



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

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

SEP -9, 2005

MEMORANDUM FOR: All CPD Field Office Division Directors

This document has been
signed by
Pamela H. Patenaude

FROM: Pamela H. Patenaude, Assistant Secretary, D

SUBJECT: Guidance on Use of HOME Funds and Waiver of HOME
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. HUD will waive HOME regulations and suspend certain HOME statutory requirements for HOME participating jurisdictions (PJs) located in areas that President Bush declared to be major disaster areas under Title IV of the Robert T. Stafford Act to assist them in disaster recovery. Many other PJs across the country are "receiving communities" that are providing shelter to evacuees. A number of these PJs have inquired about waivers of HOME Program requirements to facilitate the placement of these families in appropriate housing.

The Department believes the two most effective ways for these "receiving communities" to expeditiously meet the housing needs of evacuees is for HOME PJs to: 1) identify and prepare vacant HOME 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. This memorandum provides guidance on using vacant HOME units and HOME tenant-based rental assistance (TBRA) to assist evacuees. It also waives certain HOME regulatory provisions to facilitate immediate assistance to persons displaced by this disaster.

In light of the mass displacement of families, I find that there is good cause for a waiver of requirements to facilitate PJs' efforts to serve the critical housing needs of the displaced. Pursuant to the provisions of 24 CFR 5.110, I hereby waive the following requirements in connection with HOME assistance provided to persons displaced by Hurricane Katrina who have registered with the Federal Emergency Management Agency (FEMA) or will register within 60 days of receiving HOME 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), and 24 CFR 91.401 (Consortia)

Explanation: When proposing a substantial amendment to its Consolidated Plan, a 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 Katrina to reduce the comment period to 3 days.

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

Requirement: Source Documentation for Income Determinations

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

Explanation: This section of the rule requires that initial income determinations for HOME beneficiaries be made using source documentation. This waiver will permit PJs to use self-certification of income, as provided in §92.203(a)(1)(ii), in lieu of source documentation to determine eligibility for HOME and ADDI assistance of persons displaced by Hurricane Katrina and registered with the FEMA in accordance with the requirements of 24 CFR 92.508(a)(3)(v). 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 HOME assistance is made, the PJ may accept the income self-certification and provide the HOME assistance. However, the PJ must ensure that the beneficiary provides evidence of FEMA registration within 60 days of receiving assistance.

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

Requirement: Rent Standards for Tenant-Based Rental Assistance

Regulatory citation: 24 CFR 92.209(h)(3)

Explanation: This section of the HOME final rule provides two options for PJs 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 than more than 30% of their income toward rent. This waives the HOME rent standard requirement and permits PJs to establish rent standards, by unit size, that are reasonable 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. PJs are required to determine rent reasonableness in accordance with §92.209(f). This waiver is limited to a period of one year from the date of this memorandum.

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 PJ's normal TBRA rent standard.

Requirement: Property Standards for Tenant-Based Rental Assistance

Regulatory citation: 24 CFR 92.209(i) and 24 CFR 92.251(d)

Explanation: This section of the HOME final rule provides that units occupied by recipients of HOME TBRA meet the Housing Quality Standards (HQS) established at 24 CFR 982.401. This property standard requirement is waived for units occupied by TBRA recipients who were displaced by Katrina and are registered with the FEMA. PJs 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, which require the PJ to perform a visual assessment for deteriorated paint surfaces when a child under age 6 will occupy a unit using a TBRA subsidy, remain in effect.

Justification: This waiver is required to enable PJs to expeditiously meet the critical housing needs of the many thousands of families that have been displaced by Hurricane Katrina. This waiver is effective for 1 year from the date of this memorandum.

HUD's objective in requiring that households being served by HOME funds under these waivers be registered with FEMA is threefold. First, it encourages low-income individuals and families to avail themselves of the FEMA disaster assistance to which they are entitled. Second, it ensures that evacuees do not receive duplicative housing subsidies from HUD and FEMA. Third, it ensures that households that are released from the requirement of documenting their income for the purposes of accessing Federally-subsidized housing were actually displaced by Hurricane Katrina.

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

As a first step toward meeting their housing needs, PJs that are receiving evacuees should contact owners of HOME rental projects and compile a list of vacant units, along with their location and number of bedrooms. The HOME statute requires owners of HOME-assisted rental projects to adopt written tenant selection criteria. Because this requirement is statutory, HUD cannot waive the provision to permit preference for admission to be accorded to persons displaced by the Hurricane Katrina. However, PJs may request that their project owners 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 for. Owners must document the FEMA registration and retain the self-certification. Because eligibility for HOME assistance is based upon anticipated income for the coming 12 months, many families that would ordinarily not qualify as low-income will be eligible to occupy HOME-assisted units. For subsequent annual income certifications, evacuees will be subject to the requirements of §92.203(a)(1) as would any other tenant. If an evacuee is found on subsequent income certifications to exceed the HOME income limits, the household will be subject to the same requirements as other over-income HOME tenants pursuant to §92.252(i) (i.e., the rent may be increased, but the household cannot be displaced).

The HOME final rule also requires that a lease between the owner and tenant be executed and that the lease not be for less than one year, unless mutually agreed upon by the owner and tenant. Absent a complaint or other evidence to the contrary, a tenant's signature on a lease of less than one year is satisfactory evidence that the lesser term was mutually agreed upon. Leases for HOME units cannot contain the prohibited lease terms enumerated in §92.253(b).

Guidance on Providing HOME TBRA to Persons Displaced by Hurricane Katrina

PJs can provide TBRA to assist evacuees to find housing in their rental markets. PJs that already administer a HOME TBRA program can establish a preference for persons displaced by Hurricane Katrina in accordance with the tenant selection requirements of §92.209(c). PJs that do not currently administer a TBRA program will need to amend their Consolidated Plans in accordance with 24 CFR 92.209(b) and submit a signed certification in accordance with §91.225(d)(1) (local governments), §91.325(d)(1) (states), or §91.425(a)(2)(i) (consortia). These PJs also will need to establish written tenant selection criteria that provide a preference for persons displaced by a major disaster.

Households displaced by Hurricane Katrina and registered with FEMA or will register within the timeframes provided for 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 and the total tenant payment calculation can be based upon the amount specified in the certification. Because the amount of HOME subsidy is dependent on the amount the tenant must pay toward rent, it is important for PJs to determine whether the TBRA recipient is also receiving rental assistance from FEMA. Consequently, PJs must verify whether the displaced

person or family is also receiving such rental assistance within 90 days of approving the HOME TBRA, so that the amount of the HOME 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 HOME 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. PJs must maintain the household's income self-certification and documentation of registration with FEMA.

When providing TBRA to evacuees, the waiver contained herein enables PJs to establish a rent standard that is reasonable 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 HOME TBRA rent standard. This authority is unnecessary for PJs with higher vacancy rates or more moderate rent levels. PJs that use this authority must document the basis for this conclusion for future HUD monitoring.

In limited instances, PJs that are providing housing to families displaced by Hurricane Katrina may require additional relief from HOME requirements. If a PJ identifies such a need, it should contact the CPD Director in the appropriate local HUD office. Questions regarding this waiver should be directed to Ginny Sardone, Director, Program Policy Division, Office of Affordable Housing Programs, at 202-708-2470, or at Virginia_Sardone@hud.gov.