

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 570

[Docket No. FR-5012-F-02]

RIN 2501-AD15

Timeliness Expenditure Standards for the Insular Areas Program

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

ACTION: Final rule.

SUMMARY: This final rule implements regulatory timeliness standards for the Insular Areas Program, as established by the Housing and Community Development Act of 1974. The expenditure standards will ensure that grantees carry out their programs in a timely manner. The standards take into consideration and reflect the unique circumstances faced by Insular Area grantees in their ability to expend CDBG allocations. The final rule provides that an Insular Area grantee may submit an abbreviated consolidated plan rather than a full consolidated plan. This final rule also makes technical and conforming changes to the Insular Areas program. The final rule follows publication of an August 7, 2006, proposed rule on which HUD did not receive any public comments. Accordingly, HUD is adopting the August 7, 2006, proposed rule without change.

DATES: *Effective Date:* April 16, 2007.

FOR FURTHER INFORMATION CONTACT: Stephen Rhoadside, Senior Program Officer, State and Small Cities Division, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7184, Washington, DC 20410-7000, telephone (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

On August 7, 2006, HUD published a proposed rule (71 FR 44860) for public comment to establish timeliness standards and procedures for the reallocation of funds for the Insular Areas Program. In addition, the August 7, 2006, rule proposed to provide that an Insular Area grantee may submit an abbreviated consolidated plan that is appropriate to the types and amounts of

assistance sought from HUD, instead of a full consolidated plan. The proposed rule also sought to make technical and conforming changes to the regulations.

The Insular Areas program is a component of the Community Development Block Grant (CDBG) program, authorized by the Housing and Community Development Act of 1974 (HCD Act) (42 U.S.C. 5301, *et seq.*). Under the CDBG program, Insular Area grantees are provided flexible funding to develop and implement community and economic development strategies that primarily benefit low- and moderate-income individuals.

The August 7, 2006, rule proposed timeliness standards for the Insular Areas Program. Under the proposed standards, the amount of grant funds available but undisbursed 60 days prior to the conclusion of the Insular Area grantee's most recent program year must be no more than two times the amount of the Insular Area grantee's most recent grant. If the grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control, the grantee shall be deemed to be untimely. A grantee that has less than two times its most recent grant in its CDBG line of credit 60 days prior to the conclusion of its most recent program year shall also be deemed to be untimely if the amount of CDBG program income the recipient has on hand at that time, together with the amount of funds in its CDBG line of credit, exceeds twice the amount of the grantee's most recent grant, unless the grantee is able to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

In determining the corrective action for untimely expenditure, HUD will consider the likelihood that the recipient will expend a sufficient amount of funds over the next program year to bring the grantee into compliance with the timeliness requirements. The first timeliness review under these standards will take place 60 days prior to the conclusion of the 2006 funding year, which would take place on August 2, 2007, for Insular Area grantees that do not change their program year start dates. Failure to meet the standards may cause HUD to reduce the next grant by 100 percent of the amount in excess of twice the Insular Area grantee's most recent CDBG grant, unless HUD determines that the untimeliness resulted from factors outside of the grantee's reasonable control. The earliest that HUD will reduce grants under this final rule will be in Fiscal Year (FY) 2008, should an

Insular Area grantee be untimely 60 days prior to the conclusion of its FY 2006 and FY 2007 program years.

Additionally, HUD proposed to add a provision that would allow funds to be reallocated to the remaining eligible Insular Areas on a pro rata basis should an Insular Area grantee have its funding reduced for failing to submit a final statement for CDBG funds. The proposed rule also addressed the issue of Insular Area grantees' submission of abbreviated consolidated plans. Abbreviated consolidated plans submitted by Insular Areas grantees will be considered to be full consolidated plans, provided the Insular Area grantee complies with the submissions, certifications, amendments, and performance reports requirements of § 570.440 and citizen participation requirements of § 570.441. However, if submission of a full consolidated plan would help a grantee integrate its CDBG, HOME and Emergency Shelter Grant programs, the grantee should strongly consider submitting a full consolidated plan. Various technical changes were proposed to reflect statutory amendments, remove outdated cross-references, and delete provisions that are no longer required or applicable.

For more detailed information regarding the regulatory changes, please refer to the preamble of the August 7, 2006, proposed rule.

II. This Final Rule

This final rule follows the publication of the August 7, 2006, proposed rule. The public comment period on the proposed rule closed on October 6, 2006. HUD did not receive any public comments on the proposed rule. HUD, therefore, is issuing this final rule without change from the proposed rule.

III. Findings and Certifications

Unfunded Mandates Reform Act

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

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct

compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the executive order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the executive order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule will not have a significant economic impact on a substantial number of small entities because the rule only codifies in HUD's regulations procedures that will enable the Department to enforce its timeliness policy for 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. Therefore, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Environmental Impact

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Insular Areas Program is 14.225.

List of Subjects

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

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 91 and 570 as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 1. The authority citation for 24 CFR part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

■ 2. In § 91.235 revise paragraphs (a), (b)(3), and (e) and add paragraph (c)(4) to read as follows:

§ 91.235 Special case; abbreviated consolidated plan.

(a) *Who may submit an abbreviated plan?* A jurisdiction that is not a CDBG entitlement community under 24 CFR part 570, subpart D, and is not expected to be a participating jurisdiction in the HOME program under 24 CFR part 92, as well as an Insular Area that is a HOME or CDBG grantee, may submit an abbreviated consolidated plan that is appropriate to the types and amounts of assistance sought from HUD, instead of a full consolidated plan.

(b) * * *

(3) *Limitation.* For the HOME program, an abbreviated consolidated plan is permitted only with respect to reallocations to other than participating jurisdictions (see 24 CFR part 92, subpart J), and for Insular Area grantees that submit an abbreviated consolidated plan pursuant to 24 CFR 570.440. For

the CDBG program, an abbreviated plan may be submitted for the HUD-administered Small Cities program (except that an abbreviated plan may not be submitted for the HUD-administered Small Cities program in the state of Hawaii), and for Insular Area grantees pursuant to 24 CFR 570.440.

(c) * * *

(4) *Submissions, Certifications, Amendments, and Performance Reports.* An Insular Area grantee that submits an abbreviated consolidated plan under this section must comply with the submission, certification, amendment, and performance report requirements of 24 CFR 570.440. This includes certification that the grantee will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice and undertake other activities required for fair housing planning, in accordance with 24 CFR 91.225(a)(1) and 570.601(a)(2).

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(e) *Citizen Participation.* An Insular Area grantee that submits an abbreviated consolidated plan under this section must comply with the citizen participation requirements of 24 CFR 570.441.

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PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

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

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

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

§ 570.209 Guidelines for evaluating and selecting economic development projects.

* * * * *

(b) * * *

(2) *Applying the aggregate standards.* (i) A metropolitan city, an urban county, or an Insular Area shall apply the aggregate standards under paragraph (b)(1) of this section to all applicable activities for which CDBG funds are first obligated within each single CDBG program year, without regard to the source year of the funds used for the activities. For Insular Areas, the preceding sentence applies to grants received in program years after Fiscal Year 2004. A grantee under the HUD-administered Small Cities program in New York, or Insular Areas CDBG programs grants prior to Fiscal Year 2005, shall apply the aggregate standards under paragraph (b)(1) of this section to all funds obligated for applicable activities from a given grant;

program income obligated for applicable activities will, for these purposes, be aggregated with the most recent open grant. For any time period in which a community has no open HUD-administered grant, the aggregate standards shall be applied to all applicable activities for which program income is obligated during that period.

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■ 5. Add § 570.442 to subpart F to read as follows:

§ 570.442 Reallocations-Insular Areas.

(a) Any Insular Area funds that become available as a result of reductions under subpart O of this part, shall be reallocated in the same or future fiscal year to any remaining eligible Insular Area grantees pro rata according to population.

(b) Any Insular Area grant funds for a fiscal year reserved for an applicant that chooses not to submit a final statement in accordance with § 570.440 to receive such funds, shall be reallocated in the same or future fiscal year to any remaining eligible Insular Area grantees pro rata according to population.

(c) No amounts shall be reallocated under this section in any fiscal year to any applicant whose grant amount in such fiscal year was reduced under subpart O of this part or who did not submit a final statement in accordance with § 570.440 for that fiscal year.

(d) Insular Area grantees receiving additional funds under this section will be evaluated for timeliness under § 570.902 based upon the original grant amount plus the additional funds received. Accordingly, references in § 570.902 to an Insular Area's grant amount for its current program year include such additional funds, and references to unexpended or undisbursed funds include such additional funds.

■ 6. Revise § 570.600(a) to read as follows:

§ 570.600 General.

(a) This subpart K enumerates laws that the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to states made pursuant to section 106(d) of the Act, for purposes of the Secretary's determinations under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. This subpart K applies to grants made under the Insular Areas Program in § 570.405 and § 570.440 with

the exception of § 570.612. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws that the Secretary will treat as applicable to grants made to states under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see § 570.487.

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■ 7. In § 570.900, revise paragraphs (a)(1) and (b)(1) to read as follows:

§ 570.900 General.

(a) *Performance review authorities—(1) Entitlement, Insular Areas, and HUD-administered Small Cities performance reviews.* Section 104(e)(1) of the Act requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the recipient has carried out its activities in a timely manner, whether the recipient has carried out those activities and its certifications in accordance with the requirements and the primary objectives of the Act and with other applicable laws, and whether the recipient has a continuing capacity to carry out those activities in a timely manner.

* * * * *

(b) * * *
(1) The Department will determine the performance of each entitlement, Insular Areas, and HUD-administered small cities recipient in accordance with section 104(e)(1) of the Act by reviewing for compliance with the requirements described in § 570.901 and by applying the performance criteria described in §§ 570.902 and 570.903 relative to carrying out activities in a timely manner. The review criteria in § 570.904 will be used to assist in determining if the recipient's program is being carried out in compliance with civil rights requirements.

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■ 8. In § 570.901, revise the introductory paragraph, redesignate existing paragraphs (f), (g), and (h), as paragraphs (g), (h), and (i) respectively, and add a new paragraph (f) to read as follows:

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

HUD will review each entitlement, Insular Areas, and HUD-administered

small cities recipient's program to determine if the recipient has carried out its activities and certifications in compliance with:

* * * * *

(f) For Insular Areas Program grants only, the application and amendment requirements at § 570.440, the citizen participation requirements at § 570.441, the displacement policy requirements of § 570.606, and the lead-based paint requirements of 24 CFR 35.940;

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■ 9. In § 570.902, revise the introductory paragraph, and add a new paragraph (c) to read as follows:

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

HUD will review the performance of each entitlement, HUD-administered small cities, and Insular Areas recipient to determine whether each recipient is carrying out its CDBG-assisted activities in a timely manner.

* * * * *

(c) *Insular Areas recipients.* (1) Before the funding of the next annual grant and absent contrary evidence satisfactory to HUD, HUD will consider an Insular Areas recipient to be failing to carry out its CDBG activities in a timely manner if:

(i) Sixty days prior to the end of the grantee's current program year, the amount of Insular Area grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is more than 2.0 times the Insular Area's grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(2) Notwithstanding that the amount of funds in the line of credit indicates that the Insular Area recipient is carrying out its activities in a timely manner pursuant to paragraph (c)(1) of this section, HUD may determine that the recipient is not carrying out its activities in a timely manner if:

(i) The amount of CDBG program income the recipient has on hand 60 days prior to the end of its current program year, together with the amount of funds in its CDBG line of credit, exceeds 2.0 times the Insular Area's grant amount for its current program year; and

(ii) The grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(3) In determining the appropriate corrective action to take with respect to

a HUD determination that a recipient is not carrying out its activities in a timely manner pursuant to paragraphs (c)(1) or (c)(2) of this section, HUD will consider the likelihood that the recipient will expend a sufficient amount of funds over the next program year to reduce the amount of unexpended funds to a level that will fall within the standards described in paragraphs (c)(1) and (2) of this section when HUD next measures the grantee's timeliness performance. For these purposes, HUD will take into account the extent to which funds on hand have been obligated by the recipient and its sub-recipients for specific activities at the time the finding is made and other relevant information.

(4) If a recipient is determined to be untimely pursuant to paragraphs (c)(1) or (c)(2) of this section in one year, and the recipient is again determined to be untimely in the following year, HUD may reduce the recipient's next grant by 100 percent of the amount in excess of twice the Insular Area's most recent CDBG grant, unless HUD determines that the untimeliness resulted from factors outside of the grantee's reasonable control.

(5) The first review under paragraphs (c)(1) and (c)(2) of this section will take place 60 days prior to the conclusion of the Fiscal Year 2006 program year.

■ 10. In § 570.903, revise the introductory paragraph, paragraph (a), and remove paragraph (d) to read as follows:

§ 570.903 Review to determine if the recipient is meeting its consolidated plan responsibilities.

The consolidated plan, action plan, and amendment submission requirements referred to in this section are in 24 CFR part 91. For the purpose of this section, the term consolidated plan includes an abbreviated consolidated plan that is submitted pursuant to 24 CFR 91.235.

(a) *Review timing and purpose.* HUD will review the consolidated plan performance of each entitlement, Insular Areas, and Hawaii HUD-administered Small Cities grant recipient prior to acceptance of a grant recipient's annual certification under 24 CFR 91.225(b)(3) to determine whether the recipient followed its HUD-approved consolidated plan for the most recently completed program year, and whether activities assisted with CDBG funds during that period were consistent with that consolidated plan, except that grantees are not bound by the consolidated plan with respect to the use or distribution of CDBG funds to meet non-housing community development needs.

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■ 11. In § 570.910, revise paragraphs (b)(2)(iii) and (b)(8) to read as follows:

§ 570.910 Corrective and remedial actions.

* * * * *

(b) * * *

(2) * * *

(iii) For entitlement and Insular Areas recipients, canceling or revising affected activities that are no longer feasible to implement due to the deficiency and re-

programming funds from such affected activities to other eligible activities (pursuant to the citizen participation requirements in 24 CFR part 91); or

* * * * *

(8) In the case of an entitlement or Insular Areas recipient, condition the use of funds from a succeeding fiscal year's allocation upon appropriate corrective action by the recipient. The failure of the recipient to undertake the actions specified in the condition may result in a reduction, pursuant to § 570.911, of the entitlement or Insular Areas recipient's annual grant by up to the amount conditionally granted.

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

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

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

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Dated: March 7, 2007.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

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