

§ 1003.511

shall constitute final administrative action on the complaint.

(Approved by the Office of Management and Budget under control number 2577-0191)

**§ 1003.511 Use of escrow accounts for rehabilitation of privately owned residential property.**

(a) *Limitations.* A grantee may withdraw funds from its line of credit for immediate deposit into an escrow account for use in funding loans and grants for the rehabilitation of privately owned residential property under § 1003.202(a)(1). The following additional limitations apply to the use of escrow accounts for residential rehabilitation loans and grants closed after September 7, 1990:

(1) The use of escrow accounts under this section is limited to loans and grants for the rehabilitation of primarily residential properties containing no more than four dwelling units (and accessory neighborhood-scale non-residential space within the same structure, if any, e.g., a store front below a dwelling unit).

(2) An escrow account shall not be used unless the contract between the property owner and the contractor selected to do the rehabilitation work specifically provides that payment to the contractor shall be made through an escrow account maintained by the grantee, by a subrecipient as defined in § 1003.4, by a public agency designated under § 1003.500(a), or by an agent under a procurement contract governed by the requirements of 24 CFR 85.36. No deposit to the escrow account shall be made until after the contract has been executed between the property owner and the rehabilitation contractor.

(3) All funds withdrawn under this section shall be deposited into one interest earning account with a financial institution. Separate bank accounts shall not be established for individual loans and grants.

(4) The amount of funds deposited into an escrow account shall be limited to the amount expected to be disbursed within 10 working days from the date of deposit. If the escrow account, for whatever reason, at any time contains funds exceeding 10 days cash needs, the grantee immediately shall transfer the excess funds to its program account. In

the program account, the excess funds shall be treated as funds erroneously drawn in accordance with the requirements of U.S. Treasury Financial Manual, paragraph 6-2075.30.

(5) Funds deposited into an escrow account shall be used only to pay the actual costs of rehabilitation incurred by the owner under the contract with a private contractor. Other eligible costs related to the rehabilitation loan or grant, e.g., the grantee's administrative costs under § 1003.206 or rehabilitation services costs under § 1003.202(b)(9), are not permissible uses of escrowed funds. Such other eligible rehabilitation costs shall be paid under normal ICDBG payment procedures (e.g., from withdrawals of grant funds under the grantee's line of credit with the Treasury).

(b) *Interest.* Interest earned on escrow accounts established in accordance with this section, less any service charges for the account, shall be remitted to HUD at least quarterly but not more frequently than monthly. Interest earned on escrow accounts is not required to be remitted to HUD to the extent the interest is attributable to the investment of program income.

(c) *Remedies for noncompliance.* If HUD determines that a grantee has failed to use an escrow account in accordance with this section, HUD may, in addition to imposing any other sanctions provided for under this part, require the grantee to discontinue the use of escrow accounts, in whole or in part.

**Subpart G—Other Program Requirements**

**§ 1003.600 Constitutional prohibition.**

In accordance with First Amendment Church/State Principles, as a general rule, ICDBG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities. The following restrictions and limitations therefore apply to the use of ICDBG funds.

(a) ICDBG funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or which

will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph (b) of this section with respect to rehabilitation and under paragraph (d) of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with ICDBG funds at no more than fair market value for a non-religious use.

(b) ICDBG funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

(1) The building (or portion thereof) that is to be improved with the ICDBG assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

(2) The ICDBG assistance is provided to the lessee (and not the lessor) to make the improvements;

(3) The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

(4) The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

(5) The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;

(6) The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

(7) The lessee must remit the amount received from the lessor under paragraph (b)(6) of this section to the grantee or subrecipient from which the ICDBG funds were derived.

(8) The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph (c) of this section.

(c) As a general rule, ICDBG funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the grantee or subrecipient from which the ICDBG funds are derived that, in connection with the provision of such services:

(1) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;

(3) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

(d) Where the public services provided under paragraph (c) of this section are carried out on property owned by the primarily religious entity, ICDBG funds may also be used for minor repairs to such property which are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the ICDBG expenditure for the public services.

#### **§ 1003.601 Nondiscrimination.**

(a) Under the authority of section 107(e)(2) of the Act, the Secretary waives the requirement that grantees comply with section 109 of the Act except with respect to the prohibition of