

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**
24 CFR Part 570
[Docket No. FR-4155-P-01]
RIN 2506-AB91
**Community Development Block
Grants: New York Small Cities
Program**
AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: Section 226 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (the Act) requires that HUD issue proposed and final rules for the requirements of the Community Development Block Grant program for the State of New York before issuing a Notice of Funding Availability (NOFA) for the 1997 New York Small Cities competition.

In proposing this rule, HUD is inviting public comments on the requirements of the Community Development Block Grants (CDBG) Small Cities Program for the State of New York (24 CFR part 570, subpart F). This proposed rule contains the current requirements for the program, with a few limited changes. The first change would be to delete § 570.421(a)(3), and add § 570.421(f) to eliminate the use of multiyear plans in the HUD-administered Small Cities Program for any NOFA published in calendar year 1997 or later. The second change involves grant limits. HUD is proposing to add § 570.421(g), to limit the maximum grant award, under a NOFA, to any single, eligible unit of general local government to \$400,000, except that counties may apply for a maximum of \$600,000 in HUD-administered Small Cities funds. HUD intends to make larger grants to honor multiyear plans approved in response to NOFAs issued prior to calendar year 1997. In order to implement the reduction of grant limits, HUD intends to restrict competition under future NOFAs to Single Purpose Grants. Another minor change is the deletion of obsolete references to the Fiscal Year 1995 competition in § 570.425(c), as well as a clarification of the application procedures in that paragraph.

DATES: *Comments due date:* July 11, 1997.

ADDRESSES: HUD invites interested persons to submit comments regarding this proposed rule to the Office of the

General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, 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).

FOR FURTHER INFORMATION CONTACT: Cornelia Robertson Terry, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-1322 (voice). (This is not a toll-free number.) Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5300–5320) permits each State to elect to administer all aspects of the Community Development Block Grant (CDBG) Program annual fund allocation for the nonentitlement areas within its jurisdiction. The policies and procedures for HUD's CDBG Small Cities Program in 24 CFR part 570, subpart F apply to grants for nonentitlement areas in States, such as New York, that did not elect to administer the CDBG Program.

Section 226 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (Pub. L. 104-134; approved April 26, 1996) (the Act) requires that HUD issue proposed and final rules for the requirements of the CDBG program for the State of New York before issuing a notice of funding availability for funds made available for fiscal year (FY) 1997.

In accordance with the provisions of section 226 of the Act, HUD is publishing this rule in order to solicit public comments on the requirements of the New York CDBG Small Cities Program. These requirements appear in 24 CFR part 570, subpart F. Although §§ 570.429 and 570.430 also appear in subpart F and are therefore set forth below, these sections only apply to the Small Cities Program in Hawaii.

**Summary of Proposed Changes to
Subpart F**
**Section 570.421—New York Small Cities
Program Design**

In this rule, HUD proposes to delete paragraph (a)(3) of § 570.421, and to add a new paragraph (f), which would eliminate the use of multiyear plans in the HUD-administered Small Cities Program for NOFAs published in calendar year 1997 or later. HUD intends, however, to continue to honor multiyear plans approved in response to NOFAs published prior to calendar year 1997. This rule also proposes to add a new paragraph (g) to the current regulations to provide that the maximum grant amount that HUD will award to an eligible unit of general local government in response to a NOFA published in calendar year 1997 or later is \$400,000, except that counties could apply for a maximum of \$600,000 in HUD-administered Small Cities grant funds. HUD will not be prohibited, however, from awarding larger grants as necessary to honor the terms of multiyear plans approved under the provisions of NOFAs published prior to calendar year 1997.

**Section 570.425—HUD Review and
Actions on Applications for New York
State Applicants**

This proposed rule would delete obsolete references to the FY 1995 competition from paragraph (c) of § 570.425. It would also add a sentence clarifying the application procedures regarding carrying an application over from a previous funding round or competition.

**Justification for Reduced Comment
Period**

HUD's general policy in its notices of proposed rulemaking is to afford the public not less than 60 days for submission of comments, in accordance with HUD's regulations on rulemaking in 24 CFR 10.1. For this proposed rule, however, HUD is providing a 30-day public comment period. There are two reasons for this shortened public comment period. First, section 226 of the Act requires that HUD publish proposed and final rules for the New York State Small Cities program before it can publish any NOFA announcing the FY 1997 funding. HUD believes that a longer comment period will unnecessarily delay the FY 1997 program year. Second, the regulations for the Small Cities program in subpart F of part 570 had previously been published in their entirety in a proposed rule for public comment on September 15, 1994 (59 FR 47500), with a final rule

published December 27, 1994 (59 FR 66584). HUD believes that since the public is familiar with the issues relative to the earlier rulemaking process, and since the changes in this proposed rule are limited, the longer comment period is not necessary.

Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(1)(i) of HUD's regulations, published in a final rule on September 27, 1996 (61 FR 50914) and amended on April 2, 1997 (62 FR 15800), this proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this proposed rule is categorically excluded from the requirements of the National Environmental Policy Act.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication, and by approving it certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would make limited changes that would not have a significant impact on small entities. Small entities are invited, however, to comment on any less burdensome alternatives for compliance with these regulations.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this proposed rule would 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. This proposed rule would make limited changes that would not have Federalism implications. As a result, this proposed rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and

tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance program number is 14.219, Community Development Block Grants—Small Cities Program.

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, for the reasons set out in the preamble, 24 CFR part 570 is proposed to be amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR 570 continues to read as follows:

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

2. Subpart F is revised to read as follows:

Subpart F—Small Cities Program

- Sec.
- 570.420 General.
- 570.421 New York Small Cities Program Design.
- 570.422 Applications from joint applicants.
- 570.423 Application for the HUD-administered New York Small Cities Grants.
- 570.424 Grants for imminent threats to public health and safety.
- 570.425 HUD review and actions on applications for New York State applicants.
- 570.426 Program income.
- 570.427 Program amendments.
- 570.428 Reallocated funds.
- 570.429 Hawaii general and grant requirements.
- 570.430 Hawaii program operation requirements.
- 570.431 Citizen participation.
- 570.432 Repayment of section 108 loans.

SUBPART F—SMALL CITIES PROGRAM

§ 570.420 General.

(a) *HUD administration of nonentitlement CDBG funds.* Title I of the Housing and Community Development Act of 1974 permits each State to elect to administer all aspects of the Community Development Block Grant (CDBG) Program annual fund allocation for the nonentitlement areas within its jurisdiction. This subpart sets forth policies and procedures applicable to grants for nonentitlement areas in States that have not elected to administer the CDBG Program. States that elected to administer the program after the close of fiscal year 1984 cannot return administration of the program to HUD. A decision by a State to discontinue administration of the program would result in the loss of CDBG funds for nonentitlement areas in that State and the reallocation of those funds to all States in the succeeding fiscal year.

(b) *Scope and applicability.* (1) This subpart describes the policies and procedures of the Small Cities Program which apply to nonentitlement areas in States where HUD administers the CDBG Program. HUD currently administers the Small Cities Program in only two States—New York and Hawaii. This subpart principally addresses the requirements for New York, and §§ 570.429 and 570.430 identify special procedures applicable to Hawaii.

(2) The allocation of formula CDBG funds for use in nonentitlement areas of Hawaii and New York is as provided in subpart A of this part. The policies and procedures set forth in the following identified subparts of this part 570 apply to the HUD-administered Small Cities Program, except as modified or limited under the provisions thereof or this subpart:

- (i) Subpart A—General Provisions;
- (ii) Subpart C—Eligible Activities;
- (iii) Subpart J—Grant Administration;
- (iv) Subpart K—Other Program Requirements; and

(v) Subpart O—Performance Reviews.

(c) *Public notification requirements.* (1) Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. All competitive grants in the HUD-administered Small Cities Program in New York are affected by this legislation, and the requirements identified at 24 CFR part 4 apply to them. Imminent threat grants under

§ 570.424 and section 108 repayment grants under § 570.432 are not affected by section 102 as they are not competitive grants.

(2) The Hawaii HUD-administered Small Cities Program is not subject to section 102, since the funds are not distributed in a competitive manner.

(d) *Abbreviated consolidated plan.* Applications for the HUD-administered Small Cities Program which contain housing activities must include a certification that the proposed housing activities are consistent with the applicant's consolidated plan as described at 24 CFR part 91.

(e) *National and primary objectives.* (1) Each activity funded through the Small Cities Program must meet one of the following national objectives as defined under the criteria in § 570.208. Each activity must:

- (i) Benefit low- and moderate-income families;
- (ii) Aid in the prevention or elimination of slums or blight; or
- (iii) Be an activity which the grantee certifies is designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

(2) In addition to the objectives described in paragraph (e)(1) of this section, with respect to grants made through the Small Cities Program, not less than 70 percent of the total of grant funds from each grant and Section 108 loan guarantee funds received under subpart M of this part within a fiscal year must be expended for activities which benefit low- and moderate-income persons under the criteria of §§ 570.208(a), or 570.208(d) (5) or (6). In the case of multiyear plans in New York State approved in response to NOFAs published prior to calendar year 1997, not less than 70 percent of the total funding for grants approved pursuant to a multiyear plan for a time period of up to 3 years must be expended for activities which benefit low- and moderate-income persons. Thus, 70 percent of the grant for year 1 of a multiyear plan approved in response to NOFAs published prior to calendar year 1997 must meet the 70 percent requirement, 70 percent of the combined grants from years 1 and 2 must meet the requirement, and 70 percent of the combined grants from years 1, 2, and 3 must meet the requirement. In determining the percentage of funds expended for such activity, the provisions of

§ 570.200(a)(3) (i), (iii), (iv), and (v) shall apply.

(Approved by the Office of Management and Budget under control number 2506-0060).

§ 570.421 New York Small Cities Program Design.

(a) *Selection system.* (1) *Competitive applications.* Each competitive application will be rated and scored against the following factors:

- (i) Need-absolute number of persons in poverty as further explained in the NOFA;
- (ii) Need-percent of persons in poverty as further explained in the NOFA;
- (iii) Program Impact; and
- (iv) Fair Housing and Equal Opportunity which may include assessment of the applicant's Section 3 plan and implementation efforts. The NOFA described in paragraph (b) of this section will contain a more detailed description of these factors, and the relative weight that each factor will be given.

(2) In addition HUD reserves the right to establish minimal thresholds for selection factors and otherwise select grants in accordance with § 570.425 and the applicable NOFA.

(3) *Imminent threats to public health and safety.* The criteria for these grants are described in § 570.424.

(4) *Repayment of section 108 loans.* The criteria for these grants are described in § 570.432.

(5) *Economic development grants.* HUD intends to use the Section 108 loan guarantee program to the maximum extent feasible to fund economic development projects in the nonentitlement areas of New York. In the event that there are not enough Section 108 loan guarantee funds available to fund viable economic development projects, or if a project needs a grant in addition to a loan guarantee to make it viable, or if the project does not meet the requirements of the Section 108 program but is eligible for a grant under this subpart, HUD will fund Economic Development applications as they are determined to be fundable in a specific amount by HUD up to the sum set aside for economic development projects in the notice of funding availability. HUD also has the option in a NOFA of funding economic development activities on a competitive basis, as a competitive application as described in paragraph (a)(1) of this section. In order for an applicant to receive Small Cities grant funds, the field office must determine that the economic development project

will have a substantial impact on the needs identified by the applicant.

(b) *Notice of funding availability.*

HUD will issue one or more Notice(s) of Funding Availability (NOFA) each fiscal year which will indicate the amount of funds available, the annual grant limits per grantee, type of grants available, the application requirements, and the rating factors that will be used for those grants which are competitive. A NOFA may set forth, subject to the requirements of this subpart, additional selection criteria for all grants.

(c) *Eligible applicants.* (1) Eligible applicants in New York are units of general local government, excluding: Metropolitan cities, urban counties, units of general local government which are participating in urban counties or metropolitan cities, even if only part of the participating unit of government is located in the urban county or metropolitan city. Indian tribes are also ineligible for assistance under this subpart. An application may be submitted individually or jointly by eligible applicants.

(2) Counties, cities, towns, and villages may apply and receive funding for separate projects to be done in the same jurisdiction. Only one grant will be made under each funding round for the same type of project to be located within the jurisdiction of a unit of general local government (e.g., both the county and village cannot receive funding for a sewer system to be located in the same village, but the county can receive funding for a sewer system that is located in the same village as a rehabilitation project for which the village receives funding). The NOFA will contain additional information on applicant eligibility.

(3) Counties may apply on behalf of units of general local government located within their jurisdiction when the unit of general local government has authorized the county to apply. At the time that the county submits its application for funding, it must submit a resolution by the governing body of the unit of local government that authorizes the county to submit an application on behalf of the unit of general local government. The county will be considered the grantee and will be responsible for executing all grant documents. The county is responsible for ensuring compliance with all laws, regulations, and Executive Orders applicable to the CDBG Program. HUD will deal exclusively with the county with respect to issues of program administration and performance, including remedial actions. The unit of general local government will be considered the grantee for the purpose

of determining grant limits. The unit of general local government's statistics will be used for purposes of the selection factors referred to in § 570.421(a).

(d) *Public service activities cap.*

Public service activities may be funded up to a maximum of fifteen (15) percent of a State's nonentitlement allocation for any fiscal year. HUD may award a grant to a unit of general local government for public service activities with up to 100 percent of the funds intended for public service activities. HUD will apply the 15 percent statewide cap to public service activities by funding public service activities in the highest rated applications in each NOFA until the cap is reached.

(e) *Activities outside an applicant's boundaries.* An applicant may conduct eligible CDBG activities outside its boundaries. These activities must be demonstrated to be appropriate to meeting the applicant's needs and objectives, and must be consistent with State and local law. This provision includes using funds provided under this subpart in a metropolitan city or an urban county.

(f) *Multiyear plans.* HUD will not make any new multiyear commitments for NOFAs published in calendar year 1997 or later. HUD intends to continue to honor the terms of the multiyear plans that were approved under the provisions of NOFAs published prior to calendar year 1997.

(g) *Maximum grant amount.* The maximum grant amount that will be awarded to a single, eligible unit of general local government in response to a NOFA published in calendar year 1997 or later is \$400,000, except that counties may apply for up to \$600,000 in HUD-administered Small Cities funds. HUD may specify lower grant limits in the NOFA, which may include different limits for different types of grants available or different types of applicants. This paragraph (g) of this section does not prohibit HUD from awarding larger grants as necessary to honor the terms of multiyear plans that were approved under the provisions of NOFAs published prior to calendar year 1997.

§ 570.422 Applications from joint applicants.

Units of general local government may submit a joint application which addresses common problems faced by the jurisdictions, to the extent permitted by the NOFA. A joint application must be pursuant to a written cooperation agreement submitted with the application. The cooperation agreement must authorize one of the participating units of government to act as the lead

applicant which will submit the application to HUD, and must delineate the responsibilities of each participating unit of government with respect to the Small Cities Program. The lead applicant is responsible for executing the application, certifications, and grant agreement, and ensuring compliance with all laws, regulations, and Executive Orders applicable to the CDBG Program. HUD will deal exclusively with the lead applicant with respect to issues of program administration and performance, including remedial actions. In the event of poor performance, HUD reserves the right to deny and/or restrict future funding to all units of general local government which are parties to the cooperation agreement.

§ 570.423 Application for the HUD-administered New York Small Cities Grants.

(a) *Proposed application.* The applicant shall prepare and publish a proposed application and comply with citizen participation requirements as described in § 570.431. The applicant should follow the citizen participation requirements of 24 CFR part 91 if it submits a complete consolidated plan.

(b) *Final application.* The applicant shall submit to HUD a final application containing its community development objectives and activities. This final application shall be submitted, in a form prescribed by HUD, to the appropriate HUD office. The application also must contain a priority nonhousing community development plan, in accordance with 24 CFR 91.235.

(c) *Certifications.* (1) Certifications shall be submitted in a form prescribed by HUD. If the application contains any housing activities, the applicant shall certify that the proposed housing activities are consistent with its abbreviated consolidated plan, as described at 24 CFR part 91.

(2) In the absence of evidence (which may, but need not, be derived from performance reviews or other sources) which tends to challenge in a substantial manner the certifications made by the applicant, the certifications will be accepted by HUD. However, if HUD does have available such evidence, HUD may require the submission of additional information or assurances before determining whether an applicant's certifications are satisfactory.

(d) *Thresholds.* The HUD Office may use any information available to it to make the threshold judgments required by the applicable NOFA, including information related to the applicant's performance with respect to any previous assistance under this subpart. The annual performance and evaluation

report required under § 570.507(a) is the primary source of this information. The HUD Office may request additional information in cases where it is essential to make the required performance judgments. (Approved by the Office of Management and Budget under control number 2506-0060).

§ 570.424 Grants for imminent threats to public health and safety.

(a) *Criteria.* The following criteria apply for an imminent threat to public health or safety:

(1) The Director of Community Planning and Development of the HUD office may, at any time, invite an application for funds available under this subpart in response to a request for assistance to alleviate an imminent threat to public health or safety that requires immediate resolution. HUD shall verify the urgency and the immediacy of the threat with an appropriate authority other than the applicant prior to acceptance of the application, and the Director of Community Planning and Development of the HUD Office shall review the claim to determine if, in fact, an imminent threat to public health or safety does exist. For example, an applicant with documented cases of disease resulting from a contaminated drinking water supply has an imminent threat to public health, while an applicant ordered to improve the quality of its drinking water supply over the next two years does not have an imminent threat within the definition of paragraph (a) of this section. These funds are to be used to deal with those threats which represent a unique and unusual circumstance, not for the type of threat that occurs with frequency in a number of communities within the State of New York.

(2) The applicant does not have sufficient local resources, and other Federal or State resources are unavailable to alleviate the imminent threat.

(3) All imminent threat projects must meet the requirement of § 570.420(e).

(b) *HUD action.* (1) Fifteen percent of the funds allocated to New York State in the Small Cities Program may be reserved to alleviate imminent threats to the public health or safety unless a lesser amount is specified in a NOFA. Applications shall be submitted in accordance with § 570.423.

(2) Applications which meet the requirements of this section may be approved by the Director of Community Planning and Development of the HUD Office without competition.

(3) The only funds reserved for imminent threats to the public health or safety are those specified by this section

as modified by the NOFA. After the funds have been depleted, HUD shall not consider further requests for grants relating to imminent threats during that fiscal year.

(c) *Letter to proceed.* Notwithstanding § 570.425(a)(3), after a determination has been made that an imminent threat exists, HUD may issue the applicant a letter to proceed to incur costs to alleviate the imminent threat. Reimbursement of such costs is dependent upon HUD approval of the final application.

(d) *Environmental review.* Pursuant to 24 CFR 58.34(a)(10), grants for imminent threats to public health or safety are excluded from some or all of the environmental review requirements of 24 CFR part 58, to the extent provided therein.

§ 570.425 HUD review and actions on applications for New York State applicants.

(a) *Final application submission.* (1) *Submission deadline.* HUD will establish a time period during which final applications must be submitted to the appropriate office. The dates for this period will be published in a notice in the **Federal Register**.

(2) *Incomplete applications.* Applications must contain the information required by HUD. Information relative to the application will not be accepted or considered if received after the submission deadline, unless the information is specifically requested in writing by HUD.

(3) *Pre-agreement costs.* HUD authorizes a unit of general local government to incur costs during a Federal fiscal year in which a grant is made or the prior fiscal year for preparation of a CDBG grant application, planning costs eligible under § 570.205, environmental assessments, and project engineering and design costs for eligible activities under §§ 570.201 through 570.204 before the establishment of a formal grant relationship between the applicant and HUD. Costs of such activities for the funded application may be charged to the grant should it be funded, provided that the activities are undertaken in accordance with the requirements of this subpart, and 24 CFR part 58. It is understood that the incurring of costs described in this paragraph creates no obligation on HUD to approve the application.

(b) *HUD action on final application.*

(1) *Review and notification.* Following the review of the applications, HUD will promptly notify each applicant of the action taken with regard to its application. Documentation which supports HUD's decisions on

applications will be available to the public.

(2) *Conditional approval.* HUD may make a conditional approval, in which case the grant will be approved but the obligation and utilization of funds will be restricted. The reasons for the conditional approval and the actions necessary to remove the condition will be specified. Failure to satisfy the condition may result in a termination of the grant.

(3) HUD will not make a Small Cities grant when it is determined that the grant will only have a minimal or insignificant impact on the grantee.

(4) *Individual grant amounts.* In determining appropriate grant amounts to be awarded, HUD may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives and the administrative capacity of the applicant to complete the activities in a timely manner.

(c) *Streamlined application requirement for previous applicants.* HUD may provide pursuant to a NOFA that if an applicant notifies HUD in writing within the application period specified in a NOFA that it wishes to be so considered, HUD will consider unfunded applications from the prior round or competition that meet the threshold requirements of the NOFA. The applicant will have the option of withdrawing its application, or amending or supplementing the application for succeeding rounds of competition. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for succeeding rounds of competition. Applicants availing themselves of the option to have an application from the previous round or competition reconsidered by HUD must submit a new abbreviated or full consolidated plan, if the new competitive funding round is in a different fiscal year than the funding round or competition for which the application was originally submitted.

§ 570.426 Program income.

(a) The provisions of § 570.504(b) apply to all program income generated by a specific grant and received prior to grant closeout.

(b) If the unit of general local government has another ongoing CDBG

grant at the time of closeout, the program income will be considered to be program income of the ongoing grant. The grantee can choose which grant to credit the program income to if it has multiple open CDBG grants.

(c) If the unit of general local government has no open ongoing CDBG grant at the time of closeout, program income of the unit of general local government or its subrecipients which amounts to less than \$25,000 per year will not be considered to be program income. When more than \$25,000 of program income is generated from one or more closed out grants in a year after closeout, the entire amount of the program income is subject to the requirements of this part. This will be a subject of the closeout agreement described in § 570.509(c).

§ 570.427 Program amendments.

(a) *HUD approval of certain program amendments.* Grantees shall request prior HUD approval for all program amendments involving new activities or alteration of existing activities that will significantly change the scope, location, or objectives of the approved activities or beneficiaries. Approval is subject to the following:

(1) Programs or projects that include new or significantly altered activities are rated in accordance with the criteria for selection applicable at the time the original preapplication or application (whichever is applicable) was rated. The rating of the program or projects proposed which include the new or altered activities proposed by the amendment must be equal to or greater than the lowest rating received by a funded project or program during that cycle of ratings.

(2) Consideration shall be given to whether any new activity proposed can be completed promptly.

(3) If the grant was received on a noncompetitive basis, the proposed amended project must be able to be completed promptly, and must meet all of the threshold requirements that were required for the original project. If the proposal is to amend the project to a type of project that was rated competitively in the fiscal year that the noncompetitive project was funded, the new or altered activities proposed by the amendment must receive a rating equal to or greater than the lowest rating received by a funded project or program during that cycle of ratings.

(b) *Documentation of program amendments.* Any program amendments that do not require HUD approval must be fully documented in the grantee's records.

(c) *Citizen participation requirements.* Whenever an amendment requires HUD approval, the requirements for citizen participation in § 570.431 must be met.

§ 570.428 Reallocated funds.

(a) *General.* This section governs reallocated funds originally allocated for use under 24 CFR part 570, subpart F (Small Cities Program).

(b) *Assignment of funds to be reallocated.* Reallocated funds may be:

(1) Used at any time necessary for a section 108 repayment grant under § 570.432;

(2) Added to the next Small Cities Program competition;

(3) Used to fund any application not selected for funding in the most recent Small Cities competition, because of a procedural error made by HUD; or

(4) Used to fund the most highly ranked unfunded application or applications from the most recent Small Cities Program competition.

(c) *Timing.* Funds which become available shall be used as soon as practicable.

§ 570.429 Hawaii general and grant requirements.

(a) *General.* This section applies to the HUD-administered Small Cities Program in the State of Hawaii.

(b) *Scope and applicability.* Except as otherwise provided in this section, the policies and procedures outlined in subparts A, C, J, K, O of this part, and in §§ 570.420, 570.430, and 570.432, apply to the HUD-administered Small Cities Program in the State of Hawaii.

(c) *Grant amounts.* (1) For each eligible unit of general local government, a formula grant amount will be determined which bears the same ratio to the total amount available for the nonentitlement area of the State as the weighted average of the ratios between:

(i) The population of that eligible unit of general local government and the population of all eligible units of general local government in the nonentitlement areas of the State;

(ii) The extent of poverty in that eligible unit of general local government and the extent of poverty in all the eligible units of general local government in the nonentitlement areas of the State; and

(iii) The extent of housing overcrowding in that eligible unit of general local government and the extent of housing overcrowding in all the eligible units of general local government in the nonentitlement areas of the State.

(2) In determining the average of the ratios under this paragraph (c), the ratio

involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once. $(0.25 + 0.50 + 0.25 = 1.00)$.

(d) *Adjustments to grants.* Grant amounts under this section may be adjusted where an applicant's performance is judged inadequate, considering:

(1) Capacity to utilize the grant amount effectively and efficiently;

(2) Compliance with the requirements of § 570.902(a) for timely expenditure of funds beginning with grants made in FY 1996. In making this calculation, all outstanding grants will be considered. For the FY 1995 grant the requirement is substantial compliance with the applicant's schedule or schedules submitted in each previously funded application;

(3) Compliance with other program requirements based on monitoring visits and audits.

(e) *Reallocation.* (1) Any amounts that become available as a result of adjustments under paragraph (d) of this section, or any reductions under subpart O of this part, shall be reallocated in the same fiscal year to any remaining eligible applicants on a pro rata basis.

(2) Any formula grant amounts reserved for an applicant that chooses not to submit an application shall be reallocated to any remaining eligible applicants on a pro rata basis.

(3) No amounts shall be reallocated under paragraph (e) of this section in any fiscal year to any applicant whose grant amount was adjusted under paragraph (d) of this section or reduced under subpart O of this part.

(f) *Required submissions.* In order to receive its formula grant under this subpart, the applicant must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(g) *Application approval.* HUD will approve an application if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91 and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to subpart O of this part that the grantee has not complied with the requirements of this part, has failed to carry out its consolidated plan as provided under § 570.903, or has determined that there is evidence, not directly involving the

grantee's past performance under this program, that tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

(h) *Grant agreement.* The grant will be made by means of a grant agreement executed by both HUD and the grantee.

(i) *Conditional grant.* The Secretary may make a conditional grant in which case the obligation and use of grant funds for activities may be restricted. Conditional grants may be made where there is substantial evidence that there has been, or there will be, a failure to meet the performance requirements or criteria described in subpart O of this part. In such case, the conditional grant will be made by means of a grant agreement, executed by HUD, which includes the terms of the condition specifying the reason for the conditional grant, the actions necessary to remove the condition and the deadline for taking those actions. The grantee shall execute and return such an agreement to HUD within 60 days of the date of its transmittal. Failure of the grantee to execute and return the grant agreement within 60 days may be deemed by HUD to constitute rejection of the grant by the grantee and shall be cause for HUD to determine that the funds provided in the grant agreement are available for reallocation in accordance with section 106(c) of the Act. Failure to satisfy the condition may result in a reduction in the grant amount pursuant to § 570.911. (Approved by the Office of Management and Budget under control number 2506-0060)

§ 570.430 Hawaii program operation requirements.

(a) *Limitation on planning and administrative costs.* For grants made with allocations prior to FY 1995, no more than 20 percent of the sum of the grant plus program income received during the grant period shall be expended for planning and program administrative costs. For grants received from allocations in FY 1995 and thereafter, a grantee will be considered to be in conformance with the requirements of § 570.200(g) if expenditures for planning and administration during the most recently completed program year do not exceed 20 percent of the sum of the grant made for that program year and the program income received from post FY 1994 grants during that program year.

(b) *Performance and evaluation reports.* Grantees will follow the requirements of § 570.507(a) for entitlement grant recipients for all grants received in FY 1995 and thereafter. Grantees will continue following the requirements of § 570.507(a) for HUD-administered small cities grants for grants received prior to FY 1995 until those grants are closed out.

(c) *Grant closeouts.* Grants received prior to FY 1995 shall be closed out in accordance with the procedures in § 570.509. Grants received in FY 1995 and thereafter shall not be closed out individually. A grantee's entire program shall be closed upon program completion if a grantee ceases its participation in the Small Cities Program.

(d) *Public Services.* Starting with the FY 1996 grant, grantees may follow the provisions of § 570.201(e)(1) that refer to entitlement grantees, allowing grantees to use 15 percent of the program income received in the previous program year in addition to 15 percent of the grant amount for public services.

(e) *Compliance with the primary objective.* Starting with the FY 1995 grant, grantees may select a time period of one, two or three program years in which to meet the requirement that not less than 70 percent of the aggregate of CDBG fund expenditures be for activities benefitting low- and moderate-income persons. Grants made from allocations prior to FY 1995 will be considered individually for meeting the primary objective, and expenditures for grants from pre-FY 1995 allocations made during and after FY 1995 will not be considered in determining whether the primary objective has been met for post-1994 allocations. If the State of Hawaii decides to administer the Community Development Block Grant Program for nonentitlement units of general local government in Hawaii, the State will be bound by the time period for meeting the primary objective that was chosen by each nonentitlement grantee within the State until those time periods have expired.

(f) *Program amendments for grants received prior to FY 1995.* Grantees must follow the requirements of § 91.505 of this title when amending their program with regard to grants received prior to FY 1995. For purposes of this paragraph (f), the term "consolidated plan" as used in § 91.505 of this title means an application submitted under the Hawaii program for pre-FY 1995 funds. Also for purposes of this paragraph (f), to comply with the requirements of § 91.505 of this title, grantees must refer to their current

citizen participation plans (adopted in accordance with § 91.505 of this title) to determine the criteria for substantial amendment and the citizen participation process to be followed. (Approved by the Office of Management and Budget under control number 2506-0020.)

§ 570.431 Citizen participation.

(a) *General.* An applicant that is located in a nonentitlement area of a State that has not elected to distribute funds shall comply with the citizen participation requirements described in this section, including requirements for the preparation of the proposed application and the final application. The requirements for citizen participation do not restrict the responsibility or authority of the applicant for the development and execution of its community development program.

(b) *Citizen participation plan.* The applicant must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the application for assistance is submitted to HUD, and the applicant must certify that it is following the plan. The plan must set forth the applicant's policies and procedures for:

(1) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the grantee's proposed and actual use of CDBG funds including, but not limited to:

(i) The amount of CDBG funds expected to be made available for the coming year, including the grant and anticipated program income;

(ii) The range of activities that may be undertaken with those funds;

(iii) The estimated amount of those funds proposed to be used for activities that will benefit low and moderate income persons;

(iv) The proposed CDBG activities likely to result in displacement and the applicant's plans, consistent with the policies developed under § 570.606(b), for minimizing displacement of persons as a result of its proposed activities; and

(v) The types and levels of assistance the applicant plans to make available (or to require others to make available) to persons displaced by CDBG-funded activities, even if the applicant expects no displacement to occur;

(2) Providing technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the

applicant. The assistance need not include the provision of funds to the groups;

(3) Holding a minimum of two public hearings, for the purpose of obtaining citizens' views and formulating or responding to proposals and questions. Each public hearing must be conducted at a different stage of the CDBG program. Together, the hearings must address community development and housing needs, development of proposed activities and review of program performance. There must be reasonable notice of the hearings and the hearings must be held at times and accessible locations convenient to potential or actual beneficiaries, with reasonable accommodations including material in accessible formats for persons with disabilities. The applicant must specify in its plan how it will meet the requirement for hearings at times and locations convenient to potential or actual beneficiaries;

(4) Meeting the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate;

(5) Responding to citizen complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The applicant's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days of the receipt of the complaint, where practicable; and

(6) Encouraging citizen participation, particularly by low- and moderate-income persons who reside in slum or blighted areas, and in other areas in which CDBG funds are proposed to be used.

(c) *Publication of proposed application.* The applicant shall publish a proposed application consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:

(1) Examine the application's contents to determine the degree to which they may be affected;

(2) Submit comments on the proposed application; and

(3) Submit comments on the performance of the applicant.

(4) The requirement for publishing may be met by publishing a summary of the proposed application in one or more newspapers of general circulation, and by making copies of the proposed application available at libraries, government offices, and public places. The summary must describe the contents and purpose of the proposed

application, and must include a list of the locations where copies of the entire proposed application may be examined.

(d) *Preparation of a final application.* An applicant must prepare a final application. In the preparation of the final application, the applicant shall consider comments and views received related to the proposed application and may, if appropriate, modify the final application. The final application shall be made available to the public and shall include the community development objectives and projected use of funds, and the community development activities.

(e) *New York grantee amendments.* To assure citizen participation on program amendments to final applications that require HUD approval under § 570.427, the grantee shall:

(1) Furnish citizens information concerning the amendment;

(2) Hold one or more public hearings to obtain the views of citizens on the proposed amendment;

(3) Develop and publish the proposed amendment in such a manner as to

afford affected citizens an opportunity to examine the contents, and to submit comments on the proposed amendment;

(4) Consider any comments and views expressed by citizens on the proposed amendment and, if the grantee finds it appropriate, modify the final amendment accordingly; and

(5) Make the final amendment to the community development program available to the public before its submission to HUD.

§ 570.432 Repayment of section 108 loans.

Notwithstanding any other provision of this subpart, a unit of general local government in a nonentitlement area where the State has not elected to administer the CDBG program shall be eligible for Small Cities Grant assistance hereunder for the sole purpose of paying any amounts due on debt obligations issued by such unit of general local government (or its designated public agency) and guaranteed by the Secretary pursuant to section 108 of the Act (see subpart M of this part). The award of grant assistance for such purpose shall

be consistent with section 106(d)(3)(B) of the Act, in such amount, and subject to such conditions as the Secretary may determine. Since guaranteed loan funds (as defined in § 570.701) are required to be used in accordance with national and primary objective requirements, and other applicable requirements of this part, any grant made to make payments on the debt obligations evidencing the guaranteed loan shall be presumed to meet such requirements, unless HUD determines that the guaranteed loan funds were not used in accordance with such requirements. Any such determination by HUD shall not prevent the making of the grant in the amount of the payment due, but it may be grounds for HUD to take appropriate action under subpart O based on the original noncompliance.

Dated: May 12, 1997.

Jacquie Lawing,

General Deputy Assistant, Secretary for Community Planning and Development.

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