



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

ASSISTANT SECRETARY FOR  
COMMUNITY PLANNING AND DEVELOPMENT

[signed September 19, 2005]

MEMORANDUM FOR: All CPD Field Office Division Directors

FROM: Pamela H. Patenaude, Assistant Secretary, D

SUBJECT: Waiver of HOPWA Requirements to Facilitate Assistance to  
Persons Displaced by Hurricane Katrina

Hurricane Katrina devastated many communities along the Gulf Coast of Alabama, Mississippi, and Louisiana, and displaced residents in numbers unprecedented in our nation's history. Many organizations across the country are in receiving communities that are providing shelter to evacuees, including current HOPWA beneficiaries and other HOPWA eligible persons. A number of these organizations have inquired about waivers of HUD requirements to facilitate the placement of these families in appropriate housing. HUD is hereby waiving HOPWA regulations for HOPWA grantees located in areas, or serving as receiving communities in assisting persons displaced by Hurricane Katrina, that President Bush declared to be major disaster areas under Title IV of the Robert T. Stafford Act.

The Department believes the two most effective ways for these receiving communities to expeditiously meet the housing needs of evacuees is to: 1) identify and prepare vacant units in existing rental projects for immediate occupancy by evacuees; and 2) provide tenant-based rental assistance (TBRA) to evacuees to enable them to find market rate units in the receiving community. For low-income persons living with HIV/AIDS and their families, HOPWA resources can be used for these purposes, including use of permanent housing placement assistance to help relocate the household to the new unit.

In light of the mass displacement of families, and in order to assist HOPWA grantees in meeting the housing needs of displaced persons, the Department finds that there is good cause for a waiver of certain regulatory requirements. Accordingly, pursuant to 24 CFR 5.110, the Department hereby waives the requirements below in connection with HOPWA assistance provided to displaced persons who have either registered with the Federal Emergency Management Agency (FEMA), or will register within 60 days of receiving HOPWA assistance.

Requirement: Citizen Participation for Consolidated Plan Amendment

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

Explanation: When proposing a substantial amendment to its Consolidated Plan, a grantee 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 grantees amending their plans as a result of Hurricane Katrina by reducing the comment period to 3 days. A waiver is not needed for non-substantial changes in plans.

Justification: This waiver is required to permit grantees that have project sponsors that sustained damage as a result of Hurricane Katrina or are serving persons displaced by Hurricane Katrina to immediately reprogram HOPWA funds in their FY 2005 or prior years' HOPWA agreements, and deliver housing assistance to affected residents with immediate and pressing housing needs.

Requirement: Source Documentation for Income Determinations

Regulatory Citations: 24 CFR 574.3, Eligible Person

Explanation: This section of the regulation establishes the definition of eligible person as a low-income person who is living with HIV/AIDS and their families. To document eligibility, grantees and project sponsors must make initial household income determinations for beneficiaries, and make use of credible medical records to evidence a positive HIV status of a member of the household, using source documentation. This waiver will permit these organizations to use self-certification of income and credible information on their HIV status (such as knowledge of their HIV-related medical care) in lieu of source documentation to determine eligibility for HOPWA assistance of persons displaced by Hurricane Katrina. If the displaced household has not registered with FEMA or has registered but has not yet received a FEMA letter at the time that the application for HOPWA assistance is made, the grantee or the project sponsor may accept the income self-certification and provide the HOPWA assistance. However, the grantee or project sponsor must ensure that the beneficiary provides evidence of FEMA registration within 60 days of receiving assistance. In addition, documentation of HIV status must be made within a similar reasonable time.

Justification: Many families whose homes were destroyed or damaged by Hurricane Katrina will not have any documentation of income or medical records and will not be able to qualify for HOPWA assistance, if the requirement remains effective. This waiver is limited to a period of one year from the date of this memorandum. The grantee or the project sponsor, as appropriate, is required to maintain the household's income self-certification, confidential documentation of HIV status, and documentation of the household's registration with FEMA.

Requirement: Rent Standards for Tenant-Based Rental Assistance (TBRA)

Regulatory citation: 24 CFR 574.310(d), Resident Rent Payment and 574.320(a)(1), Maximum Subsidy

Explanation: This section of the HOPWA regulations provides two options for grantees in establishing rent standards for their TBRA programs. The TBRA payment may not exceed the difference between the rent standard and 30% of the families' adjusted income. In many housing markets there is a limited stock of vacant units that charge rents within the rent standards, and evacuees receiving TBRA would be required to pay more than 30% of their income toward rent. This waives the HOPWA rent standard requirement and permits grantees and their project sponsors to establish rent standards, by unit size, that are reasonable and based upon rents being charged for comparable unassisted units in the area, taking into account the location, size, type, quality, amenities, facilities, management and maintenance of each unit. This rent standard is to be used in calculating the TBRA subsidy for persons displaced by Hurricane Katrina. Grantees and their project sponsors are required to determine rent reasonableness in accordance with §574.320(a)(3). This waiver is limited to a period of one year from the date of this memorandum.

In cases where an eligible person or household moves into a unit owned by another member of their family, this waives the requirement that the entire family income be used in determining eligibility and in establishing the amount of housing assistance. In these cases, the amount of housing assistance should be conditioned on the rent reasonableness and rent standard used for comparable units in the community.

Justification: This waiver is required to expedite efforts to identify suitable housing units for rent to families that have been displaced by Hurricane Katrina and provide a more generous subsidy to families that must rent units with rent charges that exceed the grantee's normal TBRA rent standard.

Requirement: Property Standards for Tenant-Based Rental Assistance

Regulatory citation: 24 CFR 574.310(b)

Explanation: This section of the HOPWA regulations provides that units occupied by recipients of HOPWA TBRA meet the Housing Quality Standards (HQS) established in this section. This property standard requirement is waived for units occupied by TBRA recipients who were displaced by Hurricane Katrina. Grantees and their project sponsors must ensure that these units, at a minimum, meet state and local health and safety codes within 30 days

of occupancy. The lead hazard safety regulations at 24 CFR Part 35, Subpart M, remain in effect.

**Justification:** This waiver is required to enable grantees and project sponsors to expeditiously meet the critical housing needs of the many eligible families that have been displaced by Hurricane Katrina. This waiver is limited to a period of one year from the date of this memorandum.

#### Guidance on Using Vacant Units to House Persons Displaced by Hurricane Katrina

As a first step toward meeting their housing needs, grantees and project sponsors that are receiving evacuees should contact owners of federally-assisted rental projects and compile a list of vacant units, along with their location and number of bedrooms (including units supported by HOME, CDBG, HOPWA, Homeless Assistance, and other federal housing programs). The assisted rental projects may adopt written tenant selection criteria that provides a priority for the special population of HOPWA eligible persons who are persons displaced by Hurricane Katrina. The project owners may add such a preference to their written tenant selection criteria so that evacuees can be housed expeditiously.

The waiver provided herein will permit project owners to accept self-certifications of income from persons displaced by Hurricane Katrina who have registered with FEMA or will register in the timeframe provided in this memorandum. Owners must document the FEMA registration and retain the self-certification. Because eligibility for HOPWA assistance is based on low-income status, many families will not have any income or only qualify for income from federal welfare programs, and this population can be presumed to meet the program requirements. For subsequent annual income certifications, evacuees will be subject to income requirements as would any other tenant.

HOPWA TBRA also involves the use of a lease or occupancy agreement between the owner and tenant, with standard provisions, such as the requirement that the lease or agreement be for a period of at least one year. Section 8 regulations, which HOPWA follows to the extent practicable, provides that a project sponsor may approve a shorter initial lease if such shorter term would improve the housing opportunities for the tenant and such shorter term is the prevailing local market practice. In this situation, it is not practicable to follow both of these provisions. It is sufficient if the shorter term would improve the housing opportunities for the tenant.

#### Guidance on Providing HOPWA TBRA to Persons Displaced by Hurricane Katrina

Grantees and their project sponsors can provide TBRA along with the use of permanent housing placement assistance to assist evacuees to find and secure housing in their rental markets. Organizations that already administer HOPWA TBRA or other housing programs can establish a preference for persons displaced by Hurricane Katrina in accordance with their tenant selection requirements.

Households displaced by Hurricane Katrina and registered with FEMA or are in the process of registering within the timeframes provided in this memorandum are permitted to be income-qualified for TBRA based upon self-certification of anticipated income and to occupy units that do not meet HQS provided that the grantee or project sponsor determines that the unit does not violate state or local health and safety codes, pursuant to the waivers provided herein. The amount of HOPWA assistance and the total tenant payment calculation can be based upon the amount specified in the certification. Because the amount of HOPWA subsidy is dependent on the amount the tenant must pay toward rent, it is important for the grantee or the project sponsor to determine whether the TBRA recipient is also receiving rental assistance from FEMA. Consequently, the grantee or project sponsor must verify whether the displaced person or family is receiving additional rental assistance within 90 days of approving the HOPWA TBRA, so that the amount of the TBRA subsidy may be adjusted, if necessary.

Subsequent annual and adjusted income determinations to establish eligibility and total tenant payment must be based upon source documentation. Because HOPWA funds cannot be provided to persons with incomes in excess of 80% of area median income, TBRA to evacuees found to be over-income at requalification must be terminated. The grantee or project sponsor must maintain the household's income self-certification, confidential documentation of HIV status, and documentation of registration with FEMA.

When providing TBRA or other housing assistance to evacuees, the waiver contained herein enables grantees and project sponsors to establish a rent standard that is reasonable and based upon rents being charged for comparable unassisted units in the area, taking into account the location, size, type, quality, amenities, facilities, management and maintenance of each unit. This rent standard will be used to calculate maximum TBRA subsidy. The waiver is provided for markets in which there are limited rental housing units available with rents close to the HOPWA TBRA rent standard. This authority is unnecessary for organizations with higher vacancy rates or more moderate rent levels. Organizations that use this authority must document the basis for this conclusion for future HUD monitoring.

In limited instances, organizations that are providing housing to HOPWA eligible families displaced by Hurricane Katrina may require additional relief from HOPWA requirements. If an organization identifies such a need, it should contact the CPD Director in the appropriate local HUD office. Questions regarding this waiver should be directed to David Vos, Director, Office of HIV/AIDS Housing, at 202-708-1934, or at [David.Vos@hud.gov](mailto:David.Vos@hud.gov).