12, 13, 1995, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Services, regarding their funding.

The meeting will be open to the public up to the seating capacity of the room for the January 10 session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On January 11–13, 1995 the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff, and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 522b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under Sections 10(d) of Pub. L. 92–463 as amended by Section 5(c) of Pub. L. 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should write to Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs, 103 South Gay Street, Baltimore, Maryland 21202 (Phone: 410–962–2563) at least five days before the meeting.

Dated: December 12, 1994

Heyward Bannister,

Committee Management Officer

[FR Doc. 94–31671 Filed 12–23–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 247
Tuesday, December 27, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone vote on December 21, 1994, a majority of the members contacted and voting, the Board of Governors of the United States Postal Service voted to add to the agenda of its meeting closed to public observation on January 9, 1995, in Washington, D.C. (see 59 FR 64014, December 12, 1994), consideration of a funding request for the Santa Barbara, California, Processing & Distribution Center.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Mackie, Pace and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and section 7.3(i) of Title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(9)(B) of Title 5, United States Code and section 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 94–31904 Filed 12–22–94; 2:19 pm]

BILLING CODE 7710–12–M

federal register

Tuesday
December 27, 1994

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Block Grants: Small Cities Program and Related Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-94-1591; FR-2879-F-03]

RIN: 2506-AB11

Community Development Block Grants: Small Cities Program and Related Amendments

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

ACTION: Final rule.

SUMMARY: This final rule revises the HUD regulations in 24 CFR part 570, subpart F, which govern the administration of the Community Development Block Grant (CDBG) Small Cities Program. The purpose of subpart F is to set forth the procedures by which CDBG funds are provided to non-entitled units of general local government in those States which have *not* elected to assume administration of the CDBG formula allocations for use in non-entitled units of general local government within such States. The rule amends subpart F to incorporate the statutory changes made to the Small Cities Program since the subpart F regulations were issued in 1982, and streamlines the operation and administration of the program. In addition, the rule makes additional changes to subpart F, and various changes to subparts I and M which are necessary to permit use of the section 108 loan guarantee authority by non-entitled units of general local government in States which have not elected to assume administration of the CDBG formula allocations for nonentitlement areas of such States.

EFFECTIVE DATE: January 26, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen M. Rhodeside, 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) or (202) 708-2565 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background—September 15, 1994 Proposed Rule

On September 15, 1994 (59 FR 47500), HUD published a proposed rule that would amend HUD's regulations in 24 CFR part 570, subpart F, which govern the administration of the Community Development Block Grant (CDBG) Small Cities Program. The proposed rule provided for a 30-day public comment period. By the end of the comment period on October 17, 1994, 21 comments had been received. The 21 commenters consisted of 11 units of general local government (7 New York, 3 Hawaii, 1 Arizona), 5 consultants, and 5 public and private non-profits. These commenters made approximately 75 different comments about the September 15, 1994 proposed rule; many of these comments were made by more than one commenter. Section II of this preamble describes the changes made to the proposed rule at the final rule stage, and Section III of the preamble sets forth the issues and questions raised by the public commenters, and HUD's responses to these issues and questions.

II. Principal Differences Between Proposed Rule and Final Rule

This final rule is substantially the same as the September 15, 1994 proposed rule. The principal differences are as follows:

1. Multiyear Plans

The final rule provides that HUD may issue notices of funding availability that provide for a competition for applications that have multiyear plans (see § 570.421(a)(2)).

2. Economic Development Grants

The final rule also provides that 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 State (see § 570.421(a)(5)).

3. Counties Applying on Behalf of Units of General Local Government

The final rule provides criteria under which 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.

4. Pre-Agreement Costs

The final rule provides that HUD authorizes a unit of general local government to incur costs during the same or the prior Federal 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 § 570.201-204 before the establishment of a formal grant relationship between the applicant and HUD. Such costs for the funded activities may be charged to the grant should it be funded, provided that the activities are undertaken in accordance with the requirements of subpart F (see § 570.425(a)(3)). This includes compliance with selection of contractors under 24 CFR 85.36 if, for example, a contractor prepares the application or plans and specifications.

5. HUD Action on Final Application

The final rule adds two new paragraphs to § 570.425(b). Paragraph (b)(3) provides that 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. Paragraph (b)(4) provides that 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, among others. (See § 570.425(b) (3) and (4).)

6. Streamlined Application Requirements for Previous Applicants

The final rule adds a new paragraph (c) to § 570.425 to provide for streamlined application requirements for previous applicants. (See § 570.425(c).)

7. Clarification of "Publication of Proposed Application"

The final rule adds a new paragraph to § 570.431(c) to explain what is meant by publication of the proposed application. (See § 570.431(c)(4).)

8. Hawaii Grantee Amendments

The final rule clarifies the procedures that Hawaii grantees must follow in making amendments to final applications. (See § 570.431(f).)

9. Report Submission Date.

The final rule extends the deadline for New York Grantees to submit their performance and evaluation report on the small cities grant to October 31 (see § 570.507(a)(2)(ii)(A)) and sets forth the date Hawaii grantees must submit their performance and evaluation report (see § 570.507(a)(2)(ii)(B).)

III. Comments on the Proposed Rule and HUD's Responses

This section sets forth the issues and comments made by the public commenters on the September 15, 1994 proposed rule, and HUD's responses to these issues and questions.

A. General Comments

Comments Concerning NOFA for Small Cities Program

There were several comments that the application time period to respond to the Small Cities NOFA should be more than 60 days. The final rule will not establish the application time period for the Small Cities NOFA. The request for a longer application time period was taken into consideration in development of the Federal Fiscal Year (FY) 1995 NOFA.

Ten commenters commented on the number of funding competitions that should be held for the Small Cities Program during each fiscal year. Since the optimum number of competitive rounds will vary according to circumstances, the Small Cities NOFA will state the number of competitions that will be held in the time period that is covered by the NOFA.

Four commenters stated that the issue date for the NOFA and the due date of competitive applications should be established by regulation. To retain maximum flexibility to address changing conditions, the Department has decided that these dates should not be established by regulation.

Five commenters submitted comments on the maximum grant limits. In order to retain flexibility due to changing conditions such as inflation, the Small Cities NOFA, rather than the rule, will address the issue of grant limits.

One commenter requested that the Department establish a set amount of funding for each funding round. Although the Department agrees with this comment, the NOFA rather than the rule is a better vehicle to address this issue.

One commenter said that if it was necessary to expand the competition beyond housing, public facilities, and economic development, the final rule should so state this. Since it is impossible to foresee the types of competition that might benefit small jurisdictions in the State of New York in the future, the rule provides in § 570.421(a)(1) that there will be competitive applications.

Three commenters commented on the application page limits. Again, this is an issue that will be addressed in the NOFA to retain flexibility to adjust page limit requirements. The Department acknowledges that reducing the size of grant applications will reduce paperwork which is a goal shared by the majority of participants at the meetings held in the State of New York to discuss the proposed regulation.

A few commenters requested that the Small Cities NOFA remain as constant as possible from year to year. The Department intends to do this to the extent possible.

One commenter asked that the Department provide technical assistance after the issuance of the NOFA. Although this matter is not one that should be addressed in the final rule, the Department intends to provide the maximum amount of technical assistance that is permitted under section 103 of the Department of Housing and Urban Development Reform Act.

Another commenter requested that the Department provide an even playing field for small communities. In the history of the program, small communities have been successful in obtaining grants, and the Department sees no need to change the final rule in this regard.

Involvement in the Rulemaking Process

Another commenter requested that people with rural backgrounds be involved in the rulemaking process. This was accomplished by two highly publicized meetings with that were held in Auburn and Goshen, New York as well as having the Assistant Secretary for Community Planning and Development write to each eligible unit of general local government individually, asking for their comments in helping to shape the final rule and NOFA.

Administration of Small Cities Program by the State of New York

Two commenters stated that the Small Cities Program should not be given to New York State to administer. Section 106 (d)(2) of Title I, gives States the right to elect to administer the State CDBG Program. The Department cannot administratively amend this provision.

Single Audit and Davis-Bacon Requirements

Commenters asked that the Single Audit and Davis-Bacon Acts be made inapplicable to the Small Cities Program. To adopt this comment would require a statutory change.

Rehabilitation

Three commenters asked that the non-targeted rehabilitation program be continued. Although this issue is too specific to be addressed by the regulations, there is nothing in the Small Cities regulations that would preclude a grantee from initiating a non-targeted rehabilitation program. A request was made by one commenter to fund more HUD staff travel. Although the Department is sensitive to the need of HUD Field staff to travel to small cities in New York, the travel budget is determined by annual appropriations and is not an appropriate issue to be addressed by the final regulation.

One commenter stated that funds should be allowed to be used to rehabilitate pre-1976 mobile homes. While the Department is unclear as to the commenters' reference to pre-1976 mobile homes, manufactured housing can be rehabilitated in accordance with § 570.202(a)(4), since the State of New York recognizes manufactured housing as real property.

One commenter stated that senior citizens on fixed income should be able to get rehabilitation grants. The major purpose of the CDBG program is to benefit low- and moderate-income persons. Senior citizens who are of low- and moderate-income are eligible to receive housing rehabilitation grants. Senior citizens who have higher incomes cannot receive grants unless the activity is to aid in the prevention or elimination of slums or blight. Title I does not give higher income senior citizens preference over low- and moderate-income non senior citizens.

Household Incomes

One commenter asked that households with incomes between 80–100 percent of median be eligible to receive rehabilitation assistance in non-targeted areas. The Department notes that this can be done under § 570.208(b)(2) as long as the rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

Multiyear Plans

One commenter said that community facilities should not be funded on a multiyear basis, but should be funded through a large grant of up to $900,000. The Department decided not to restrict community facilities from being part of multiyear plan projects. However, to the extent a project consisting, for example, of one large building cannot logically be subdivided into segments that are viable as separate grants, the project would have to be funded from a single year's grant funds under § 570.421(a)(1). Larger public facilities projects, however, can now be funded with Section 108 loan guarantee assistance under § 570.703(l).

One commenter said that the first year of the multiyear plan should be fifteen months, and another commenter indicated that there should be a site visit 9–10 months into the multiyear plan. These comments are operational in nature and not appropriate to be addressed by the final rule.

Priority for EZs/ECs

One commenter stated that Empowerment Zones (EZ) and Enterprise Communities (EC) should not receive a priority in the final regulation. The Department agrees that the final regulation is an inappropriate place to show support for the EZ/EC program and can more appropriately lend its support in the NOFA.

Public Hearings

A commenter stated that public hearings should be able to be combined with hearings for other purposes. The Department agrees, and notes that this is the Department's policy, and therefore, need not be stated specifically in the final rule.

Abbreviated Consolidated Plan

Several commenters requested that the abbreviated Consolidated Plan requirements be made as simple as possible. It is the Department's intention to do this, but the NOFA is a more appropriate vehicle for doing this since the abbreviated Consolidated Plan may need to be changed based on ongoing experience in program administration. At this time the abbreviated Consolidated Plan is not yet required. (The FY 1995 NOFA requires an abbreviated CHAS if the application contains housing activities.) After the Consolidated Plan final rule is published, succeeding NOFAs will explain the requirements. The final rule for the Consolidated Plan will make conforming changes to this regulation. The final rule will not apply to applications under the FY 1995 NOFA for the State of New York.

B. Specific Comments on Rule Sections

Section 570.420 General

Five commenters call for the abbreviated CHAS requirement to be eliminated. Section 570.420(d) requires that there be a certification in the Small Cities application that housing activities proposed to be funded by the Small Cities Program must be consistent with the applicant's abbreviated CHAS. This is required by 24 CFR part 91 and Section 105(b) of the National Affordable Housing Act.

One commenter wanted to lower the requirement that 70 percent of the grant funds must be used to benefit low-and moderate-income persons to 51 percent. The Department believes that the commenter misunderstands the requirement. Under § 570.208(a)(1), if at least 51 percent of the residents of an area are low- and moderate-income persons, an activity that benefits that area is considered to benefit low- and moderate-income persons. Section 570.200(a)(3)(v) provides that area benefit activities are to count as benefitting low- and moderate-income persons 100 percent. Accordingly, if a water project is funded for $300,000, which benefits an area that is 57 percent low-and moderate-income, the entire $300,000 is considered to be benefitting low- and moderate-income persons.

Three commenters said that the regulations should clearly state that § 570.200(a)(3)(iii) applies, and that grantees should not include Section 108 loan repayments in the calculations for meeting the objective that not less than 70 percent of the total of grant funds from each grant and Section 108 loan guarantee funds received under 24 CFR part 570, subpart M, within a fiscal year, must be expended for activities that benefit low-and moderate-income persons. The Department agrees and paragraph (e)(2) was revised to incorporate this change.

Eight commenters protested the elimination of the rating and ranking scoring factors from the regulations. As a result of these comments, § 570.421(a) has been added to the final rule to describe the selection system.

There were multiple comments recommending that the Department establish an Economic Development set-aside with an open window, so that economic development applications could be submitted at any time during the year. Commenters also suggested that Section 108 loan guarantees be used to fund economic development projects to the greatest extent possible. These comments are addressed in § 570.421(a)(5), which provides that the Department will use the Section 108 loan guarantee program to the greatest extent possible to fund Economic Development projects, and that the Department will fund Economic Development applications as they are determined to be fundable in a specific amount by HUD. All Economic Development projects that are funded with Small Cities funds must have a substantial impact on the needs identified by the applicants.

One commenter stated that only housing and public facilities applications should be funded during the competitive funding cycles. Under the new § 570.421(a) ("Selection system"), both competitive applications and the first year of multiyear plans will be funded on a competitive basis with the NOFA indicating how that competition will be held. Since "Economic Development" and "Imminent Threat" projects funded on a non-competitive basis, the competition will essentially include housing, public facilities, and comprehensive applications.

One commenter suggested that the division between comprehensive projects and single purpose projects be retained with an eye towards evening the chances of obtaining funding from both types of projects. Another commenter requested that funding be continued for comprehensive grants. The nomenclature of single purpose and comprehensive projects has been removed from the final rule, but the Department may elect to retain and define such categories in a NOFA. Under the final rule, there will be competitions for competitive applications and multiyear plans with the funding divided between the categories fine-tuned by a NOFA that will be issued each year. The former single purpose projects will be eligible for funding as competitive applications. The former comprehensive projects may be funded as either competitive applications or as multiyear grants.

One commenter requested that the Department allow counties to apply on behalf of municipalities. This suggestion was incorporated into the final rule at 24 CFR 570.421(c)(3). Another commenter suggested that the Department encourage county-wide applications. County-wide applications are eligible for funding and will receive the same consideration as all other applications for Small Cities funding.

Six commenters requested that the Department allow multiyear funding for comprehensive grants. This comment was adopted in § 570.421(a)(2) of the final rule, which will allow the Department to fund multiyear plans. After the first year of a multiyear plan is funded, the Department may fund future years on a non-competitive basis subject to acceptable performance, submission of an acceptable application and certifications, and the provision of adequate appropriations.

One commenter stated that multiyear grantees should not receive other grants during the time period that the multiyear grant was ongoing. The Department decided that this issue is more appropriately addressed in the NOFA rather than the rule.

Another commenter suggested that consideration be given to female and disabled heads of household in giving fair housing points and contracts given to female-owned businesses should be taken into account in reporting minority business enterprise achievements. In order to retain flexibility to address changing priorities, the Department decided that the makeup of the fair housing and equal opportunity points will be disseminated in the NOFA rather than the regulations.

Section 570.424 Grants for Imminent Threats to Public Health and Safety

Three commenters wanted the imminent threat set-aside retained in the final rule, and one commenter wanted it deleted. The Department decided to retain the imminent threat set-aside to give the Department the flexibility to respond immediately to threats to health and safety such as flood damage from hurricanes.

Section 570.425

HUD Review and Actions on Applications for New York State Applicants

One commenter said that if there was more than one funding round in a fiscal year, an unsuccessful application should be able to be resubmitted in the next round. The Department agrees and paragraph (c) was added to § 570.425 which authorizes HUD to provide in a NOFA that unsuccessful applications will be automatically held over for the succeeding rounds of competition if the applicant so requests in writing. The applicant will have the option of amending or withdrawing its application. For FY 1995, applications not funded in FY 1994 will automatically be reconsidered under the FY 1995 NOFA unless the applicant notifies HUD otherwise.

Another commenter indicated that HUD should ensure that applications are funded for the least amount of funds necessary to implement the proposed activities. As a result of this comment, paragraph (b)(4) was added to § 570.425 of the final rule. This paragraph gives the Department the right to 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 in determining the appropriate grant amount to award.

To respond to a commenter's request to even the playing field for smaller communities, the Department has revised § 570.425(a)(3) in the final rule to allow units of general local government to incur costs for certain CDBG grant activities before the establishment of a formal grant relationship and charge the pre-agreement costs to the grant, should it be funded. This includes the cost of application preparation, but does not create an obligation on part of the Department to fund the application.

Section 570.426 Program Income

One commenter wrote favorably of § 570.426(c) which provides that if a unit of general local government has no open CDBG grant at the time of closeout, program income of less than $25,000 per year after closeout will not be considered program income, and will not be subject to the requirements of this part. This provision has been retained in the final regulation.

Section 570.429 Hawaii General and Grant Requirements

Three counties in the State of Hawaii commented that they did not want the method of distribution of Hawaii Small Cities funds to be changed by the issuance of a NOFA because that would impinge upon the ability of the Hawaii grantees to plan for future use of Small Cities funds. The Department agrees with this comment, and all references to a NOFA for the Hawaii Small Cities program were removed from § 570.429.

Two commenters from the State of Hawaii thought that paragraph (d)(1) of § 570.429 should be revised to better define "capacity to utilize the grant amount effectively and efficiently". This term was used in the previous regulation at § 570.435(c)(1)(ii)(A), and does not need to be redefined.

Two commenters from the State of Hawaii requested that Hawaii grantees follow the application submission requirements in 24 CFR part 570, subpart D. Another commenter said that applications should be accepted and not approved. Section 570.429 has been revised to treat the Hawaii grantees as much like entitlement grantees as possible. Since the program is still discretionary under section 106(d) of Title I, the Department decided that applications should be required to be submitted and approved. Paragraph (g) of § 570.429 indicates that the Department will approve the application unless it is shown that "one or more of the following requirements (relating to completeness, timeliness, certifications, and compliance with this part) have not been met". This provision gives assurance to Hawaii grantees that applications that are complete, timely, contain the proper certifications, and which are otherwise in compliance with this part will be approved.

Another commenter from the State of Hawaii asked that paragraph (d)(2) of § 570.429 regarding timely expenditures only consider grants from FY 1995 onward. Since it is the policy of the Department to encourage timely expenditures, the Department decided that all outstanding grants should be used in calculating timely expenditures under § 570.902(a). The Department notes that Kauai's disaster grant will not be considered in the calculations.

The final rule on the Consolidated Plan, which will be published shortly, will change the application, citizen participation, approval and reporting requirements for the Hawaii grantees. These changes will be incorporated into subpart F at the time the final consolidated plan regulation is promulgated. In view of the probable timing of submission of applications by Hawaii grantees, it is anticipated that these rule changes will apply to FY 1995 applications by Hawaii grantees.

Section 570.430 Hawaii Program Operation Requirements

One commenter stated that paragraph (a) of § 570.430 should be clarified to indicate that grants received in FY 1995 and thereafter are grants made from FY 1995 allocations and thereafter, and that grants made prior to FY 1995 are grants from allocations prior to FY 1995. This revision has been made in the final rule.

Section 570.431 Citizen Participation

Four comments from the State of Hawaii concerned citizen participation requirements. One commenter requested that paragraph (e) of § 570.431 be revised to indicate that the citizen participation requirements apply to the State of Hawaii, and two commenters requested that the entitlement citizen participation process be followed, and one commenter requested that the entitlement amendment process be followed by Hawaii grantees. The Department has decided to add a new paragraph (f) to § 570.431 to clarify the requirements that Hawaii Small Cities grantees must follow. The citizen participation requirements are being included in the Small Cities final rule for clarity. It is noted that the citizen participation requirements for Hawaii grantees will be revised shortly, when the final rule on consolidated planning requirements is published.

Section 570.432 Repayment of Section 108 Loans

Six commenters stated that Section 108 funds should not be used for the New York Small Cities Program because repayment will come from the total allocation of discretionary Small Cities funding for the State of New York. One commenter said that Section 108 funds must be backed by the community's own resources. In making non-entitled units of general local government in the State of New York eligible for the

Section 108 program, the Department intends to provide small communities with the opportunity to fund large economic development projects—projects that they would not ordinarily be able to fund. Since it is envisioned that a significant portion of economic development funding will come from the Section 108 loan guarantee fund rather than the HUD-administered Small Cities Program, there will be more Small Cities funds available to fund non-economic development projects, even if a small portion of funds are used under § 570.432 to repay amounts due on Section 108 loan obligations. All Section 108 loan obligations will be underwritten to ensure that only high quality projects are funded. In addition, the Department is considering instituting loan insurance pools to further ensure that the cost to the Small Cities Program will be minimized.

Section 570.507 Reports

The Department agrees with the three commenters that indicated fifteen working days is insufficient time for New York grantees to submit a performance assessment report and has extended the period to 31 calendar days in the final rule. (See § 570.507(a)(2)(ii)(A).)

Three commenters from the State of Hawaii requested that HUD consider a uniform period of activity for their Small Cities performance and evaluation report. The Department agrees and § 570.507(a)(2)(ii)(B) provides for this.

Subpart M—Section 570.702 Eligible Applicants

Two commenters requested that the Department make available the Section 108 Loan Guarantee Program to non-entitled units of local governments in the HUD-administered Small Cities Program. The Department agrees that the non-entitled communities in the States of New York and Hawaii should have available the use of Section 108 and § 570.702(c) provides for this.

III. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, at the time of the development of the proposed rule. Because no substantial programmatic changes have been made, that finding remains applicable to this final rule. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Impact on Small Entities

The Secretary, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), has reviewed this final rule before publication, and by approving it certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule proposes to modify, simplify and update the administration and procedural requirements of the CDBG Small Cities Program to conform with legislation applicable to this program. Accordingly, the final rule is anticipated to have some beneficial impact on small entities. However, the number of small entities that may be affected by this rule will not be substantial and the economic impact will not be significant.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this final rule does not have Federalism implications and therefore is not subject to review under the Order. No programmatic or policy changes will result from this rule's promulgation which will have a substantial direct effect on the States, or on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

Family Impact

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

Regulatory Agenda

This final rule was listed as sequence number 1834 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57662) pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

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, Grant programs—education, 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 is revised 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

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 nonentitled 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 § 570.429–30 identifies special procedures applicable to Hawaii.

(2) The allocation of formula CDBG funds for use in nonentitled 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 12 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 CHAS.* 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 Comprehensive Housing Affordability Strategy 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). In the case of multiyear plans, in New York State, 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 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.

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§ 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) *Multiyear Plans.* The notice of funding availability may provide for a competition for applications that have multiyear plans. The plans will be rated and scored against factors in paragraph (a)(1) (i) through (iv) of this section. The action plan for each year of the multiyear plan must be a viable project on its own. If the multiyear plan is selected on a competitive basis, the first year will be funded and HUD may fund future years on a non-competitive basis subject to acceptable performance, submission of an acceptable application and certifications, and the provision of adequate appropriations for the HUD-administered Small Cities Program.

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

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

(6) *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.

§ 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.

(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.

(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 Comprehensive Housing Affordability Strategy 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.

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§ 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)(8), grants for imminent threat 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. For FY 1995 only, unfunded applications from the FY 1994 competition will be automatically reactivated for consideration unless the applicant notifies the Department in writing by the date specified in the FY 1995 NOFA that it does not wish to have the FY 1994 application considered in the FY 1995 competition. 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.

§ 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 non-competitive 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 non-competitive 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 shall apply 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 and 570.430 through 570.432, shall 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 nonentitled 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 nonentitled 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) *Applications.* (1) *Presubmission.* The applicant will follow the requirements of § 570.301(a) and (c), as well as the requirements of this section.

(2) *Submission.* (i) HUD will require all applicants to submit an application for the amount established under paragraphs (c) through (e) of this section by a date established by HUD, and to follow the requirements of § 570.302(a)(1) and (2).

(ii) *Certifications.* 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 Comprehensive Housing Affordability Strategy as described at 24 CFR part 91.

(g) *Application Approval.* HUD will approve the application and certifications unless it is determined that one or more of the following requirements have not been met.

(1) *Completeness.* The submission shall include all of the components required in paragraph (f) of this section.

(2) *Timeliness.* The submission must be received within the time period established in paragraph (f) of this section.

(3) *Certifications.* The certifications made by the grantee will be satisfactory to the Secretary if made in conformance with the requirements of paragraph (f) of this section, unless the Secretary has determined pursuant to subpart O of this part that the grantee has not complied with the requirements of this part or has failed to carry out its Comprehensive Housing Affordability Strategy in a timely manner, or determined that there is evidence, not directly involving the grantee's past performance under this program, which 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.

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§ 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 non-entitled 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 non-entitled grantee within the State until those time periods have expired.

(f) *Amendments.* (1) The grantee shall amend its application whenever it decides not to carry out an activity described in its application, to carry out an activity not previously described, or to substantially change the purpose, scope, location, or beneficiaries of an activity. Prior to the submission of its FY 1995 application, each grantee shall develop and make public its criteria for what constitutes a substantial change for this purpose.

(2) Prior to amending its application, a grantee shall follow the citizen participation requirements of § 570.431 except that HUD is not required to approve the amendment.

§ 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 citizen's 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.

(f) *Hawaii Grantee amendments.* Hawaii grantees shall follow the requirements of paragraph (e) of this section except that the amendment does not need HUD approval, and does not have to be submitted 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.

3. In 24 CFR part 570, subpart I, a new § 570.497 is added to read as follows:

§ 570.497 Condition of State election to administer State CDBG Program.

Pursuant to section 106(d)(2)(A)(i) of the Act, a State has the right to elect, in such manner and at such time as the Secretary may prescribe, to administer funds allocated under subpart A of this part for use in nonentitlement areas of the State. After January 26, 1995, any State which elects to administer the allocation of CDBG funds for use in nonentitlement areas of the State in any year must, in addition to all other requirements of this subpart, submit a pledge by the State in accordance with section 108(d)(2) of the Act, and in a form acceptable to HUD, of any future CDBG grants it may receive under subpart A and this subpart. Such pledge shall be for the purpose of assuring repayment of any debt obligations (as defined in § 570.701), in accordance with their terms, that HUD may have guaranteed in the respective State on behalf of any nonentitlement public entity (as defined in § 570.701) or its designated public agency prior to the State's election.

4. In § 570.507, paragraph (a)(2)(ii)(A) is revised to read as follows:

§ 570.507 Reports.

(a) * * *

(2) * * *

(ii) * * *

(A) The first report on a small cities grant for a New York grantee should be submitted no later than October 31 for all grants executed prior to April 1 of the same calendar year. The first report should cover the period from the execution of the grant until September 30. Reports on grants made after March 31 of a calendar year will be due October 31 of the following calendar year and the reports will cover the period of time from the execution of the grant until September 30 of the calendar year following grant execution. After the initial submission, the performance and evaluation report will be submitted annually on October 31 until completion of the activities funded under the grant;

(B) Hawaii grantees will submit their small cities performance and evaluation report for each pre-FY 1995 grant no later than 90 days after the completion of their most recent program year. After the initial submission, the performance and evaluation report will be submitted annually until completion of the activities funded under the grant; and

(C) No later than 90 days after the criteria for grant closeout, as described in § 570.509(a), have been met.

* * * * *

5. In 24 part 570, subpart M, consisting of §§ 570.700 through 570.710 is revised to read as follows:

Subpart M—Loan Guarantees

Subpart M—Loan Guarantees

§ 570.700 Purpose.

This subpart contains requirements governing the guarantee under section 108 of the Act of debt obligations as defined in § 570.701.

§ 570.701 Definitions.

Borrower means the public entity or its designated public agency that issues debt obligations under this subpart.

Debt obligation means a promissory note or other obligation issued by a public entity or its designated public agency and guaranteed by HUD under this subpart, or a trust certificate or other obligation offered by HUD or by a trust or other offeror approved for purposes of this subpart by HUD which is guaranteed by HUD under this subpart and is based on and backed by a trust or pool composed of notes or other obligations issued by public entities or their designated public agencies and guaranteed or eligible for guarantee by HUD under this subpart.

Designated public agency means a public agency designated by a public entity to issue debt obligations as borrower under this subpart.

Entitlement public entity means a metropolitan city or an urban county receiving a grant under subpart D of this part.

Guaranteed loan funds means the proceeds payable to the borrower from the issuance of debt obligations under this subpart.

Nonentitlement public entity means any unit of general local government in a nonentitlement area.

Public entity means any unit of general local government, including units of general local government in a nonentitlement area.

State-assisted public entity means a unit of general local government in a nonentitlement area which is assisted by a State as required in § 570.704(b)(9) and § 570.705(b)(2).

§ 570.702 Eligible applicants.

The following public entities may apply for loan guarantee assistance under this subpart.

(a) Entitlement public entities.

(b) Nonentitlement public entities that are assisted in the submission of applications by States that administer the CDBG program (under subpart I of this part). Such assistance shall consist, at a minimum, of the certifications required under § 570.704(b)(9) (and actions pursuant thereto).

(c) Nonentitlement public entities eligible to apply for grant assistance under subpart F of this part.

§ 570.703 Eligible activities.

Guaranteed loan funds may be used for the following activities, provided such activities meet the requirements of § 570.200. However, guaranteed loan funds may not be used to reimburse the CDBG program account or line of credit for costs incurred by the public entity or designated public agency and paid with CDBG grant funds or program income.

(a) Acquisition of improved or unimproved real property in fee or by long-term lease, including acquisition for economic development purposes.

(b) Rehabilitation of real property owned or acquired by the public entity or its designated public agency.

(c) Payment of interest on obligations guaranteed under this subpart.

(d) Relocation payments and other relocation assistance for individuals, families, businesses, nonprofit organizations, and farm operations who must relocate permanently or temporarily as a result of an activity financed with guaranteed loan funds, where the assistance is:

(1) Required under the provisions of § 570.488 (b) or (c) or § 570.606 (b) or (c); or

(2) Determined by the public entity to be appropriate under the provisions of § 570.488(d) or § 570.606(d).

(e) Clearance, demolition and removal, including movement of structures to other sites, of buildings and improvements on real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section.

(f) Site preparation, including construction, reconstruction, or installation of public and other site improvements, utilities, or facilities (other than buildings), which is:

(1) Related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section, or

(2) For an economic development purpose.

(g) Payment of issuance, underwriting, servicing, trust administration and other costs associated with private sector financing of debt obligations under this subpart.

(h) Housing rehabilitation eligible under § 570.202.

(i) The following economic development activities:

(1) Activities eligible under § 570.203; and

(2) Community economic development projects eligible under § 570.204.

(j) Construction of housing by nonprofit organizations for homeownership under section 17(d) of the United States Housing Act of 1937 (Housing Development Grants Program, 24 CFR part 850) or title VI of the Housing and Community Development Act of 1987 (Nehemiah Housing Opportunity Grants Program, 24 CFR part 280).

(k) A debt service reserve to be used in accordance with requirements specified in the contract entered into pursuant to § 570.705(b)(1).

(l) Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities (except for buildings for the general conduct of government), public streets, sidewalks, and other site improvements and public utilities.

(m) In the case of applications by public entities which are, or which contain, "colonias" as defined in section 916 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 5306 note), as amended by section 810 of the Housing and Community Development Act of 1992, acquisition, construction, reconstruction, rehabilitation or installation of public works and site or other improvements which serve the colonia.

§ 570.704 Application requirements.

(a) *Presubmission and citizen participation requirements.*

(1) Before submission of an application for loan guarantee assistance to HUD, the public entity must:

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

(A) The community development objectives the public entity proposes to pursue with the guaranteed loan funds.

(B) The activities the public entity proposes to carry out with the guaranteed loan funds. Each activity must be described in sufficient detail, including the specific provision of § 570.703 under which it is eligible and the national objective to be met, amount of guaranteed loan funds expected to be used, and location, to allow citizens to determine the degree to which they will be affected. The proposed application must indicate which activities are expected to generate program income. The application must also describe where citizens may obtain additional information about proposed activities.

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

(ii) Fulfill the applicable requirements in its citizen participation plan developed in accordance with § 570.704(a)(2).

(iii) Publish community-wide its proposed application so as to afford affected citizens an opportunity to examine the application's contents and to provide comments on the proposed application.

(iv) Prepare its final application. Once the public entity has held the public hearing and published the proposed application as required by paragraphs (a)(1)(ii) and (iii) of this section, respectively, the public entity must consider any such comments and views received and, if the public entity deems appropriate, modify the proposed application. Upon completion, the public entity must make the final application available to the public. The final application must describe each activity in sufficient detail to permit a clear understanding of the nature of each activity, as well as identify the specific provision of § 570.703 under which it is eligible, the national objective to be met, and the amount of guaranteed loan funds to be used. The final application must also indicate which activities are expected to generate program income.

(v) If an application for loan guarantee assistance is to be submitted by an entitlement public entity simultaneously with the public entity's submission for its entitlement grant, the public entity shall include and identify in its proposed and final statements of community development objectives and projected use of funds prepared for its annual grant pursuant to § 570.301 the activities to be undertaken with the guaranteed loan funds, the national objective to be met by each of these activities, the amount of any program income expected to be received during the program year, and the amount of guaranteed loan funds to be used; the public entity shall also include in these statements a description of the pledge of grants required under § 570.705(b)(2). In such cases the proposed and final application requirements of paragraphs (a)(1) (i), (iii), and (iv) of this section will be deemed to have been met.

(2) *Citizen participation plan.* The public entity must develop and follow a detailed citizen participation plan and make the plan public. The plan must be completed and available before the application is submitted to HUD. The plan may be the plan required for the CDBG program, modified to include guaranteed loan funds. The public entity is not required to hold a separate public hearing for its CDBG program and for the guaranteed loan funds to obtain citizens' views on community development and housing needs. The plan must set forth the public entity's policies and procedures for:

(i) Giving citizens timely notice of local meetings and reasonable and timely access to local meetings, information, and records relating to the public entity's proposed and actual use of guaranteed loan funds, including, but not limited to:

(A) The amount of guaranteed loan funds expected to be made available for the coming year, including program income anticipated to be generated by the activities carried out with guaranteed loan funds;

(B) The range of activities that may be undertaken with guaranteed loan funds;

(C) The estimated amount of guaranteed loan funds (including program income derived therefrom) proposed to be used for activities that will benefit low and moderate income persons;

(D) The proposed activities likely to result in displacement and the public entity's plans, consistent with the policies developed under § 570.606 or § 570.488 for minimizing displacement of persons as a result of its proposed activities.

(ii) 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 public entity. Such assistance need not include the provision of funds to such groups.

(iii) Holding a minimum of two public hearings, each at a different stage of the public entity's program, for the purpose of obtaining the views of citizens and formulating or responding to proposals and questions. Together the hearings must address community development and housing needs, development of proposed activities and review of program performance. At least one of these hearings must be held before submission of the application to obtain the views of citizens on community development and housing needs. Reasonable notice of the hearing must be provided and the hearing must be held at times and locations convenient to potential or actual beneficiaries, with accommodation for the handicapped. The public entity must specify in its plan how it will meet the requirement for a hearing at times and locations convenient to potential or actual beneficiaries.

(iv) 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.

(v) Providing affected citizens with reasonable advance notice of, and opportunity to comment on, proposed activities not previously included in an application and activities which are proposed to be deleted or substantially changed in terms of purpose, scope, location, or beneficiaries. The criteria the public entity will use to determine what constitutes a substantial change for this purpose must be described in the citizen participation plan.

(vi) Responding to citizens' complaints and grievances, including the procedures that citizens must follow when submitting complaints and grievances. The public entity'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.

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

(b) *Submission requirements.* An application for loan guarantee assistance may be submitted at any time. The application (or final statement) shall be submitted to the appropriate HUD Office and shall be accompanied by the following:

(1) A description of how each of the activities to be carried out with the guaranteed loan funds meets one of the criteria in § 570.208.

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

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

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

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

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

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

(8) Certifications by the public entity that:

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

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

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

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

(iii) Before submission of its application to HUD, the public entity has:

(A) Furnished citizens with information required by § 570.704(a)(2)(i);

(B) Held at least one public hearing to obtain the views of citizens on community development and housing needs; and

(C) Prepared its application in accordance with § 570.704(a)(1)(iv) and made the application available to the public.

(iv) It is following a detailed citizen participation plan which meets the requirements described in § 570.704(a)(2).

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

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

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

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

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

(vii) It will comply with the requirements governing displacement, relocation, real property acquisition, and the replacement of low and moderate income housing described in § 570.488 or § 570.606.

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

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

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

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

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

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

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

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

(c) *HUD review and approval of applications.* (1) HUD will normally accept the certifications submitted with the application. HUD may, however, consider relevant information which challenges the certifications and require additional information or assurances from the public entity or State as warranted by such information.

(2) The HUD Office shall review the application for compliance with requirements specified in this subpart and forward the application together with its recommendation for approval or disapproval of the requested loan guarantee to HUD Headquarters.

(3) HUD may disapprove an application, or may approve loan guarantee assistance for an amount less than requested, for any of the following reasons:

(i) HUD determines that the guarantee constitutes an unacceptable financial risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(A) The length of the proposed repayment period;

(B) The ratio of expected annual debt service requirements to expected annual grant amount;

(C) The likelihood that the public entity or State will continue to receive grant assistance under this part during the proposed repayment period;

(D) The public entity's ability to furnish adequate security pursuant to § 570.705(b), and

(E) The amount of program income the proposed activities are reasonably estimated to contribute toward repayment of the guaranteed loan.

(ii) The requested loan amount exceeds any of the limitations specified under § 570.705(a).

(iii) Funds are not available in the amount requested.

(iv) The performance of the public entity, its designated public agency or State under this part is unacceptable.

(v) Activities to be undertaken with the guaranteed loan funds are not eligible under § 570.703.

(vi) Activities to be undertaken with the guaranteed loan funds do not meet the criteria in § 570.208 for compliance with one of the national objectives of the Act.

(4) HUD will notify the public entity in writing that the loan guarantee request has either been approved, reduced or disapproved. If the request is reduced or disapproved, the public entity shall be informed of the specific reasons for reduction or disapproval. If the request is approved, HUD shall issue an offer of commitment to guarantee debt obligations of the borrower identified in the application subject to compliance with this part, including the requirements under § 570.705(b), (d), (g) and (h) for securing and issuing debt obligations, the conditions for release of funds described in paragraph (d) of this section, and such other conditions as HUD may specify in the commitment documents in a particular case.

(5) *Amendments.* If the public entity wishes to carry out an activity not previously described in its application or to substantially change the purpose, scope, location, or beneficiaries of an

activity, the amendment must be approved by HUD. Amendments by State-assisted public entities must also be approved by the State. The public entity shall follow the citizen participation requirements for amendments in § 570.704(a)(2).

(d) *Environmental review.* The public entity shall comply with HUD environmental review procedures (24 CFR part 58) for the release of funds for each project carried out with loan guarantee assistance. These procedures set forth the regulations, policies, responsibilities and procedures governing the carrying out of environmental review responsibilities of public entities. All public entities, including nonentitlement public entities, shall submit the request for release of funds and related certification for each project to be assisted with guaranteed loan funds to the appropriate HUD Field Office.

(e) *Displacement, relocation, acquisition, and replacement of housing.* The public entity (or the designated public agency) shall comply with the displacement, relocation, acquisition and replacement of low/moderate-income housing requirements in § 570.488 or § 570.606 in connection with any activity financed in whole or in part with guaranteed loan funds.

§ 570.705 Loan requirements.

(a) *Limitations on commitments.* (1) If loan guarantee commitments have been issued in any fiscal year in an aggregate amount equal to 50 percent of the amount approved in an appropriation act for that fiscal year, HUD may limit the amount of commitments any one public entity may receive during such fiscal year as follows (except that HUD will not decrease commitments already issued):

(i) The amount any one entitlement public entity may receive may be limited to $35,000,000.

(ii) The amount any one nonentitlement public entity may receive may be limited to $7,000,000.

(iii) The amount any one public entity may receive may be limited to such amount as is necessary to allow HUD to give priority to applications containing activities to be carried out in areas designated as empowerment zones/enterprise communities by the Federal Government or by any State.

(2) In addition to the limitations specified in paragraph (a)(1) of this section, the following limitations shall apply.

(i) *Entitlement public entities.* No commitment to guarantee shall be made if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity would thereby exceed an amount equal to five times the amount of the most recent grant made pursuant to § 570.304 to the public entity.

(ii) *State-assisted public entities.* No commitment to guarantee shall be made if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity and all other State-assisted public entities in the State would thereby exceed an amount equal to five times the amount of the most recent grant received by such State under subpart I.

(iii) *Nonentitlement public entities eligible under subpart F of this part.* No commitment to guarantee shall be made with respect to a nonentitlement public entity in the State of Hawaii if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity would thereby exceed an amount equal to five times the amount of the most recent grant made pursuant to § 570.429 to the public entity. No commitment to guarantee shall be made with respect to a nonentitlement public entity in the State of New York if the total unpaid balance of debt obligations guaranteed under this subpart (excluding any amount defeased under the contract entered into under § 570.705(b)(1)) on behalf of the public entity would thereby exceed the greater of five times:

(A) The most recent grant approved for the public entity pursuant to subpart F of this part,

(B) The average of the most recent three grants approved for the public entity pursuant to subpart F of this part, excluding any grant in the same fiscal year as the commitment, or

(C) The average amount of grants made under subpart F of this part to units of general local government in New York State in the previous fiscal year.

(b) *Security requirements.* To assure the repayment of debt obligations and the charges incurred under paragraph (g) of this section and as a condition for receiving loan guarantee assistance, the public entity (and State and designated public agency, as applicable) shall:

(1) Enter into a contract for loan guarantee assistance with HUD, in a form acceptable to HUD, including provisions for repayment of debt obligations guaranteed hereunder;

(2) Pledge all grants made or for which the public entity or State may become eligible under this part; and

(3) Furnish, at the discretion of HUD, such other security as may be deemed appropriate by HUD in making such guarantees. Other security shall be required for all loans with repayment periods of ten years or longer. Such other security shall be specified in the contract entered into pursuant to § 570.705(b)(1). Examples of other security HUD may require are:

(i) Program income as defined in § 570.500(a);

(ii) Liens on real and personal property;

(iii) Debt service reserves; and

(iv) Increments in local tax receipts generated by activities carried out with the guaranteed loan funds.

(c) *Use of grants for loan repayment.* Notwithstanding any other provision of this part:

(1) Community Development Block Grants allocated pursuant to section 106 of the Act (including program income derived therefrom) may be used for:

(i) Paying principal and interest due (including such issuance, servicing, underwriting, or other costs as may be incurred under paragraph (g) of this section) on the debt obligations guaranteed under this subpart;

(ii) Defeasing such debt obligations; and

(iii) Establishing debt service reserves as additional security pursuant to paragraph (b)(3) of this section.

(2) HUD may apply grants pledged pursuant to paragraph (b)(2) of this section to any amounts due under the debt obligations, the payment of costs incurred under paragraph (g) of this section, or to the purchase or defeasance of such debt obligations, in accordance with the terms of the contract required by paragraph (b)(l) of this section.

(d) *Debt obligations.* Debt obligations guaranteed under this subpart shall be in the form and denominations prescribed by HUD. Such debt obligations may be issued and sold only under such terms and conditions as may be prescribed by HUD. HUD may prescribe the terms and conditions of debt obligations, or of their issuance and sale, by regulation or by contractual arrangements authorized by section 108(r)(4) of the Act and paragraph (h) of this section. Unless specifically provided otherwise in the contract for loan guarantee assistance required under paragraph (b) of this section, debt obligations shall not constitute general obligations of any public entity or State secured by its full faith and credit.

(e) *Taxable obligations.* Interest earned on debt obligations under this subpart shall be subject to Federal taxation as provided in section 108(j) of the Act.

(f) *Loan repayment period.* The term of debt obligations under this subpart shall not exceed twenty years.

(g) *Issuance, underwriting, servicing, and other costs.* Each public entity or its designated public agency issuing debt obligations under this subpart must pay the issuance, underwriting, servicing, trust administration and other costs associated with the private sector financing of the debt obligations. Such costs are payable out of the guaranteed loan funds and shall be secured under paragraph (b) of this section.

(h) *Contracting with respect to issuance and sale of debt obligations; effect of other laws.* No State or local law, and no Federal law, shall preclude or limit HUD's exercise of:

(1) The power to contract with respect to public offerings and other sales of debt obligations under this subpart upon such terms and conditions as HUD deems appropriate;

(2) The right to enforce any such contract by any means deemed appropriate by HUD;

(3) Any ownership rights of HUD, as applicable, in debt obligations under this subpart.

§ 570.706 Federal guarantee; subrogation.

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subpart. Any such guarantee made by HUD shall be conclusive evidence of the eligibility of the debt obligations for such guarantee with respect to principal and interest, and the validity of such guarantee so made shall be incontestable in the hands of a holder of the guaranteed debt obligations. If HUD pays a claim under a guarantee made under section 108 of the Act, HUD shall be fully subrogated for all the rights of the holder of the guaranteed debt obligation with respect to such obligation.

§ 570.707 Applicability of rules and regulations.

(a) *Entitlement public entities.* The provisions of subparts A, C, J, K and O of this part applicable to entitlement grants shall apply equally to guaranteed loan funds and other CDBG funds, except to the extent they are specifically modified or augmented by the provisions of this subpart.

(b) *State-assisted public entities.* The provisions of subpart I of this part, and the requirements the State imposes on units of general local government receiving Community Development Block Grants or program income to the extent applicable, shall apply equally to guaranteed loan funds and Community Development Block Grants (including program income derived therefrom) administered by the State under the CDBG program, except to the extent they are specifically modified or augmented by the provisions of this subpart.

(c) *Nonentitlement public entities eligible under subpart F of this part.* The provisions of subpart F of this part shall apply equally to guaranteed loan funds and other CDBG funds, except to the extent they are specifically modified or augmented by the provisions of this subpart.

§ 570.708 Sanctions.

(a) *Non-State Assisted Public Entities.* The performance review procedures described in subpart O of this part apply to all public entities receiving guaranteed loan funds other than State-assisted public entities. Performance deficiencies in the use of guaranteed loan funds made available to such public entities (or program income derived therefrom) or violations of the contract entered into pursuant to § 570.705(b)(1) may result in the imposition of a sanction authorized pursuant to § 570.900(b)(7) against pledged CDBG grants. In addition, upon a finding by HUD that the public entity has failed to comply substantially with any provision of the Act with respect to either the pledged grants or the guaranteed loan funds or program income, HUD may take action against the pledged grants as provided in § 570.913 and/or may take action as provided in the contract for loan guarantee assistance.

(b) *State-assisted public entities.* Performance deficiencies in the use of guaranteed loan funds (or program income derived therefrom) or violations of the contract entered into pursuant to § 570.705(b)(1) may result in an action authorized pursuant to § 570.495 or § 570.496. In addition, upon a finding by HUD that the State or public entity has failed to comply substantially with any provision of the Act with respect to the pledged CDBG nonentitlement funds, the guaranteed loan funds, or program income, HUD may take action against the pledged funds as provided in § 570.496 and/or may take action as provided in the contract.

§ 570.709 Allocation of loan guarantee assistance.

Of the amount approved in any appropriation act for guarantees under this subpart in any fiscal year, 70 percent shall be allocated for entitlement public entities and 30 percent shall be allocated for nonentitlement public entities. HUD need not comply with these percentage requirements in any fiscal year to the extent that there is an absence of applications approvable under this subpart from entitlement or nonentitlement public entities.

§ 570.710 State responsibilities.

The State is responsible for choosing public entities that it will assist under this subpart. States are free to develop procedures and requirements for determining which activities will be assisted, subject to the requirements of this subpart. Upon approval by HUD of an application from a State-assisted public entity, the State will be principally responsible, subject to HUD oversight under subpart I of this part, for ensuring that the public entity complies with all applicable requirements governing the use of the guaranteed loan funds. Notwithstanding the State's responsibilities described in this section, HUD may take any action necessary for ensuring compliance with requirements affecting the security interests of HUD with respect to the guaranteed loan.

Dated: December 20, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

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Tuesday
December 27, 1994

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1903

Policy on Employee Rescue Efforts; Interpretive Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1903

Policy on Employee Rescue Efforts

ACTION: Issuance of interpretive rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is issuing an interpretive regulation addressing the agency's citation policy regarding voluntary employee rescue activities.

EFFECTIVE DATE: December 27, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Cyr, Acting Director, Office of Information and Consumer Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Ave., NW., Washington, DC 20210. Telephone: (202) 219–8615.

SUPPLEMENTARY INFORMATION: In carrying out its enforcement responsibilities under the Occupational Safety and Health Act, OSHA from time to time investigates workplace incidents which involve not only injuries to workers directly exposed to hazards, but injuries and potential injuries to employees who voluntarily attempt to rescue or assist their fellow workers. OSHA is aware of many instances in which employees have voluntarily rescued coworkers or rendered emergency assistance in the aftermath of workplace accidents, sometimes at considerable risk to themselves. Until recently, there has been no written instruction by OSHA to its field offices providing guidance in such situations. Accordingly, the agency has decided to issue an interpretive rule clarifying its citation policy regarding employers whose employees perform or attempt to perform rescues of individuals in life-threatening danger.

It is not OSHA's policy to interfere with or to regulate every decision by a worker to place himself at risk to save another individual. Nor is it OSHA's policy to issue citations to employers whose employees voluntarily undertake acts of heroism to save another individual from imminent harm, where rescue operations are not part of the employee's job responsibilities and the likelihood that a rescue may become necessary is not reasonably foreseeable.

At the same time, employers who have employees working in environments where the possibility of life-threatening accidents is reasonably foreseeable are required by various OSHA standards and the general duty clause to take appropriate precautions to assure that the rescuers themselves do not become victims. *See, e.g., Pride Oil Well Service*, 15 BNA–OSHC 1808 (Rev. Comm.1992); ARO, Inc., 1 BNA–OSHC 1453 (Rev. Com. 1973). Accidents requiring rescue efforts are reasonably foreseeable in certain working environments such as, for example, trenches and excavations, hazardous waste operations and emergency response work, or construction work over water. Confined spaces are another occupational setting where rescuers, without proper equipment and precautions, often are killed or injured. "Worker Deaths in Confined Spaces: A Summary of Surveillance Findings and Investigative Case Reports", National Institute for Occupational Safety and Health, No. 94–103 (1994).

Because the occurrence of accidents which invite rescue attempts is foreseeable in various industrial processes and environments, a variety of OSHA standards include precautions and safeguards for rescue-related operations, including, *e.g.*, the emergency planning and response provisions of the process safety management standard, 29 CFR 1910.119(n), and hazardous waste operations standard, 29 CFR 1910.120(1), (p) and (q); and the standards on confined spaces in general industry, 29 CFR 1910.146, and in grain handling, 1910.272(d), (e), and (g). In construction, specific rescue precautions are prescribed, *e.g.*, for work performed near or over water, and for excavation work, 29 CFR 1926.106, 1926.651(g). *See also* 29 CFR 1910.38 (employee emergency plans in general industry) and 1926.20, .21, and .35 (training and emergency action plans in construction).

Under the interpretive rule set forth below, these and other requirements under the Occupational Safety and Health Act will be applied in situations involving employee rescue efforts only when the employer has specifically designated an employee with responsibility to perform or assist in a rescue operation, or when employees have duties directly related to workplace processes or operations where the possibility of life-threatening accidents is foreseeable.

Effect of the Interpretive Rule

The present interpretive rule is intended to make clear that no citation will be issued by OSHA to any employer, under any OSHA standard or under the general duty clause, for any rescue activity by its employees except in the limited circumstances discussed in the written policy statement to be codified in 29 CFR Part 1903. The rule is adopted as a general statement of agency policy under the Administrative Procedure Act, 5 U.S.C. § 553, and is an exercise of agency prosecutorial discretion in carrying out its enforcement responsibilities under the OSH Act. The interpretive rule issued today is not an exercise of standard-setting authority by OSHA; it does not require any additional compliance action by employers beyond what is already required under existing OSHA standards and the general duty clause, nor does it relieve employers of any obligations currently imposed by those requirements, including the responsibility to designate and appropriately train and equip emergency personnel when required under specific safety and health standards.

Regulatory Impact Analysis

In accordance with Executive Order 12866 (58 FR 51735, October 4, 1993) OSHA has assessed the potential impact of this interpretive rule. Based on the guidelines set forth in the Executive Order, OSHA has concluded that the interpretation is not a "significant regulatory action" which would necessitate further economic impact evaluation and the preparation of a regulatory impact analysis. As noted above, the interpretation does not add to the compliance responsibilities of any employer subject to the Act; nor would the rule interfere with action by any other agency. Finally, OSHA finds that today's interpretive rule would not have an adverse impact on small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*.

Administrative Procedure

The policy set forth in this **Federal Register** notice is both an interpretive rule and a general statement of agency policy within the meaning of 5 U.S.C. 553(b) and, accordingly, is being issued as a final rule without opportunity for public comment. OSHA finds, pursuant to 29 USC § 553(d), that good cause exists for making the interpretive rule effective immediately upon publication; as discussed above, the rescue policy rule simply states OSHA's enforcement policy that citations involving employee rescue activity will be issued only with certain criteria are met, and adds no new compliance responsibilities beyond those already contained in existing OSHA standards.

List of Subjects in 29 CFR Part 1903

Occupational Safety and Health; Occupational Safety and Health

Administration; Law Enforcement; Penalties.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington, D.C. 20210.

Accordingly, pursuant to section 8 of the Occupational Safety and Heath Act, 29 U.S.C. 657; Section 553 of the Administrative Procedure Act, 5 U.S.C. 553; and Secretary of Labor's Order 1–90 (55 FR 9033), 29 CFR Part 1903 is amended as set forth below.

Signed in Washington, D.C. this 20th day of December, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

1. The authority citation for Part 1903 is revised to read as follows:

Authority: Secs. 8, 9, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 658); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Sections 1903.7 and 1903.14 also issued under 5 U.S.C. 553.

2. Section 1903.14 is amended by revising the section heading and adding a new paragraph (f) to read as follows:

§ 1903.14 Citations; notices of de minimis violations; policy regarding employee rescue activities.

* * * * *

(f) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:

(1) (i) Such employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, and

(ii) the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

(2) (i) such employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, and

(ii) the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

(3) (i) such employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water; and

(ii) such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual; and

(iii) the employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.

(4) For purposes of this policy, the term "imminent danger" means the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

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