

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

[Docket No. FR-4556-F-03]

RIN 2506-AC04

Prohibition on Use of Community Development Block Grant Assistance for Job-Pirating Activities

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

ACTION: Final rule.

SUMMARY: On December 23, 2005, HUD published an interim rule implementing certain statutory changes by revising HUD's regulations for the Community Development Block Grant (CDBG) program. Specifically, the interim rule prohibited state and local governments from using CDBG funds for "job-pirating" activities that are likely to result in significant job loss. The rule also applied to section 108 loan guarantees and the use of Brownfields Economic Development Initiative and Economic Development Initiative funds with section 108 loan guarantees and CDBG funding. This final rule follows publication of the December 23, 2005, interim rule, and makes no changes at this final rule stage.

DATES: *Effective Date:* June 23, 2006.

FOR FURTHER INFORMATION CONTACT: Richard Kennedy, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410-7000, telephone (202) 708-3587 (this is not a toll-free number).

In addition, program participants may contact their respective program offices by calling the applicable telephone number listed below (these telephone numbers are not toll-free).

For State CDBG, HUD-administered Small Cities, and Insular recipients: Michael Sowell, Community Planning and Development Specialist, State and Small Cities Division, (202) 708-1322.

For Entitlement Communities: Stan Gimont, Director, Entitlement Communities Division, (202) 708-1577.

For Section 108 program participants: Paul Webster, Director, Financial Management Division, (202) 708-1871.

For Economic Development Initiative (EDI) and Brownfields Economic Development Initiative (BEDI) program participants: William Seedyke, EDI and BEDI Program Coordinator, Grants Management Division, (202) 708-3484.

Hearing- or speech-impaired individuals may access any of the telephone numbers listed in this section

by calling the Federal Information Relay Service toll-free at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320) (1974 HCD Act) establishes the statutory framework for the Community Development Block Grant (CDBG) program. HUD's regulations implementing the CDBG program are located at 24 CFR part 570 (entitled "Community Development Block Grants"). As used in this final rule, the term "CDBG funding" or reference to CDBG programs means, in addition to the Entitlement and State CDBG programs, those programs covered by the part 570 regulations (e.g., section 108 loan guarantees, the Economic Development Initiative, the Brownfields Economic Development Initiative, HUD-administered Small Cities, and the Insular CDBG program). This final rule does not apply to the Indian CDBG program.

Section 105 of the 1974 HCD Act (42 U.S.C. 5305) was amended by section 588 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Title V of the Fiscal Year 1999 HUD Appropriations Act, Pub. L. 105-276, approved October 21, 1998). Specifically, section 105 was amended to add a subsection (h) entitled "Prohibition on Use of Assistance for Employment Relocation Activities." This subsection prohibits the use of CDBG funds to facilitate the relocation of for-profit businesses from one labor market area to another if the relocation is likely to result in a significant job loss.

Subsection 105(h) provides as follows:

(h) Prohibition on Use of Assistance for Employment Relocation Activities.— Notwithstanding any other provision of law, no amount from a grant under section 106 made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from [one] area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

On October 24, 2000 (65 FR 63756), HUD published a proposed rule to implement section 588 of QHWRA. The October 24, 2000, proposed rule proposed to prohibit state and local governments from using CDBG funds for job-pirating activities. Job pirating was defined as the act of one community luring a business, and the jobs that would accompany it, from another community that could have significant

impact on the economic viability of the latter community. HUD received 32 public comments on the proposed rule.

On December 23, 2005 (70 FR 76362), HUD published an interim rule that took into consideration the public comments received on the proposed rule. In response to those public comments, the interim rule made several changes to the proposed rule, including (1) the "*de minimis*" job loss definition; (2) the state designation of applicable Labor Market Area (LMA); (3) the time limits on anti-piracy requirements; (4) the streamlining of reporting requirements; and (5) the definition of "directly assist." In addition, the interim rule also provided the public with an additional opportunity to comment on the regulatory job-pirating provisions in general and on changes made to the rule based on the earlier comments.

II. This Final Rule

This final rule follows publication of the December 23, 2005, interim rule, and takes into consideration public comments received on the interim rule. HUD received one comment on the interim rule. After careful consideration of the public comment, HUD has decided to adopt the December 23, 2005, interim rule as final without change.

The public comment period for this interim rule closed on February 23, 2006. As noted, HUD received one public comment from a community development commission. The commenter wrote that the interim rule limits the ability of public entities and discourages private businesses from fostering development through public/private partnerships. Additionally, the commenter wrote that the definition of Local Market Area (LMA) is not the most logical tool to use in evaluating market area job loss, as LMAs can be various sizes and the definition may not accurately account for a variety of market factors and commuting patterns. Also, the commenter wrote that HUD should explicitly exclude national and large retail operations from the rule's provisions. The commenter stated that the nature of such retail operations are driven by consumer patterns not likely associated with market forces beyond the immediate proximity of the retail outlets. The commenter also stated that job relocation is likely to be statistically insignificant because the personnel for such operations are usually hired from the area in which the outlet is located.

After careful consideration of the public comment, HUD has chosen not to make any changes to the rule. HUD does not agree that the interim rule, if implemented, would impede the public

and private sectors from partnering with each other. The rule's principal function is to prohibit CDBG funds from directly assisting a business in a relocation of its operations. CDBG funds may be used for many other public-private partnership scenarios. Furthermore, HUD does not agree that LMAs are not adequate tools to use in evaluating job loss. As noted in the interim rule's preamble, LMAs include Metropolitan Statistical Areas (MSAs) and Metropolitan Divisions, which both take into consideration commuting patterns. Lastly, HUD does not agree that large, national retail operations should be excluded from the rule. HUD already considered the impact that this rule would have on these operations, and, as noted in the interim rule's preamble, HUD made necessary adjustments to the interim rule. For example, the commenter suggests that recordkeeping requirements would be onerous for large retail operations. However, HUD considered this point and has already streamlined the reporting requirements to only require a certification submission.

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this final rule are currently approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0077 for the CDBG Entitlement program, and 2506–0085 for the State CDBG program. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage and is applicable to this final rule in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The

Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anticompetitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. Additionally, HUD received no comments on its December 23, 2005, interim rule on whether uniform application of requirements on entities of differing sizes often place a disproportionate burden on small businesses. Therefore, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This final rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state,

local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program numbers for the programs covered by this final rule are as follows:

- Community Development Block Grants/Entitlement Grants—14.218;
- Community Development Block Grants/State's program—14.228;
- Community Development Block Grants/Small Cities program—14.219;
- Community Development Block Grants/Brownfields Economic Development Initiative—14.246;
- Community Development Block Grants/Section 108 Loan Guarantees—14.248; and
- Community Development Block Grants/Special Purpose Grants/Insular Areas—14.225.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

■ Accordingly, for the reasons stated in the preamble, the interim rule for part 570 of Title 24 of the Code of Federal Regulations, adding § 570.210 and § 570.482, and amending § 570.200 and § 570.506, is promulgated as final, without change.

Dated: May 16, 2006.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

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