. Compiling this information in a single notice creates a helpful resource for Mississippi grant administrators and HUD field staff. Waivers and alternative requirements regarding the common application and reporting process for all grantees under the 2006 Act were published in a prior notice published February 13, 2006 (71 FR 7666) and retained in a notice published on August 8, 2008 (73 FR 46312).

Except as described in notices regarding this grant, the 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.

#### **Descriptions of Changes**

This section of the notice briefly describes the basis for each waiver and provides an explanation of related alternative requirements, if additional explanation is necessary.

Except as provided in the October 30, 2006, and August 8, 2008, notices, the waivers, alternative requirements, and statutory changes apply only to the CDBG supplemental disaster recovery funds appropriated in the 2006 Act and allocated to the State of Mississippi. These actions provide additional flexibility in program design and implementation and note statutory requirements unique to this appropriation.

#### **Eligibility**

*Eligibility—housing related.* The waiver of section 105(a) that allows new housing construction and of section 105(a)(24) to allow homeownership assistance for families whose income is up to 120 percent of median income and payment of up to 100 percent of a housing downpayment is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disaster eligible under this notice. The state requested that HUD broaden the section 105(a)(24) waiver to allow it to serve families with income up to 120 percent of median income to implement its Long Term Workforce Housing program in accordance with its accepted Action Plan for Disaster Recovery.

*General planning activities use entitlement presumption.* The annual

state CDBG program requires that local government grant recipients of planning-only grants must document that the use of funds meets a national objective. In the state CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-project specific plans such as functional land use plans, historic preservation plans, comprehensive plans, development of housing codes, and neighborhood plans related to guiding long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department noted that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, the Department has removed the eligibility requirement that CDBG disaster recovery assisted planning-only grants or state directly administered planning activities that will guide recovery in accordance with the appropriations act, must comply with the state CDBG program rules at 24 CFR 570.483(b)(5) or (c)(3).

*Compensation for disaster-related losses.* The state is providing compensation to homeowners who lived outside the floodplain and whose homes were damaged by flooding during the covered disasters, if the homeowners agreed to meet the stipulations of the published program design. The state is also providing compensation to homeowners affected by the disaster in other circumstances, under Phase II and other aspects of the state's homeowner compensation program. The Department has waived the 1974 Act and associated regulations to make this use of grant funds eligible.

*Anti-pirating.* The limited waiver of the anti-pirating requirements allowed the flexibility to provide assistance to a business located in another state or market area within the same state if the business was displaced from a declared area within the state by the disaster and the business wishes to return. This waiver is necessary to allow a grantee affected by a major disaster to rebuild its employment base.

#### **Program Income**

A combination of CDBG provisions limited the flexibility available to the

state for the use of program income. Prior to 2002, program income earned on disaster recovery grants was usually program income in accordance with the rules of the regular CDBG program of the applicable state and lost its disaster recovery grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The 1974 Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The 1974 Act allows the state to require return of the program income to the state under certain circumstances. The notice waived the existing statute and regulations to give the state, in all circumstances, the choice of whether or not a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan could retain this income and use it for additional disaster recovery activities. In addition, the notice allowed program income to the disaster recovery grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently would become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

#### **Relocation Requirements**

HUD provided and is continuing a limited waiver of the relocation requirements. HUD waived the one-for-one replacement of low- and moderate-income housing units demolished or converted using CDBG funds requirement for housing units damaged by one or more disasters. HUD has waived this requirement because it did not take into account the large, sudden changes a major disaster may cause to the local housing stock, population, or local economy.

Further, the requirement did not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. Left unchanged, the requirement could have impeded disaster recovery and discouraged grantees from acquiring,

converting, or demolishing disaster-damaged housing because of excessive costs that would have resulted from replacing all such units within the specified time frame.

HUD also waived the relocation benefits requirements contained in Section 104(d) of the 1974 Act to the extent they differ from those of the Uniform Relocation Assistance and Real Properties Acquisition Act of 1970 (42 U.S.C. 4601 *et seq.*). This change simplifies implementation while preserving statutory protections for persons displaced by projects assisted with CDBG disaster recovery grant funds.

### Overall Benefit

The waivers related to overall benefit in Mississippi were published in several previous notices. Because the waivers are inextricably interrelated and have common alternative requirements, HUD is reconsidering all of them at this point, as the reconsideration of the first of them is now required. The State complied fully with the alternative data collection requirements included with the original waivers and collected income information for all of its direct benefit activities, regardless of overall benefit waivers. This data, and the State's completion of the initial budgeting of all of its disaster recovery grant funds, provided HUD with enough information to determine whether the State still has the statutorily mandated "compelling need" for each of those previously granted waivers.

A CDBG grantee uses its grant funds for *eligible activities*, such as rehabilitation of a single house, construction of a water and sewer line, providing childcare through a particular program, or making a loan to a small business. Each activity must demonstrate benefit by meeting one of the three *national objectives* of the CDBG program. These national objectives are:

- (1) Provide benefit to low- and moderate-income persons (low/mod activities);
- (2) prevent or eliminate slums or blight (slum/blight activities); or
- (3) address urgent community needs for which no other funding exists (urgent need activities).

For purposes of reporting to HUD, the funds and performance of some types of activities, such as single family housing, may be aggregated. For example, Mississippi has been reporting quarterly on its single-family homeowner compensation program under two categories, one that aggregates activity performance and costs for payments to low- and moderate-income households

and one that aggregates payments made under the urgent need national objective.

The regular CDBG program also subtotals the funds used for each national objective and compares the subtotals to the overall grant amount (minus general administration and planning costs) in a test called *overall benefit*. To meet the overall benefit test, the percentage of *funds* a grantee has expended for the subtotal of individual activities that meet the national objective of benefit to low- and moderate-income persons must be at least 70 percent of the total funds used for all activities (excluding general administration and planning costs).

For the CDBG supplemental grants for recovery from the consequences of Hurricanes Katrina, Rita, and Wilma, HUD granted two kinds of overall benefit waivers. The first kind is common to all five state grantees. Published February 13, 2006, this waiver lowered the overall benefit threshold from 70 percent to 50 percent for each of the recovery grants under Public Law 109-148. The same waiver was made October 30, 2006, for the recovery grants under Public Law 109-234. These waivers were reconsidered and republished August 8, 2008. Therefore, absent an additional waiver, 50 percent of each Gulf Coast recovery grant governed by those notices must support activities that meet the low- and moderate-income national objective.

The second kind of waiver granted for Gulf Coast recovery grants was only requested by the State of Mississippi and only then for the first recovery grant made under Public Law 109-148, not for the second grant. Between October 2006 and July 2008, Mississippi requested multiple additional waivers of the overall benefit requirement for its first grant and HUD provided some limited approvals for specific activities.

The standard that Congress provided for granting an overall benefit waiver for a disaster recovery grant is "compelling need" for the waiver. HUD denied several blanket waiver requests for the overall benefit test primarily because the State had not yet budgeted enough of its grant to allow HUD to weigh the necessity for a blanket waiver.

The additional waivers HUD granted provided that specified activities undertaken by Mississippi would not be considered in calculating the overall benefit test if such consideration would cause the State to fail to meet the requirement. Each of these waivers is only needed if the State needs the activity to continue its recovery and the State would be in noncompliance with the overall benefit provision without the

waiver. To determine if the State is in compliance with the overall benefit requirement, HUD calculates the overall benefit test as usual by excluding all planning and general administration activities, and then removing the funds applied to waived slum/blight or urgent need activities one at a time until the State passes the test. To facilitate this process, HUD required the State to keep beneficiary data for each activity despite the waivers. (Note that, although the Disaster Recovery Grant Reporting (DRGR) system is used to collect the benefit information, it only calculates the overall benefit test as usual, not as waived. The effects of the waiver on compliance must be manually determined. Therefore, the automatically calculated percentages in the published reports are technically inaccurate.) In the notices, HUD linked all of the Mississippi-only overall benefit waivers to specific, named and dated action plans. This means that when the State substantially amends an activity under the waiver, that waiver no longer applies to the funds removed from the original activity. This occurred frequently as the budget for Phase I of the homeowner compensation program decreased in size from over \$3 billion to about \$1.5 billion and as the State completed other reprogramming from undersubscribed activities.

At this time, using budgets and data provided by the State, HUD has calculated that the State is likely to achieve approximately 40 percent overall benefit for the whole grant (before applying the waivers). Next, based on the information available prior to publication of this notice, HUD has performed the overall benefit test by removing an activity at a time, in the date order in which the waivers were granted. If, at any point in the calculation the State would clearly be in compliance with the overall benefit requirement without further waivers, then there can be no compelling need for subsequent waivers.

HUD calculates that, if the original waivers for three activities launched early in the recovery that now have been completed or nearly completed in reliance on those waivers (homeowner compensation Phase 1, assistance to private utilities, and windpool payments) remain without change, then the State will pass the overall benefit test with the remaining grant funds as they are currently budgeted. This conclusion removes the compelling need for the waivers granted for other activities and they are hereby rescinded, as shown in the table below.

Activity or program	Original waiver date	Reconsideration status
Regional Infrastructure Program ..... Economic Development and Community Revitalization.	August 24, 2007 (72 FR 48808) ..... March 6, 2007 (72 FR 10020) .....	Waiver rescinded. Waiver rescinded.
Regional Infrastructure Program—Master Plan and Emergency Infrastructure.	October 24, 2006 (71 FR 62372) .....	Waiver rescinded.
Ratepayer and Windpool Mitigation .....	October 24, 2006 (71 FR 62372) .....	Waiver retained as originally granted.
Compensation for housing loss .....	June 14, 2006 (71 FR 34457) .....	Waiver retained for Phase 1 Ur- gent Need activities.

HUD notes that the change in the status of these waivers will require no changes in the State's currently budgeted and operating programs beyond the stipulated attention on the part of the State to addressing the recovery needs of low- and moderate-income persons in the required proportions for the remainder of its activities.

The original waiver notices include greater detail about the State's requests and the waivers and alternative requirements. The specific notices to reference are:

- 71 FR 34457, published June 14, 2006;
- 71 FR 62372, published October 24, 2006;
- 72 FR 10020, published March 6, 2007; and
- 72 FR 48808, published August 24, 2007.

**Timely Distribution of Funds**

The state CDBG program regulation regarding timely distribution of funds is at 24 CFR 570.494. This provision is designed to work in the context of an annual program in which almost all grant funds are distributed to units of general local government. Because the State may have used its disaster recovery grant funds to carry out activities directly, and because Congress expressly allowed this grant to be available until expended, HUD waived this requirement. However, HUD still expects the State of Mississippi to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

**Waivers and Alternative Requirements**

1. Program income waivers and alternative requirement. 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent that they conflict with the rules stated in the program income alternative requirement below. The following alternative requirement applies instead.

(a) Program income. (1) For the purposes of this subpart, "program income" is defined as gross income

received by a state, a unit of general local government, a tribe, or a subrecipient of a unit of general local government or a tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

- (i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
- (ii) Proceeds from the disposition of equipment purchased with CDBG funds;
- (iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe, or a unit of general local government with CDBG funds, less the costs incidental to the generation of the income;
- (iv) Gross income from the use or rental of real property owned by a state, tribe, or the unit of general local government or a subrecipient of a state, tribe, or unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;
- (v) Payments of principal and interest on loans made using CDBG funds;
- (vi) Proceeds from the sale of loans made with CDBG funds;
- (vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;
- (viii) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;
- (ix) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the special assessments are used to recover

all or part of the CDBG portion of a public improvement; and

(x) Gross income paid to a state, tribe, or a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

(2) "Program income" does not include the following:

- (i) The total amount of funds which is less than \$25,000 received in a single year that is retained by a unit of general local government, tribe, or subrecipient;
- (ii) Amounts generated by activities eligible under section 105(a)(15) of the 1974 Act and carried out by an entity under the authority of section 105(a)(15) of the Act.

(3) The state may permit the unit of general local government or tribe that receives or will receive program income to retain the program income, subject to the requirements of paragraph (a)(3)(ii) of this section, or the state may require the unit of general local government or tribe to pay the program income to the state.

(i) Program income paid to the state. Program income that is paid to the state or received by the state is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used by the state or distributed to units of general local government in accordance with the state's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the United States Treasury, except as provided in paragraph (b) of this section.

(ii) Program income retained by a unit of general local government or tribe.

(A) Program income that is received and retained by the unit of general local government or tribe before closeout of the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this notice.

(B) Program income that is received and retained by the unit of general local government or tribe after closeout of the grant that generated the program

income, but that is used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of this notice.

(C) All other program income is subject to the requirements of 42 U.S.C. 5304(j) and subpart I of 24 CFR part 570.

(D) The state shall require units of general local government or tribes, to the maximum extent feasible, to disburse program income that is subject to the requirements of this notice before requesting additional funds from the state for activities, except as provided in paragraph (b) of this section.

(b) Revolving funds.

(1) The state may establish or permit units of general local government or tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities that, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the United States Treasury for revolving fund activities. Such program income is not required to be disbursed for nonrevolving fund activities.

(2) The state may also establish a revolving fund to distribute funds to units of general local government or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government that could be funded from the revolving fund.

(3) A revolving fund established by either the state or unit of general local government shall not be directly funded or capitalized with grant funds.

(c) Transfer of program income. Notwithstanding other provisions of this notice, the state may transfer program income before closeout of the grant that generated the program income to its own annual CDBG program or to any annual CDBG-funded activities administered by a unit of general local

government or Indian tribe within the state.

(d) Program income on hand at the state or its subrecipients at the time of grant closeout by HUD and program income received by the state after such grant closeout shall be program income to the most recent annual CDBG program grant of the state.

2. Housing-related eligibility waivers. 42 U.S.C. 5305(a) is waived to the extent necessary to allow homeownership assistance for households with up to 120 percent of area median income and downpayment assistance for up to 100 percent of the downpayment (42 U.S.C. 5305(a)(24)(D)) and to allow new housing construction.

3. Compensation for loss of housing. 42 U.S.C. 5305(a) is waived to the extent necessary to allow compensation for unreimbursed loss of housing caused by the disaster. The grantee must undertake any compensation activity in accordance with the state's approved action plan and published program design.

4. Planning requirements. For CDBG disaster-recovery-assisted general planning activities that will guide recovery in accordance with the 2006 Act, the state CDBG program rules at 24 CFR 570.483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies.

5. Waiver and modification of the anti-pirating clause to permit assistance to help a business return. 42 U.S.C. 5305(h) and 24 CFR 570.482(h) are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of Hurricane Katrina and has since moved, in whole or in part, from the affected area to another state or to a labor market area within the same state to continue business.

6. Waiver of one-for-one replacement of units damaged by disaster. 42 U.S.C. 5304(d)(2)(A)(i)–(ii) and 42 U.S.C. 5304(d)(2)(A)(iii)–(iv) are waived to remove the one-for-one replacement requirements for occupied and vacant, occupiable lower-income dwelling units that may be demolished or converted to a use other than for housing; and to remove the relocation benefits requirements contained at 42 U.S.C. 5304(d) to the extent they differ from those of the Uniform Relocation Act. Also, 24 CFR 42.375 is waived to remove the requirements implementing the above-mentioned statutory requirements regarding replacement of housing and 24 CFR 42.350, to the extent that these regulations differ from the regulations contained in 49 CFR part 24. These requirements are waived

provided the grantee assures HUD it will use all resources at its disposal to ensure no displaced homeowner will be denied access to decent, safe, and sanitary suitable replacement housing because he or she has not received sufficient financial assistance.

7. 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, were waived June 14 and October 24, 2006; and March 6 and August 24, 2007, for the CDBG disaster recovery grant covered by this notice, to the extent necessary to permit Mississippi to carry out activities specified in each notice 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.

a. After the required reconsideration, HUD is retaining waivers granted under 71 FR 34460 paragraph 7, and 71 FR 62374 paragraph 4, to the extent necessary to allow the retention of the overall benefit waiver for the ratepayer mitigation and windpool activities.

b. After the required reconsideration, the Department no longer finds compelling need for, and is therefore rescinding, the waivers granted under 71 FR 62374 paragraph 4, to the extent that the waiver originally was granted for the Regional Infrastructure Program—Master Plan and Emergency Infrastructure; 72 FR 10021 paragraph 5, to the extent that it covers the Economic Development and Community Revitalization program; and 72 FR 48811 paragraph 2, to the extent that it covers the Regional Infrastructure Program. HUD continues to expect the grantee to maintain low- and moderate-income benefit documentation for each activity providing such benefit.

8. Waiver of requirement for timely distribution of funds. 24 CFR 570.494 regarding timely distribution of funds is waived.

9. Note on the eligibility of providing funds to Enterprise and Local Initiatives Support Corporation (LISC) for certain purposes. The appropriations statute provides that the states of Louisiana and Mississippi may each use up to \$20,000,000 (with up to \$400,000 each for technical assistance) from funds made available under this heading for LISC and the Enterprise Foundation for activities authorized by section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, and for activities authorized under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 42 U.S.C. 12805 note),

including demolition, site clearance and remediation, and program administration.

10. Non-Federal Cost Sharing of Army Corps of Engineers Projects. Public Law 105-276, Title II, Oct. 21, 1998, 112 Stat. 2478, provided in part that: "For any fiscal year, of the amounts made available as emergency funds under the heading 'Community Development Block Grants Fund' and notwithstanding any other provision of law, not more than \$250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers."

#### Finding of No Significant Impact

A Finding of No Significant Impact 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 Finding of No Significant Impact 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: November 24, 2008.

**Roy A. Bernardi,**

*Deputy Secretary.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5217-N-03]

### Notice of Regulatory Waiver Requests Granted for the Third Quarter of Calendar Year 2008

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Notice.

**SUMMARY:** Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the

requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on July 1, 2008, and ending on September 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500, telephone number 202-708-3055 (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.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the third quarter of calendar year 2008.

**SUPPLEMENTARY INFORMATION:** Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

- a. Identify the project, activity, or undertaking involved;
- b. Describe the nature of the provision waived and the designation of the provision;
- c. Indicate the name and title of the person who granted the waiver request;
- d. Describe briefly the grounds for approval of the request; and
- e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions

that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from July 1, 2008, through September 30, 2008. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the third quarter of calendar year 2008) before the next report is published (the fourth quarter of calendar year 2008), HUD will include any additional waivers granted for the third quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.