



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

This document has been
signed by
Pamela H. Patenaude

MEMORANDUM FOR: Katie S. Worsham, Director
Community Planning and Development Division
Fort Worth Regional Office, 6AD **OCT 13, 2005**

FROM: Pamela H. Patenaude, Assistant Secretary, D

SUBJECT: Request for waivers concerning hurricane disaster
response and recovery State of Louisiana

On September 13, 2005, Louisiana Governor Kathleen Babineaux Blanco wrote to Secretary Jackson, requesting a number of waivers for the State's CDBG program. Below are my determinations regarding each of the State's requests.

Under the authority of Section 122 of the Housing and Community Development Act of 1974, as amended (the Act), and pursuant to 24 CFR 5.110 and 24 CFR 91.600, I have determined that there is good cause to suspend the following statutory requirements of the Housing and Community Development Act, and to waive the following regulatory requirements governing the State CDBG program for the State of Louisiana. **Unless otherwise specified, these apply to the State of Louisiana's FY 2005 and FY 2006 allocation of funds, and to any prior-year funds that are not obligated to units of general local government as of the date of this letter.** The Department is unable to completely grant several of the State's requests to suspend statutory requirements and to waive regulatory requirements, for the reasons noted. In those cases, this letter indicates the specific provisions for which a waiver or suspension is or is not granted.

Request 1: "Restrictions on the repair or reconstruction of buildings used for the general conduct of government at 42 USC 5305(a)(2) and (a)(14) and 24 CFR 570.207(a)(1)."

Response: At this time, I am not suspending 42 USC 5305(a)(2) and (a)(14) for Louisiana's regular formula allocations of CDBG funding. HUD will reconsider this request at a future date, as recovery and rebuilding efforts progress.

Justification: I recognize there has been widespread destruction of government buildings, and the resulting hardship this has placed on local government operations. However, at this time, communities in Louisiana face even more critical and overwhelming needs in the areas of housing, economic development and infrastructure.

Request 2: "Submission Requirements at 42 USC 12705(a)(2), 42 USC 5304(a)(1), 42 USC 5304(m), 42 USC 5306(d)(2)(C)(iii), and 24 CFR 91.320 regarding the State's Action Plan."

Response: The State wishes to amend its current method of distribution to create a new disaster response funding category, using program income, program year 2005 and prior year funds. In addition, the State desires to significantly alter its action plan for program year 2006, which the State had finalized and was otherwise ready to submit to HUD. The request for suspension of the statute or waiver of certain regulatory requirements is to permit the State to revise its action plans and method(s) of distribution to react to evolving –and in some cases yet-to-be-identified needs- without adhering to the complete citizen participation process.

Pursuant to Section 122 of the Act, HUD cannot waive provisions relating to public notice of funding availability, but can provide significant relief to certain provisions of the submission process. It is not appropriate for HUD to suspend the requirements of 42 USC 5304(a)(1). The State must still submit its annual action plan and certifications in order to receive its FY 2006 funding; a method for distributing funds must still be described in this submission. However, HUD can provide regulatory relief regarding the certifications, contents and level of detail to be contained in the State’s submission.

I hereby suspend:

- 42 USC 12705(a)(2), to remove the requirement that the State submit an annual update of its housing strategy.
- 42 USC 5304(m), to remove the requirement that the State submit a description of its priority non-housing community development needs.
- 42 USC 5306(d)(2)(C)(iii), to remove the requirement that the State must certify that it will not refuse to distribute funds to units of general local government based on the eligible activity selected by the local government.

I hereby waive:

- The provisions of 24 CFR 91.10 concerning the starting date and duration of Louisiana’s program year. HUD will take all steps possible to award the State its 2006 CDBG funding as soon as possible, without requiring the State to request a change to the start date of its program year. The State may then consider its program year to begin on the date of grant award and to end as normal on March 31, 2007.
- The provision of 24 CFR 91.320(c) requiring that the CDBG program method of distribution must describe “how the proposed distribution of funds will address the priority needs and specific objectives described in the consolidated plan.”
- The provision of 24 CFR 91.320(g)(1) regarding the content and level of detail to be contained in the CDBG program method of distribution.

- The provision of 24 CFR 91.325(b)(2)(iv), to eliminate the certification under 42 USC 5306(d)(2)(C)(iii), above.
- The provision of 24 CFR 91.325(c)(3), to eliminate the certification that the State's consolidated plan identifies community development and housing needs and specifies short- and long-term community development objectives.
- The provision of 24 CFR 91.325(b)(2)(v), to modify the certification that the State will require state grant recipients to identify their housing and community development needs. Units of general local government undertaking activities that respond to the hurricane disaster need not submit this certification.

HUD does not suspend the other provisions of 42 USC 5304(a)(1) which require submission of an annual action plan (including a method for distributing funds) and other certifications in order to receive funding. Other sections of 24 CFR 91.320 also remain in effect, unless otherwise noted.

Justification: These suspensions and waivers allow the State of Louisiana to streamline the level of detail required in the 2006 program year action plan and any amendment to the program year 2005 action plan. Since submission of its last five-year consolidated plan, Louisiana's housing and other community development needs have suddenly changed. In the short term, it is unreasonable to expect the State to thoroughly inventory all of its needs, to finalize new strategies to address those needs, and to revise all aspects of its CDBG Method of Distribution before distributing funds to meet communities' emergency and long-term recovery needs. The State may publish the action plan containing a method of distribution without complete details on how the funds will be distributed. Following the publication of the action plan, as the State finalizes its revised distribution processes, HUD expects the State to publish application manuals or otherwise make information available to explain the specifics (including rating criteria) on how funds will be distributed.

Request 3: "The 50% of downpayment limitation on direct homeownership assistance for low or moderate-income homebuyers at 42 USC 5305(a)(25)(D)."

Response: I hereby suspend 42 USC 5305(a)(24)(D) (formerly Section 5305(a)(25)(D)), to remove the 50 percent of downpayment costs limitation on direct homeownership assistance for low- and moderate-income homebuyers.

Justification: Based on the large number of persons anticipated to need homeownership assistance, it is in the State's best interest to suspend the statute to provide for higher levels of downpayment assistance, as needed.

Request 4: "The requirement that 70% of funds are for activities that benefit low and moderate income persons at 42 USC 5304(b)(3)(A) and 24 CFR 570.484."

Response: Section 122 of the Act allows HUD to suspend statutory requirements for disasters, "...except for...requirements that activities benefit persons of low and moderate income." This section of the Act is not read to give HUD the authority to suspend the 70 percent overall low- and moderate-income benefit requirement or to allow a grantee to meet a lower overall percentage for regular formula allocations of CDBG funding. However, 42 USC 5304(b)(3)(A) allows grantees to select a period of up to three years over which to demonstrate compliance with the requirement. The State of Louisiana has heretofore chosen to demonstrate compliance with the overall benefit requirement on a year-by-year basis.

I hereby waive the provisions of 24 CFR 91.325(b)(4)(ii) and 570.484 to allow the State of Louisiana to change its certification of compliance with this requirement, retroactively if the State so chooses, to a two- or three-year period. Thus, if the State of Louisiana wishes to change its existing certifications to cover FY 2003-2005, 2004-2006 or 2005-2007 funding, it may do so, so long as it informs HUD of the new certification period. (The period must cover consecutive years.)

Justification: This waiver will allow the State to use a greater percentage of funds for activities that will meet the urgent need or slum/blight national objectives. Nonetheless, HUD will encourage the State to maximize the amount of funding for activities that benefit low- and moderate-income persons.

Request 5: "The provision at 24 CFR 570.483(b)(4)(ii) that requires units of general local governments, for job creation activities, to document that either or both of the following conditions apply to at least 51% of the jobs at the time CDBG assistance is provided: 1) the jobs are known to be held by low or moderate income persons, or 2) the jobs can be expected to turn over within two years and be filled by or made available to low or moderate income persons upon turn over. Instead, units of local government in the hurricane impacted areas will be able to presume that all jobs retained as a result of the CDBG funds meet one or both of these conditions."

Response: As previously noted, Section 122 of the Act allows HUD to suspend statutory requirements for disasters, "...except for...requirements that activities benefit persons of low and moderate income." This section of the Act is not read to give HUD the authority to suspend the applicability of low- and moderate-income benefit requirements for activities. Specifically, Section 105(c)(1) of the Act requires that any activity eligible under Section 105(a)(14) or (17), which is intended to benefit low- and moderate-income persons, must either be carried out in a neighborhood which is principally low- and moderate-income, involve facilities designed for use predominantly by low- and moderate-income persons, or "involve employment of persons, a majority of whom are persons of low and moderate income."

Because HUD cannot suspend the statute relating to low- and moderate-income benefit, it is not possible to waive the low-and moderate-income benefit requirements of 24 CFR

570.483(b)(4)(ii). HUD can offer waivers, consistent with the statute, regarding the criteria by which benefit to low- and moderate-income persons is demonstrated.

I hereby waive:

- The provision of 24 CFR 570.483(b)(4)(ii) regarding assistance to businesses for the purpose of retaining jobs, to remove the requirement that "...the unit of general local government must document that the jobs would actually be lost without the CDBG assistance...."

HUD has granted a waiver modifying:

- The provisions of 24 CFR 570.483(b)(4)(iv)(A)(1) and (b)(4)(v) regarding the criteria for locations in which a person may be presumed to be of low or moderate income. For job retention activities, in addition to the presumptions currently allowed, the State may accept any census tract as meeting the criteria of paragraph (b)(4)(v), if:
 - (a) at least 51 percent of the residents of the tract are of low and moderate income, according to either the latest Low/Moderate Income Survey Data or a more recent survey; and
 - (b) the tract is located in a parish eligible for both Individual and Public Assistance under disaster declaration FEMA-1603-DR or any comparable declaration issued pursuant to Hurricane Rita.
- The provisions of 24 CFR 570.483(b)(1)(v)(D) and (e)(5)(i) regarding job retention activities meeting the low- and moderate-income benefit criteria on an area benefit basis when undertaken pursuant to a community revitalization strategy. This waiver lifts the requirement that a unit of general local government have an approved community revitalization strategy for purposes of paragraph (e)(5)(i). For job retention activities, this waiver lifts the requirement for units of general local government to obtain prior HUD case-by-case approval under paragraph (b)(1)(v)(D), if:
 - (a) at least 51 percent of the residents of the unit of general local government are of low and moderate income, according to either the latest Low/Moderate Income Survey Data or a more recent survey; and
 - (b) the unit of general local government is located in a parish eligible for both Individual and Public Assistance under disaster declaration FEMA-1603-DR or any comparable declaration issued pursuant to Hurricane Rita.

There are several areas in which the program regulations allow flexibility in determining and documenting the income status of employees. In addition, the State may be able to determine that assistance to businesses can meet the urgent need or slum/blight national objectives. I direct HUD staff to discuss with state staff these situations for which waivers are not needed.

Justification: HUD recognizes that the impact of the hurricanes on Louisiana's economy

(and on individual businesses) is so severe that, absent substantial evidence to the contrary, the State may presume that jobs would actually be lost from businesses that have been put out of operation or whose continued operation is endangered. The Housing and Community Development Act describes certain situations in which jobs may be presumed to principally benefit low- and moderate-income persons. The degree of socioeconomic and physical distress that now exists in many Louisiana communities is functionally equivalent to the degree of distress recognized by the statutory criteria allowing such presumptions. Similarly, HUD recognizes that the degree of socioeconomic and physical distress that now exists in many Louisiana communities is functionally equivalent to that envisioned by HUD when the community revitalization strategy concept was added to the regulations.

Request 6: “The one-for one replacement requirements at 42 USC 5304(d)(2) and 24 CFR 570.488 for low and moderate income dwelling units (1) damaged by the disaster, (2) for which CDBG funds are used for demolition and (3) which are not suitable for demolition requires that all occupied and vacant occupiable low/moderate income dwelling units that are demolished or converted to use other than low/moderate income dwelling units in connection with a CDBG activity must be replaced with low/moderate income dwelling units.”

Response: I hereby suspend 42 USC 5304(d)(2) and (d)(3), 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 in Section 104(d) of the Housing and Community Development Act (42 USC 5304(d)) to the extent they differ from those of the Uniform Relocation Act.

I hereby waive:

- 24 CFR 42.375, to remove the requirements implementing the abovementioned statutory requirements regarding replacement of housing.
- 24 CFR 42.350, to remove the requirements implementing the abovementioned Housing and Community Development Act relocation benefits requirements, to the extent these regulations differ from the Uniform Relocation Act regulations contained in 49 CFR part 24.

HUD has determined that it is not necessary to waive 24 CFR 570.488 or 24 CFR 570.606 in order to grant the State’s request. While those regulations reference the requirements regarding minimizing displacement and replacement housing, they do not contain specific implementation provisions.

Justification: These suspensions and waivers are necessary to relieve the State and local governments of requirements that would impede disaster recovery, discourage local governments from acquiring, demolishing or rehabilitating disaster-damaged housing and thereby inhibiting recovery efforts designed to address health and safety problems. The

requirement to calculate replacement housing payments based on 60 months, rather than 42 months as required by the Uniform Relocation Act, creates a disparity between the available benefits. The waiver assures uniform and equitable treatment for all such tenants.

Any acquisition of property and any relocation of occupants must still comply with the requirements of the Uniform Relocation Act and implementing regulations; the State and its recipients are still required to develop plans to minimize displacement.

Request 7: “Requirements that state grantee must match the amount of CDBG funds used for administration and limits administration and technical assistance to three percent and limits the state and its grantees to 20% of the aggregate amount received of the state CDBG program at 42 USC 5306(d)(3)(A), and 24 CFR 570.489(a)(1)(3).”

Response: I hereby suspend 42 USC 5306(d)(3)(A), (d)(5) and (d)(6), as revised and renumbered by Public Law 108-199, Section 423 (and formerly codified as 42 USC 5306(d)(3)(A) and (d)(5)).

I hereby waive 24 CFR 570.489(a)(1)(i) and (iii) which caps State administration expenditures and requires a dollar for dollar match of State funds for administrative costs exceeding \$100,000. This suspension and waiver regarding State administrative costs and cost matching applies to any State administrative expenses incurred between the date of disaster declaration FEMA-1603-DR (August 29, 2005) and the end of Louisiana’s 2006 program year (March 31, 2007). The suspension regarding the limit on Technical Assistance activities applies to fiscal year 2005 and 2006 funding, as well as to any prior years for which the State has funds remaining that are not under contract to units of general local government.

HUD does not waive 24 CFR 570.489(a)(3) to allow the State to exceed the overall planning, management and administrative cap of 20 percent.

Justification: Due to the widespread devastation, administrative funds are needed to hire additional staff, travel to localities to monitor recovery efforts, replace equipment, etc. By waiving the State administration cap and allowing use of matched funds for other purposes, HUD will assist Louisiana in administering its program and using funds as best needed in affected communities. This will also allow the State to provide additional technical assistance resources to units of local government to help them recover.

Section 122 of the Housing and Community Development Act (codified at 42 USC 5321) does not give HUD the authority to waive the overall 20 percent cap on planning and administrative costs. Thus, HUD cannot waive the implementing provisions in the State CDBG program regulations.

Request 8: “The provisions at 42 USC 5304(j) and 24 CFR 570.489(e) that permit states to allow units of general local government to retain program income. For purposes of the supplemental funds, all program income will be returned to the state and will become program income to the most recent regular CDBG program year.”

Response: I hereby suspend the statutory provision of 42 USC 5304(j) that prohibits the State from requiring certain program income to be returned to the State.

I hereby waive the same provision in 24 CFR 570.489(e)(3). For any activities funded with FY 2006 or prior year funding that is not under contract to units of general local government as of the date of this letter, the State may require all program income to be returned to the State.

Justification: Requiring units of general local government to return all program income will allow the State to manage the allocation of resources to the greatest needs.

Request 9: “Requirements at 42 USC 12706 and 24 CFR 91.325(a)(6), that housing activities undertaken with CDBG funds be consistent with the strategic plan and 24 CFR 570.903, which requires HUD to annually review grantee performance under the consistency criteria.”

Response: I hereby suspend the provisions of 42 USC 12706.

I hereby waive the provisions of 24 CFR 91.325(a)(6). A waiver to 24 CFR 570.903 is not necessary to grant the State’s request as this regulatory provision governs the Entitlement CDBG program, and the State CDBG regulations do not contain comparable language.

Justification: Since submission of its last five-year consolidated plan, Louisiana’s housing and other community development needs have suddenly changed. In the short term, it is unreasonable to expect the State to thoroughly inventory all of its needs and to finalize new strategies to address those needs. Activities that the State chooses to fund to meet communities’ emergency and long-term recovery needs might not be consistent with the existing strategic plan.

Request 10: “Citizen participation requirements at 42 USC 5304(a)(2) and (3), 42 USC 12707, 24 CFR 570.486, and 24 CFR 91.115(b).”

Response: HUD recently provided significant relief to the regulatory requirement for a 30-day public comment period for amendments to the consolidated plan. HUD has already issued a waiver of 24 CFR 91.115(c)(2) to provide for a minimum public comment period of three calendar days in lieu of a period of 30 calendar days. As noted in that waiver, pursuant to 42 USC 5321 (Section 122 of the Housing and Community Development Act), HUD cannot suspend the statute for actions relating to public notice of funding availability. Therefore, HUD cannot suspend altogether the statutory citizen participation requirements

of 42 USC 5304(a)(2) and (3). However, HUD can offer significant relief from certain citizen participation requirements contained in the regulations that implement the statutory requirements.

HUD understands that, prior to the occurrence of Hurricanes Katrina and Rita, the State of Louisiana had already met all citizen participation requirements preparatory to submission of its program year 2006 action plan. The State now wishes to significantly revise its 2006 action plan, which was otherwise ready to be submitted to HUD. Such changes do not technically qualify as an amendment to the 2006 plan, as it has not yet been submitted to or approved by HUD. However, given that the changes may be substantial and are not necessarily in response to public comments on the draft plan, some opportunity for public comment on those potential changes is appropriate.

I hereby waive:

- Provisions of 24 CFR 91.115(b)(3) insofar that the State need not hold any additional public hearings on any changes that it proposes to its program year 2006 action plan.
- Provisions of 24 CFR 91.115(b)(4), to provide for a minimum three day public comment period on any changes the State proposes to its program year 2006 action plan. As with the waiver of 24 CFR 91.115(c)(2), HUD has determined that a minimum three (3) calendar day public comment period would be acceptable given the circumstances.
- The provisions of 24 CFR 570.486(a)(5), to allow units of general local government to provide for one public hearing prior to the submission of an application to the State.

HUD has determined that it is not necessary to suspend the provisions of 42 USC 12707 in order to grant the waivers above. While that section of the statute contains overall citizen participation requirements for the Comprehensive Housing Affordability Strategy portion of the consolidated plan, the detailed, program-specific citizen participation requirements are in the consolidated plan regulations.

The regulations at 24 CFR 570.486(a) do not specify time frames for the provision of information to citizens, for advance notice of public hearings, or for submission of public comments. Therefore, a waiver of the 24 CFR 570.486 as a whole is not needed. HUD recognizes that, in order to expedite the process for awarding funds to units of local government to meet disaster recovery needs, the State may wish to amend its citizen participation plan in order to streamline the pre-application citizen participation requirements for applicants. The State may wish to consider alternative approaches to ensuring local-level citizen participation consistent with 24 CFR 570.486. 24 CFR 91.115(a)(3) provides the State some flexibility to determine what is a “reasonable opportunity” for public comment on any amendment to the State’s citizen participation plan.

Justification: Given the unexpected nature of this situation, Louisiana's consolidated plan does not give the State the flexibility it needs to address the unexpected needs and expenses of communities as they recover from the hurricane. In order to quickly address these needs, it is appropriate to give the State the ability to streamline its and local governments' citizen participation processes while still allowing for adequate public input.

Request 11: "The requirement at 42 USC 5306(d)(1) and 24 CFR 570.480 (a) that states electing to receive CDBG funds must distribute the funds to units of general local government in the state's nonentitlement areas."

Response: As the devastation caused by Hurricanes Katrina and Rita affected both entitlement and non-entitlement areas, it does not appear to be in the best interest of Louisiana's nonentitled areas to offer relief to this requirement for regular formula allocations of CDBG funding. There is a significant need for rebuilding in both urban and rural areas. Louisiana's entitlement communities receive their own source of funds (which collectively total more than the State's nonentitlement allocation) and these should be used to the fullest extent for rebuilding in those areas. The HUD data derived from the 2000 Census shows that there are 130 villages, towns, parishes and cities that have over 51 percent low and moderate-income residents; no doubt those and other nonentitlement communities had unmet community development needs even before the hurricanes. If supplemental funds are appropriated, this issue will be reconsidered, if necessary.

HUD realizes that some nonentitlement local governments have been so heavily impacted by the hurricanes that they may now lack capacity to administer a CDBG grant from the State. Should the State find this to be a problem, I would consider a waiver/suspension request to allow the State to make grants to entities other than units of general local government for use in nonentitlement areas.

Request 12: "The requirements at 24 CFR 570.207 (b)(3) relative to new construction of housing."

Response: I hereby suspend 42 USC 5305(a) to permit new construction of housing. The State CDBG regulations do not contain a list of eligible and ineligible activities; HUD realizes many states use the Entitlement regulations as guidance on eligibility, even though they are not binding upon states. Therefore, no waiver of 24 CFR 570.207(b)(3) of the Entitlement CDBG regulations is necessary in order to grant Louisiana's request. In addition to the suspension of the statute, the State is encouraged to take advantage of the reconstruction provisions at Section 105(a)(4) of the Housing and Community Development Act of 1974, as amended.

Justification: Given the widespread destruction of housing units, it is in the State's best interest to be able to use all potential funding sources to provide new housing units for its residents.

A letter will be sent to the Governor from Secretary Jackson informing Governor Blanco that these waivers and suspensions have been granted.