

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR-5013-F-02]

RIN 2506-AC19

Community Development Block Grant Program; Small Cities Program

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

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing the Community Development Block Grant (CDBG) program for non-entitlement areas in the state of Hawaii, which were formerly part of the Small Cities Program. Pursuant to statutory authority, the State of Hawaii government has elected not to administer CDBG funds granted to units of general local government located in non-entitlement areas within the state. The statute provides that if Hawaii elects not to assume responsibility for this program, then the Secretary of HUD will make the CDBG grants to the units of general local government located in Hawaii's non-entitlement areas, employing the same distribution formula as was used under prior regulations. This final rule modifies HUD's regulations to clarify how the CDBG program will be implemented in the non-entitlement areas of Hawaii in light of the state's decision. HUD has also taken the opportunity afforded by this rule to update and streamline the regulations, particularly with regard to the HUD-administered Small Cities program in New York, which awarded its last competitive grant in Fiscal Year (FY) 1999. This final rule follows publication of the January 3, 2007, proposed rule and takes into consideration the public comments HUD received. After careful consideration of the issue raised by the comments, HUD has decided to adopt the proposed rule without change.

DATES: *Effective Date:* September 17, 2007.

FOR FURTHER INFORMATION CONTACT: Stephen Rhodside, Deputy Director, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7184, Washington, DC 20410-7000; telephone number (202) 708-1322 (this is not a toll-free number). Individuals with speech or hearing impairments may access this telephone number via TTY by calling the toll-free

Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The CDBG program is authorized under the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCD Act). Under the CDBG program, HUD allocates funds by formula among eligible state and local governments for activities that principally benefit low- and moderate-income persons, aid in the elimination of slums or blighting conditions, or meet other community development needs having a particular urgency.

In 1981, Section 106 of Title I of the HCD Act (Section 106) was amended (Pub. L. 97-35, approved August 13, 1981) to permit states to elect to assume administrative responsibility for the CDBG program for non-entitlement areas within their jurisdiction. In the event that a state government does not elect to do so, section 106 provides that HUD will administer the CDBG program for non-entitlement areas within the state. For those states that have not elected to assume this administrative responsibility, HUD administers the program under regulations in 24 CFR part 570, subpart F, entitled the "Small Cities Program." HUD currently administers grants to non-entitlement areas in Hawaii. The Department also administers uncompleted Small Cities grants in New York that were contracted before the New York State government took over the program in FY 2000. The active New York Small Cities grants are being funded with program income.

Section 218 of the Consolidated Appropriations Act, 2004, (Pub. L. 108-199, approved January 23, 2004) required that, by July 31, 2004, the State of Hawaii government had to decide whether it would elect to distribute CDBG funds to units of general local government located in its non-entitlement areas. On August 5, 2004, the Governor of Hawaii notified HUD that the state had elected not to do so, and the Secretary of HUD permanently assumed administrative responsibility for making grants to the units of general local government in Hawaii's non-entitlement areas (Hawaii, Kauai, and Maui counties). Section 218 of the Consolidated Appropriations Act, 2004, requires the Secretary of HUD to allocate the CDBG funds based upon the same distribution formula that had been used to compute grant funds for the non-entitlement counties in Hawaii. This formula takes population, poverty, and housing overcrowding into consideration.

II. The January 3, 2007, Proposed Rule

On January 3, 2007 (72 FR 62), HUD published for public comment a proposed rule that would revise HUD's regulations at 24 CFR part 570. The proposed changes would clarify how HUD will administer the CDBG program in the non-entitlement areas of Hawaii. HUD had previously amended the Hawaii Small Cities regulations by a final rule published on December 27, 1994 (59 FR 66594), to treat the three non-entitlement counties of Hawaii similarly to entitlement grantees, to the greatest extent allowable under statute. As a result, the clarifying changes in the January 3, 2007, proposed rule were relatively minor in scope. The January 2007 rule also proposed to provide that the provisions in regulations that are applicable to entitlement grants would apply to non-entitlement grants to counties in Hawaii, with two exceptions. The two exceptions are: (1) The manner in which allocations to counties are calculated and (2) the source of the CDBG funding. The proposed rule provided that these exceptions would be codified in 24 CFR 570.429. The rule also proposed to remove from 24 CFR 570.420, which provides general requirements for HUD's administration of non-entitlement grants, all references to the Small Cities Program in Hawaii. It also proposed minor conforming changes to headings and terms throughout 24 CFR part 570, to prevent confusion among CDBG entitlement and non-entitlement programs.

HUD also proposed to update and streamline the subpart F regulations for the HUD-administered Small Cities program in New York, which HUD operated prior to the state's takeover of the program in FY 2000. The final competitive grants made under this program by HUD were awarded in FY 1999, and almost all New York Small Cities projects expended their funds by the close of FY 2006. The subpart F regulations contain certain outdated provisions regarding the New York Small Cities program that are no longer necessary and, therefore, would be removed by the proposed rule. For example, § 570.420(c) currently references statutory public notification requirements that HUD must follow when it makes competitive awards of grants. HUD is removing paragraph (c) because HUD no longer awards the New York Small Cities funds. Other provisions that continue to apply to ongoing grants are retained in subpart F.

The regulatory changes are described in greater detail in the preamble to the January 3, 2007, proposed rule.

III. This Final Rule

This final rule follows publication of the January 3, 2007, proposed rule and takes into consideration the public comments HUD received.

The public comment period on the proposed rule closed March 5, 2007. HUD received two comments, which were submitted by the Hawaii County and Kauai County governments. Both comments supported the proposed rule. One of the comments recommended that HUD eliminate the second, program income-based test at 24 CFR 570.902(a)(2) for determining whether a grantee is carrying out its CDBG activities in a timely manner. Under the test, which HUD proposed to apply to non-entitlement CDBG grantees in Hawaii, HUD may determine that a grantee is not carrying out its activities in a timely manner if, 60 days prior to the end of a program year, the sum of program income the grantee has on hand and the funds remaining in its CDBG line of credit exceeds 1.5 times the grant amount for its current program year. The commenter argued that, especially for grantees receiving relatively small annual program grants, it is important to be able to generate and maintain revolving loan funds to support homebuyer loan and other lending programs. HUD has decided not to revise the proposed rule in response to the comment. The entitlement rule currently considers program income, including income from revolving loan funds, in determining whether a grantee is implementing its activities in a timely manner. There is a provision at § 570.902(a)(2)(ii) that allows HUD to determine a grantee to be timely if the lack of timely expenditure is due to factors beyond the grantee's reasonable control. This provision would accommodate a situation in which a small grantee received a large amount of unexpected program income. It is worth noting that HUD expects grantees to properly plan for receipt of program income. Implementing § 570.902(a)(2)(ii) for non-entitlement counties in Hawaii will also meet the statutory intent of Section 218 of the Consolidated Appropriations Act, 2004, which aims to treat the non-entitlement counties in Hawaii in the manner of entitlement grantees, as much as possible.

A technical amendment has been made to § 570.420(e) to reference § 570.442 in the section. This section refers to reallocation of Insular area funds and was added to the regulations by a final rule that was published on March 15, 2007.

IV. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2506–0020. The amendments made by this rule do not revise the information collection requirements for the CDBG Small Cities Program. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule only codifies, in HUD's regulations, procedures that will enable the Department to treat the three non-entitled Hawaii counties as entitlement grantees. Since the non-entitled counties previously were funded

annually by formula and were treated as entitlement grantees as much as statutorily possible, the rule does not significantly differ from the current status in terms of the impact on the number of entities, the amount of funding, or the governing requirements applicable. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That FONSI remains applicable to this final rule, and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the finding must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Hearing- and speech-impaired persons may access the telephone number listed above via TTY by calling the Federal Information Relay Service at (800) 877–8339.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the CDBG Small Cities program is 14.219, and the number for the CDBG Entitlement program is 14.218.

List of Subjects in 24 CFR Part 570

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

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

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

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

■ 2. Revise § 570.200(a)(3) introductory text to read as follows:

§ 570.200 General policies.

(a) * * *

(3) *Compliance with the primary objective.* The primary objective of the Act is described in section 101(c) of the Act. Consistent with this objective, entitlement recipients, non-entitlement CDBG grantees in Hawaii, and recipients of insular area funds under section 106 of the Act must ensure that, over a period of time specified in their certification not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under § 570.208(a) or under § 570.208(d)(5) or (6) for benefiting low- and moderate-income persons. For grants under section 107 of the Act, insular area recipients must meet this requirement for each separate grant. See § 570.420(d)(3) for additional discussion of the primary objective requirement for insular areas funded under section 106 of the Act. The requirements for the HUD-administered Small Cities program in New York are at § 570.420(d)(2). In determining the percentage of funds expended for such activities:

* * * * *

■ 3. Revise § 570.208(a)(1)(ii) introductory text to read as follows:

§ 570.208 Criteria for national objectives.

* * * * *

(a) * * *

(1) * * *

(ii) For metropolitan cities and urban counties, an activity that would otherwise qualify under § 570.208(a)(1)(i), except that the area served contains less than 51 percent low- and moderate-income residents, will also be considered to meet the objective of benefiting low- and moderate-income persons where the proportion of such persons in the area is within the highest quartile of all areas in the recipient's jurisdiction in terms of the degree of concentration of such persons. This exception is inapplicable to non-entitlement CDBG grants in Hawaii. In applying this exception, HUD will determine the lowest proportion a recipient may use to qualify an area for this purpose, as follows:

* * * * *

■ 4. § 570.209(b)(2)(i) is revised to read as follows:

§ 570.209 Guidelines for evaluating and selecting economic development projects.

* * * * *

(b) * * *

(2) *Applying the aggregate standards.*

(i) A metropolitan city, an urban county, a non-entitlement CDBG grantee in Hawaii, or an Insular Area shall apply the aggregate standards under paragraph (b)(1) of this section to all applicable activities for which CDBG funds are first obligated within each single CDBG program year, without regard to the source year of the funds used for the activities. For Insular Areas, the preceding sentence applies to grants received in program years after Fiscal Year 2004. A grantee under the HUD-administered Small Cities Program, or Insular Areas CDBG grants prior to Fiscal Year 2005, shall apply the aggregate standards under paragraph (b)(1) of this section to all funds obligated for applicable activities from a given grant; program income obligated for applicable activities will, for these purposes, be aggregated with the most recent open grant. For any time period in which a community has no open HUD-administered or Insular Areas grants, the aggregate standards shall be applied to all applicable activities for which program income is obligated during that period.

* * * * *

■ 5. Revise § 570.300 to read as follows:

§ 570.300 General.

This subpart describes the policies and procedures governing the making of community development block grants to entitlement communities and to non-entitlement counties in the State of Hawaii. The policies and procedures set forth in subparts A, C, J, K, and O of this part also apply to entitlement grantees and to non-entitlement grantees in the State of Hawaii. Sections 570.307 and 570.308 of this subpart do not apply to the Hawaii non-entitlement grantees.

■ 6. Revise the heading of Subpart F to read as follows:

Subpart F—Small Cities, Non-Entitlement CDBG Grants in Hawaii and Insular Areas Programs

■ 7. In § 570.420:

■ a. Revise paragraphs (a)(1) and (b)(1);

■ b. Remove § 570.420(c);

■ c. Redesignate paragraphs (d), (e), and (f) as paragraphs §§ 570.420 (c), (d), and (e), respectively; and

■ d. Revise the newly designated paragraph (e) to read as follows:

§ 570.420 General.

(a) *Administration of Non-entitlement CDBG funds in New York by HUD or Insular Areas—*(1) *Small cities.* The Act permits each state to elect to administer all aspects of the CDBG program annual fund allocation for the non-entitlement areas within its jurisdiction. All states except Hawaii have elected to administer the CDBG program for non-entitlement areas within their jurisdiction. This section is applicable only to active HUD-administered small cities grants in New York. The requirements for the non-entitlement CDBG grants in Hawaii are set forth in § 570.429 of this subpart. 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 non-entitlement 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 that apply to non-entitlement areas in states where HUD administers the CDBG program. HUD currently administers the Small Cities program in only two states—New York (for grants prior to FY 2000) and Hawaii (for non-entitlement CDBG grants in Hawaii). The Small Cities portion of this subpart addresses the requirements for New York Small Cities grants in §§ 570.421, 570.426, 570.427, and 570.431. Section 570.429 identifies special procedures applicable to Hawaii.

* * * * *

(e) *Allocation of funds—*The allocation of appropriated funds for insular areas under section 106 of the Act shall be governed by the policies and procedures described in section 106(a)(2) of the Act and §§ 570.440, 570.441, and 570.442 of this subpart. The annual appropriations described in this section shall be distributed to insular areas on the basis of the ratio of the population of each insular area to the population of all insular areas.

■ 8. Revise § 570.427(a) to read as follows:

§ 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 amended activities meeting the requirements of this part and being able to be completed promptly.

* * * * *

■ 9. In § 570.429:

- a. Revise paragraphs (a) and (b);
- b. Remove paragraphs (d), (f), (g), (h), and (i);
- c. Redesignate paragraph (e) as a new paragraph (d); and
- d. Revise newly designated paragraph (d) to read as follows:

§ 570.429 Hawaii general and grant requirements.

(a) *General.* This section applies to non-entitlement CDBG grants in Hawaii. The non-entitlement counties in the State of Hawaii will be treated as entitlement grantees except for the calculation of allocations, and the source of their funding, which will be from section 106(d) of the Act.

(b) *Scope and applicability.* Except as modified or limited under the provisions thereof or this subpart, the policies and procedures outlined in subparts A, C, D, J, K, and O of this part apply to non-entitlement CDBG grants in Hawaii.

* * * * *

(d) *Reallocation.* (1) Any amounts that become available as a result of any reductions under subpart O of this part shall be reallocated in the same or future 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 (d) of this section in any fiscal year to any applicant whose grant amount was reduced under subpart O of this part.

■ 10. Remove §§ 570.430 and 570.432.

■ 11. In § 570.901, revise paragraphs (d) and (e) to read as follows:

§ 570.901 Review for compliance with the primary and national objectives and other program requirements.

* * * * *

(d) For entitlement grants and non-entitlement CDBG grants in Hawaii, the submission requirements of 24 CFR part 91 and the displacement policy requirements at § 570.606;

(e) For HUD-administered Small Cities grants in New York, the citizen participation requirements at § 570.431, the amendment requirements at § 570.427, and the displacement policy requirements of § 570.606;

* * * * *

■ 12. In § 570.902:

- a. Revise the heading of paragraph (a);
- b. Revise the introductory paragraph of paragraph (a)(1); and
- c. Revise paragraph (b) to read as follows:

§ 570.902 Review to determine if CDBG-funded activities are being carried out in a timely manner.

* * * * *

(a) *Entitlement recipients and Non-entitlement CDBG grantees in Hawaii.*

(1) Before the funding of the next annual grant and absent contrary evidence satisfactory to HUD, HUD will consider an entitlement recipient or a non-entitlement CDBG grantee in Hawaii to

be failing to carry out its CDBG activities in a timely manner if:

* * * * *

(b) *HUD-administered Small Cities program in New York.* The Department will, absent substantial evidence to the contrary, deem a HUD-administered Small Cities recipient in New York to be carrying out its CDBG-funded activities in a timely manner if the schedule for carrying out its activities, as contained in the approved application (including any subsequent amendment(s)), is being substantially met.

* * * * *

■ 13. Revise § 570.911(b) to read as follows:

§ 570.911 Reduction, withdrawal, or adjustment of a grant or other appropriate action.

* * * * *

(b) *Entitlement grants, Non-entitlement CDBG grants in Hawaii, and Insular Areas grants.* Consistent with the procedures described in § 570.900(b), the Secretary may make a reduction in the entitlement, non-entitlement CDBG grants in Hawaii, or Insular Areas grant amount either for the succeeding program year or, if the grant had been conditioned, up to the amount that had been conditioned. The amount of the reduction shall be based on the severity of the deficiency and may be for the entire grant amount.

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Dated: August 8, 2007.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

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