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STATE OF ALABAMA

ALABAMA DEPARTMENT OF ECONOMIC
AND COMMUNITY AFFAIRS

KENNETH W. BOSWELL
DIRECTOR

September 23, 2020

Ms. Renee Ryles, Acting Field Office Director
Office of Community Planning & Development
U. S. Department of Housing and Urban Development
950 22nd Street, North, Suite 900
Birmingham, Alabama 35203-5301

Dear Ms. Ryles:

RE: State of Alabama's Request to HUD for Waivers Allowed Pursuant to the
PY2020 CARES Act's CDBG-CV Program Funds

The Alabama Department of Economic and Community Affairs (ADECA) administers the State Program for Community Development Block Grant (CDBG) funding within the State of Alabama. Further, ADECA is also the entity responsible for administering the CDBG Disaster Recovery Program (CDBG-DR) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) CDBG-CV Program for the State of Alabama. ADECA staff continue to work diligently with HUD staff to oversee multiple funding programs within the State, and we appreciate the responsiveness of the interaction that the ADECA staff receive from the HUD staff.

According to (i) the text within the CARES Act that was passed by Congress and signed into law by President Trump on March 27, 2020 in response to the Centers for Disease Control and Prevention's January 21, 2020 confirmation of the first coronavirus case in the United States, (ii) the subsequent HUD-issued April 9, 2020 Memorandum entitled "CARES Act Flexibilities for CDBG Funds Used to Support Coronavirus Response and Plan Amendment Waiver," and (iii) the subsequent HUD-issued August 10, 2020 **FR-6218-N-01: Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs** that was published in the Federal Register, along with HUD's telephonic discussions and webinars with the States conducted on August 14, 2020 and September 9, 2020, HUD is providing explicit authorization to grant waivers within the CDBG-CV Program to the States in any program areas that do not pertain to "fair housing, nondiscrimination, labor standards, and the environment". ADECA

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submits the following information to HUD requesting specific waivers which will enable the most effective and efficient allocation and timely expenditure of CDBG-CV funds within the State of Alabama, while ensuring that the overarching objectives of the CDBG program are maintained.

Consideration has been given to information contained within the CARES Act and subsequent guidance issued by HUD. Stated herein in this letter are waivers that the State of Alabama/ADECA wishes to exercise with its CDBG-CV allocations. Specifically, the State of Alabama/ADECA will utilize the waivers that are numbered 1 through 4 below – which waivers are already included in HUD’s August 10, 2020 Federal Register Notice. Additionally, the State of Alabama/ADECA is requesting to utilize the waivers that are numbered 5 through 8 below – which waivers will allow the State/ADECA to optimize the use of its CDBG-CV funds to prevent, prepare for, and respond to the virus threat.

1. Citizen Participation Public Comment Period for a Consolidated Plan Amendment.

Requirement: 30-day Public Comment Period.

Citation: 24 CFR §91.105(c)(2) and (k), 24 CFR §91.115(c)(2) and (i), 24 CFR §91.401, and HUD’s August 10, 2020 Federal Register Notice **FR-6218-N-01: Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs.**

Explanation: A HUD Community Planning and Development (CPD) grant recipient may amend an approved Consolidated Plan in accordance with 24 CFR §91.505. Substantial amendments to the Consolidated Plan are subject to the citizen participation process contained in the grant recipient’s Citizen Participation Plan (CPP). The CPP must provide citizens with 30 days to comment on substantial amendments to plans.

Justification: Given the need to expedite actions to respond to COVID-19, HUD waives 24 CFR §91.105(c)(2) and (k), and 24 CFR §91.115(c)(2) and (i), as specified below, in order to balance the need to respond quickly to the growing spread and effects of COVID-19 with the statutory requirement to provide reasonable notice and opportunity for citizens to comment on a plan’s substantial amendment(s) concerning the proposed uses of CDBG, ESG, HOME, HOPWA, or HTF funds.

Applicability: This 30-day minimum for the required public comment period is waived for substantial amendments to plans, provided that no less than 5 days are provided for public comments on each substantial amendment to a plan. The waiver is available through the end of the recipient’s 2020 program year. The State of Alabama/ADECA intends to utilize this option. Additionally, any grant recipient desiring to undertake further amendments to prior years’ plans following PY2020 can do so during the development of its PY2021 Annual Action Plan.

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2. Citizen Participation Reasonable Notice and Opportunity to Comment.

Requirement: Reasonable Notice and Opportunity to Comment.

Citation: 24 CFR §91.105(c)(2) and (k), 24 CFR §91.115(c)(2) and (i), 24 CFR §91.401, and HUD's August 10, 2020 Federal Register Notice **FR-6218-N-01: Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs.**

Explanation: As indicated above, the regulations at 24 CFR §91.105 (for local governments) and 24 CFR §91.115 (for State governments) set forth the CPP requirements for grant recipients. For substantial amendments to the Consolidated Plan, the regulations require the grant recipient to follow its CPP to provide citizens with reasonable notice and opportunity to comment. The CPP must state how reasonable notice and opportunity to comment will be given.

Justification: HUD recognizes that the efforts to contain the COVID-19 pandemic require limiting public gatherings of large groups of people – such as those often used to obtain citizen participation, and that there is a need to respond quickly to the growing spread and effects of COVID-19. Therefore, HUD waives 24 CFR §91.105(c)(2) and (k), 24 CFR §91.115(c)(2) and (i), and 24 CFR §91.401 as specified below to allow these grant recipients to determine what constitutes “reasonable notice” and “opportunity to comment” given their circumstances.

Applicability: This authority is in effect through the end of the recipient's 2020 program year. The State of Alabama/ADECA intends to utilize this option. Additionally, the State of Alabama/ADECA intends to utilize virtual public hearing methods and mechanisms (such as WebEx calls) through which ADECA will conduct the required public hearing(s) and five (5) day public comment period(s) for its CDBG-CV substantial amendment(s) to the State's Plan.

3. Eligible Entities.

Requirement: Only the units of local government – including both the entitlement and non-entitlement communities – are eligible for CDBG-CV funds.

Citation: 24 CFR §570.4(a), and HUD's August 10, 2020 Federal Register Notice **FR-6218-N-01: Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs.**

Explanation: CDBG program regulations prohibit State governments or non-profit entities from being the recipient of CDBG funding. Similarly, CDBG-CV funding would be so limited in availability.

Justification: Within the State of Alabama, the COVID-19 response has been originated and coordinated primarily by Alabama's Governor and the State government agencies. To ensure that effective and efficient coordination is maintained and furthered by ADECA, the State of Alabama/ADECA intends to utilize this option of a waiver to the provisions contained in

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24 CFR §570.480(a) and HUD's August 10, 2020, Federal Register Notice **FR-6218-N-01** requiring that local governments are the only eligible recipients of the CDBG grant funds. Specifically, the State of Alabama/ADECA intends to utilize this option that State government agencies who are leading the State's COVID-19 response and recovery efforts, as well as the non-profit and/or for-profit hospitals and non-profit entities that are specifically involved in the COVID-19 response, may be grant recipients of CDBG-CV funding through the State of Alabama's CDBG-CV allocation.

4. Pre-Agreement Cost Approval.

Requirement: The State may permit a unit of local government to incur costs for CDBG activities before the establishment of a formal grant relationship between the State and that unit of local government, and these pre-agreement costs may be charged to the grant if the activities are eligible. Also, the State may incur costs prior to entering into a grant agreement with HUD, and the State may charge those pre-agreement costs to the grant, provided that the activities are eligible.

Citation: 24 CFR §570.489(b), 24 CFR Part 58, the citizen participation requirements of 24 CFR Part 91, and HUD's August 10, 2020 Federal Register Notice **FR-6218-N-01: Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs.**

Explanation: States and local governments may incur pre-agreement costs prior to entering into a grant agreement, provided that the requirements of environmental review and citizen participation are met.

Justification: Given that the Centers for Disease Control and Prevention confirmed the first coronavirus case in the United States on January 21, 2020, the State of Alabama/ADECA intends to utilize this option of a waiver effective January 21, 2020 as the date triggering the pre-agreement cost approval.

5. Low- and Moderate-Income Persons.

Requirement: The terms "persons of low and moderate income" and "low- and moderate-income persons" is defined as meaning "families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the [HUD] Secretary with adjustments for smaller and larger families".

Citation: The Housing and Community Development Act at §102(a)(20), 42 USC §5302(a)(20)(A), and HUD's August 10, 2020 Federal Register Notice **FR-6218-N-01: Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs.**

Explanation: ADECA requests a waiver to permit the State of Alabama to use income

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limits of 120 percent of the median income of the area involved.

Justification: The COVID-19 pandemic has impacted all communities across the State of Alabama. ADECA respects and supports the intent of CDBG funds being expended to assist low-income and moderate-income persons through the State's COVID-19 response efforts. For that reason, the State of Alabama/ADECA requests a waiver to allow the State of Alabama's CDBG-CV Program to reflect the 120 percent income limits.

6. National Objective of Urgent Need.

Requirement: Currently, activities that qualify under the CDBG Program's National Objective of "Urgent Need" must meet several criteria – as follows: (i) the existing conditions must pose a serious and immediate threat to the health or welfare of the community; (ii) the existing conditions must be of recent origin or recently became urgent (generally, within the past 18 months); (iii) the grantee is unable to finance the activity on its own; and (iv) other sources of funding are not available.

Citation: 24 CFR §570.483(d) or 24 CFR §570.208(c), and HUD's August 10, 2020 Federal Register Notice **FR-6218-N-01: Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs.**

Explanation: This waiver request is to expand the definition of "urgent need" as was done for the CDBG-DR Program. Under the CDBG-DR Program, a new "Urgent Need Mitigation" (UNM) National Objective requires activities funded with the CDBG-MIT grant to result in (i) measurable and verifiable reductions in the risk of loss of life and property from future disasters, and (ii) yielding community development benefits.

Justification: The State of Alabama/ADECA's waiver request is that an expanded definition be allowed for activities related to COVID-19 to "prevent, prepare for, and respond to coronavirus". Throughout Alabama, many areas have experienced very serious health issues, and in some areas a high number of deaths have resulted from COVID-19. Because the purpose of the CARES Act is to provide health care resources to fight COVID-19, an expanded definition of "urgent need" to address these health issues will allow the State to respond to needs being experienced throughout Alabama.

7. Limited Clientele.

Requirement: The term "limited clientele" is defined as a benefit to a group of persons who are generally presumed to be principally of low- and moderate-income (LMI). This presumption covers abused children, battered spouses, elderly persons, severely disabled adults, homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers. Use of this term may also require documentation on family size and income level in order to show that at least 51 percent of the clientele are LMI persons, or have income eligibility

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requirements limiting the activity to LMI persons only, or be of such a nature and in such a location that it can be concluded that clients are primarily LMI persons.

Citation: 24 CFR §570.208(a)(2)(i), and HUD's August 10, 2020 Federal Register Notice **FR-6218-N-01: Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs.**

Explanation: The State of Alabama/ADECA's waiver request is to expand the definition of "limited clientele" to include a health care provision. Some examples of activities that qualify under the "limited clientele" category already include (i) acquisition of a building to be converted into a shelter for the homeless, (ii) rehabilitation of a center for training severely disabled persons to enable them to live independently, (iii) clearance of a structure from the future site of a neighborhood center that will exclusively serve the elderly, and (iv) public services activities such as the provision of health services.

Justification: This waiver request is twofold. First, the State of Alabama/ADECA seeks to expand the definition of "limited clientele" so as to include the provision of health care as an eligible category for serving "limited clientele" beneficiaries for the purpose of enabling the CDBG-CV funds to be used to allow for the delivery of services to the citizens of Alabama who are being impacted by COVID-19. Second, the expansion of the definition of "limited clientele" will allow public facility activities (such as construction of broadband) to qualify as an allowable activity to address citizens' COVID-19 health needs.

8. National Objective of Low-Income and Moderate-Income Beneficiaries.

Requirement: At least 70 percent of CDBG funds must assist activities that meet the Low-Income and Moderate-Income National Objective.

Citation: The Housing and Community Development Act at §101(c), 42 USC §5301(c), 24 CFR §570.200(a)(3), and HUD's August 10, 2020 Federal Register Notice **FR-6218-N-01: Notice of Program Rules, Waivers, and Alternative Requirements Under the CARES Act for Community Development Block Grant Program Coronavirus Response Grants, Fiscal Year 2019 and 2020 Community Development Block Grants, and for Other Formula Programs.**

Explanation: The State of Alabama/ADECA's waiver request is to allow a program activity to qualify under any of the three National Objectives without a specific percentage target for low-income and moderate-income persons. There is a need to assist all of the citizens of Alabama during this COVID-19 pandemic, not just those citizens who are of at least 51% low-income and moderate-income.

Justification: Many COVID-19 eligible activities that are included in the Quick Guide issued by HUD to support infectious disease response are not possible, if not challenging. Activities such as (i) the construction of a testing and diagnosis or treatment facility, or (ii) acquiring and rehabilitating a commercial or closed school building to provide a group living

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facility for patients undergoing treatment or to accommodate the isolation of patients during their recovery, cannot be appropriately or wisely targeted towards the low-income and moderate-income persons at the exclusion of those other persons who are impacted by the COVID-19 virus but who would not qualify as low-income and moderate-income beneficiaries. The containment of the COVID-19 virus dictates that as widely as possible, all persons who are impacted by the virus be qualified to participate under the National Objective of Urgent Need.

ADECA appreciates HUD's prompt consideration of these waiver requests. ADECA believes that the outcome of HUD's determination on these waiver requests will affect ADECA's plan for distributing the State's current and future CDBG-CV allocations of funds in terms of what flexibilities ADECA will be able to exercise in the planning and awarding of these funds.

If you have any questions pertaining to this matter, please contact Shabbir Olia at (334)242-5468 or shabbir.olia@adeca.alabama.gov.

Sincerely,



Kenneth W. Boswell
Director

KWB:SAO:tmn

cc: Debbie Bowie, HUD Birmingham, Alabama Office