

APPENDIX VI DISASTER WAIVERS AND SPECIAL PROVISIONS AFFECTING SINGLE AUDITS

Changes to Compliance Requirements

Recipients affected by Hurricanes Katrina and Rita in 2005, either directly or indirectly, may be covered by waivers and/or special provisions that modify the terms and conditions of their awards, including the types of compliance requirements described in this Compliance Supplement. In some cases, the waiver or special provision may apply to Hurricane Wilma as well. This Appendix provides updated information on the waivers and special provisions granted by Federal agencies. A “waiver,” for purposes of this Appendix, is elimination of or change in a substantive compliance requirement. A “special provision,” for purposes of this Appendix, is extension of a due date or deadline for an action that is otherwise unchanged.

This Appendix includes information to assist the auditor in determining what, if any, changes they need to be aware of when performing an audit that covers the period during which requirements may have been lifted or modified. Auditors engaged to perform single audits should consult the resources described here to determine if a particular recipient or program is covered by a waiver. While most of the Hurricane Katrina and Rita waivers affect entities in Louisiana, Mississippi, Alabama, and Florida, they also affect numerous other States and entities that provided services to displaced individuals. However, because this Appendix is a resource that provides generally applicable information only, auditors also should inquire of auditee officials whether they are aware of any special provisions or waivers affecting their awards. Because some State or local governments may have issued waivers (i.e., a waiver of out-of-state tuition for hurricane victims that might impact student financial needs calculations), the auditor also should inquire of auditee officials whether they are aware of any State or local waiver that might impact Federal requirements. In most cases, copies of waivers and special provisions issued by the Federal Government also are available on Federal agency websites. Unless modified by waivers or special provisions, compliance requirements of law and regulation are applicable to grantees affected by disasters.

Availability of Other Information

Auditors also should refer to <http://www.gao.gov/govaud/hurricanedocument.pdf> for temporary exemptions and guidance issued by the Government Accountability Office related to the governmental auditing standards.

Suggested Audit Procedures

For grantees affected by Hurricanes Katrina, Rita, or Wilma, as applicable, auditors should perform the following procedures to determine if modifying provisions or waivers apply:

1. Inquire of the auditee whether it is aware of any disaster-related special provisions, including any specific waivers available as a result of Hurricane Katrina or Rita or, where applicable, Wilma. Obtain and examine these provisions/waivers.

2. Consult Parts 4 and 5 of this Compliance Supplement for information about any additional special disaster-related provisions affecting individual programs.
3. Also, for each major Federal program, consult the home page for the department/agency and/or program for information about waivers and special provisions.
4. In performing the audit, the auditor will use Parts 4, 5, or 7 as appropriate. For any modifying provision or waiver, whether explained or referenced in this Appendix or made known to the auditor by the auditee, the auditor should review and evaluate the content, validity, scope, and applicability of the provision or waiver, with particular attention to when it was in effect, and determine whether it excuses the grantee from complying with the compliance requirement(s) at issue.
5. If there are no valid disaster-related special provisions or waivers that modify a compliance requirement, and the requirement has not been adhered to, the auditor must report a finding of non-compliance in accordance with the requirements of OMB Circular A-133, Paragraph __.510. However, if the auditee and/or auditor are of the opinion that circumstances resulting from the cited natural disasters caused or contributed to the non-compliance, such circumstances should be explained in the description of the audit finding and/or the views of responsible officials included with the audit findings. Audit resolution officials will consider such causes in their resolution action, in accordance with the applicable statute and regulations.

PART 4 – AGENCY PROGRAM REQUIREMENTS

Following is a table that indicates which programs in Part 4 of this Supplement are affected by waivers and special provisions.

| CFDA Number | Waiver/Special Provision |
|--------------------|---------------------------------|
| 14.218 | Waiver |
| 14.228 | Waivers |
| 14.231 | Waivers |

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)**CFDA 14.218 COMMUNITY DEVELOPMENT BLOCK GRANTS/ENTITLEMENT GRANTS**

WAIVER - On September 5, 2005, HUD issued a statutory suspension of the 15 percent public service expenditure cap applicable to Community Development Block Grant (CDBG) funds for purposes related to Hurricane Katrina assistance efforts. This suspension was extended to Hurricane Rita recovery efforts on October 13, 2005.

HUD Waivers for the City of Moss Point, Mississippi

On December 21, 2005, HUD issued a series of regulatory waivers and statutory suspensions to the City of Moss Point, Mississippi, to help the City recover from the effects of Hurricane Katrina. The waivers and suspensions are as follows:

WAIVER – HUD waived the 15 percent public service cap for Moss Point contained at 24 CFR section 570.201, and acknowledges that the City will utilize the statutory suspension of the 15 percent cap contained in Section 105(a)(8) of the Housing and Community Development Act of 1974, as amended, that was suspended on September 5, 2005.

WAIVER – HUD waived 24 CFR section 570.207(b)(1) to allow the City to purchase generators for sanitary and water systems and similar public purposes.

WAIVER – HUD suspended Section 105 of the Housing and Community Development Act of 1974, as amended, to permit the City to use CDBG funds for new housing construction. HUD also has waived 24 CFR section 570.207(b)(3) to permit the city to utilize CDBG funds for new construction activities. This waiver and suspension are effective through September 30, 2007.

HUD Waivers for the City of Gulfport, Mississippi

On December 21, 2005, HUD issued a series of regulatory waivers and statutory suspensions to the City of Gulfport, Mississippi, to help the City recover from the effects of Hurricane Katrina. The waivers and suspensions are as follows:

WAIVER – HUD waived the 15 percent public service cap for Gulfport contained at 24 CFR section 570.201, and acknowledges that the city will utilize the statutory suspension of the 15 percent cap contained in Section 105(a)(8) of the Housing and Community Development Act of 1974, as amended, that was suspended on September 5, 2005.

WAIVER – HUD waived 24 CFR section 570.208(a)(4)(ii) to remove the requirement that to retain jobs the recipient must document that jobs would actually be lost without CDBG assistance.

WAIVER – HUD waived 24 CFR sections 570.208(a)(4)(iv)(A)(1) and (B) and (a)(4)(v) to allow the City to presume that any census tract meets the criteria of paragraph (a)(4)(v) if at least 51 percent of the residents of the tract are of low- and moderate-income, according to either the latest low- and moderate-income summary data or a more recent survey.

WAIVER – HUD has suspended the provisions of Section 106 of National Affordable Housing Act and waives 24 CFR section 91.225(a)(6) and 24 CFR section 570.903 through December 31, 2006 to give the City relief from the consolidated plan requirement that housing activities undertaken with CDBG funds be consistent with the City’s consolidated plan for the most recent program year and that such performance be reviewed by HUD annually.

WAIVER – HUD has suspended Section 105(a) of the Housing and Community Development Act of 1974, as amended, to permit the City to use CDBG funds for new housing construction. HUD also has waived 24 CFR section 570.207(b)(3) to permit the city to utilize CDBG funds for new construction activities. This waiver and suspension are effective through December 31, 2006.

HUD Waivers for the City of Biloxi, Mississippi

On December 21, 2005, HUD issued regulatory waivers and statutory suspensions to the City of Biloxi, Mississippi, to help the City recover from the effects of Hurricane Katrina. The waivers and suspensions are as follows:

WAIVER - HUD waived the 15 percent public service cap for Gulfport contained at 24 CFR section 570.201, and acknowledges that the city will utilize the statutory suspension of the 15 percent cap contained in Section 105(a)(8) of the Housing and Community Development Act of 1974, as amended, that was suspended on September 5, 2005.

HUD Waiver for Hattiesburg, Jackson, and Pascagoula, Mississippi, and Mobile, and Mobile County, Alabama

On February 10, 2006, HUD issued a regulatory waiver to the aforementioned jurisdictions to help them recover from the effects of Hurricanes Katrina and Rita. The waiver is as follows:

WAIVER – HUD has waived the 30-day public comment requirements of 24 CFR section 91.105(c)(2) and will permit grantees to provide a 10-day minimum public comment period for substantial amendments to the consolidated plan. The waiver will remain in effect through the end of each grantee’s 2006 CDBG program year.

HUD Waivers for the City of Baton Rouge – Parish of East Baton Rouge, Louisiana

On February 14, 2006, HUD issued a series of regulatory waivers and statutory suspensions to the City of Baton Rouge- Parish of East Baton Rouge, Louisiana, to help the City recover from the effects of Hurricane Katrina. The waivers and suspensions are as follows:

WAIVER – HUD has suspended 42 USC 5305(a)(24)(D) to allow the City and Parish to provide up to 100 percent of the down payment required for low- and moderate-income homebuyers. In support of this suspension, HUD has waived 24 CFR section 570.201(n). The relief granted by this suspension and waiver shall remain in effect through the end of the grantee’s 2007 program year and may be utilized solely for the benefit of low- and moderate-income homebuyers in support of Hurricane Katrina relief efforts.

WAIVER –HUD has suspended 42 USC 5305(a) to permit the City and Parish to use CDBG funds for new housing construction. HUD has waived 24 CFR section 570.207(b)(3) to permit the City to utilize CDBG funds for new housing construction activities. The waiver and suspension are effective through the end of the grantee’s 2007 program year and may be utilized solely for the benefit of low- and moderate-income homebuyers in support of Hurricane Katrina relief efforts.

Compliance Requirements Affected - III.A, “Activities Allowed or Unallowed,” and III.G.3.c, “Matching, Level of Effort, Earmarking – Earmarking”

Additional Information - The waivers can be found at <http://www.hud.gov/offices/cpd/library/katrina/revkatpswaive.pdf>, and http://www.hud.gov/offices/cpd/library/katrina/CDBGwaiver_ext.pdf.

CFDA 14.228 COMMUNITY DEVELOPMENT BLOCK GRANTS/STATE’S PROGRAM AND NON-ENTITLEMENT GRANTS IN HAWAII

WAIVER - On September 5, 2005, HUD issued a statutory suspension of the 15 percent public service expenditure cap applicable to CDBG funds for purposes related to Hurricane Katrina assistance efforts. This suspension was extended to Hurricane Rita recovery efforts on October 13, 2005.

HUD Waivers for the States of Louisiana and Mississippi.

On October 13, 2005 and November 9, 2005, HUD issued a series of statutory suspensions and regulatory waivers to the States of Louisiana and Mississippi, respectively, to help the States’ recovery from the effects of Hurricane Katrina. The waivers are as follows:

WAIVER - HUD suspended 42 USC 5305(a) to permit new construction of housing (see III.A.1, “Activities Allowed or Unallowed”)

WAIVER - HUD has granted a waiver modifying the provisions of 24 CFR sections 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 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 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 (see III.A.2, “Activities Allowed or Unallowed”).

WAIVER - HUD waived the provisions of 24 CFR sections 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 lifted 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 lifted the requirement for units of general local government to obtain prior HUD case-by-case approval under paragraph (b)(1)(v)(D), if 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 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 (see III.A.2, “Activities Allowed or Unallowed”).

WAIVER - HUD suspended 42 USC 5306(d)(3)(A), (d)(5), and (d)(6) (as revised and renumbered by Pub. L. No. 108-199, Section 423 and formerly codified as 42 USC 5306(d)(3)(A) and (d)(5)), and waived 24 CFR sections 570.489(a)(1)(i) and (iii), which cap State administration expenditures and require a dollar-for-dollar match of State funds for administrative costs exceeding \$100,000 (see III.G.3.b, “Matching, Level of Effort, Earmarking – Earmarking”). The 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 Federal fiscal year 2005 and 2006 funding, as well as to any prior fiscal years for which the State has funds remaining that are not under contract to units of general local government.

WAIVER - HUD suspended the provision of 42 USC 5304(j) that prohibits the State from requiring certain program income to be returned to the State, and waived the same provision in 24 CFR section 570.489(e)(3) (see III.G.3.b, “Matching, Level of Effort, Earmarking - Earmarking”). For any activities funded with Federal fiscal year 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.

WAIVER - HUD suspended 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. HUD waived 24 CFR section 42.375 to remove the requirements implementing the aforementioned statutory requirements regarding replacement of housing and 24 CFR section 42.350 to remove the requirements implementing the aforementioned Housing and Community Development Act relocation benefits requirements, to the extent these regulations differ from the Uniform Relocation Assistance Act regulations contained in 49 CFR part 24 (see III.K, “Real Property Acquisition and Relocation Assistance”).

WAIVER - For the State of Louisiana, HUD suspended 42 USC 5305(a)(24)(D) to remove the 50 percent downpayment assistance cap for direct homeownership assistance to low-and moderate-income homebuyers (see III.A.1, “Activities Allowed or Unallowed”).

WAIVER - For the State of Louisiana, HUD waived the provisions of 24 CFR sections 91.325(b)(4)(ii) and 570.484 to allow the State of Louisiana to change its certification of compliance with the 70 percent overall low-and moderate-income benefit requirement (42 USC 5304(b)(3)(A)) retroactively, if the State so chooses, to a 2- or 3-year period (see III.G.3.a, “Matching, Level of Effort, Earmarking - Earmarking”). Thus, if the State of Louisiana wishes to change its existing certifications to cover Federal fiscal years 2003-2005, 2004-2006 or 2005-

2007 funding, it may do so, as long as it informs HUD of the new certification period. (The period must cover consecutive years.)

WAIVER - For the State of Mississippi, HUD suspended 42 USC 5305(a) to permit use of funds to purchase generators (see III.A.1, “Activities Allowed or Unallowed”).

HUD Waivers for the State of Louisiana

On January 20, 2006, HUD issued a series of regulatory waivers and statutory suspensions to the State of Louisiana to help the State recover from the effects of Hurricane Katrina. The waivers and suspensions are as follows:

WAIVER – For the purposes of the Louisiana Bridge Loan Program, HUD has suspended the provisions of (1) 42 USC 5304(a)(1) requiring that the State’s method of distribution may only provide that funds be distributed to units of general local government; (2) 42 USC 5306(d)(1) requiring that the State’s CDBG funds shall be for use in non-entitlement areas; (3) 42 USC 5306(d)(2) requiring that State CDBG funds are to be distributed only to units of general local government located in non-entitlement areas of the State; and (4) 42 USC 5306(d)(2)(D), to remove the requirement that the State certify that each unit of general local government to which funds are to be distributed will identify its housing and community development needs. To implement the aforementioned suspensions, HUD has waived the provisions of (1) 24 CFR section 91.320(c) and (g)(1) requiring that the State’s method of distribution only provide funds that will be distributed to units of general local government; (2) 24 CFR section 91.325(b)(2)(v), to eliminate the certification under 42 USC 5306(d)(2)(D), (see above); and (3) 24 CFR section 570.486(b) regarding the requirement that units of general local government determine that the activity is meeting its needs in accordance with 42 USC 5306(d)(2)(D).

WAIVER – For the purposes of the Louisiana Bridge Loan Program, HUD has suspended the provisions of 42 USC 5305(e)(3), which require the State to demonstrate that the public benefit provided by the activity is appropriate relative to the amount of assistance provided with the grant. To implement this suspension, HUD has waived 24 CFR section 570.482(f)(6), which requires the State and its grant recipients to demonstrate the level of public benefit.

WAIVER – For the purposes of the Louisiana Bridge Loan Program, HUD has waived the provisions of 24 CFR section 570.483(d) regarding required certifications by the unit of general local government to support the classification of activities as meeting the urgent need national objective.

Compliance Requirements Affected - The following compliance requirements have been affected by the waivers listed above:

III.A, “Activities Allowed or Unallowed;” III.G.3.a, b, and d, “Matching, Level of Effort, Earmarking - Earmarking;” III.K, “Real Property Acquisition and Relocation Assistance”

Additional Information – Information on these and other waivers issued by HUD can be found at <http://www.hud.gov/offices/cpd/library/katrina/>, <http://www.hud.gov/offices/cpd/library/katrina/revkatpswaive.pdf>, <http://www.hud.gov/offices/cpd/library/katrina/modCPwaiver.pdf>, and http://www.hud.gov/offices/cpd/library/katrina/CDBGwaiver_ext.pdf.

CFDA 14.231 EMERGENCY SHELTER GRANTS PROGRAM

WAIVER - The definition of “emergency shelter” has been waived so that it is not limited to “facilities.” The current definition prevents the use of conventional housing owned by private-sector landlords from being used as short-term emergency and transitional shelter resources. Because of the scope of this disaster, HUD provided maximum flexibility to grantees to meet their emergency housing needs (24 CFR section 576.3).

WAIVER - The obligation and expenditure requirements listed in 24 CFR sections 576.35(a) and (b) are waived for a period of up to one year (subject to any applicable statutory limitations). Within 24 CFR section 576.35, (a) refers to States and (b) refers to Formula cities and counties, territories, and Indian tribes. States must currently make the funds available for use within 65 days, obligate them within 180 days, and spend them within 24 months. Entitlement communities must spend funds within 24 months. This waiver will enable grantees to retain their funds while homeless providers and their communities seek to rebuild service-delivery systems in the wake of the Katrina and Rita disasters (24 CFR section 575.35).

Compliance Requirements Affected - III.A, “Activities Allowed or Unallowed,” III.H, “Period of Availability of Federal Funds,” and III.N.2, “Special Tests and Provisions – Funding”

Additional Information – The waivers cited in this section are listed at the following website: <http://www.hud.gov/offices/cpd/library/katrina/ESGWaiver.pdf>.