

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 570**

[Docket No. FR-4559-F-01]

RIN 2506-AC06

CDBG Program Regulations on Pre-Award Costs and New Housing Construction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule changes the Community Development Block Grant (CDBG) program to permit a new CDBG grantee without a consolidated plan to be reimbursed for costs for activities related to the development and preparation of its first consolidated plan, and to permit homeownership activities, to the extent authorized by statute, to be funded in connection with new construction.

EFFECTIVE DATE: December 21, 2000.

FOR FURTHER INFORMATION CONTACT: Sue Miller, Entitlement Communities Division, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708-1577. (This is not a toll-free number). Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal information relay service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: This rule makes three changes to the regulations for the Community Development Block Grant (CDBG) program. It permits a new CDBG grantee without a consolidated plan to incur costs for activities related to the development and preparation of its first consolidated plan, and to be reimbursed from CDBG funds for those costs. The rule allows homeownership activities, to the extent authorized by statute, to be funded in connection with new construction. Finally, the rule makes a related technical correction by removing the specific statutory reference for homeownership activities.

Costs for First Consolidated Plan

A CDBG grantee is allowed reimbursement from grant funds for costs incurred prior to the effective date of the grant agreement when certain requirements stated in the regulations are met. One of those requirements is that the activity must be included in a consolidated plan action plan, or an amended consolidated plan action plan, prior to the costs being incurred. As a

result, a new CDBG grantee that does not yet have a consolidated plan cannot obtain reimbursement for costs related to the development and preparation of its first consolidated plan without obtaining a regulatory waiver. This outcome is an unintended consequence of a previous rule regarding CDBG pre-award costs (60 FR 56892, November 9, 1995). Grantees ordinarily are able to fund their development and preparation costs for a future year's consolidated plan by including that activity in the current year's consolidated plan, but the 1995 change did not take into account the special needs of new grantees. Failure to permit a new grantee to fund these costs from CDBG funds could negatively impact the implementation of its CDBG program and its ability to effectively carry out activities that will benefit low- and moderate-income residents. Although HUD could continue to address this problem through waivers, that is an inefficient approach and one that leaves a new grantee uncertain of funding until a waiver is granted. HUD and new grantees will benefit from a regulations change to permit routine reimbursement for a new grantee for its pre-award costs for development and preparation of its first consolidated plan, and there will be no adverse effect from this change.

Homeownership Activities for New Construction

In general, CDBG assistance is not available for new construction activities. However, a statutory provision (discussed below) does allow certain forms of direct homeownership assistance to low- and moderate-income households. To date, HUD has applied a conservative interpretation to this statutory provision that did not permit the use of CDBG funds for homeownership assistance that directly assisted the construction of new housing. We have reconsidered this interpretation, in part because homeownership assistance (originally approved as an eligible activity only for certain years) is now permanently authorized, and because of the important role that CDBG assistance can play in the development of new affordable housing with increased opportunities for homeownership for low- and moderate-income persons. HUD has concluded that neither the statutory text nor the legislative history behind the provisions for CDBG homeownership assistance require that the availability of homeownership assistance be affected by whether or not the home was previously constructed. Therefore, the regulations will now reflect this revised interpretation.

Revision to Statutory Reference

In connection with the change discussed above, we are revising the current statutory reference for homeownership assistance that appears in § 570.201(n). It cites "section 105(a)(25)" of the Housing and Community Development Act of 1974. However, due to intervening statutory changes, a different provision regarding lead-based paint hazard evaluation and reduction is now designated as section 105(a)(25) and the correct citation for the homeownership assistance provision is not completely certain. For example, the United States Code Annotated designates the provision as 42 U.S.C. 5305(a)(24) [corresponding to a section 105(a)(24) of the 1974 Act], but the current "Basic Laws on Housing and Community Development" printed as Committee Print 106-1 for use of the House of Representatives' Committee on Banking and Financial Services expressly states that there is no section 105(a)(24). Despite the uncertainty regarding correct citation, there is no dispute over the fact that the homeownership assistance provision is now permanently authorized as eligible activity for the CDBG program. This rule thus revises the citation in § 570.201(n) from the current specific reference to section 105(a)(25) to a more general reference to section 105(a).

Other Matters*Justification for Final Rulemaking*

It is the general practice of the Department to provide a 60-day public comment period on all rules in accordance with 24 CFR part 10. However, a public comment procedure may be omitted under § 10.1 if the Department determines that is impracticable, unnecessary, or contrary to the public interest. It may also be omitted for interpretive rules. The Department has decided that public comment is both unnecessary and contrary to the public interest regarding both the change on pre-award costs for consolidated plan preparation and development by first-time grantees, and eligibility for homeownership assistance in connection with new construction. Delay in issuance of a final rule could adversely affect first-time grantees and interfere with the achievement of the purposes of the program, with no corresponding public benefit because the changes are simple ones without a substantive adverse effect on anyone. In addition, the change regarding homeownership assistance qualifies as an interpretive rule reflecting a revision in our interpretation of statutory limits. Public comment regarding the third

change (deletion of an incorrect statutory reference) is clearly not needed due to complete lack of substantive effect.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, or \$100 million or more in any one year.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are

not any unusual procedures that would need to be complied with by small entities.

Executive Order 13132, Federalism

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.218.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, the Department hereby amends 24 CFR part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301-5320.

2. Section 570.200 is amended by revising paragraph (h)(1)(i) to read as follows:

§ 570.200 General policies.

* * * * *
(h) * * *

(1) * * *

(i) The activity for which the costs are being incurred is included, prior to the costs being incurred, in a consolidated plan action plan, an amended consolidated plan action plan, or an application under subpart M of this part, except that a new entitlement grantee preparing to receive its first allocation of CDBG funds may incur costs necessary to develop its consolidated plan and undertake other administrative actions necessary to receive its first grant, prior to the costs being included in its consolidated plan;

2. Section 570.201 is amended by revising paragraph (n) to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(n) *Homeownership assistance.* CDBG funds may be used to provide direct homeownership assistance to low- or moderate-income households in accordance with section 105(a) of the Act.

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3. Section 570.207 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 570.207 Ineligible activities.

* * * * *

(b) * * *

(3) * * *

(ii) As authorized under § 570.201(m) or (n);

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Dated: August 24, 2000.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

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