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# Louisiana Housing Finance Agency



## Legal

Christine Bratkowski, Keith Cunningham

April 11, 2007

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## MEMORANDUM

**To:** Commissioner Allison Jones, Chairman  
Commissioner Mark Madderra  
Commissioner Lisa Woodruff-White  
Commissioner Adell Brown, Jr.

**From:** Christine Bratkowski and Keith Cunningham, Legal Department

**Date:** April 11, 2007

**Re:** Legal Committee Meeting

There will be a Legal Committee meeting at 10:15 a.m., Wednesday, April 18, 2007, in Committee Room 1 at Louisiana Housing Finance Agency, 2415 Quail Drive.

If you have any questions or concerns, please contact us.

April 11, 2007

**LEGAL COMMITTEE MEETING**

A regular meeting of the Louisiana Housing Finance Agency Legal Committee will be held on Wednesday, April 18, 2007, at 10:15 a.m., Louisiana Housing Finance Agency, Committee Room 1, located at 2415 Quail Drive, Baton Rouge, LA, by order of the Chairman.

**Preliminary Agenda**

1. Call to order, roll call and introduction of guests
2. Approval of the minutes of February 14, 2007 Committee Meeting
3. Cooperative Endeavor Agreement
4. DSS/OFS – LHFA Memorandum of Understanding – Child Care
5. Other Business
5. Adjournment

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Milton J. Bailey, President

If you require special services please contact Lourie Brown at (225) 763-8700 before April 16, 2007.

MEMORANDUM OF UNDERSTANDING BETWEEN

DEPARTMENT OF SOCIAL SERVICES  
Office of Family Support  
AND

LOUISIANA HOUSING FINANCE AGENCY

This Memorandum of Understanding (MOU) is entered into by the Department of Social Services (DSS), Office of Family Support (DSS/OFS), and the Louisiana Housing Finance Agency (LHFA) relative to Child Care Services.

**I. Background**

This MOU facilitates expenditures of the supplemental allotment of Social Service Block Grant (SSBG) funds as authorized Budget Adjustments to Act 16 of the 2005 Regular Legislative Session for the Child Care Services, in accordance with federal and state regulations (45 CFR Part 96 et seq. and Public Law 109-148) and any applicable Program Instructions.

CFDA Title and Number:	Social Services Block Grant (SSBG), 93.667 – Supplemental Allotment – Department of Defense Appropriations Act, 2006 (H.R. 2863) (P.L. 109- 148)
Award Name, Number, Year:	Social Services Block Grant, G-0601LASOSR, 2006
Federal Agency:	Administration for Children and Families, Department of Health and Human Services
Federal Laws/Regulations:	Social Services Block Grant, 42 USC 397 et seq., 45 CFR Part 96, applicable OMB Circulars and applicable Program Instructions, 31 CFR Part 205 implementing Cash Management Improvement Act

**II. Liaison Officials**

The primary point of contact who shall function as the lead liaison for all implementation of services described in this Memorandum of Understanding (MOU) agreement is James Gilmore, Louisiana Housing Finance Agency Vice President, 2415 Quail Drive, Baton Rouge, Louisiana 70808, (225) 763-8700, FAX (225) 763-8710, [jgilmore@lhfa.state.la.us](mailto:jgilmore@lhfa.state.la.us).

The secondary point of contact who shall serve as a secondary liaison regarding implementation of services described in this Memorandum of Understanding (MOU) agreement is Loretta Wallace, Louisiana Housing Finance Agency Program Administrator, 2415 Quail Drive, Baton Rouge, Louisiana 70808, (225) 763-8700, FAX (225) 763-8710, [lwallace@lhfa.state.la.us](mailto:lwallace@lhfa.state.la.us). This individual shall serve as the contact for the following functions: fiscal and budgetary decisions, programmatic decisions, daily program operation, service delivery operations, and program monitoring.

### **III. SSBG GOAL**

This program initiative meets SSBG Goal by rebuilding the child care infrastructure lost due to the consequences of Hurricanes Katrina and Rita in the Gulf of Mexico in 2005. Restoring critical child care services will support families as they return to work in hurricane affected parishes. Child care services are vital to reestablishing a workforce and strengthening our state's economy.

Hurricanes Rita and Katrina, and especially the flooding in parts of Greater New Orleans, have seriously affected the child care industry. The hurricanes and flood waters damaged many Class A, state-licensed child care centers, that serve lower income families participating in the Child Care Assistance Plan (CCAP). Many centers have closed; some for short periods, some for long periods and some will probably never reopen. Restoring the supply of child care services is important to the stability and well-being of families and young children who have been displaced and who wish to return to their homes or communities.

The child care industry is poorly capitalized. Louisiana plans to use a portion of its Federal funding for hurricane recovery to achieve simultaneously two policy goals:

- to assist in reopening the supply of child care, and
- to ensure the availability of quality child care.

### **IV. Program Components**

#### ***Furnishing Child Care Centers Program***

##### Program Description

This component will offer a program for equipping, furnishing, and supplying Class A Child Care centers whose licenses were suspended due to hurricane-related damage and have reopened Class A centers in the process of opening or reopening, or Class A centers being constructed and furnished by August 31, 2007. An assessment of each center will be conducted and a priority for equipping Class A Child Care centers will be established. Furnishings, equipment and supplies include but are not limited to curriculum, books, furniture, appliances, office equipment, developmentally and age-appropriate play equipment for both indoor and outdoor, and other items appropriate to the operation of a Class A licensed day care center.

##### Statement of Work

1. Assessments will be conducted in Class A Child Care centers whose licenses were suspended and have reopened, are in the process of opening or reopening, or Class A centers being constructed and furnished by August 31, 2007. The assessment will determine the needs of the facilities and document the losses incurred.
2. Eligibility will be limited to Class A Child Care Centers who are currently participating in the Child Care Assistance Program (CCAP) funding; or for those reopening, participated in the CCAP program within a year prior to August 2005; or for new Class A Child Care centers who have opened since August 29, 2005,

committing to serve CCAP eligible children within 60 days of opening for business.

3. The program will be offered in the parishes of Calcasieu, Cameron, Orleans, St. Bernard, Plaquemines, Jefferson, St. Tammany and Washington, those hardest hit by the hurricanes and flooding.
4. The program will be measured by the number of child care centers participating in the assessment and the number of child care slots receiving assistance from this program.
5. The projected budget for program implementation is \$2,400,000.
6. Eligible expenses dated October 1, 2005 or after will be reimbursable. Eligible reimbursable expenses are those not covered by other reimbursement, such as insurance and other state or federal funds.
7. Eligible reimbursable expenses include, but are not limited to, the following: furnishings, equipment and supplies including but not limited to curriculum, books, furniture, appliances, office equipment, developmentally and age-appropriate play equipment for both indoor and outdoor, and other items appropriate to the operation of a Class A licensed day care center.
8. Class A Child Care Centers participating in this program must agree to accept all requirements as defined by SSBG and the state, including federal and state interest.
9. Eligibility will be considered on a first come first serve basis until all funds have been expended.

## **V. Confidentiality Statement**

DSS/OFS and LHFA shall abide by the Federal and State laws and regulations concerning confidentiality which safeguard information and the participant's confidentiality (LA. R.S. 46:56). DSS/OFS and LHFA will further abide by all Federal and State laws and regulations as it relates to data sharing of pertinent information for performance accountability and program evaluation purposes.

## **VI. Responsibilities**

### **A. DSS/OFS shall:**

Prepare the SSBG Intended Use Report amendments and enable rulemaking to facilitate this plan as necessary.

1. Provide payment to LHFA within 30 calendar days of submission of completed and accurate invoices submitted by the 15th of each month to the DSS/OFS for reimbursement of expenditures for payments for services rendered. DSS/OFS shall make notice to LHFA, in writing, of the date that an invoice has been received and provide immediate communication regarding the need for any additional information so that processing of payment will not be delayed. DSS/OFS shall provide written

communication to LHFA regarding any changes to the format needed for timely processing of LHFA invoices. LHFA agrees to separate Agency administrative cost from program costs.

2. Provide technical assistance regarding rules, regulations, and policies governing the use of SSBG funds.
3. Review all contract and agreement forms to be utilized for contractual agreements with service providing entities of the DSS/OFS for compliance with SSBG requirements, prior to the submission to the Office of Contractual Review. Non-compliance shall be communicated in writing to DSS/OFS no later than 10 days after contract submission.
4. Provide SSBG funds as set forth in the Budget Adjustments (BA-7s) to Act 16 of the 2005 Regular Legislative Session, and subsequent Budget Adjustments (BA-7) as approved by the Joint Legislative Committee on the Budget (JLCB) for services eligible under this agreement.
5. Review LHFA expenditures monthly to ensure that SSBG funds are expended appropriately throughout the SSBG MOU period. If at any review, LHFA fails to expend the SSBG funds as expected, LHFA shall meet with DSS/OFS to determine the cause for the deviation, discuss the performance enhancement plan necessary to alleviate the problem, and set a deadline for the performance enhancement plan to be implemented. Failure to meet adequate spending levels may result in a redirection of funds by the Department of Social Services to other programs and services designated to meet SSBG goals. LHFA will receive at least 30 days prior written notice of such a redirection of funds by DSS/OFS, with the notice to include the amount of funds to be redirected, and the date on which such redirection of funds is to commence, and the reason for the redirection of funds. Furthermore, in the event of such a redirection of funds by DSS/OFS, LHFA will nevertheless receive funds in an amount sufficient to fully pay contractors for any services rendered prior to the date such redirection of funds is to commence.
6. Review LHFA performance measures monthly to ensure that performance measures are being met throughout the SSBG MOU period. If LHFA fails to meet projected performance measures for two consecutive months, DSS/OFS will meet with LHFA to determine the cause for the deviation, discuss the performance enhancement plan necessary to alleviate the problem and set a deadline for the performance enhancement plan to be implemented. Failure to meet performance measures may result in a redirection of funds by the Department of Social Services to other programs and services designated to meet SSBG goals. LHFA will receive at least 30 days prior written notice of such a redirection of funds by DSS/OFS, with the notice to include the amount of funds to be redirected, and the date on which such redirection of funds is to commence, and the reason for the redirection of funds. Furthermore, in the event of such a redirection of funds by DSS/OFS, LHFA will nevertheless receive funds in an amount sufficient to fully pay contractors for any services rendered prior to the date such redirection of funds is to commence.
7. Request, at random, full backup documentation to accompany two of LHFA's invoices submitted within the MOU period. DSS/OFS will review the backup documentation and determine if the charges are correct and allowably. If

deficiencies are detected in the review of the sample invoices, DSS/OFS will request clarification or additional information from LHFA and may, if warranted, request backup documentation on additional invoices both past and future. If any overpayments are determined from the DSS/OFS review, the recoupment of the overpayment will occur on future invoices.

**B. The LHFA shall:**

1. Promulgate rules for implementation of the program, if appropriate and necessary, according to the most expedient process as determined by the LHFA. Agencies are authorized under the BA-7 to Act 16 of the 2005 Regular Legislative Session to conduct emergency rulemaking for this purpose.
2. Retain all books, records and other documents relevant to the MOU and funds expended there under for at least three (3) federal fiscal years after final payment or as described in 45 CFR 92.42 whichever is longest.
3. Grant to the State of Louisiana, through the Office of the Legislative Auditor, Department of Social Services (DSS), Inspector General's Office, Federal Government and/or other such officially designated body, the right to inspect and review all books and records pertaining to services rendered under this MOU.
4. Grant permission, as evidenced by the signing of this Memorandum of Understanding, to the DSS/OFS, to request, receive and communicate with the Office of the Legislative Auditor or other Audit firm regarding any audit concerns or findings as they relate to the performance of any audit conducted for the provision of SSBG-funded services under this agreement.
5. Comply with applicable federal and/or state laws (31 USC 7501 through 7507, Revised OMB Circular A-133, 45 CFR 96.3 and LA R.S. 24:513 and 514) pertaining to required audits or annual financial statement of the DSS/OFS operation as a whole, or of specific program activities.
6. Ensure that all contractors are informed of any applicable audit requirements and that all necessary audit requirements are complied with. The LHFA shall have the option to conduct an audit for any and all contractors to ensure compliance.
7. Submit an invoice for services rendered by the 15<sup>th</sup> of each month to the DSS/OFS at the following address:

DSS/OFS  
Contract Services  
P.O. Box 94065  
Baton Rouge, LA 70804-9065  
ATTN: Gwendolyn D. Brooks  
Phone: (225) 342-2514  
Fax: (225) 342-2536

8. Repay, to the DSS/OFS, any federal sanction or penalty amount (not to exceed the amount received under this MOU) determined by single state audit or other reviews,

which sanction or penalty is directly related to the services provided pursuant to this MOU and is imposed as a result of the negligence or fault of LHFA.

9. Inform the DSS/OFS within 7 business days of any legislative or federal audit findings directly related to this SSBG funded program. A copy of the pertinent audit report will be submitted to the following address:

DSS/OFS  
Contract Services  
P.O. Box 94065  
Baton Rouge, LA 70804-9065  
ATTN: Gwendolyn D. Brooks  
Phone: (225) 342-2514  
Fax: (225) 342-2536

10. Cooperate with DSS/OFS regarding program oversight and evaluation. These include, but are not limited to, program staff providing onsite verification of furnishing existence based upon receipts submitted with grant application.
11. Be responsible for the maintenance of documentation of services provided and expenditures as provided by law.
12. Communicate in writing requests for any programmatic or budgetary changes for review and approval by the DSS/OFS.
13. By signature of this agreement the LHFA understands and agrees to the following:
  - SSBG funds received pursuant to the attached MOU are one-time, non-recurring funds. Receipt of these funds does not guarantee funding past the expiration date specified in this MOU. The LHFA agrees to conduct the planning and implementation of specified initiative, taking into consideration that these funds are non-recurring sources of funding.
  - The LHFA shall inform all applicants that funding is one-time and non-recurring.

## **VII. Budget**

Program services shall be administered according to an approved budget. The LHFA will receive an administrative expense fee of 9% of total allocation.

## **VIII. Funding Agreements, Conditions, Payment Terms, and Administrative Allocations**

As a party to this agreement, the LHFA understands and agrees to the following:

- A. Funding for this program is contingent upon availability and appropriation of SSBG funds.

- B. SSBG funds shall:
1. Not be used as a match to draw down other federal funds.
  2. Be used only for the designated purposes. Any overpayments will be offset from future payments within the current MOU period.
  3. Be utilized according to the legislative intent as specified within P. L. 109-148 and the approved BA-7s to Act 16 of the 2005 Regular Legislative Session.
  4. Used for the provision of services through August 31, 2007.
- C. Administrative expenses for SSBG-funded services shall not exceed more than 9 percent of an entity's total allocation.
- D. Requests to redirect or reallocate funds shall be communicated in writing to the DSS/OFS for review and approval.
- E. LHFA shall submit an invoice for services rendered by the 15<sup>th</sup> of each month.
- F. Documentation deemed acceptable to support invoices for services shall be maintained and made available upon request by LHFA and its subcontractors.
- G. This MOU is subject to and conditioned upon the availability and appropriation of Federal, and/or State funds; and no liability or obligation for payment will develop between the parties until the MOU has been approved by required authorities of the Department of Social Services and the Louisiana Housing Finance Agency.
- H. SSBG funds available for payment under this MOU shall not exceed SSBG funds as set forth in the BA-7 to Act 16 of the 2005 Regular Legislative Session, and subsequent Budget Adjustments (BA-7) as approved by the Joint Legislative Committee on the Budget (JLCB). This amount includes administrative costs, which may not exceed 9% of the SSBG allocation.
- I. Funding for this agreement is subject to revision at the discretion of the Joint Legislative Committee on the Budget (JLCB).
- J. Funding for this agreement is one-time and non-recurring. LHFA shall inform any and all contractors that funding for service delivery specified in this agreement is one-time and non-recurring.
- K. The LHFA shall ensure that all services rendered under this MOU agreement are completed by August 31, 2007. Invoicing for services should be received by DSS/OFS prior to September 15, 2007.

**IX. Modifications or Amendments**

Any alterations, variations, modifications, or waiver of provisions of this MOU shall be valid only when reduced to writing, duly signed, and attached to the original of this MOU. Any amendment to this MOU shall not be valid until it has been executed by the Secretary of DSS and the LHFA.

**X. Termination**

Either party shall have the right to cancel this agreement, with or without cause, by giving the other party thirty (30) days written notice forwarded to their respective address by certified mail.

**XI. Execution**

For the faithful performance of the terms of this MOU, the parties, by their authorized representatives in their capacities as stated, affix their signatures and agree to be bound by the provisions hereof. This MOU has been made and executed by the parties in duplicate. The effective date of this MOU will be as of date of signed agreement. The MOU will terminate September 30, 2007. LHFA shall ensure that all service completed occurs prior to August 31, 2007. Invoicing for services should be received by DSS/OFS prior to September 30, 2007. Failure to do so will result in non payment.

**XII. Remedies for Default**

Any claim or controversy arising out of this contract shall be resolved by the provisions of La. R.S. 39:1524-1526.

**XIII. Discrimination Clause**

The DSS/OFS agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1972, and DSS/OFS agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

LHFA agrees not to discriminate in its employment practices, and will render services under this MOU without regard to race, color, sex, sexual orientation, nation origin, veteran status, political affiliation, or disabilities.

Any act of discrimination committed by LHFA or failure to comply with these statutory obligations when applicable shall be grounds for termination of this MOU.

**XIV. Assurances**

The LHFA agrees to, and understands that:

\_\_\_\_\_ **(Please Initial)** SSBG funds received pursuant to the attached MOU are one-time, non-recurring funds. Receipt of these funds does not guarantee funding past the expiration date specified in this MOU. The LHFA agrees to conduct the planning and implementation of specified initiative taking into consideration that these funds are non-recurring sources of funding. The LHFA shall inform all qualified applicants that funding is one-time and non-recurring.

\_\_\_\_\_ **(Please Initial)** Program staff will provide on site verification of furnishings based on receipts submitted with grant application.

\_\_\_\_\_ **(Please Initial)** Any disallowances associated with LHFA expenditure of SSBG funds authorized herein shall be borne by the LHFA and said amounts will be reimbursed to DSS/OFS within the federal fiscal year that the disallowance is effected.

**Approved:**

**Louisiana Housing Finance Agency**

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**Milton J. Bailey**  
**President**

**Louisiana Department of Social Services**

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**Ann Silverberg Williamson**  
**Secretary of the Department of Social Services**

**Louisiana Housing Finance Agency  
Legal Committee Meeting Minutes  
Wednesday, February 14, 2007  
2415 Quail Drive  
Committee Room 1  
Baton Rouge, LA 70808  
9:00 A.M.**

**Commissioners Present**

Allison A. Jones, Chairman  
Lisa Woodruff-White  
Dr. Adell Brown, Jr.  
Mark Madderra

**Commissioners Absent**

**Legal Counsel Present**

Keith Cunningham  
Christine Bratkowski

**Staff Present**

Loretta Wallace  
Melanie Brocato  
James Gilmore

**Others Present**

Kelly Longwell  
Vernon Martin  
Bruce Cola  
Charles Wilkins  
Robert Rowan  
Coats | Rose

Chairman Allison A. Jones called the meeting to order at 9:19 a.m. and asked for roll call. A quorum was established.

1. Call to order, roll call and introduction of guests

2. **Approval of the minutes.** A motion was made by Commissioner Allison Jones, and a second by Commissioner Mark Madderra to approve the minutes of the January 10, 2007 Legal Committee meeting. The minutes were approved.
3. **Update on Road Home Housing Corporation Act. R.S. 40:600.61, et seq.**

The Road Home Housing Corporation was adequately authorized to incorporate doctrine or input for LHFA per the Attorney General opinion. The committee recommends that no further action be taken on that issue and we rely on the opinion of the Attorney General. The report at full board will be that we received the opinion and no action is necessary.
4. **Update on Willowbrook and Gaslight.** The committee requested a timeline for completion of the rebuilding of Gaslight which we expect to have by our March meeting, and the Willowbrook repairs have already begun. The schedule for completion on Willowbrook has been requested from the architects. It should be received before the March board meeting. OFP with ORM will fund the project. Another committee will handle the placement of tenants. With regard to litigation on the properties, the committee requests a copy of Long Law Firm's report on Willowbrook/Gaslight litigation for the next board meeting. Improvements will be the responsibility of the Agency. FEMA's position is that they will build what was there up to current code. They will rebuild as it was with the exception of meeting the elevation expectations. FEMA has to decide what they want to do on this issue and Keith will report to the board as information is received. Commissioner Wayne Woods will be on the architectural committee.
5. **Update on Public Records Requests Policy.** The legal committee received a copy of the Proposal for Public Records Requests. It should be circulated in the future QAP. Input is needed from the legal committee on this policy. We should let the developers know what our policy is up front then they know when they make a request what the rule will be and the staff knows how to respond to those requests. If there are no amendments it is suggested that a motion is made to the full board to adopt this policy. Motion passes.
6. **Update on Agency Record Retention Policy.** The policy was submitted via internet at <https://webapps3.lhfa.state.la.us/> to all committee members. We will submit a template for the policy by March if information is received from all departments. The agency did not receive Concurrent Resolution #14 with regard to the location of stored agency records. Commissioner Lisa Woodruff-White will send a copy to the Legal Department.
7. **Discussion on Tri-SHARE.** These are rehab properties that are located in Madison, Tensas and West Carroll Parishes. We received a report with respect to those properties approximately 33 remaining properties, but 13 of them are still out. They have to comply with the universal code that went into effect January 1, 2007. We received an update with respect to those properties and they are online

to be completed. As you recall we received these properties in regard to certain litigation matters in regard to a HUD audit. There is no action necessary.

8. **Discussion on Year 15 Policy and Procedures (Qualified Contracts) IRS Code Section 42(h)(6)(E)(i)(II).** The legal committee is currently working on a report and a policy in order to deal with any year 15 policy procedures have to do with the second, 15 year extension on certain contracts. We hope to present that policy and procedure plan to the board at the March meeting.
9. **Other Business.** Villa d'Ames received their audit. We need to look at the audit to make sure the Agency is in compliance with what is needed. Checks were issued to UJAMAA Community Development Corporation, Marrero, LA only. There will be more information available from Ms. Kelley Longwell next week.
10. Adjournment – Motion to adjourn at 9:48 made by Commissioner Allison Jones and a second by Dr. Adell Brown, Jr. Meeting adjourned.