

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

[Docket No. FR-4269-I-01]

RIN 2528-AA07

Hispanic-Serving Institutions Work Study Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Interim rule.

SUMMARY: On April 9, 1997, HUD published a final rule for the Hispanic-serving Institutions Work Study Program (HSI-WSP). That rule established, among other things, eligibility for the program. Eligibility was limited to certain public and private non-profit two-year institutions of higher education. This interim rule broadens eligibility to a larger universe of these institutions.

DATES: Effective Date: March 27, 1998.
Comment Due Date: April 27, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. 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.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships, U.S. Department of Housing and Urban Development, Room 8110, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-1537, extension 218. Hearing-or speech-impaired individuals may call HUD's TTY number, (202) 708-1455, or 1-800-877-8399 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.) Ms. Karadbil can also be contacted via the Internet at Jane__R__Karadbil@hud.gov.

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

The information collection requirements contained in this interim rule were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and

have been assigned OMB control number 2528-0182. 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.

II. Background

The HSI-WSP is authorized by section 107(c) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5307, 88 Stat. 647). This section provides authority to " * * * make grants to institutions of higher education * * * for the purposes of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time * * * undergraduate programs in community or economic development, community planning, or community management."

On April 9, 1997 (62 FR 17492), HUD issued a final rule governing the program. The final rule limited eligibility for HUD's HSI-WSP to certain Hispanic-serving Institutions (HSIs). Specifically, only public or private institutions of higher education that offer two-year associate degrees and qualify as HSIs are eligible for HSI-WSP. While the statute authorizing the program does not require it, HUD decided to determine eligibility by using the definition of an HSI contained in section 316 of the Higher Education Amendments of 1992 (20 U.S.C. 1059c; 106 Stat. 448, 473). The Act defines an HSI as: an institution that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., 150 percent of the poverty level) who are first generation college students (i.e., whose parent(s) did not complete a baccalaureate degree) and another 25 percent are either low-income individuals or first generation college students. The U.S. Department of Education determines the eligibility of specific institutions as HSIs and issues a list of institutions meeting this definition. HUD's final rule noted that a list of HSI-WSP-eligible community colleges that are included in the U.S. Department of Education's list of HSIs would appear with each Notice of Funding Availability (NOFA) for the program. Only institutions on this list, or HSI-WSP-eligible institutions subsequently added to the U.S. Department of Education's list prior to that NOFA's application deadline, are eligible to apply for HSI-WSP funds.

III. A Change in the Procedure To Determine Eligibility

HUD has decided to eliminate the use of the U.S. Department of Education's list to determine eligibility and, instead, allow institutions to certify that they meet the statutory definition.

The process for an institution to be put on the U.S. Department of Education's list has several steps. First, an institution must apply for and receive Title III (of the Higher Education Amendments of 1992). (This eligibility applies to a broader universe of institutions, not just HSIs, and allows these institutions to compete for Title III grants.) Second, with this eligibility, an institution must apply for the U.S. Department of Education's Hispanic-serving Institutions Program (which is a capacity building program for institutions of higher education, not a work study program). Third, the U.S. Department of Education must receive, as part of the application for their HSI program, a certification from the institution that it meets the statutory HSI definition. Fourth, as a result of this certification, the U.S. Department of Education puts the institution on its HSI list. Based on the language in the HSI-WSP final rule, only when all of these steps have occurred is the institution eligible for HUD's HSI-WSP.

HUD's use of the U.S. Department of Education's list means that some Hispanic-serving institutions are not eligible for HSI-WSP for one of two reasons. First, institutions that meet the eligibility requirements but do not apply for the U.S. Department of Education's program (and are therefore not on the U.S. Department of Education's list) cannot apply for the HUD program. Second, because the U.S. Department of Education had no funding for new grants for its HSI Program in FY 1996, FY 1997, and FY 1998, there was no call for applications for three years, and, thus, no additional determinations of HSI eligibility which could be added to the list of HSIs that Department produces. HUD has determined that it may be unfairly penalizing institutions if it relies on a potentially out-of-date and overly restrictive eligibility list. HUD has, therefore, decided not to base eligibility on the U.S. Department of Education's list, but instead allow applicants to certify to HUD that they are eligible to apply for the HSI-WSP.

IV. Justification for an Interim Rule

In general, HUD publishes a rule for public comments before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for

exceptions from the general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1)

The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is contrary to the public interest. The purpose of the rule is to expand eligibility to additional institutions of higher education. If the rule were issued for public comment, it could not take effect before the next round of competition, preventing otherwise eligible schools from competing. This, in turn, would deny eligible students from entering these community colleges and moving on to careers in community building. Although the rule will take effect 30 days from the date of publication, HUD solicits comments from the public on this interim rule.

V. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(b)(9) of the HUD regulations, the policies and procedures contained in this rule relate only to training grants and technical assistance, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Regulatory Flexibility

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 it will not have a significant economic impact on a substantial number of small entities. The rule only affects applicants and participants in the Hispanic-Serving Institutions Work Study Program and will not have any meaningful economic impact on any other entity.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in 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. As a result, the rule is not subject to review under the Order. Specifically, the rule solicits participation by institutions of higher education in creating community development work study programs for some of their economically disadvantaged and minority students. The rule does not impinge upon the relationships between the Federal government and State or local governments.

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 interim 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.

The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.513.

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, subpart E is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart E—Special Purpose 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 570.416 is amended by revising the definition of "Hispanic-serving institution" in paragraph (b) to read as follows:

§ 570.416 Hispanic-serving institutions work study program.

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(b) Definitions. * * *

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Hispanic-serving institution is an institution of higher education that certifies to the satisfaction of the Secretary that it meets the criteria set out at 20 U.S.C. 1059c(b)(1), including the following: An institution that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., their families' taxable income for the preceding year did not exceed 150 percent of the poverty level) who are first generation college students; and in which another 25 percent are either low-income individuals or first generation college students.

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Dated: January 22, 1998.

Paul A. Leonard,

Deputy Assistant Secretary for Policy Development.

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