

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

[Docket No. FR-4449-I-01]

RIN 2506-AC00

**Community Development Block Grant  
(CDBG) Program; Clarification of the  
Nature of Required CDBG Expenditure  
Documentation**

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

**ACTION:** Interim rule.

**SUMMARY:** This rule clarifies the level of expenditure documentation that is needed to meet the financial management requirement that grantees and subrecipients maintain adequate records to identify the use of Community Development Block Grant (CDBG) funds provided for assisted activities. This change will provide the public with more assurance that CDBG funds are used only for allowable purposes.

**DATES:** *Effective Date:* August 18, 1999.  
*Comments Due Date:* September 17, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Regulations Division, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, SW, Washington, DC 20410-8000. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (fax) comments will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Sue Miller, Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-1577. Persons with hearing or speech impairments may call 1-800-877-8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

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

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in

accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned OMB control number 2506-0077. 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.

**Background**

The Office of Inspector General (OIG) audits have found various cases in which grantees and subrecipients were not maintaining sufficient documentation to clearly identify the actual use of Community Development Block Grant (CDBG) funds provided to assisted projects. This issue has particularly arisen in regard to special economic development activities where the funds are ultimately expended by for-profit businesses. Such lack of appropriate documentation increases the potential for misuse of CDBG funds. This rule clarifies the level of documentation that is needed for grantees and subrecipients to demonstrate compliance with the existing financial management requirements in 24 CFR parts 84 and 85 relating to maintaining adequate records to identify the use of funds provided for assisted activities. This change will provide the public with more assurance that CDBG funds are used only for allowable purposes.

OMB Uniform Administrative Requirements for grants to local governments and nonprofit organizations have long required that grantees and subrecipients maintain records which adequately identify the source and application of funds provided for financially-assisted activities. This requirement is found at § 85.20(b)(2) for local governments and at § 84.21(b)(2) for nonprofit organizations. These requirements are specifically made applicable to the CDBG program by §§ 570.502(a)(4) and (b)(3), respectively. The CDBG regulations at § 570.506(h) also require maintaining financial records in accordance with the applicable requirements listed in § 570.502.

Most grantees and subrecipients comply satisfactorily with the subject requirement, particularly for those activities that the grantee and/or subrecipient directly implements or for which it procures goods or services. Problems are most likely to occur in instances where the grantee and/or subrecipient provides CDBG financial assistance to an entity that is neither a contractor nor a subrecipient, but rather possesses characteristics of a "beneficiary." Such entities carry out assisted activities directly and are not

subject to the provisions of 24 CFR part 84 or part 85.

A common example of these latter type of assisted activities is that of a grantee making a CDBG economic development loan to a for-profit business to carry out an economic development project. The private business is then generally responsible for all direct implementation actions and is not governed by the OMB uniform administrative requirements. The grantee must thus exercise due diligence in obtaining documentation from the business to support the use of CDBG funds in order to ensure that the grantee is in compliance with its responsibilities under the uniform administrative requirements which only allow costs that are necessary, reasonable, and adequately supported to be charged to the CDBG program.

In the example case, the grantee's records relating to its review and approval of the business' loan application are not sufficient to provide the adequate documentation of the "application of funds" required by § 85.20(b)(2). The grantee's loan agreement with the business and related security filings, while important, are also not in themselves adequate to document the actual use of the funds. The grantee must have records to support the scope of the activity that is actually accomplished and to clearly demonstrate how the CDBG funds were used to assist the activity.

This interim rule amends 24 CFR 570.506(h) to clarify the extent of documentation needed to meet the financial management requirement that grantees and subrecipients maintain adequate records to identify the use of funds provided for assisted activities. A broad range of types of documentation is described in an effort to reflect the myriad of different activities and financing mechanisms that can be undertaken with CDBG funds. Comment on this method of addressing the issue of adequate financial support documentation is welcome.

**Justification for Interim Rulemaking**

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest."

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment because this rule clarifies requirements already in place for grantees and subrecipients. In consideration of this fact, advance public comment was determined not necessary, but HUD welcomes comments from the public and is soliciting comment on this rule.

### Findings and Certifications

#### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a substantial economic impact on small entities. This interim rule will have no economic impact on small entities since it is a clarification of existing policy. Notwithstanding HUD's determination regarding small entities, HUD specifically invites comments regarding alternatives to this rule that would meet HUD's objectives as described in this preamble.

#### *Environmental Impact*

This amendment is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321). In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or

construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(2), this amendment is categorically excluded because it amends an existing document where the existing document as a whole would not fall under the exclusion in 24 CFR 50.19 (c)(1), but the amendment by itself would do so.

#### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this interim 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. The clarification resulting from this interim rule will not affect the relationship between the Federal Government and State and local governments.

#### *Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance numbers for the Community Development Block Grants program are 14.218, 14.219, 14.225, 14.227, 14.246, and 14.248.

#### **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 amended 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 5300–5320.

2. Section 570.506 is amended by revising paragraph (h) to read as follows:

#### **§ 570.506 Records to be maintained.**

\* \* \* \* \*

(h) Financial records, in accordance with the applicable requirements listed in § 570.502, including source documentation for entities not subject to parts 84 and 85 of this title. Grantees shall maintain evidence to support how the CDBG funds provided to such entities are expended. Such documentation must include, to the extent applicable, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by appropriate parties (e.g., general contractor and/or a project architect), and/or other documentation appropriate to the nature of the activity.

\* \* \* \* \*

Dated: June 16, 1999.

**Cardell Cooper,**

*Assistant Secretary for Community Planning and Development.*

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