



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

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

~~OCT -4, 2005~~

MEMORANDUM FOR: Katie Worsham, Director, Office of Community Planning and
Development, Fort Worth Regional Office, 6AD

This document has been
signed by
Pamela H. Patenaude

FROM: Pamela H. Patenaude, Assistant Secretary, D

SUBJECT: Waiver of HOME Requirements For Participating
Jurisdictions in Presidentially-Declared Disaster
Areas Due to Hurricane Rita

Hurricane Rita caused substantial damage to communities along the Texas-Louisiana border, destroying residential property and displacing residents. Section 290 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA), as amended, authorizes HUD to suspend certain HOME statutory requirements for HOME participating jurisdictions located in areas that President Bush declared to be disaster areas under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to assist them in disaster recovery.

Pursuant to the authority provided in Section 290 of NAHA and 24 CFR 5.110, I hereby find good cause as stated in the justifications to suspend the HOME statutory requirements and waive HOME regulatory requirements specified in the attachment to this memorandum for participating jurisdictions in Louisiana and Texas counties that are declared to be disaster areas under title IV of Robert T. Stafford Act. These participating jurisdictions include, but are not limited to, the following:

New Orleans Field Office

State of Louisiana
City of Lake Charles

Fort Worth Field Office

State of Texas
City of Beaumont
Orange County Consortium
City of Port Arthur

For the State of Texas, certain waiver provisions have been limited to the counties that were declared disaster areas under Title IV of the Robert T. Stafford Act or to families whose homes were damaged by or who were displaced by Hurricane Rita. This limitation was established because most of the State of Texas did not sustain damage as a result of Hurricane Rita. These restrictions were not established for the State of Louisiana, because it is already operating under similar waivers on a statewide basis granted after Hurricane Katrina.

Participating jurisdictions should direct any questions regarding these suspensions to your office. Should you or your staff have any questions regarding these suspensions, you may contact Ginny Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, at 202-708-2470, or at Virginia_Sardone@hud.gov.

Attachment

HOME Program Suspensions and Waivers Related to Hurricane Rita Recovery Efforts

The following provisions contained in the HOME Investment Partnerships (HOME) Act, as amended (42 U.S.C. 12721 et seq.) (Act) and in the HOME Program regulations codified at 24 CFR Part 92, as they relate to the use of HOME and American Dream Downpayment Initiative funds to address disaster relief as a result of Hurricane Rita, are being suspended pursuant to the authority established in Section 290 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended. Provisions that are not specifically waived remain fully effective:

Program Requirements:

Citizen Participation for Consolidated Plan Amendment

Citations: 24 CFR 91.105(c)(2) and (k) (Local Governments), 24 CFR 91.115(c)(2) and (i) (States), and 24 CFR 91.401 (Consortia)

Explanation: When proposing a substantial amendment to its Consolidated Plan, a participating jurisdiction (PJ) must provide a period of not less than 30 days to allow citizens and public interest groups to comment on the proposed amendment(s). This waiver will permit PJs amending their plans as a result of Hurricane Rita to reduce the comment period to 3 days.

Justification: This waiver is required to permit PJs that sustained damage and displacement of population as a result of Hurricane Rita to immediately reprogram HOME funds in their FY 2005 or prior years' HOME agreements, and deliver emergency housing assistance to affected residents.

Tenant-Based Rental Assistance (TBRA)

Citation: Section 212(a)(3)(A)(i) (Act), and 24 CFR 91.225(d)(1) (Local Governments), §91.325(d)(1) (States), and §91.425(a)(2)(i) (Consortia)

Explanation: This section of the rule requires PJs intending to use HOME funds for TBRA to certify that the provision of such assistance is an essential part of its Consolidated Plan.

Justification: Required to relieve the PJ of the administrative burden of determining and certifying needs that are obvious.

Source Documentation for Income Determinations

Citations: 24 CFR 92.203(a)(1) and (2), and 24 CFR 92.610(c)

Explanation: This section of the rule requires that initial income determinations be made using source documentation. This waiver will permit the PJ to use self-certification of income, as provided in §92.203(a)(1)(ii), in lieu of source documentation to determine eligibility of beneficiaries for HOME and ADDI assistance who are unable to provide such documentation because their homes were severely damaged or they were displaced by Hurricane Rita. The PJ must retain the income self-certification.

Justification: Many families whose homes were destroyed or damaged by Hurricane Rita will not have any documentation of income and will not be able to qualify for HOME assistance if the requirement remains effective. This waiver applies to families whose homes were severely damaged or destroyed by Hurricane Rita and is limited to a period of one year from the date of the memorandum granting this waiver.

Limitation on Use of HOME funds for Administrative Costs

Citations: Section 212(c) (Act), and 24 CFR 92.207

Explanation: This section of the rule limits the amount of HOME funds that a PJ may use for administrative and planning costs to 10 percent of allocation plus program income received. This provision is suspended to enable the PJ to expend up to 20 percent of its FY 2004, FY 2005, and FY 2006 allocations and program income received for administrative and planning costs.

Justification: Required to provide the PJ adequate funds to pay for the increased cost of administering HOME-related disaster relief activities and to relieve the PJ of the burden of identifying PJ funds to pay these costs.

Tenant-based rental assistance (TBRA): Eligible costs and requirements

Citations: Section 212(a)(3)(Act), and 92.209(b), (c), (h), (i), (j) and (k)

Explanation: This section of the rule governs the operation of a HOME TBRA program. The provisions of: (b) General requirement (certification); (c) Tenant selection; (h) Maximum subsidy are being suspended; (i) Housing quality standards; (j) Definition of Security deposit; and (k) Program operation. (The Department cannot suspend requirements with respect to low-income status of beneficiaries.)

Justification: Suspending these provisions will provide the PJ with greater flexibility to use tenant-based rental assistance as an emergency housing resource.

Reduction of matching contribution requirement

Citation: 24 CFR 92.222(b)

Explanation: HUD is hereby reducing the matching requirements for the PJ by 100 percent with respect to any HOME funds expended during FY 2006 and FY 2007. The requirement that the PJ must submit a copy of the disaster declaration is waived.

Justification: The approval of a match reduction will relieve the PJ from the need to identify or provide matching contributions to HOME projects, in light of the urgency of its housing needs and the substantial financial impact Hurricane Rita will have on the PJ.

Project Requirements:

Maximum per-unit subsidy

Citations: Section 212(e) (Act), and 24 CFR 92.250(a) and §92.612(a)

Explanation: This section of the rule specifies the maximum subsidy amount of HOME and ADDI funds that the PJ may invest per unit.

Justification: Required to allow the PJ needed flexibility to assist affected low-income households by removing the per-unit cap on assistance. For the State of Texas, this waiver is limited to counties declared disaster areas under the Stafford Act.

Property Standards

Citations: 24 CFR 92.251 and 24 CFR 92.612(b)

Explanation: This section of the rule requires that housing assisted with HOME or American Dream Downpayment Initiative (ADDI) funds meet property standards based on the activity undertaken, i.e., HUD housing quality standards (HQS) in Section 982.109 for tenant-based rental assistance and homebuyer assistance, and state and local standards and codes or model codes for rehabilitation and new construction. Property standard requirements are waived for repair of properties damaged by Hurricane Rita and for units occupied by tenant-based rental assistance recipients that were displaced by Rita. Units must meet State and local health and safety codes. The lead housing safety regulations established in 24 CFR Part 35 are not waived.

Justification: Required to enable the PJ to meet the critical housing needs of families whose housing was damaged and families who were displaced by Hurricane Rita. For the State of Texas, this waiver is limited to housing that was damaged by Hurricane Rita or housing rented or acquired by families displaced by Hurricane Rita.

Tenant and participation protections

Citations: Section 225(d) (Act), and 24 CFR 92.253(d)

Explanation: This section of the rule requires an owner of rental housing assisted with HOME funds to adopt written tenant selection policies and procedures.

Justification: The requirement that there be written tenant selection criteria constitutes an impediment to the expeditious use of HOME funds. Waiver limited to period of one year from the date of this memorandum. For the State of Texas, this waiver is limited to counties declared disaster areas under the Stafford Act.

Homeownership Housing Maximum Value/Sales Price Limitation

Citation: Section 215(b)(1) (Act), and 24 CFR 92.254(a)(2)

Explanation: This section of the rule requires that the sales price or maximum after-rehabilitation value of HOME-assisted housing not exceed 95% of area median sales price.

Justification: The waiver is necessary to provide the PJ with flexibility to assist affected low-income homeowners to repair hurricane and flood damage to their homes and low-income homebuyers to purchase available, standard housing in local market areas. For the State of Texas, this waiver is limited to counties declared disaster areas under the Stafford Act.

Community Housing Development Organizations (CHDOs):

Set-aside for community housing development organizations

Citations: Section 231 (Act), and 24 CFR 92.300(a)(1)

Explanation: This section of the rule establishes a set-aside for Community Housing Development Organizations (CHDOs). The requirement that the PJ use 15% of its allocation for housing owned, developed, or sponsored by CHDOs is suspended for the PJ's FY 2005 and FY 2006 allocations.

Justification: Required to relieve the PJ of requirements that impede the obligation and use of funds to expeditiously provide housing to displaced persons and repair damaged properties.

American Dream Downpayment Initiative (ADDI) Requirements:

First-time homebuyer requirement

Citations: Sec. 271(c)(1) (Act), and 24 CFR 92.602(a)(1)

Explanation: This section of the rule provides that households assisted with ADDI qualify as first-time homebuyers.

Justification: Required to enable the PJ to assist families that previously owned homes that were damaged or destroyed in Hurricane Rita to purchase homes with ADDI funds. Waiver limited to households affected by the disaster. For the State of Texas, this waiver is limited to counties declared disaster areas under the Stafford Act.

Per Unit Limit on ADDI Assistance

Citations: Sec. 271(c)(2)(A)(i) (Act), and 24 CFR 92.602(e)

Explanation: This section of the rule limits the amount of ADDI assistance that may be provided to an assisted homebuyer to the greater of: 1) 6 percent of the sales price; or 2) \$10,000.

Justification: Required to relieve the PJ of the burden of finding other sources of financing to assist families affected by Hurricane Rita to purchase homes. Suspension is limited to households whose homes were damaged by or who were displaced by the disaster.

Other Federal Requirements

Optional Relocation Assistance

Citation: 24 CFR 92.353(d)

Explanation: This section requires a publicly available, written policy for providing relocation payments and other relocation assistance to persons displaced by activities not covered by the URA or assistance to persons covered by the URA or section 104(d) at higher levels than required by such provisions. Equal levels of assistance must be provided for each class of displaced persons.

Justification: Because of the large number of displaced persons, requiring the PJ to provide equal levels of assistance to each class of displaced persons may reduce assistance to such low levels that it would have little meaningful benefit. For the State of Texas, this waiver is limited to counties declared disaster areas under the Stafford Act.

Section 104(d), One-for-One Replacement

Citations: Sec. 105(a)(16) of the NAHA, Sec. 104(d)(2)(A)(i) and (ii) and Sec. 104(d)(3) of the HCD Act, 24 CFR 92.353(e) and 24 CFR 42.375

Explanation: These provisions require a PJ to replace occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with a development project assisted with HOME.

Justification: Required to relieve the PJ of requirements that would impede disaster recovery, discourage PJs from acquiring, demolishing or rehabilitating disaster-damaged housing and thereby inhibiting recovery efforts designed to address health and safety problems. For the State of Texas, this waiver is limited to counties declared disaster areas under the Stafford Act.

Replacement Housing Assistance

Citation: Sec. 105(a)(16) of the NAHA, Sec. 104(d)(2)(A)(iii) and (iv), Sec. 104(d)(2)(B) and (C) of the HCD Act, 24 CFR 92.353(e) and 24 CFR 42.350(e)(1)

Explanation: These provisions require a PJ to provide rental assistance payments calculated based on 60 months.

Justification: This requirement to calculate replacement housing payments based on 60 months, rather than 42 months as required by the URA creates a disparity between the available benefits. The waiver assures uniform and equitable treatment for all such tenants. For the State of Texas, this waiver is limited to counties declared disaster areas under the Stafford Act.

Decent, Safe and Sanitary Standard

Citation: 24 CFR 92.353(b)(2)(iii)

Explanation: The rehabilitation of a substandard dwelling occupied by a nondisplaced person in a disaster-damaged building triggers a requirement that the unit be decent, safe and sanitary upon completion of the rehabilitation.

Justification: Failure to waive this provision would impede disaster recovery, discouraging grantees from undertaking rehabilitation of disaster-damaged housing and thereby inhibiting recovery efforts designed to address health and safety problems. For the State of Texas, this waiver is limited to counties declared disaster areas under the Stafford Act.