

Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006.” Section 901 of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005) authorizes HUD to allow PHAs to combine assistance provided under sections 9(d) and 9(e) of the United States Housing Act of 1937 (Act) and assistance provided under section 8(o) of the Act, for the purpose of facilitating the prompt, flexible and efficient use of funds provided under these sections of the Act to assist families who were receiving housing assistance under the Act immediately prior to Hurricane Katrina or Rita and were displaced from their housing by the hurricanes. Section V.A. of the July 28, 2006, notice, entitled, “General Procedures for Combining Public Housing and Voucher Funds under section 901,” provided instructions for PHAs interested in implementing the flexibility in funding authorized in section 901.

On October 30, 2006, at 71 FR 63340, HUD published a notice (FR–5067–N–02) that extended the period for PHAs located within the most heavily impacted areas of Louisiana and Mississippi that are subject to a declaration by the President of a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in connection with Hurricanes Katrina or Rita to submit Notices of Intent and Fungibility Plans in accordance with the July 28, 2006, notice. In addition to extending the PHA submission deadline, the October 30, 2006, notice removed the restriction that the combined funding may not be spent for uses under the Housing Choice Voucher program.

On August 6, 2007, at 72 FR 45657, HUD published a notice (FR–5067–N–03) that extended section 901 fungibility through CY 2007 pursuant to section 4803 of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act (Pub. L. 110–28, approved May 25, 2007).

Today’s **Federal Register** notice revises the earlier notices to incorporate the extension of section 901 fungibility from calendar year CY 2007 to calendar years 2006, 2007, 2008, and 2009, as authorized by section 11003 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329, approved September 30, 2008).

As noted earlier in today’s notice, eligible PHAs interested in combining

CY 2008 funds must submit a 2008 Notice of Intent and Fungibility Plan in accordance with the July 28, 2006, notice, and subsequent **Federal Register** notices. Further information on HUD processing of CY 2008 and CY 2009 Section 901 flexibility may be found on the Office of Public and Indian Housing Web site at <http://www.hud.gov/offices/pih>.

Notices and Plans should be submitted to the following addresses and contacts, as listed in the July 28, 2006, notice: PHAs should submit one copy to the Public Housing Director of the HUD office in New Orleans, Louisiana or Jackson, Mississippi, as applicable, and the original to HUD Headquarters, Office of Public and Indian Housing, Office of Policy, Program, and Legislative Initiatives, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000, Attention: Bessy Kong/Sherry McCown.

Dated: December 9, 2008.

**Paula O. Blunt,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5269–N–01]

### Waiver of Regulations Issued by HUD Restatement of Policy

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice reiterates HUD’s statement of policy concerning the procedures that govern the waiver of regulations and directives issued by HUD. This policy was first announced by notice published in 1991, following enactment of the Department of Housing and Urban Development Reform Act of 1989. In 2001, HUD published a notice that clarified how these procedures are implemented during a period of Administration transition. This notice consolidates the information and procedures provided by the two notices, and updates information and terminology to reflect current HUD operations and procedures.

**FOR FURTHER INFORMATION CONTACT:** For Regulations: Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10282, Washington, DC 20410–0500, telephone number 202–708–1793. (This is not a

toll-free number.) For Directives: Dorothy Fason, Departmental Directives Management Officer, Office of Administration, Department of Housing and Urban Development, 451 7th Street, SW., Room 10139, Washington, DC 20410, telephone 202–708–3054. (This is not a toll-free number.) Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

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 Housing and Urban Development Act. (See 42 U.S.C. 3535(q).) This provision specifies that all waivers of HUD regulations:

- Must be in writing and indicate the grounds for granting the waiver;
- May be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, who is authorized to issue the regulation to be waived; and

- Must provide notification to the public through a notice published at least quarterly in the **Federal Register**. (See 42 U.S.C. 3535(q)(1) through (3).)

Section 7(q) also provides that any waiver of a provision of a HUD handbook (which is included in HUD’s definition of “directive”) must be in writing, specify the grounds for the waiver, and be indexed and made available for public inspection for a period of 3 years. (See 42 U.S.C. 3535(q)(4).)

Section 7(q) contains only procedural requirements with respect to waivers of regulations and handbooks. These include requirements governing the form and content of a waiver, who may grant the waiver, and public notification of the waiver. Section 7(q) made no change in the substantive grounds upon which, or the circumstances in which, HUD may grant a waiver.

##### II. Statement of Policy on Waiver of Regulations and Directives

This statement sets forth HUD’s policy and procedures governing the waivers of HUD regulations and directives. These procedures are consistent with the requirements of section 7(q) of the Department of Housing and Urban Development Act, as added by section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)). HUD’s regulation at 24 CFR 5.110 also sets forth HUD’s

obligation to comply with the waiver requirements of 42 U.S.C. 3535(q).

#### A. Definitions

*As used in this Statement Policy:*

*Assistant Secretary* means an Assistant Secretary of the Department under section 4(a) of the Department of Housing and Urban Development Act (42 U.S.C. 3533(a)), or an individual of equivalent rank (as such term is defined in this section).

*Department* or HUD means the United States Department of Housing and Urban Development.

*Deputy Secretary* means the Deputy Secretary of Housing and Urban Development.

*HUD Act* means the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*).

*Directive* means a handbook (including a change or supplement), notice, and any other issuance that HUD may classify as a directive.

*Individual of equivalent rank* means an individual with rank equivalent to an Assistant Secretary, such as the General Counsel, the Chief Financial Officer, the Inspector General, and the President of the Government National Mortgage Association.

*Regulation means:*

- Any material contained in Title 24, Code of Federal Regulations;
- Any notice published in the **Federal Register** announcing the availability of funds (referred to as a notice of funding availability or NOFA), or the criteria to be used to select recipients of the funds, under any program administered by HUD; and
- Any other notice published in the **Federal Register** that establishes program requirements pursuant to a statute that authorizes HUD to administer the program by **Federal Register** publication, pending issuance of effective regulations amending Title 24, Code of Federal Regulations.

*Secretary* means the Secretary of Housing and Urban Development.

#### B. Waiver of Regulations

##### 1. Actions Subject to Section 7(q).

Section 7(q) of the HUD Act only covers waivers of non-statutory regulatory requirements. Many HUD regulations reflect statutory requirements, and section 7(q) grants no authority to waive statutory requirements that may be codified in HUD regulations. Therefore, HUD officials must always exercise caution that a waiver of a HUD regulation is not a waiver of a statutory requirement.

Section 7(q), however, is not applicable to HUD regulations that

contain, within the regulation, the authority to grant an exception to the overall requirement stated in the regulation under certain specified criteria. This type of regulation was established to provide “built-in” exceptions to the general regulatory requirement, thereby allowing the applicable HUD official to act on such exceptions under the exception criteria specified without undertaking the more formal regulatory waiver process. Examples of this type of regulation can be found in the following regulations:

- a. 24 CFR 203.43(c)(2)

#### § 203.43 Eligibility of Miscellaneous Type Mortgages

\* \* \* \* \*

(c) The Commissioner may insure under this part, without regard to any limitation upon eligibility contained in the other provisions of this subpart, any mortgage given to refinance an existing mortgage insured under the National Housing Act. The refinancing mortgage must meet the following special requirements:

\* \* \* \* \*

(2) It must have a term which does not exceed the unexpired term of the existing mortgage, *except that in any case where the Commissioner determines that an extension of the term of the mortgage will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage*, the term may be extended to the lesser of (i) 30 years or (ii) the unexpired term of the existing mortgage, plus 12 years; (Emphasis added.)

Section 203.43 specifies the conditions under which the Federal Housing Commissioner may grant an exception to the general condition that a refinanced mortgage must have a term that does not exceed the unexpired term of the existing mortgage.

- b. 24 CFR 201.5

#### § 201.5 Waivers

*Waiver of lender's noncompliance.* The Secretary may waive a lender's noncompliance with any provision of this part, subject to statutory limitations, when it is determined that enforcement of the regulations would impose an injustice upon a lender which has substantially complied with the regulations in good faith and refunded or credited any excess charge made, and when such waiver does not involve an increase in the Secretary's obligation beyond that which would have been involved if the lender was in full compliance with the regulations.

Section 201.5 provides a built-in waiver provision and specifies the basis upon which the waiver may be granted.

2. *Form and Content of Waivers.* Each waiver of a HUD regulation must be in writing and specify the grounds for granting the waiver.

3. *Who May Grant a Waiver?* The Secretary is the ultimate repository of the authority both to issue and to waive HUD regulations. The Deputy Secretary has been delegated concurrent authority with the Secretary to issue and waive HUD regulations. The Secretary may delegate each of these powers to HUD Assistant Secretaries or other individuals of equivalent rank, as defined in this notice, and as provided in this section. Typically, the authority to issue regulations is delegated to an Assistant Secretary, with concurrent authority delegated to the Assistant Secretary's principal deputy, generally a General Deputy Assistant Secretary.

The authority to waive a regulation may not be delegated below the Assistant Secretary or equivalent rank (e.g., an Assistant Secretary's principal deputy) unless that individual is serving as the Assistant Secretary or as other individual of equivalent rank. That is, persons formally authorized to act for the Secretary, Deputy Secretary, or an Assistant Secretary, or an individual of equivalent rank in that official's absence may exercise the waiver authority of that individual. Use of this power is limited to situations in which an official is designated as, and is performing the duties of, the absent official pursuant to a current, written order of succession signed by the appropriate official. Note: Special issues are raised by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. The statute authorizes the Department of Transportation, as lead agency, to issue regulations. (See 42 U.S.C. 4633 and the implementing regulations at 49 CFR part 24.) Section 24.7 of the Department of Transportation regulations (49 CFR 24.7) authorizes the federal funding agency to waive certain non-statutory requirements of part 24. Accordingly, the authority to issue and the authority to waive are in different agencies. HUD's position is that the waiver authority of 49 CFR 24.7 is not subject to section 7(q) of the HUD Act because section 7(q) addresses only regulations that the Secretary has the authority to issue.

4. *Legal Concurrence in Waivers.* A proposed waiver of a regulation subject to section 7(q) must be concurred in by the General Counsel (or the General Counsel's designee with responsibility for the legal area involving the waiver), if the waiver would:

- a. Be precedential in effect;
- b. Affect in any way the competitive “ground rules” under which assistance is distributed to recipients;
- c. Relate to litigation involving HUD or its programs; or

d. Otherwise present novel decisions or circumstances.

A proposed waiver that does not meet any of these criteria may be granted without the concurrence of the Office of General Counsel.

5. *Concurrence in Waivers of Nondiscrimination Provisions.* Any proposed waiver of a regulation subject to section 7(q) that prohibits discrimination on the basis of race, color, religion, national origin, sex, disability, age, or familial status, or that sets forth related affirmative obligations, must be concurred in by the Assistant Secretary for Fair Housing and Equal Opportunity, or the Assistant Secretary's designee.

6. *Notification to the Public.*

a. *In General.* HUD will notify the public of all waivers of regulations subject to section 7(q) that are granted by HUD through notice published in the **Federal Register**.

b. *Timing of Notice.* Each notice will be published not less frequently than quarterly, and will provide information on all waivers of regulations subject to section 7(q) since the end of the period covered by the last **Federal Register** notice containing all the waivers granted during the reporting period.

c. *Content of Notice.* The notice will contain the following information for each waiver:

- i. An identification of the project or activity that is the subject of the regulatory waiver;
- ii. A description of the nature of the requirement that has been waived and a specification of the provision involved, including the citation to the Code of Federal Regulations (CFR), if the provision is codified in the CFR;
- iii. The name and title of the official who granted the waiver;
- iv. A brief description of the grounds for granting the waiver; and
- v. A statement of how more information about the waiver, a copy of any request, and the approval of the waiver may be obtained.

d. *Public Inspection of Waivers.* A record of each waiver of a HUD regulation (including the information specified in Section B.c. of this notice) is maintained by the office of the HUD official who granted the waiver, and will be made available to the public, upon request, subject to the 3-year recordkeeping period for the waiver required by section 7(q)(4)(C). As provided in Section C.4. of this notice, information about specific waivers granted should be directed to the office that granted the waiver. General information about the procedures for granting waivers of regulations may be obtained from the Regulations Division,

Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500, telephone number 202-708-2084. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

C. *Waiver of Directives*

1. *Form and Content of Waivers.* Each waiver of a provision in a HUD directive will be in writing and will specify the grounds for granting it.

2. *Who May Grant a Waiver?* The HUD officer who is authorized to issue a directive may also grant waivers of its provisions. This authority may be delegated to any officer or employee in the issuing official's organization, as well as to any officer or employee in a HUD Field or Regional Office. Any such delegation must be in writing, although a published delegation of authority is not necessary to delegate the power to waive the provisions of directives.

3. *What May be Waived?* This notice applies only to a waiver that is intended to provide a benefit to, or to remove an obstacle to participation in a HUD program by specific individuals or entities outside the Department. Waivers of provisions governing internal HUD operations, and any action establishing guidance that applies to all individuals or entities that are in similar circumstances, are not subject to the waiver requirements of this notice. Issuance of a new directive is not a waiver for purposes of this notice.

HUD officials must be alert and cognizant that waiver of a directive provision that restates or summarizes a regulation may constitute a regulatory waiver. In determining whether a directive provision is to be treated as a regulatory waiver, HUD will consider whether the waiver of the directive would also require a regulatory waiver. If so, the waiver must meet the regulatory waiver requirements set forth in this notice.

All prohibitions against 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 prohibitions.

4. *Public Inspection of Waivers.* A record of each waiver of a HUD directive (including the grounds for granting the waiver) will be made available to the public. For more information on where and how this information may be inspected, interested members of the public are to

contact the HUD office that granted the waiver. The record of the waiver will be maintained for not less than the 3-year period beginning on the date the waiver is granted.

D. *Regulatory Waiver Procedures During Period of Administration Transition*

During a period of Administration transition, HUD officials authorized to waive regulations include those persons who, by reason of a vacancy in a position requiring Senate confirmation, are designated to exercise authority of the Secretary, Deputy Secretary, Assistant Secretary, or an individual of equivalent rank under a published order of succession. HUD's orders of succession, consistent with 42 U.S.C. 3535(d), ensure that waivers of regulations will be issued only by those persons authorized to issue the regulation to be waived. Consistent with such orders of succession and the Vacancies Reform Act of 1998 (5 U.S.C. 3345-3349d), delegation of this authority, and the waiver procedures set forth in this statement of policy continue until individuals nominated by the President to offices requiring Senate confirmation are confirmed by the Senate and sworn in by the President.

Employing orders of succession and existing delegations of authority during a period of Administration transition is essential to ensure that the business of the Department is not seriously impaired by the absence of individuals occupying positions requiring Senate confirmation. HUD receives a significant number of requests for waivers of regulations and directives, and failure to respond to these requests in a timely, considered manner may have significant adverse effects on HUD grantees and undercut HUD's credibility with the public. This clarification is also consistent with the Department's April 22, 1991, statement of policy, reiterated in this notice, in which HUD noted that the only other persons who are authorized to waive a regulation are those serving in an "acting" capacity. Use of this power is limited to situations in which an official is designated as, and is performing the duties of, the absent official pursuant to a current, written order of succession signed by the appropriate official. HUD has in place written orders of succession to ensure an orderly flow of the authority of those vacant positions that require Senate confirmation.

Notwithstanding Section II.B.4.e. of this notice, all waivers of regulation proposed during a period of Administration transition must be concurred in by the Associate General

Counsel who serves as program counsel to the program office considering granting the waiver, and by the General Counsel or General Counsel's designee under the most recent General Counsel's order of succession. This review procedure will ensure that all waivers are consistent with the Vacancies Reform Act of 1998.

### III. Findings and Certifications

*Environmental Review.* An environmental finding under the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) is unnecessary since this notice involves internal administrative procedures that are categorically excluded under HUD regulations at 24 CFR 50.20(k). It should be noted that the actual grant of a waiver pursuant to this notice may require environmental review. If this occurs, the environmental considerations will be assessed at that time and in that context.

*Executive Order 13132, Federalism.* Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. The statement of policy sets forth only the procedures for granting waivers of regulations and directives, and for notifying the public of the waiver. Accordingly, this statement of policy does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

**Authority:** Sections 7(d) and 7(q), Department of Housing and Urban Development Act (42 U.S.C. 3535(d) and 3535(q)).

Dated: December 9, 2008.

**Roy A. Bernardi,**

*Deputy Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R3-R-2008-N0294; 30136-1265-0000-S3]

#### Big Stone, Neal Smith, Crane Meadows, Gravel Island, Green Bay, Harbor Island, Huron, and Michigan Islands National Wildlife Refuges

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare comprehensive conservation plans and environmental assessments; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), intend to gather information necessary to prepare comprehensive conservation plans (CCP) and associated environmental documents for the Big Stone, Neal Smith, Crane Meadows, Gravel Island, Green Bay, Harbor Island, Huron, and Michigan Islands National Wildlife Refuges (NWRs). We furnish this notice in compliance with our CCP policy to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to be considered in the planning process. In addition, we invite comments on archeological, historic, and traditional cultural sites in accordance with the National Historic Preservation Act. Special mailings, newspaper articles, Internet postings, and other media announcements will inform people of the opportunities for written comments.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** section of this notice for specific addresses for each refuge.

You may also find information on the CCP planning process and submit comments electronically on the planning Web site <http://www.fws.gov/midwest/planning>, or you may e-mail comments to [r3planning@fws.gov](mailto:r3planning@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** See **SUPPLEMENTARY INFORMATION** section of this notice for specific contact names and telephone numbers for each refuge.

**SUPPLEMENTARY INFORMATION:** With this notice, we initiate the CCP for the Big Stone National Wildlife Refuge, Big Stone and Lac qui Parle Counties, MN; Neal Smith National Wildlife Refuge, Jasper County, IA; Crane Meadows National Wildlife Refuge, Morrison County, MN; Gravel Island National Wildlife Refuge, Door County, WI (Lake Michigan); Green Bay National Wildlife Refuge, Door County, WI (Lake Michigan); Harbor Island National Wildlife Refuge, Chippewa County, MI

(Lake Huron); Huron National Wildlife Refuge, Marquette County, MI (Lake Superior); and Michigan Islands National Wildlife Refuge, with four islands in Charlevoix County, MI (Lake Michigan), and five islands in Arenac and Alpena Counties, MI (Lake Huron).

Comments or requests for more information can be directed to the individuals listed for each refuge:

- Attention: Alice Hanley, Refuge Manager, Big Stone National Wildlife Refuge, 44843 County Road 19, Odessa, MN 56276; 320-273-2191.
- Attention: Nancy Gilbertson, Refuge Manager, Neal Smith National Wildlife Refuge, P.O. Box 399, 9981 Pacific Street, Prairie City, IA 50228; 515-994-3400.
- Attention: Paul Soler, Refuge Manager, Crane Meadows National Wildlife Refuge, 19502 Iris Road, Little Falls, MN 56345; 320-632-1575.
- Attention: Patti Meyers, Refuge Manager, Gravel Island National Wildlife Refuge (Managed by Horicon NWR), W4279 Headquarters Road, Mayville, WI 53050; 920-387-2658.
- Attention: Patti Meyers, Refuge Manager, Green Bay National Wildlife Refuge (Managed by Horicon NWR), W4279 Headquarters Road, Mayville, WI 53050; 920-387-2658.
- Attention: Tracy Casselman, Refuge Manager, Harbor Island National Wildlife Refuge (Managed by Seney NWR), 1674 Refuge Entrance Rd., Seney, MI 49883; 906-586-9851.
- Attention: Tracy Casselman, Refuge Manager, Huron National Wildlife Refuge (Managed by Seney NWR), 1674 Refuge Entrance Rd., Seney, MI 49883; 906-586-9851.
- Attention: Tracy Casselman, Refuge Manager, Michigan Islands National Wildlife Refuge (northern section of Michigan Islands management at Seney NWR), 1674 Refuge Entrance Rd., Seney, MI 49883; 906-586-9851 and (south section of Michigan Islands management at Shiawassee NWR) Attention: Steve Kahl, Refuge Manager, Michigan Islands National Wildlife Refuge, 6975 Mower Road, Saginaw, MI 48601; 989-777-5930.

### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should know that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.