

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5051-N-09]

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 these disaster recovery grants, upon the request of the state grantee. 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:* November 5, 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 2006 supplemental appropriation for the Community Development Block Grant (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 Community Development Block Grant 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 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 2006 Act are in response to requests from the State of Mississippi.

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**.

Except as described in this and other notices applicable to the State of Mississippi's disaster recovery grants under either 2006 Act, 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, 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 Pub. L. 109-148 and Pub. L. 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; 71 FR 63337, published October 30, 2006; 72 FR 10020, published March 6, 2007; and 72 FR 48808, published August 24, 2007.

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

Eligibility—Tourism. The State plans to provide disaster recovery grants to support the tourism industry and promote travel to communities in the disaster-impacted areas. Tourism industry support, such as a national consumer awareness advertising campaign for an area in general, is ineligible for CDBG assistance. However, Congress did make such support eligible, within limits, for the CDBG disaster recovery funds appropriated for recovery of Lower Manhattan following the September 11, 2001, terrorist attacks. Additionally, an eligibility waiver, on a limited basis, was granted to Louisiana to support the disaster-impacted areas of the State's tourism industry in the June 14, 2006, notice (71 FR 34451). HUD understands that such support can be a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues. Because the State is proposing advertising and marketing activities rather than direct assistance to tourism-dependent businesses, and because the measures of long-term benefit from the proposed activities must be derived using regression analysis and other indirect means, the waiver will permit use of no more than \$5 million for assistance for the tourism industry (as requested by the State) and the assisted activities must be designed to support tourism to the most impacted and distressed areas related to the effects of Hurricane Katrina. The waiver will expire 2 years after the date of this notice, after which previously ineligible support of the tourism industry, such as marketing a community as a whole, will again be ineligible for CDBG disaster recovery funding.

Eligibility—Project-Based Rental Assistance. The State requested a waiver to allow the use of project-based rental assistance (herein referred to as PBRA) to encourage owners, including non-profit owners, of small rental properties to reestablish affordable rental housing in areas that suffered the greatest losses. The subsidy funding, which may be used in conjunction with components of the State's Small Rental Assistance Program to repair, rehabilitate, reconstruct, or convert small rental properties, targets housing for low- and moderate-income families.

A major challenge in providing affordable rental units is the difference between what tenants can afford to pay and the projected cost of operating these units. A project-based rental assistance program provides funding to landlords who rent a specified number of affordable apartments to low-income families or individuals. Assistance is

tied directly to the properties, so tenants can generally not move without losing their assistance. The Department encourages the State to avoid PBRA if other financing is available or if the project can reasonably be structured to achieve and maintain its target affordability without the subsidy. Therefore, HUD recommends an up-front review reflecting the perceived financial costs of a project over the life of the subsidy. Additionally, HUD recommends that the State establish written requirements for income eligibility, maximum rents, utility allowances, structure quality, and affirmative marketing of projects throughout the life of the program.

HUD recommends that, in implementing PBRA funding, the State acquire and maintain the expertise equivalent to that of a tax credit administrator with responsibilities including, but not limited to, making PBRA payments to owner-investors and compliance control of eligibility determinations. Due to the distinctive and potentially high-risk nature of this eligibility waiver, the expertise must be maintained through the life of the program to ensure the prevention of fraud, abuse of funds, and duplication of benefits. Furthermore, HUD may conduct financial monitoring to oversee the State's efforts. HUD reminds the State of the regulatory requirement for annual financial audits of its programs, and of the requirements of **Federal Register** Notices 71 FR 7666 and 71 FR 63337 that its entire program be under the purview of an internal auditor.

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 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 63337, published October 30, 2006; and 72 FR 10020, published March 6, 2007.

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. *Waiver to permit some activities in support of the tourism industry.* 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived to the extent necessary to make eligible use of no more than \$5 million for assistance for the tourism industry, including promotion of a community or communities in general, provided the assisted activities are designed to support tourism to the most impacted and distressed areas, related to the effects of Hurricane Katrina. This waiver will expire 2 years after the date of this notice, after which previously ineligible support for the tourism industry, such as promotion of a community in general, will again be ineligible for CDBG funding.

3. *Waiver to permit project-based rental subsidies for affordable rental housing.* 42 U.S.C 5305(a) is waived to the extent necessary to make eligible the rental income subsidy assistance component of the Small Rental Assistance Program included in the state's HUD-approved Action Plan for Disaster Recovery, provided that the assisted activities are designed to ensure that CDBG funds will be invested only in proportion to the extent of anticipated need.

4. *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. 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, 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: October 24, 2007.

Roy A. Bernardi,
Deputy Secretary.

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