

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

[Docket No. FR-3298-P-02]

RIN 2506-AB43

**Office of the Assistant Secretary for  
Community Planning and  
Development; Community  
Development Block Grant Program;  
Dispute Resolution and Enforcement  
Actions, Loan Guarantee Application  
Requirements; Proposed Rule and  
Notice of Proposed Information  
Collection Requirements**

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

**ACTION:** Proposed rule and notice of proposed information collection requirements.

**SUMMARY:** In this rule, HUD is proposing changes to the Community Development Block Grant (CDBG) regulations, including procedures for voluntary and involuntary corrective actions for noncompliance with CDBG program requirements, dispute resolution, and hearings. HUD is also proposing changes in the application procedures under the Section 108 Loan Guarantee Program, in order to include references to the consolidated submission process.

**DATES:** Comment due date: November 25, 1996.

**ADDRESSES:** HUD invites interested persons to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. eastern time) at the above address. HUD will not accept comments sent by facsimile (FAX).

HUD also invites interested persons to submit comments on the proposed information collection requirements in this proposed rule. Comments should

refer to the above docket number and title, and should be sent to Sheila E. Jones, Reports Liaison Officer, Room 7230, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jan C. Oppen, Senior Program Officer, Office of Block Grant Assistance, Room 7286, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410, telephone number (202) 708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339. FAX inquiries (but not comments on the rule) may be sent to Mr. Oppen at (202) 401-2044. (Except for the "800" number, these telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:****I. Paperwork Reduction Act Statement**

The information collection requirements in § 570.704 of this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

As required under 5 CFR 1320.8(d)(1), HUD and OMB are seeking comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Interested persons are invited to submit comments according to the instructions in the "Dates" and "Addresses" sections in the preamble of this proposed rule.

This proposed rule also lists the following information:

*Title of Proposal:* Consolidated Plan for Community Investment.

*OMB Control Number:* 2506-0117.

*Description of the Need for the Information and Proposed Use:* In this proposed rule, HUD proposes to require entities to use the procedures in the Consolidated Plan when applying for Section 108 Loan Guarantee assistance. The application information is required in order for HUD to determine the eligibility of the activities proposed to be financed with Section 108 loan guarantee assistance and to ensure that the loan guarantee does not pose a financial risk to the Federal Government.

*Form Numbers:* HUD-40090-A REV. and HUD-40091-A REV.

*Members of Affected Public:* States, units of general local government, consortia, and other "consolidated" jurisdictions.

*Estimation of the Total Number of Hours Needed To Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response:* Requiring entities to use the Consolidated Plan when applying for Section 108 Loan Guarantee assistance should eliminate some duplicative information collection requirements, and it may result in an overall decrease in burden hours. The numbers below represent HUD's estimate of the additional hours it will take Section 108 applicants to prepare the required information under the Consolidated Plan; they do not reflect the hours saved by eliminating duplicative requirements.

Submission requirements	Number of respondents	Number of responses	Total annual response	Hours per response	Total
Consolidated Plan (Section 108 Loan Guarantee Application) .....	150	1	150	125	18,750

*Status of the Proposed Information Collection:* Revision of a currently approved collection is pending.

## II. Background

The Community Development Block Grant (CDBG) program is a key component of HUD's legislative reinvention proposal, the American Community Partnerships Act. This proposed rule provides redesigned dispute resolution and sanctions procedures for enforcing the CDBG program requirements. It also conforms the regulations for the Section 108 Loan Guarantee program with the consolidated plan requirements, using the consolidated plan citizen participation and amendment process.

### Proposed Revisions Regarding Dispute Resolution and Corrective Actions

On November 12, 1993 (58 FR 60088), HUD proposed certain changes to the procedures for resolving issues of grantee noncompliance with CDBG program requirements. The preamble to the November 12, 1993 rule provided background information about HUD's authority to address performance deficiencies. As a result of HUD's review of comments received on that proposed rule, HUD has determined that it will not adopt the changes proposed in the November 12, 1993 rule. Instead, this proposed rule reflects some additions to, and revisions and rearrangements of, the provisions of subpart O of part 570 regarding performance reviews. This section of the preamble includes a discussion of the provisions that were proposed in the November 12, 1993 rule, the comments received in response to that rule, and the revised proposals in today's rule.

#### A. Making of Grants

HUD proposes to amend § 570.304(a) to conform with the proposed changes to part 570, subpart O, as described below.

#### B. Authorities for Enforcing Compliance

The November 12, 1993 proposed rule would have included a new section § 570.907 to clarify the statutory authorities for HUD to enforce recipient compliance with applicable laws and regulations. HUD received no comments on this provision, and HUD has maintained the provision in today's proposed rule.

#### C. Voluntary Corrective and Remedial Actions

The November 12, 1993 proposed rule clarified in § 570.910 that there are actions that HUD may advise the grantee to take voluntarily to correct or remedy

its alleged failure to comply with applicable program requirements. HUD's objectives in seeking voluntary actions are to prevent the continuation of the deficiency, to mitigate its adverse effects, and to avoid its recurrence. If HUD determines that the deficiency was beyond the reasonable control of the recipient, HUD may decide that no corrective action is needed.

A grantee that commented on the November 12, 1993 proposed rule suggested that HUD should consult with grantees concerning the appropriateness of any mitigation effort, and that grantees should have the option of reprogramming funds rather than reimbursing their line of credit. HUD agrees that the grantee should generally be given an opportunity to participate in the identification of corrective and remedial actions, and HUD has traditionally followed this practice. Today's proposed rule would clarify this.

The comment regarding reprogramming is unclear, but presumably the commenter is asking that HUD allow grantees to offset disallowed costs by receiving credit for activities undertaken with local funds. HUD does not believe that this is an appropriate remedy. Almost any grantee would be able to show some activities it has carried out with local funds that could have been funded with CDBG funds. The effect of allowing credit for such expenditures to offset noncomplying CDBG expenditures is that it reduces the incentive for a grantee to follow applicable rules in the use of CDBG funds. It should be noted that HUD's request for reimbursement of the line of credit with non-Federal funds is advisory and usually precedes HUD's initiation of an enforcement action.

Today's proposed rule would revise the section title and provisions of § 570.910 to remove actions that would not be voluntary. HUD would usually provide the grantee the opportunity to take one or more of these actions voluntarily prior to initiating enforcement actions or nondiscrimination compliance measures.

#### D. Resolving Disputes Over Noncompliance

Separate from today's rule, HUD has proposed a streamlined and consolidated set of hearing procedures for formal administrative hearings. HUD published these procedures in a proposed rule on April 23, 1996 (61 FR 18026). These procedures would appear as a separate subpart of 24 CFR part 26. Today's proposed rule would adopt

these procedures for offering and conducting formal administrative hearings prior to HUD taking enforcement actions.

The November 12, 1993 proposed rule would have differentiated between substantial and nonsubstantial noncompliance with program requirements, establishing for such noncompliance either a formal administrative hearing process or an informal hearing process, respectively. The November 12, 1993 proposed rule would have established the informal hearing officer's decision as a nonreviewable agency decision.

HUD received four comments (from a HUD field program manager, two grantees, and a commenter representing three public interest groups and a grantee) concerning the threshold in the November 12, 1993 proposed rule for distinguishing between substantial and nonsubstantial noncompliance. One commenter questioned HUD's authority to take enforcement actions unless noncompliance was substantial. A commenter questioned the dollar threshold for determining substantial noncompliance, believing it to be arbitrary, and suggested a sliding scale of thresholds depending upon grant size. Another commenter suggested that HUD should use nonmonetary factors as well. One commenter argued that certain violations should not entitle a grantee to a formal hearing. Finally, HUD received three comments (from two grantees and a commenter representing three public interest groups and a grantee) regarding the final nature of the informal hearing decision under the November 12, 1993 proposed rule.

In today's proposed rule, HUD does not distinguish between substantial and nonsubstantial noncompliance, and HUD has eliminated the informal hearing process provided for in the November 12, 1993, proposed rule. While today's proposed rule does contain an opportunity for an informal consultation, it would precede an opportunity for a final hearing, and it would constitute a reviewable agency decision.

Two commenters (a grantee and an administrative law judge) suggested lengthening the response periods for a grantee to request a hearing. Likewise, two commenters (an administrative law judge and a representative of three public interest groups and a grantee) offered numerous technical comments concerning the formal hearing procedures. However, HUD is now proposing to adopt a set of uniform hearing procedures, which HUD published in a proposed rule on April 23, 1996 (61 FR 18026), rather than

including duplicative hearing procedures in the CDBG regulations. Therefore, HUD invites the public to comment on HUD's use of those procedures in the CDBG program.

In summary, today's proposed rule would contain no differentiation in the level or gravity of noncompliance, but it would provide that HUD would offer the opportunity for an informal consultation concerning the noncompliance alleged by HUD and the enforcement action HUD plans to take, or that HUD would offer an alternative means of dispute resolution. If the grantee disputes that it has failed to comply, today's rule would provide a formal hearing process to resolve such dispute. Decisions from this formal hearing process, and any enforcement action HUD would take in the event of noncompliance, would be reviewable by the Secretary.

If, after requesting additional assurances with regard to certifications, a recipient fails to respond, declines to comply with HUD's request, or the Secretary finds the recipient's response to be unsatisfactory, today's proposed rule would provide, in § 570.911(c), that HUD may withhold the award of the recipient's grant until such time as assurances satisfactory to the Secretary are provided.

#### *E. Enforcement Actions*

The November 12, 1993 proposed rule would not have revised § 570.911. However, today's proposed rule would consolidate in § 570.911 the enforcement actions that HUD will initiate when it has made a finding of noncompliance and believes that the grantee has not taken or is unlikely to take appropriate corrective and remedial actions. HUD's objectives in initiating enforcement actions are to bring about compliance and mitigation of adverse effects to the extent practical.

One commenter, representing three public interest groups and a grantee, argued against HUD suspending future use of CDBG funds to mitigate adverse effects or consequences prior to an enforcement proceeding. This action is currently authorized in § 570.913(a). Today's proposed rule would provide, in § 570.913(a)(2), that after HUD has provided a grantee due notice of its opportunity for a hearing, but prior to the hearing, HUD may petition the Administrative Law Judge to order a suspension, if the Secretary determines such action to be in the best interests of the program.

#### *Proposed Revisions for the Section 108 Loan Guarantee Program*

When HUD published the regulations entitled "Consolidated Submission for Community Planning and Development Programs" in 24 CFR part 91 on January 5, 1995 (60 FR 1878), HUD updated most of the corresponding references to consolidated submissions in the CDBG regulations (24 CFR part 570). However, in that final rule HUD made only minimal references to consolidated plan submissions in subpart M of part 570 regarding loan guarantees. Since more substantive revisions would represent a change in the loan guarantee application process that might affect a substantial amount of financing, HUD is publishing the change today as a proposed rule. Specifically, this proposed rule addresses the need to include loan guarantee-financed activities in a grantee's consolidated action plan or amendment, and it proposes a change in the citizen participation requirements.

#### *III. Other Matters*

##### *E.O. 12866 Statement*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled "Addresses."

##### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The economic impact of this proposed rule will be minimal, and the rule would affect small and large entities equally.

##### *Environmental Impact*

Under HUD regulations (24 CFR 50.20(k)), this proposed rule is exempt from the requirements of the National Environmental Policy Act of 1969, as set forth in 24 CFR part 50. The proposed rule relates to internal administrative procedures, the content of which does not involve development decisions or affect the physical condition of project areas or building sites, but only relates to the performance of accounting, auditing, and fiscal functions.

#### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No programmatic or policy changes will result from this document's promulgation that would affect the relationship between the Federal Government and State and local governments.

#### *Executive Order 12606, The Family*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, *The Family*, has determined that this rule will not have potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies relate to the family, will result from promulgation of this proposed rule.

#### *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, 24 CFR part 570 is proposed to be amended as follows:

#### **PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS**

1. In § 570.304, paragraph (a) is amended by adding a sentence at the end, to read as follows:

##### **§ 570.304 Making of grants.**

(a) \* \* \* Failing this voluntary compliance action, the Secretary may institute an enforcement action as provided under §§ 570.910(b)(3) and 570.911(c).

\* \* \* \* \*

2. Section 570.704 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 570.704 Application requirements.**

(a) *Presubmission and citizen participation requirements.* Before submission to HUD of an application for loan guarantee assistance, the public entity must:

(1) Develop a proposed application that includes the following items:

(i) The community development objectives identified under the provisions of §§ 91.215 (b) or (e)(1) or 91.315 (b) or (e) of this title that the public entity proposes to pursue with the guaranteed loan funds;

(ii) The activity or activities the public entity proposes to carry out with the guaranteed loan funds specified in accordance with the criteria at § 91.220(g)(1)(iv) of this title and § 570.301(a). For each proposed discrete project or activity, this information should include, but is not limited to:

(A) The specific provision of § 570.703 under which the activity or activities are eligible, and the national objective(s) under § 570.208 to be met;

(B) The amount of guaranteed loan funds to be used;

(C) Whether each activity is expected to generate program income, an estimate of the amount per year, and any other proposed source of repayment of the guaranteed loan;

(D) How citizens may obtain more information;

(E) The location of the activity or activities;

(iii) A description of the pledge of grants required under § 570.705(b)(2). In the case of applications by State-assisted public entities, the description shall note that pledges of grants will be made by the State and by the public entity.

(2) With respect to the proposed uses of guaranteed loan funds for each activity, fulfill the applicable requirements of the citizen participation plan developed in accordance with §§ 91.105 or 91.115 of this title, as applicable.

(3)(i) If an application for loan guarantee assistance is to be submitted simultaneously with a public entity's submission for an entitlement grant or a grant under subpart F of this part, the public entity shall include and identify the activity or activities to be assisted with loan guarantee funds in its action plan prepared pursuant to § 91.220 of this title.

(ii) If an application for loan guarantee assistance is not to be submitted simultaneously with a public entity's submission for an entitlement grant or a grant under subpart F of this part, and such action plan does not cover all of the activities proposed in the loan guarantee application, the application shall be considered a

substantial amendment to the action plan, and the public entity shall follow the amendment procedures identified in its HUD-approved consolidated plan pursuant to § 91.105(c) of this title, as applicable.

(iii) If an application for loan guarantee assistance is to be submitted by a State-assisted public entity, it must either:

(A) Submit a certification from the State that the State's action plan prepared pursuant to § 91.315 of this title and approved by HUD includes all of the information about the public entity's proposed activities required by this section; or

(B) In coordination with the State, submit a proposed substantial amendment to the State's consolidated plan for HUD approval together with the Section 108 application.

(iv) Under either paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii) of this section, the activity description in either the action plan or any substantial amendment thereto shall include at least the same elements as required under paragraph (a)(1) of this section.

(b) *Submission requirements.* An applicant may submit an application for loan guarantee assistance under § 570.702 at any time. The applicant must submit to the appropriate HUD office the application (and consolidated plan or substantial amendment thereto, as applicable), as well as the following:

(1) A description of how each of the activities to be carried out with the guaranteed loan funds is eligible under § 570.703, how it meets one of the criteria in § 570.208, and (if applicable) how it complies with the public benefit standards in § 570.209.

(2) A schedule for repayment of the loan that identifies the sources of repayment, together with a statement identifying the entity that will act as borrower and issue the debt obligations.

(3) A certification providing assurance that the public entity possesses the legal authority to make the pledge of grants required under § 570.705(b)(2).

(4) A certification providing assurance that the public entity has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, that the public entity will maintain documentation of such efforts for the term of the loan guarantee, and that the public entity cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(5) The drug-free workplace certification required under 24 CFR part 24.

(6) The certification regarding debarment and suspension required under 24 CFR part 24.

(7) The anti-lobbying statement required under 24 CFR part 87 (Appendix A).

(8) Certifications by the public entity that:

(i) It possesses the legal authority to submit the application for assistance under this subpart and to use the guaranteed loan funds in accordance with the requirements of this subpart.

(ii) Its governing body has duly adopted or passed as an official act a resolution, motion, or similar official action:

(A) Authorizing the person identified as the official representative of the public entity to submit the application and amendments thereto and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public entity to act in connection with the application to provide such additional information as may be required; and

(B) Authorizing such official representative to execute such documents as may be required in order to implement the application and issue debt obligations pursuant thereto (provided that the authorization required by this paragraph (b)(8)(ii)(B) of this section may be given by the local governing body after submission of the application but prior to execution of the contract required by § 570.705(b));

(iii) Before submission of its application to HUD, the public entity has met the citizen information and participation requirements of § 570.704 (a)(1) and (a)(2) in preparing its application.

(iv) [Reserved].

(v) The public entity will affirmatively further fair housing, and the guaranteed loan funds will be administered in compliance with:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); and

(B) The Fair Housing Act (42 U.S.C. 3601–3619).

(vi)(A) (Only for entitlement public entities): In the aggregate, at least 70 percent of all CDBG funds, as defined at § 570.3, to be expended during the one, two, or three consecutive years specified by the public entity for its CDBG program will be for activities that benefit low and moderate income persons, as described in § 570.208(a).

(B) (Only for nonentitlement public entities eligible under subpart F of this part): It will comply with primary and national objectives requirements, as applicable under subpart F of this part.

(vii) It will comply with the requirements governing displacement, relocation, real property acquisition, and the replacement of low and moderate income housing described in § 570.606.

(viii) It will comply with the requirements of § 570.200(c)(2) with regard to the use of special assessments to recover the capital costs of activities assisted with guaranteed loan funds.

(ix) Where applicable, the public entity may also include the following additional certification: It lacks sufficient resources from funds provided under this subpart or program income to allow it to comply with the provisions of § 570.200(c)(2), and it must therefore assess properties owned and occupied by moderate income persons, to recover the guaranteed loan funded portion of the capital cost without paying such assessments in their behalf from guaranteed loan funds.

(x) It will comply with the other provisions of the Act and with other applicable laws.

(9) In the case of an application submitted by a State-assisted public entity, certifications by the State that:

(i) It agrees to make the pledge of grants required under § 570.705(b)(2).

(ii) It possesses the legal authority to make such pledge.

(iii) At least 70 percent of the aggregate use of CDBG grant funds received by the State, guaranteed loan funds, and program income during the one, two, or three consecutive years specified by the State for its CDBG program will be for activities that benefit low and moderate income persons.

(iv) It agrees to assume the responsibilities described in § 570.710.

\* \* \* \* \*

3. In subpart O, a new § 570.907 is added, to read as follows:

**§ 570.907 Authorities for enforcing compliance.**

The Secretary may make appropriate adjustments in the amount of annual grants, or terminate, reduce, or limit the availability of payments to the recipient, if a recipient has failed to comply with applicable requirements of the program, as authorized and provided in sections 104(e) and 111 of the Act (42 U.S.C. 5304(e) and 5311).

4. Section 570.910 is revised to read as follows:

**§ 570.910 Corrective and remedial actions.**

(a) *General.* If HUD finds a deficiency in a recipient's performance due to failure to comply with applicable program requirements, as referenced under § 570.901, or failure to meet

performance criteria under §§ 570.902 through 570.906, the Secretary may seek corrective and remedial action by the recipient prior to initiating actions authorized by §§ 570.911, 570.912, or 570.913.

(b) *Actions to secure voluntary compliance.* In order to secure voluntary compliance, HUD may take the following actions:

(1) *Letter to recipient.* HUD may issue a letter advising the recipient of HUD's finding of the deficiency, advising the recipient to notify HUD whether there are any ongoing or planned activities that are or will be affected by the deficiency, and putting the recipient on notice that additional action may be taken if the deficiency is not corrected in the time frame specified by HUD or is repeated. If HUD has determined that the deficiency is affecting one or more ongoing activities, it may advise the recipient to suspend disbursement of funds for the affected activities until corrective actions have been taken.

(2) *Corrective action.* HUD may advise the recipient to take corrective action prior to undertaking any activities that would be so affected in order to prevent a recurrence of the deficiency. HUD may specify the corrective action or offer the recipient the opportunity, within a time frame specified by HUD, to identify actions it believes will correct the deficiency. HUD may also advise the recipient that the deficiency calls into question a certification necessary to receive future funds, in which case HUD will identify any specific additional actions necessary to make the certification satisfactory.

(3) *Request for additional assurances.* If the Secretary finds a certification to be unsatisfactory under the authority of § 570.304(a), HUD may request that the recipient provide such additional assurances as the Secretary deems warranted or necessary to find the certification satisfactory.

(4) *Reimburse line of credit.* HUD may advise the recipient, within a time frame specified by HUD, to reimburse its line of credit with non-Federal funds for any portion of the amounts improperly expended and to reprogram the use of those funds in accordance with applicable requirements. HUD may advise that some or all of the reimbursed funds be reprogrammed to be used to redress particular adverse effects.

(5) *Review of activities and systems.* HUD may advise the recipient to review its planned and ongoing activities together with its administrative and management systems within such time limit as HUD may specify for this purpose in order to:

(i) Identify the causes for delays,  
(ii) Change the systems and activities,  
(iii) Reprogram funds to other activities, as applicable and necessary to bring its expenditures into compliance, and

(iv) Develop a detailed schedule with interim milestones for use in tracking the recipient's management of its expenditures.

(c) *Changing the method of payment.* In addition to the actions described in paragraph (b) of this section, if HUD has determined that the recipient is not taking appropriate action to prevent a financial management deficiency from affecting ongoing or future performance, HUD may change the method of payment to the recipient for some or all of the activities from a line of credit basis to a pre-Federal payment approval basis, until the deficiency is cured.

5. Section 570.911 is revised to read as follows:

**§ 570.911 Resolving disputes/ administrative hearings.**

If HUD has made a finding of noncompliance pursuant to subpart O of this part, and if HUD believes that additional action is necessary to bring about appropriate corrective and remedial actions in a timely manner (including any actions sought by HUD under § 570.910 that are not forthcoming), HUD will initiate one or more of the following enforcement actions:

(a) *Opportunity for informal consultation.* HUD will initiate the enforcement actions under § 570.913 (except as specified under § 570.913(d)) only after HUD has provided the recipient the opportunity for an informal consultation, in order to discuss the alleged noncompliance and the enforcement actions HUD proposes to take. If the recipient elects to participate in an informal consultation, HUD will defer an enforcement action under § 570.913 (except as specified under § 570.913(d)) pending completion of the consultation. HUD may also offer another "alternative means of dispute resolution," as defined at 5 U.S.C. 581(3), and if the recipient elects to participate in such procedure, HUD will defer an enforcement action under § 570.913 (except as specified under § 570.913(d)) pending completion of the procedure.

(b) *Opportunity for administrative hearing.* After considering any information the recipient may provide through the process of consultation or other alternative means of dispute resolution, if HUD maintains that the alleged deficiency constitutes a failure to comply with one or more program

requirements, but the recipient does not agree, HUD will offer the recipient the opportunity for an administrative hearing to resolve the dispute. HUD will not take an enforcement action under § 570.913 until either the time has elapsed for the recipient to avail itself of the opportunity for a hearing or the hearing results in a finding that the recipient failed to comply with program requirements. For these purposes, the hearing will be conducted in accordance with the procedures outlined under 24 CFR part 26, subpart B.

(c) *Certifications.* After requesting additional assurances of certifications under § 570.910(b)(3), HUD shall conduct the dispute resolution in accordance with the procedures under paragraph (b) of this section, and may withhold the award of the recipient's CDBG grant until such time as the recipient provides assurances satisfactory to the Secretary, if either of the following occurs:

(1) The recipient fails to respond or declines to comply with HUD's request, or

(2) The Secretary finds the recipient's response to be unsatisfactory.

6. Section 570.913 is revised to read as follows:

**§ 570.913 Enforcement actions.**

If HUD has made a finding of noncompliance under subpart O of this part, and if HUD believes that additional action is necessary to bring about appropriate corrective and remedial actions by the recipient in a timely manner (including any actions sought by HUD under § 570.910 that are not

forthcoming), HUD will initiate one or more of the following enforcement actions after complete dispute resolution/administrative hearing procedures under § 570.911 (a) and (b), as appropriate:

(a) *Limit availability of funds.* HUD may limit the availability of CDBG funds to the recipient to programs, projects, or activities not affected by the performance deficiency. This could include, for example, requiring the recipient to limit the availability of CDBG funds it has provided to one or more of its subrecipients.

(b) *Reduce payments.* As appropriate, HUD may reduce payments to the recipient under the CDBG program by the amount of funds that were not expended in accordance with the requirements of the regulations or applicable laws. This could include a reduction in the amount of a future grant to which the recipient would otherwise be entitled or eligible to receive.

(c) *Terminate grant(s).* As appropriate, HUD may terminate the recipient's entire CDBG grant to prevent continuation or recurrence of the deficiency.

(d) *Suspend payments.* The Secretary may petition the Administrative Law Judge for authority to suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to § 570.911(b), pending such hearing and a final decision, to the extent the Secretary determines such action is necessary to preclude the further disbursement of funds for activities affected by such failure to comply.

(e) *Limitation on enforcement actions.* In no case shall funds already expended on eligible activities be recaptured from an existing grant or deducted from future grants under the actions described above.

7. Section 570.14 is added to read as follows:

**§ 570.914 Referrals to the Attorney General and claims collection.**

(a) *Referral action.* In lieu of, or in addition to, any action authorized in § 570.913, the Secretary may:

(1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and

(2) Upon such referral, the Attorney General may bring a civil action in any United States district court with proper venue for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under title I of the Act that was not expended in accordance with the Act, or for mandatory or injunctive relief.

(b) *Claims collection.* In any case in which claims are payable to HUD or the U.S. Treasury, HUD will institute collection procedures pursuant to subpart C of 24 CFR part 17.

Dated: June 26, 1996.

Andrew M. Cuomo,  
Assistant Secretary for Community Planning  
and Development.

[FR Doc. 96-24662 Filed 9-25-96; 8:45 am]

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