

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5358-N-01]

### Reconsideration of 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 reconsidered 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 purpose, upon the request of the State grantees. This Notice describes the statutorily required reconsideration of additional waivers and alternative requirements applicable to the Community Development Block Grant (CDBG) disaster recovery grant provided to the State of Mississippi under the subject appropriations acts.

**DATES:** Effective Date: November 4, 2009

#### FOR FURTHER INFORMATION CONTACT:

Scott Davis, 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. Fax inquiries may be sent to Mr. Davis 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) disaster recovery 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, enacted December 30, 2005), which appropriated \$11.5 billion for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The second supplemental appropriation was in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109-234, enacted June 15, 2006), which appropriated \$5.2 billion in CDBG funds

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. Both of these supplemental appropriation acts 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 (including waivers concerning lead-based paint), 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 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 (42 U.S.C. 5301 *et seq.*) (the 1974 Act), or the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. 12721 *et seq.*). 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 waivers and alternative requirements contained in this notice were originally published October 24, 2006, (71 FR 62372), March 6, 2007, (72 FR 10020) and October 31, 2007, (72 FR 61788). Upon a finding of good cause supported by a written request from the State of Mississippi, these waivers and alternative requirements are being retained after reconsideration.

Except as described in this and other notices applicable to these grants, 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.

##### Description of Changes

This Notice does not address 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 reconsidered all of them on December 12, 2008 (73 FR 75733), at which point, the reconsideration of the first waiver was required. Additionally, in the December 12, 2008, Notice, HUD rescinded the waiver granted in paragraph 5 of the March 6, 2007, Notice (72 FR 10021), to the extent that it covers the Economic Development and Community Revitalization program.

HUD continues to expect Mississippi to maintain low- and moderate-income benefit documentation for each activity providing such benefit.

##### 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 Public Law 109-148 and Public Law 109-234 apply. The notices in which these prior waivers and alternative requirements applicable to Mississippi were published on February 13, 2006, (71 FR 7666), June 14, 2006, (71 FR 34457), October 24, 2006 (71 FR 62372), October 30, 2006; (71 FR 63337), March 6, 2007, (72 FR 10020), August 24, 2007; (72 FR 48808), October 31, 2007; (72 FR 61788), August 8, 2008 (73 FR 46312), and December 12, 2008 (73 FR 75733). These provisions provide additional flexibility in program design and implementation for the disaster recovery grants. Please note, the provisions of this Notice do not apply to funds provided under the annual CDBG program.

*Low- and moderate-income household benefit for multi-unit housing projects.* Upon consideration, HUD is retaining the state's waiver of 24 CFR 570.483(b)(3) so that it can fund multi-unit projects and measure benefit to low- and moderate income households in such projects in a manner more supportive of mixed income housing. Under the cited regulation, the general rule is that at least 51 percent of the residents of an assisted structure must be income eligible. However, this waiver allows a proportional units approach, in which the number of income-eligible units is proportional to the amount of assistance provided.

Therefore, the waiver and alternative requirements continue to give the State a choice. The State may measure benefit within a housing development project (1) according to the existing CDBG requirements, (2) according to the HOME program requirements at 24 CFR 92.205(d), or (3) according to the modified CDBG alternative requirements specified in this notice. The State must select and use just one method for each project. For these purposes, the term "project" will have the same meaning as in the HOME program at 24 CFR 92.2. Unlike the HOME program, the CDBG program does not regulate the maximum amount of assistance per unit, require unit and income reviews in the years following initial occupancy, require a specific form of subsidy layering review, or define affordability. The State is reminded, however, that CDBG does

require that costs be necessary and reasonable and that the State must develop procedures and documentation to ensure that its housing investments meet this requirement. The State must also meet all civil rights and fair housing requirements.

*Housing incentives to resettle in Mississippi.* The State may offer disaster recovery or mitigation housing incentives to promote housing development or resettlement in particular geographic areas. These incentives have served as a valuable tool in helping the State to mitigate risk to housing and communities, thereby reducing damage and cost in future disasters. With Mississippi's request, the Department is retaining the waiver of the 1974 Act and associated regulations to the extent necessary to make this use of grant funds eligible.

*Eligibility—buildings for the general conduct of government.* Upon consideration, HUD is retaining the State's requested eligibility waiver to allow it to fund buildings for the general conduct of government in accordance with its Action Plan. The State can continue to assist construction, reconstruction, or rehabilitation of such buildings when the assistance meets the criteria in the Action Plan. HUD considered the State's request and agrees that it is still consistent with the overall purposes of the 1974 Act for the State to be allowed to use the grant funds under this Notice to fund critical projects involving repair of buildings for the general conduct of government that the State has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the State has determined have substantial value in promoting disaster recovery.

*Public benefit for certain economic development activities.* For its economic development programs, the State has requested a waiver of the public benefit standards for its economic development activities. The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the annual aggregate. These dollar thresholds were set more than a decade ago and under disaster recovery conditions (which often require a larger investment to achieve a given result), can be too low and thus impede recovery by limiting the amount of assistance the grantee may provide to a critical activity. The State has made public in its Action Plan the disaster recovery needs each activity is addressing and the public benefits expected. After consideration, this Notice retains the waiver for public benefit standards for the cited activities,

except that the state shall report and maintain documentation on the creation and retention of, (a) total jobs, (b) number of jobs within certain salary ranges, (c) the average amount of assistance per job and activity or program, and (d) the types of jobs. As a conforming change for the same activities or programs, HUD is also waiving 24 CFR 570.482(g) to the extent its provisions are related to public benefit.

*Eligibility—Tourism.* Upon reconsideration, HUD is retaining the waiver allowing support of the tourism industry. The Department understands that the support provided by Mississippi has been a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues. The jobs and tax revenues produced as a result of support of the tourism industry have played a valuable role in the economic revitalization of the Mississippi Gulf Coast region. The waiver will continue to permit advertising and marketing activities rather than direct assistance to tourism dependent businesses. Because the measures of long-term benefit from the proposed activities must be derived using regression analysis and other indirect means, the waiver will still cap the funds that may be used for this purpose. However, based on the state's request, that cap will increase from \$5 million to \$7 million. The assisted activities must continue to support tourism to the most impacted and distressed areas related to the effects of Hurricane Katrina. This waiver will now expire 2 years after the date of this notice, after which, support of the tourism industry will again be ineligible for CDBG disaster recovery funding.

*Eligibility—Project-Based Rental Assistance.* After reconsideration, HUD is also retaining the waiver to allow the use of project-based rental assistance (herein referred to as PBRA) to encourage owners, including nonprofit owners, of small rental properties to reestablish affordable rental housing in areas that suffered the greatest losses. The subsidy funding can be used in conjunction with components of the State's Small Rental Assistance Program to repair, rehabilitate, reconstruct, or convert small rental properties. The funding should continue to target 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 upfront 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.

Rental programs of this type can be risky; HUD again reminds the state of the regulatory requirement for annual financial audits of its programs and of the requirements published in **Federal Register** notices on February 13, 2006 (71 FR 7666), October 30, 2006 (71 FR 63337), and August 8, 2008, (73 FR 46312), 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 7666), June 14, 2006; (71 FR 34457), October 30, 2006; (71 FR 63337), March 6, 2007; (72 FR 10020), August 24, 2007; (72 FR 48808), October 31, 2007; (72 FR 61788); August 8, 2008 (73 FR 46312); and December 12, 2008, (73 FR 75733).

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. *Low- and moderate-income benefit for multi-unit housing projects.* 24 CFR 570.483(b)(3) is waived to the extent necessary to allow the state to document low- and moderate-income benefit in a proportional units approach for multi-unit housing projects. HUD will consider assistance for a multi-unit housing project to benefit low- and moderate-income households in the following circumstances:

(a)(i) The CDBG assistance defrays the development costs of a housing project providing eligible permanent residential units that, upon completion, will be

occupied by low- and moderate-income households; and

(ii) If the project is rental, the units occupied by low- and moderate-income households will be leased at affordable rents. The grantee or unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose; and

(iii) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low- and moderate-income households; or

(b) When CDBG funds defray the development costs of eligible permanent residential units, such funds shall be considered to benefit low- and moderate-income persons if the grantee follows the provisions of 24 CFR 92.205(d); or

(c) The requirements of 24 CFR 570.483(b)(3) are met.

(d) The State must select and use just one method for each project.

(e) The term "project" will have the same meaning as in the HOME program at 24 CFR 92.2.

(f) If the State applies option (a) or (b) above to a housing project, 24 CFR 570.483(b)(3) is waived for that project.

3. *Eligibility—buildings for the general conduct of government.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow the state to use the grant funds under this Notice to assist construction, reconstruction, or rehabilitation of buildings for the general conduct of government that the state has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery.

4. *Eligibility—incentives to resettle in Mississippi.* 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible incentives to resettle in Mississippi in accordance with the state's approved Action Plan and published program design.

5. *Public benefit standards for economic development activities.* For economic development activities designed to create or retain jobs or businesses, the public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived, except that the grantee shall report and maintain documentation on the creation and retention of, (a) total jobs, (b) number of jobs within certain salary ranges, (c) average amount of assistance provided per job by activity or program, and (d) types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

6. *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 \$7 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 support for the tourism industry, such as promotion of a community in general, will again be ineligible for CDBG funding.

7. *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.

8. *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 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). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Dated: October 21, 2009.

**Mercedes M. Márquez,**  
Assistant Secretary for Community Planning  
and Development.

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Renewal of Agency Information Collection for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is proposing to submit the information collection, titled "Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts, 25 CFR 23.13" to the Office of Management and Budget for renewal. The information collection is currently authorized by OMB Control Number 1076–0111, which expires February 28, 2010. The information collection requires State courts that appoint counsel for an indigent Indian parent or Indian custodian in an involuntary Indian child custody proceeding to submit certain information to BIA for reimbursement when appointment of counsel is not authorized by State law.

**DATES:** Interested persons are invited to submit comments on or before December 29, 2009.

**ADDRESSES:** You may submit comments on the information collection to Sue Settles, Chief, Division of Human Services, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Mail Stop 4513, Washington, DC 20240, *facsimile:* (202) 208–5113.

**FOR FURTHER INFORMATION CONTACT:** You may request further information or obtain copies of the information collection request submission from Sue Settles, *telephone:* (202) 513–7621.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The BIA is seeking renewal of the approval for the information collection conducted under 25 CFR 23.13, implementing the Indian Child Welfare Act (25 U.S.C. 1901 *et seq.*). Approval for this collection expires February 28, 2010. The information collection allows BIA to receive written requests by State courts that appoint counsel for an