

CHAPTER 5. WAIVER OF PROVISIONS CONTAINED IN DIRECTIVES

- 5-1 **Purpose.** Chapter 5 explains the Department's policy on the waiver, by HUD officials, of provisions in Departmental directives.
- 5-2 **Authority.** Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) added a new section 7(q) to the Department of HUD Act (42 U.S. C. 3535 (q)).
- 5-3 **Requirements.** Section 7 (q) requires that any waiver of a provision of a handbook of the Department shall:
- A. be in writing;
 - B. specify the grounds for approving the waiver; and
 - C. be maintained in indexed form and made available for public inspection for not less than the 3-year period beginning on the date of the waiver.
- 5-4 **Implementation.** The Department implemented this authority in a Statement of Policy (FR 2736) published in the Federal Register, and taking effect, on April 22, 1991 (56 FR 16337)
- 5-5 **Responsibility.** Paragraph 1-4 of this handbook provides that the Secretary or an Assistant Secretary may issue a directive. The Secretary, Assistant Secretary or an equivalent rank may also grant waivers of the provisions of the directive. The authority to grant waivers of directives may be delegated to any officer or employee in the issuing official's organization, as well as to any officer or employee in a Field Office. Any such delegation must be in writing. Any officer or employee who has a delegation of authority to waive a provision of a directive may grant waivers in accordance with this chapter.
- 5-6 **Scope.**
- A. The term "directive" has the same meaning as in paragraph 2-1 of this handbook. The term includes handbooks (including changes), notices, interim notices, special directives, and any other issuance that the Department may classify as a directive. The waiver policy explained in this chapter pertains to all documents of this kind.
 - B. The Reform Act requirement that waivers of directives be in writing applies to any waiver that is intended to provide a benefit to, or to remove an obstacle to participation by, one or more specific individuals or entities outside the Department. Waivers of provisions in directives governing only the internal operations of the Department, or waivers that affect all persons who are in similar circumstances, are not subject to the requirements of this chapter.
 - C. A provision in a directive may not be waived if the provision is one that summarizes or restates a regulatory provision that is subject to section 7(q). In any such instance, the waiver

may not be granted, since it would, in fact, be a waiver of a regulation. Only the Secretary, or the program Assistant Secretary who issued the regulation, is empowered to waive the requirement in question. A useful test for determining whether a directive provision may be waived is whether the waiver would also require a regulatory waiver to make the directive waiver effective.

- D. For purposes of the HUD Statement of Policy, all prohibitions in directives that treat the subject of discrimination on the basis of race, sex, color, national origin, religion, handicap, age, or familial status, and all related affirmative obligations that are direct derivatives of regulations, are considered regulatory provisions--that is, they may not be waived except by action of an Assistant Secretary.

5-7 Procedures.

- A. The record of a waiver of a provision in a directive must set out
 - 1. The identifying number of the handbook or other directive waived, and the particular provision waived.
 - 2. A brief explanation of the reason for granting the waiver.
 - 3. The name of the person who granted the waiver request, and the name of the person to be contacted for further information concerning it.
- B. This information should be forwarded to the Departmental Directives Management Officer, Office of Administrative and Management Services, Office of Administration.
- C. A record of waivers granted will be maintained in indexed form in the HUD Library for not less than a 3-year period beginning on the date a waiver was granted.