

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

[Docket No. FR-4919-I-01]

RIN 2506-AC17

**Community Development Block Grant
Program; Small Cities and Insular
Areas Programs**

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

ACTION: Interim rule.

SUMMARY: This interim rule establishes regulations to implement a statutory change moving Community Development Block Grant (CDBG) program assistance for insular areas from section 107 (Special Purpose Grants) to section 106 (Allocation and Distribution of Funds) of the Housing and Community Development Act of 1974. As in the past under the Special Purpose Grant program, HUD will continue to make grants to insular area jurisdictions under the Insular Areas CDBG program for activities which principally benefit low- and moderate-income persons, aid in the elimination of slums or blighting conditions, or meet other community development needs having a particular urgency. This interim rule codifies the amended statutory funding mechanism for allocation of CDBG funds to insular areas, includes the Insular Areas CDBG program in subpart F and streamlines that subpart by removing sections no longer necessary for the Small Cities CDBG program, identifies the process by which insular areas will receive and report on grant funds under section 106, enables insular areas to apply for the Section 108 Loan Guarantee program, and makes other conforming and technical amendments.

DATES: *Effective Date:* July 12, 2004.

Comment Due Date: August 9, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Electronic comments may be submitted through Regulations.gov (<http://www.regulations.gov>). Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT:

Jamie Spakow, Community Planning and Development Specialist, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Room 7184, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-7000, telephone (202) 708-1322 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:**I. Background**

The CDBG program, authorized under the Housing and Community Development Act of 1974 (HCD Act) (42 U.S.C. 5301 *et seq.*), has provided discretionary assistance as special purpose grants to qualifying insular area jurisdictions since Fiscal Year (FY) 1982. Through the CDBG program, HUD allocates funds by formula among eligible state and local governments, and also makes funds available to insular areas, for activities which principally benefit low- and moderate-income persons, aid in the elimination of slums or blighting conditions, or meet other community development needs having a particular urgency. HUD's regulations for the portions of the CDBG program administered by HUD's Office of Community Planning and Development are located in 24 CFR part 570.

Title V of Public Law 108-186 (117 Stat. 2685, approved December 16, 2003) (title V) amended title I of the HCD Act, moving the insular areas funding authorization from section 107(a) (42 U.S.C. 5307(a)) to section 106(a) (42 U.S.C. 5306(a)). This revision identified a specific portion of the CDBG allocation for insular areas that is separate from the distribution for special purpose grants as well as from the entitlement and state formula distribution. The change provides the insular areas of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa with greater assurance of annual CDBG program funding.

With respect to the allocation of funds, title V establishes total ongoing annual insular areas funding at a level of \$7,000,000, consistent with the level of funding received by insular areas while under the special purpose grant section of the HCD Act. Title V provides for the distribution of amounts to insular areas on the basis of the ratio of the population of each insular area to the population of all insular areas, which is also consistent with the past

basis for distribution under the special purpose grant section. Title V also provides HUD with the authority to include other statistical criteria in the distribution formula as additional data become available from the Bureau of the Census, if such distribution criteria are contained in a regulation promulgated by HUD after notice and public comment. Finally, the greater assurance of continued funding provided by inclusion under section 106 of the HCD Act and the placement of the Insular Areas CDBG regulations in subpart F provide insular areas with the opportunity to apply for loan guarantees as described in section 108 of the HCD Act and subpart M of 24 CFR 570.

Because the Consolidated Appropriations Act, 2004 (Public Law 108-199, approved January 23, 2004) made funds available to insular areas under section 107 rather than section 106, the regulations at 24 CFR 570.405 applicable to insular areas grants under section 107 will govern FY2004 insular areas funding. The regulations added by this rule to govern insular areas funding under section 106 will apply to funds made available under section 106.

II. This Interim Rule

This interim rule amends HUD's part 570 regulations for the CDBG program to establish the policies and procedures governing the Insular Areas CDBG program consistent with section 106 of the HCD Act. The Insular Areas CDBG regulations that will govern funding under section 106 are added to subpart F (renamed "Small Cities and Insular Areas Programs" by this rule) of 24 CFR part 570. This interim rule codifies in HUD's regulations the statutory basis for allocation of CDBG funding to insular area jurisdictions under section 106, identifies eligible activities and costs, and makes other conforming and technical amendments.

To the greatest extent possible, this interim rule applies existing CDBG program regulatory requirements to Insular Areas CDBG awards under section 106. This interim rule enables insular areas to apply for the Section 108 Loan Guarantee program. This rule also streamlines subpart F by removing sections no longer necessary for the Small Cities CDBG program and identifies the process by which insular areas will receive and report on grant funds under section 106.

The following discussion provides an overview of the specific regulatory amendments made by this interim rule:

A. Purpose and Primary Objective

This interim rule expands the scope of subpart F, which formerly contained

only regulations applicable to the HUD-administered Small Cities CDBG program. Subpart F now contains regulations applicable to two types of nonentitlement area CDBG funds: (1) The HUD-administered Small Cities program, and (2) the Insular Areas program. Conforming amendments are made to § 570.1 in subpart A and § 570.420 in subpart F to reflect this change. Regulations pertaining to the third type of nonentitlement CDBG program, the state-administered nonentitlement program, remain separate under Subpart I without revision.

B. Definitions

This interim rule codifies the definitions that apply to the Insular Areas CDBG program in § 570.3, which contains the definitions that also apply to other components of the CDBG program. The interim rule also makes technical corrections to § 570.3 to remove terms related to the Indian CDBG program, as this program is now administered by HUD's Office of Public and Indian Housing and is codified separately at 24 CFR part 1003. The specific changes to § 570.3 are as follows:

1. *Insular area.* Given enactment of title V and authorization of Insular Area CDBG funding under section 106 of the HCD Act, HUD is codifying the statutory definition of "insular area" in § 570.3. Accordingly, this interim rule provides that the term "insular area" has the same meaning as provided in section 102(a)(24) of the Act. The term "insular area" means each of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

2. *Applicant.* This interim rule makes a technical correction by removing the reference to Indian tribes as eligible applicants for the CDBG program administered through HUD's Office of Community Planning and Development and codified at 24 CFR part 570. The Indian CDBG program is separately codified at 24 CFR part 1003 and administered by HUD's Office of Public and Indian Housing. Indian tribes are no longer eligible applicants under the part CDBG program codified at 24 CFR part 570. Eligible applicants for CDBG under part 570 now include only states or units of general local government (including insular areas) making applications pursuant to the provisions of subparts D, E, F, G, I, or M of 24 CFR part 570.

3. *Indian tribe.* The part 570 definition of Indian tribe is removed, as this definition is no longer relevant to the CDBG program administered by the

Office of Community Planning and Development.

C. Allocation of Funds

This interim rule makes a conforming change to § 570.4(a) to include a reference to the allocation of appropriated funds to insular areas as being governed by the policies and procedures described in sections 106 and 107 of the HCD Act, as appropriate.

D. General Policies

Section 570.200 of subpart C (applicable to all categories of the part 570 CDBG program, except the state-administered program under subpart I) has been revised to conform the applicability and implementation of the national and primary objectives under section 106 of the HCD Act for the Insular Areas program. Conforming changes are made to § 570.200(a)(2) and (a)(3) to specifically include insular area CDBG recipients. The change to § 570.200(a)(3) allows these recipients to determine compliance with the 70 percent low- and moderate-income requirement over a period of up to three years for grants funded under section 106 of the HCD Act. The option of choosing a one- to three-year compliance measurement period in recipient certifications is already available to other recipients under section 106. Because § 570.200(a)(3) specifies that this flexibility applies to grants under section 106, insular area grantees must continue to determine compliance for funds received under section 107 of the HCD Act on an annual basis.

E. Special Purpose Grants

Until funds made available under section 107 are fully expended and these grants are closed out, insular area jurisdictions must continue to comply with the special purpose grant requirements of § 570.400, § 570.405, and other sections of part 570 applicable to the program at time of funding, as well as the terms of the grant agreements for those grants, and to implement their activities as outlined in each insular application and approved by HUD. A conforming change is made to § 570.420(a) to state that fund reservations for insular areas under section 107 shall remain governed by the policies and procedures described in section 107(a)(1)(A) of the Act and §§ 570.400 and 570.405.

F. Subpart F—General Section

Subpart F formerly referred only to the Small Cities program. This interim rule revises the General section of subpart F at § 570.420 to include the

Insular Areas program and to clarify the applicability of the remaining subpart F sections to the Small Cities and Insular Areas CDBG programs.

1. *Administration of nonentitlement CDBG funds.* Introductory language at § 570.420(a) has been revised to indicate that two categories of nonentitlement CDBG programs are now covered in this subpart, the Small Cities and Insular Areas programs. The description of the Small Cities program that originally composed the entire text of paragraph (a) has been redesignated as § 570.420(a)(1), and § 570.420(a)(2) has been added to describe the Insular Areas program in accordance with the statutory change.

2. *Scope and applicability.* This interim rule simplifies and clarifies the applicability of the remaining sections of subpart F, while also incorporating regulations to administer the Insular Areas program. References to regulatory sections applicable to the Small Cities program are further delineated as applicable only to New York, Hawaii, or small city grant recipients from either state. A new § 570.420(b)(2) has been added to refer to sections applicable to the Insular Areas program, including the treatment of grants under section 107. The previous § 570.420(b)(2) (except for the first sentence, which has been redesignated as § 570.420(f)(1), as described below) has been redesignated as § 570.420(b)(3), and outlines the applicability of the other subparts of part 570 to the Small Cities and Insular Areas programs. A new reference about the applicability of subpart M, loan guarantees, has been added. This reference supports the continued ability to apply for section 108 loan guarantees under the Small Cities program, and provides this option for insular area grantees for the first time.

3. *Public notification requirements.* Section 570.420(c)(3) has been added to indicate that Section 102 of the HUD Reform Act of 1989 (42 U.S.C. 3545) is not applicable to the Insular Areas CDBG program under section 106, since these funds are not distributed by HUD on a competitive basis.

4. *Abbreviated consolidated plan.* A conforming revision to § 570.420(d) includes the Insular Areas program under section 106 in the requirement to include a certification of consistency of proposed housing activities with an applicant's consolidated plan.

5. *National and primary objectives.* Consistent with the conforming change made in § 570.200(a)(3), discussed above, § 570.420(e)(3) has been added to provide the options that Insular Areas grantees under section 106 will have for measuring compliance with the primary

objective of 70 percent benefit to low- and moderate-income persons. Under the Special Purpose Grant program pursuant to section 107, insular area recipients were required to measure compliance based on each individual funding award. For funds made available under section 106, insular area jurisdictions will have the same flexibility afforded to entitlement and state grantees of measuring compliance on a one- to three-year basis. In the certifications to their consolidated plan, insular area jurisdictions must specify the measurement period to be used.

6. *Allocation of Funds.* This rule redesignates the first sentence of § 570.420(b)(2), which describes the Small Cities allocation method, as § 570.420(f)(1) and adds the allocation method for the Insular Areas program under section 106 as § 570.420(f)(2).

G. Obsolete Small Cities Regulations

Under the Small Cities CDBG program, HUD directly administers allocations for nonentitlement areas in states that have not elected to administer their own nonentitlement programs. In recent years, HUD has administered the Small Cities program in only two states—New York and Hawaii. The State of New York currently administers its own nonentitlement funding under the State CDBG program, beginning with FY2000 funding. The Consolidated Appropriations Act, 2004 contained provisions to fund directly the three county recipients of the Hawaii Small Cities program as urban counties under the Entitlement CDBG program, starting in FY2005, if the State of Hawaii does not elect to administer the State CDBG program. HUD intends to separately issue revised regulations to implement the Hawaii program's change in status. In order to simplify subpart F, along with the incorporation of new Insular Areas program regulations, this interim rule removes the following regulatory sections of the Small Cities Program that are no longer required (because the State of New York now administers its own program): § 570.422—Applications from joint applicants; § 570.423—Application for the HUD-administered New York Small Cities Grants; § 570.424—Grants for imminent threats to public health and safety (under the New York Small Cities program), § 570.425—HUD review and actions on applications for New York State applicants, and § 570.428—Reallocated (Small Cities) funds.

This rule also makes a conforming change to remove from 24 CFR 570.206(f) the reference to § 570.433, a section that was previously removed

from the subpart F CDBG program regulations.

H. Application Requirements for Insular Area Grants Funded Under Section 106

Subpart F of this interim rule establishes CDBG grant application requirements under section 106 for use by insular areas.

1. *Consolidated plan.* In § 570.440, this rule provides the options for insular area jurisdictions to prepare either an abbreviated consolidated plan following the requirements of 24 CFR 91.235, or a full consolidated plan under part 91 following the requirements of subparts A—General, B—Citizen Participation and Consultation, C—Local Governments: Contents of Consolidated Plan, and F—Other General Requirements. Most insular areas have submitted information in the past under section 107 that is similar to an abbreviated consolidated plan under section 106 as part of the annual application for funding under the Special Purpose Grant program. Section 570.440 also uses the section 106 terminology of proposed and final “statements” rather than “applications” to recognize the recent change in Insular Areas CDBG program status under title V. HUD specifically invites comments on the issue of whether future regulatory revisions should require insular areas funded under section 106 to complete a full consolidated plan.

2. *Certifications.* This interim rule specifies the required Insular Areas CDBG certifications at § 570.440(e), consistent with those already required in a consolidated plan.

3. *Submission requirement.* Consistent with the existing consolidated plan requirements, § 570.440(d) of this interim rule provides insular area jurisdictions with additional flexibility in determining their program year under section 106 and requires submission of final statements at least 45 days before the start of the program year. Under the Special Purpose Grant program pursuant to section 107, all insular areas use October 1 as their program year start date. October 1 is the start of the federal fiscal year. October 1, 2004, will continue to be the program year start date for FY2004 funds, which are being made available under section 107. This rule allows insular area jurisdictions to change their program year start dates in future years under section 106. HUD does not recommend choosing a program year start date during the six months following the beginning of a federal fiscal year, as there may be delay in a jurisdiction's ability to access funds. For example, choosing a FY2005

program year start date of January 1, 2005 might result in the jurisdiction's inability to access federal fiscal year 2005 funds until several months into that program year because of the time required to make the funds available to the jurisdiction. Similarly, a jurisdiction should also consider the impact of program year timing issues relative to 24 CFR 91.10 and 91.15 on its operations under full consolidated plan requirements.

4. *HUD actions.* This interim rule specifies that HUD will notify insular area jurisdictions promptly of actions taken with regard to a final statement submitted for funding under section 106, and describes the conditions necessary for approval at § 570.440(f). This section is consistent with existing requirements applicable to nonentitlement grantees in subpart F and in subpart O of part 570.

5. *Program amendments.* Section 570.440(j) of this rule outlines an insular area jurisdiction's responsibility for including policies and procedures for program amendments in its citizen participation plan and HUD's minimum requirements in this area, including a public comment period for substantial amendments, consistent with the consolidated plan requirements at § 91.105. Citizen participation requirements are further described in this interim rule at § 570.441.

6. *Other flexibilities and requirements.* At § 570.440, this interim rule changes, for purposes of funding under section 106, the process for an insular area jurisdiction to be reimbursed for preaward costs. Insular areas will be subject to the requirements of § 570.200(h) for costs incurred prior to its program year start date. That section prescribes a limit of the greater of 25 percent of that year's grant or \$300,000 for preaward costs that meet the other requirements of this section, including consolidated plan, environmental, and citizen participation requirements. Under the Special Purpose Grant program pursuant to section 107 at § 570.405, preaward costs require specific HUD approval at the application level before they can be incurred. At § 570.440(i), an insular area under section 106 has the additional flexibility to incorporate float funding in its program, the same option available to entitlements. This option is possible as a result of the greater assurance of funding provided by inclusion under section 106 of the HCD Act. These changes are applicable only to awards under section 106.

I. Citizen Participation

At § 570.441, the interim rule requires, for funding under section 106, insular area jurisdictions to develop and follow detailed citizen participation plans. There are two primary options available to insular area jurisdictions. Jurisdictions preparing abbreviated consolidated plans in accordance with § 91.235 must follow the citizen participation requirements outlined in § 570.441, which are consistent with the nonentitlement area citizen participation requirements at § 570.431. Jurisdictions preparing full consolidated plans must follow the citizen participation requirements detailed in the consolidated plan regulations at 24 CFR 91.100 and 91.105. There is one notable exception based in statute to the latter requirement—an insular area jurisdiction does not have to comply with the § 91.100(a)(4) requirement for consultation with adjacent units of general local government. Adjacent units of general local government outside of the insular area itself are not relevant because such other jurisdictions are not contiguous with the insular areas.

HUD notes that insular areas intending to make applications for the Section 108 Loan Guarantee program must ensure that they follow the presubmission and citizen participation requirements outlined in the loan guarantee regulations at § 570.704.

J. Subpart M Loan Guarantees

Some minor revisions to the Section 108 Loan Guarantee program regulations at §§ 570.704(a)(1)(v) and 570.705(a)(2)(iii) are necessary to clarify the ability of insular area jurisdictions to apply for loan guarantees. Section 570.704(a)(1)(v) is amended to permit a “nonentitlement public entity,” a term that includes insular areas, to submit loan guarantee and grant applications simultaneously. In § 570.705(a)(2)(iii), the words “in an insular area” and reference to the new insular area regulations at § 570.440 are added to allow each insular area jurisdiction to have an unpaid balance of loan guarantees up to five times the amount of its most recent grant. HUD notes that while insular area jurisdictions may now apply for the Section 108 Loan Guarantee program, the approval of insular area applications (as with any other type of application) will be subject to all of the program’s underwriting and other criteria.

K. Timeliness

HUD will establish timeliness standards for the Insular Areas program

under section 106 by regulation at a later date. Until then, insular area jurisdictions that will be funded under section 106 are encouraged to adopt and achieve the timeliness standards for section 570.902(a) currently applicable to entitlement jurisdictions. In the meantime, HUD specifically invites comments on the idea of adopting the § 570.902(a) standards as the Insular Areas program timeliness standards under section 106.

III. Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is “impractical, unnecessary, or contrary to the public interest” (24 CFR 10.1). For the following reasons, HUD has determined that it would be unnecessary to delay the effectiveness of this rule in order to solicit prior public comments.

This interim rule merely codifies in HUD’s regulations the statutory policies and procedures mandated by title V, which transfer the Insular Areas program from eligibility under section 107 of the HCD Act to eligibility under section 106 of the HCD Act, and makes existing sections of 24 CFR parts 91 and 570 that apply to section 106 nonentitlement grants also applicable to the Insular Areas program. Accordingly, the interim rule only changes the administration of the Insular Areas program from being subject to regulatory requirements relevant to section 107 to being subject to existing regulatory requirements relevant to section 106, consistent with the title V statutory amendments. In addition, section 501(g) of title V requires HUD to issue regulations carrying out the amendments made by title V to take effect not later than the expiration of the 90-day period beginning on the date of the enactment of Public Law 108–186.

Although HUD believes that good cause exists to publish this rule for effect without prior public comment, HUD recognizes the value of public comment in the development of its regulations. HUD has, therefore, issued these regulations on an interim basis and has provided the public with a 60-day comment period. HUD welcomes comments on the regulatory amendments made by this interim rule, as well as advance comments on the

adoption of full consolidated planning and reporting requirements and timeliness standards for insular area CDBG grantees as discussed in more detail under the applicable sections of this preamble. The public comments will be addressed in the final rule or, if necessary, in a new proposed rule.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled “Regulatory Planning and Review”). OMB determined that this rule is a “significant regulatory action” as defined in section 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

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 interim rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

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

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule and in so doing certifies that this rule will not have a significant

economic impact on a substantial number of small entities for the following reasons. This rule only codifies in HUD's regulations statutory policies and procedures that transfer the Insular Areas program from eligibility under section 107 of the HCD Act to eligibility under section 106 of the HCD Act and makes existing sections of 24 CFR parts 91 and 570 that apply to section 106 nonentitlement grants also applicable to the Insular Areas program. As such, the rule does not significantly differ from the current status in terms of the impact on the number of entities, the amount of funding, or the governing requirements applicable.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been 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 (42 U.S.C. 4332(2)(C)). 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, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the CDBG Small Cities Program is 14.219.

List of Subjects in 24 CFR Part 570

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

■ Accordingly, HUD amends 24 CFR parts 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 1. The authority citation for 24 CFR part 570 continues to read as follows:

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

■ 2. In § 570.1, revise paragraph (a)(2) to read as follows:

§ 570.1 Purpose and primary objective.

(a) * * *

(2) Nonentitlement Funds: HUD-administered Small Cities and Insular Area programs (subpart F);

* * * * *

■ 3. In § 570.3, revise the definition of *applicant*, remove the definition of *Indian tribe*, and add, in alphabetical order, the definition of *insular area*, to read as follows:

§ 570.3 Definitions.

* * * * *

Applicant means a State or unit of general local government that makes application pursuant to the provisions of subpart E, F, G or M.

* * * * *

Insular area shall have the meaning provided in section 102(a)(24) of the Act.

* * * * *

■ 4. In § 570.4, revise paragraph (a) to read as follows:

§ 570.4 Allocation of funds.

(a) The determination of eligibility of units of general local government to receive entitlement grants, the entitlement amounts, the allocation of appropriated funds to States for use in nonentitlement areas, the reallocation of funds, the allocation of appropriated funds to insular areas, and the allocation of appropriated funds for discretionary grants under the Secretary's Fund shall be governed by the policies and procedures described in sections 106 and 107 of the Act, as appropriate.

* * * * *

■ 5. In § 570.200, revise paragraph (a)(2) and the introductory paragraph of (a)(3) to read as follows:

§ 570.200 General policies.

(a) * * *

(2) *Compliance with national objectives.* Grant recipients under the Entitlement and HUD-administered Small Cities programs and recipients of insular area funds under section 106 of the Act must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives of benefit to low-

and moderate-income families or aid in the prevention or elimination of slums or blight. The projected use of funds may also include activities that the recipient certifies are 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. Consistent with the foregoing, each recipient under the Entitlement or HUD-administered Small Cities programs, and each recipient of insular area funds under section 106 of the Act must ensure and maintain evidence that each of its activities assisted with CDBG funds meets one of the three national objectives as contained in its certification. Criteria for determining whether an activity addresses one or more of these objectives are found in § 570.208.

(3) *Compliance with the primary objective.* The primary objective of the Act is described in section 101(c) of the Act. Consistent with this objective, Entitlement recipients, recipients of the HUD-administered Small Cities program in Hawaii, and recipients of insular area funds under section 106 of the Act must ensure that over a period of time specified in their certification not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under § 570.208(a) or under § 570.208(d)(5) or (6) for benefiting low- and moderate-income persons. For grants under section 107 of the Act, insular area recipients must meet this requirement for each separate grant. See § 570.420(e)(3) for additional discussion of the primary objective requirement for insular areas funded under section 106 of the Act. The requirements for the HUD-administered Small Cities program in New York are at § 570.420(e)(2). Additional requirements for the HUD-administered Small Cities program in Hawaii are at § 570.430(e). In determining the percentage of funds expended for such activities:

* * * * *

■ 6. In § 570.206, revise the first sentence of paragraph (f) to read as follows:

§ 570.206 Program administrative costs.

* * * * *

(f) *Submission of applications for federal programs.* Preparation of documents required for submission to HUD to receive funds under the CDBG and UDAG programs. * * *

* * * * *

■ 7. Revise the heading of subpart F in part 570 to read as follows:

Subpart F—Small Cities and Insular Areas Programs

■ 8. Revise § 570.420 to read as follows:

§ 570.420 General.

(a) *Administration of nonentitlement CDBG funds by HUD or Insular Areas—*(1) *Small cities.* The Act permits each State to elect to administer all aspects of the CDBG program annual fund allocation for the nonentitlement areas within its jurisdiction. This subpart sets forth policies and procedures applicable to grants for nonentitlement areas in States that have not elected, in a manner and time prescribed by the Secretary, 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 nonentitlement areas in that State and the reallocation of those funds to all States in the succeeding fiscal year.

(2) *Insular areas.* Title V of Public Law 108–186 amended the Act to move the insular areas funding authorization from sections 107(a) and (b) to section 106(a). This revision identified a specific portion of the CDBG allocation for insular areas that is separate from the distribution for special purpose grants, as well as from the Entitlement and State formula distribution. The insular areas of Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa are permitted to administer all aspects of their Community Development Block Grant (CDBG) program under section 106 of the Act in accordance with their final statement as further described at § 570.440.

(b) *Scope and applicability.* (1) This subpart describes the policies and procedures of the Small Cities Program that 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 (for grants prior to FY2000) and Hawaii. The small cities portion of this subpart principally addresses the requirements for New York in §§ 570.421, 570.426, 570.427, and 570.431. Sections 570.429 and 570.430 identify special procedures applicable to Hawaii. Section 570.432 is applicable to both New York and Hawaii.

(2) This subpart also describes the policies and procedures governing

community development block grants to insular areas under section 106 of the Act. Sections 570.440 and 570.441 identify procedures applicable to the Insular Areas program under section 106 of the Act. Fund reservations for insular areas under section 107 of the Act shall remain governed by the policies and procedures described in section 107(a)(1)(A) of the Act and §§ 570.400 and 570.405 of this part.

(3) The policies and procedures set forth in the following identified subparts of this part apply to the HUD-administered Small Cities and Insular Areas programs, 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;
- (v) Subpart M—Loan Guarantees; and
- (vi) 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 statute, and the requirements identified at 24 CFR part 4 apply to them. Imminent threat grants under § 570.424 and section 108 repayment grants under § 570.432 are not affected by section 102 because they are not competitive grants.

(2) The Hawaii HUD-administered Small Cities program is not subject to section 102 because the funds are not distributed by HUD on a competitive basis.

(3) The Insular Areas program under section 106 of the Act is not subject to section 102 because the funds are not distributed by HUD on a competitive basis.

(d) *Abbreviated consolidated plan.* Applications for the HUD-administered Small Cities Program and the Insular Areas program under section 106 of the Act that contain housing activities must include a certification that the proposed housing activities are consistent with the applicant's consolidated plan as described at 24 CFR part 91.

(e) *National and primary objectives.* (1) Each activity funded through the Small Cities program and the Insular Areas program under section 106 of the Act must meet one of the following national objectives as defined under the criteria in § 570.208:

(i) Benefit low- and moderate-income families;

(ii) Aid in the prevention or elimination of slums or blight; or

(iii) Be an activity that 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 and 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) or of § 570.208(d)(5) or (6). In the case of multiyear plans in New York State approved in response to NOFAs published prior to calendar year 1997, not less than 70 percent of the total funding for grants approved pursuant to a multiyear plan for a time period of up to three 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 approved in response to NOFAs published prior to calendar year 1997 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.

(3) In addition to the objectives described in paragraph (e)(1) of this section, grants made through the Insular Areas program shall also comply with the primary objective of 70 percent benefit to low- and moderate-income persons. Insular area recipients must meet this requirement for each separate grant under section 107 of the Act. For grants made under section 106 of the Act, insular area recipients must ensure that over a period of time specified in their certifications not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for low- and moderate-income activities meeting the criteria under § 570.208(a) or under § 570.208(d)(5) or (6). See also § 570.200(a)(3) for further discussion of the primary objective.

(f) *Allocation of funds*—(1) *Small cities*. The allocation of formula CDBG funds for use in nonentitlement areas of Hawaii is as provided in subpart A of this part.

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

§ 570.422 [Removed]

■ 9. Remove § 570.422.

§ 570.423 [Removed]

■ 10. Remove § 570.423.

§ 570.424 [Removed]

■ 11. Remove § 570.424.

§ 570.425 [Removed]

■ 12. Remove § 570.425.

§ 570.428 [Removed]

■ 13. Remove § 570.428.

■ 14. Add a new § 570.440 in subpart F to read as follows:

§ 570.440 Application requirements for insular area grants funded under section 106.

(a) *Applicability*. The requirements of this section apply to insular grants funded under section 106 of the Act. An insular area jurisdiction may choose to prepare program statements following either:

(1) The abbreviated consolidated plan procedures described in this subpart and in 24 CFR 91.235; or

(2) The complete consolidated plan procedures applicable to local governments, discussed at 24 CFR 91.200 through 91.230.

(b) *Proposed statement*. An insular area jurisdiction shall prepare and publish a proposed statement and comply with the citizen participation requirements described in § 570.441, if it submits an abbreviated consolidated plan under 24 CFR 91.235. The jurisdiction shall follow the citizen participation requirements of 24 CFR 91.105 and 91.100 (with the exception of § 91.100(a)(4)), if it submits a complete consolidated plan.

(c) *Final statement*. The insular area jurisdiction shall submit to HUD a final statement describing its community development objectives and activities. The statement also must include a priority nonhousing community

development plan in accordance with 24 CFR 91.235. This final statement shall be submitted, together with the required certifications, to the appropriate field office in a form prescribed by HUD.

(d) *Submission requirement*. Each insular area jurisdiction shall submit its final statement to HUD no later than 45 days before the start of its program year. Each jurisdiction may choose the start date for the annual period of its program year that most closely fits its own needs. HUD may grant an extension of the submission deadline for good cause.

(e) *Certifications*. The insular area jurisdiction's final statement must be accompanied by appropriate certifications as further described under 24 CFR 91.225. The jurisdiction should submit all general certifications, as well as all program certifications for each program from which it receives funding, if it submits a complete consolidated plan. For insular area jurisdictions receiving CDBG funds under an abbreviated consolidated plan, these certifications shall include at a minimum:

(1) The following general certifications described at § 91.225(a) of this title: Affirmatively furthering fair housing; anti-displacement and relocation plan; drug-free workplace; anti-lobbying; authority of jurisdiction; consistency with plan; acquisition and relocation; and Section 3.

(2) The following CDBG certifications described at § 91.225(b) of this title: Citizen participation; community development plan; following a plan; use of funds; excessive force; compliance with anti-discrimination laws; compliance with lead-based paint procedures; and compliance with laws.

(f) *HUD action on final statement*. Following the review of the statement, HUD will promptly notify each jurisdiction of the action taken with regard to its statement. HUD will approve a grant if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91, and if the certifications required in such submissions are satisfactory to HUD. The certifications will be satisfactory to HUD for this purpose, unless HUD determines pursuant to subpart O of this part that the jurisdiction has not complied with the requirements of this part, has failed to carry out its consolidated plan (or abbreviated consolidated plan) as provided under § 570.903, or has determined that there is evidence, not directly involving the jurisdiction's past performance under this program, that tends to challenge in a substantial manner the jurisdiction's certification of

future performance. If HUD makes any such determination, however, further assurances may be required to be submitted by the jurisdiction as HUD may deem warranted or necessary to find the jurisdiction's certification satisfactory.

(g) *Reimbursement for pre-award costs*. Insular area jurisdictions may request reimbursement for pre-award costs in accordance with § 570.200(h).

(h) *Float funding*. An insular area jurisdiction may use undisbursed funds in the line of credit and its CDBG program account that are budgeted in final statements or action plans for one or more activities that do not need the funds immediately, subject to the limitations described in § 570.301(b).

(i) *Program amendments*. (1) The insular area jurisdiction's citizen participation plan (see § 570.441) must specify the criteria the jurisdiction will use for determining what changes in the jurisdiction's planned or actual activities will constitute a substantial amendment to its final statement. It must include changes in the use of CDBG funds from one eligible activity to another among the changes that qualify as a substantial amendment.

(2) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on substantial amendments. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given, as well as provide a period of not less than 30 days to receive comments on the substantial amendment before the amendment is implemented.

(3) The citizen participation plan shall require the jurisdiction to consider comments or views of citizens received in writing, or orally at public hearings, if any, in preparing the substantial amendment of its statement. A summary of comments or views not accepted and the reasons for non-acceptance shall be attached to the substantial amendment.

(4) Any program amendment, regardless of whether it is considered to be substantial, must be fully documented in the jurisdiction's records.

(j) *Performance reports*. Each insular area jurisdiction must submit annual performance reports in accordance with 24 CFR 91.520.

■ 15. Add a new § 570.441 in subpart F to read as follows:

§ 570.441 Citizen participation—insular areas.

(a) *General*. An insular area jurisdiction submitting an abbreviated consolidated plan under 24 CFR 91.235 shall comply with the citizen

participation requirements described in this section. An insular area jurisdiction submitting a complete consolidated plan in accordance with 24 CFR 91.200 through 91.230 shall follow the citizen participation requirements of § 91.100 and § 91.105, except for § 91.100(a)(4). For funding under section 106 of the Act, these requirements are applicable to all aspects of the Insular Areas program, including the preparation of the proposed statement and final statements as described in § 570.440. The requirements for citizen participation do not restrict the responsibility or authority of the jurisdiction for the development and execution of its community development program.

(b) *Citizen participation plan.* The insular area jurisdiction must develop and follow a detailed citizen participation plan and must make the plan public. The plan must be completed and available before the statement for assistance is submitted to HUD, and the jurisdiction must certify that it is following the plan. The plan must set forth the jurisdiction'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 jurisdiction'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 jurisdiction plans to make available (or to require others to make available) to persons displaced by CDBG-funded activities, even if the jurisdiction 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 jurisdiction. 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 citizens' 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 jurisdiction 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 jurisdiction's policies and procedures must provide for timely written answers to written complaints and grievances within 15 working days after the receipt of the complaint, where practicable; and

(6) Encouraging citizen participation, particularly by low- and moderate-income persons who reside in areas in which CDBG funds are proposed to be used.

(c) *Publication of proposed statement.*

(1) The insular area jurisdiction shall publish a proposed statement consisting of the proposed community development activities and community development objectives in order to afford affected citizens an opportunity to:

(i) Examine the statement's contents to determine the degree to which they may be affected;

(ii) Submit comments on the proposed statement; and

(iii) Submit comments on the performance of the jurisdiction.

(2) The requirement for publishing in paragraph (c)(1) of this section may be met by publishing a summary of the proposed statement in one or more newspapers of general circulation and by making copies of the proposed statement available at libraries, government offices, and public places. The summary must describe the contents and purpose of the proposed statement and must include a list of the

locations where copies of the entire proposed statement may be examined.

(d) *Preparation of a final statement.*

An insular area jurisdiction must prepare a final statement. In the preparation of the final statement, the jurisdiction shall consider comments and views received relating to the proposed statement and may, if appropriate, modify the final statement. The final statement shall be made available to the public and shall include the community development objectives, projected use of funds, and the community development activities.

(e) *Program amendments.* To assure citizen participation on program amendments to final statements, the insular area 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) *Performance reports.* (1) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on performance reports. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period of not less than 15 days to receive comments on the performance report before it is to be submitted to HUD.

(2) The citizen participation plan shall require the jurisdiction to consider comments or views of citizens received in writing or orally at public hearings in preparing the performance report. A summary of these comments or views shall be attached to the performance report.

(g) *Application for loan guarantees.* Insular area jurisdictions intending to apply for the Section 108 Loan Guarantee program must ensure that they follow the applicable presubmission and citizen participation requirements of § 570.704.

■ 16. In § 570.704, revise paragraph (a)(1)(v) to read as follows:

§ 570.704 Application requirements.

(a) * * *
(1) * * *
(v) If an application for loan guarantee assistance is to be submitted by an entitlement or nonentitlement public entity simultaneously with the public entity's submission for its grant, the public entity shall include and identify in its proposed and final consolidated plan 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 the consolidated plan a description of the

pledge of grants, as 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.
* * * * *

■ 17. Revise the introductory paragraph of § 570.705(a)(2)(iii) to read as follows:

§ 570.705 Loan requirements.

(a) * * *
(2) * * *
(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 an insular area or 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 or § 570.440 (as applicable) to the public entity.

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Dated: May 11, 2004.
Roy A. Bernardi,
Assistant Secretary for Community Planning and Development.
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