

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

[Docket No. FR-3978-F-01]

RIN 2506-AB77

Office of the Assistant Secretary for Community Planning and Development; Community Development Block Grant Program; Streamlining Final Rule

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

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the Community Development Block Grant (CDBG) Program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the CDBG regulations by eliminating provisions that are redundant of statutes or are otherwise unnecessary. This final rule will make the CDBG regulations clearer and more concise.

EFFECTIVE DATE: April 19, 1996.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. While the Community Development Block Grant regulations serve as important program guidance, HUD has determined that the regulations can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the CDBG regulations repeat statutory language from the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*) (the Act), and other statutes. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR),

since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule will remove repetitious statutory language and replace it with a citation to the specific statutory section for easy reference.

Other provisions in the CDBG regulations apply to more than one program, and therefore HUD repeated these provisions in different subparts within part 570. This repetition is unnecessary, and updating these scattered provisions is cumbersome and often creates confusion. Therefore, this final rule will consolidate these duplicative provisions.

Some provisions in the CDBG regulations are obsolete. For instance, Congress has not appropriated funds for the Urban Development Action Grant (UDAG) program since Fiscal Year 1988. While several approved grants have not yet reached the final close-out stage, it is unnecessary for HUD to maintain all of the regulations for these grants. Therefore, this rule removes many of the UDAG provisions from subpart G of part 570, such as those related to the submission and approval of applications for new grants. This rule also removes obsolete regulations regarding Urban Renewal projects in subpart N. Loans and grants are no longer authorized under the Urban Renewal program. All of the existing projects are the subject of close-out agreements that contain all the regulatory provisions. Therefore, HUD can remove the obsolete regulations in subpart N.

This final rule makes the following specific amendments:

1. Amends § 570.1 by updating paragraphs (a)(4) and (b) to refer to Special Purpose Grants, rather than the Secretary's Fund program;
2. Moves the essential language of § 570.2 into a new paragraph (c) in § 570.1, and removes the unnecessary remainder of § 570.2;
3. Amends § 570.3 by removing the statutory language from several definitions, by updating the definition of "CDBG funds" to include funds received under § 570.405 or under section 108(q) of the Housing and Community Development Act of 1974, and by updating the definition of "Discretionary grant" to refer to Special Purpose Grants, rather than to the Secretary's Fund;
4. Adds a streamlined § 570.5, which contains a reference to HUD's waiver authority in the CDBG program. This section was inadvertently removed in the General HUD Program Requirements

final rule, published in the Federal Register on February 9, 1996 (61 FR 5198);

5. Amends § 570.200(a)(3) by removing the statutory language and clarifying the requirements for the HUD-administered Small Cities Program. This rule also corrects § 570.200(a)(3), which was recently amended in a final rule published on November 9, 1995 (60 FR 56892), to clarify that Insular areas must use 70 percent of their CDBG funds for activities that benefit low- to moderate-income persons each year;

6. Removes obsolete provisions regarding the New Communities program, maintaining a savings clause in § 570.403;

7. Corrects § 570.420(e)(2) to refer to § 570.208(d)(5) or (6), in addition to § 570.208(a);

8. Removes obsolete provisions regarding the UDAG program from subpart G;

9. Consolidates, to the extent possible, the provisions in §§ 570.488 and 570.606, which are essentially the same. In effect, this rule removes most of the information in § 570.488, maintaining a cross-reference to § 570.606, and makes minor conforming changes to § 570.606 so that it applies both to grantees and States/state recipients. This rule makes no substantive changes to the requirements in § 570.606;

10. Removes the statutory and other repetitive language in §§ 570.600, 570.601, 570.603, 570.604, 570.605, 570.608, 570.701, and 570.706, maintaining statutory citations for easy reference;

11. Makes conforming changes to §§ 570.703(d) and 570.704 to reflect the consolidation of §§ 570.488 and 570.606;

12. Removes obsolete provisions regarding Urban Renewal projects from subpart N, maintaining a savings clause in § 570.800; and

13. Makes conforming changes to § 570.904 to reflect this rule's amendment to § 570.601. This final rule will eliminate approximately 34 pages of unnecessary regulations from the CFR.

Justification for Final 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 "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1).

HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule streamlines the Community Development Block Grant regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rule does not have an environmental impact. This rule simply amends existing regulations by consolidating and streamlining provisions; it does not alter the environmental effect of the regulations being amended. At the time of development of regulations in part 570, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). That finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has

determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects in 24 CFR Part 570

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

Accordingly, 24 CFR part 570 is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

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

Authority: 42 U.S.C. 3535(d) and 5300-5320.

Subpart A—General Provisions

2. Section 570.1 is amended by revising the section heading, paragraph (a)(4), and the second sentence of paragraph (b); and by adding a new paragraph (c), to read as follows:

§ 570.1 Purpose and primary objective.

(a) * * *
(4) Special Purpose Grants (subpart E);

* * * * *
(b) * * * In the application of the subparts to Special Purpose Grants or the Urban Development Action Grant program, the reference to funds in the form of grants in the term ‘‘CDBG funds’’, as defined in § 570.3, shall mean the grant funds under those programs. * * *

(c) The primary objective of the programs authorized under title I of the Housing and Community Development Act of 1974, as amended, is described in section 101(c) of the Act (42 U.S.C. 5301(c)).

§ 570.2 [Removed]

3. Section 570.2 is removed.

4. Section 570.3 is amended by adding introductory text; and by revising the definitions of ‘‘Age of housing’’, ‘‘Buildings for the general conduct of government’’, ‘‘CDBG

funds’’, ‘‘Discretionary grant’’, ‘‘Extent of growth lag’’, ‘‘Extent of housing overcrowding’’, ‘‘Indian tribe’’, ‘‘Metropolitan area’’, ‘‘Metropolitan city’’, ‘‘Microenterprise’’, ‘‘Nonentitlement area’’, ‘‘State’’, ‘‘Unit of general local government’’, and ‘‘Urban county’’; to read as follows:

§ 570.3 Definitions.

The terms *HUD* and *Secretary* are defined in 24 CFR part 5. All of the following definitions in this section that rely on data from the United States Bureau of the Census shall rely upon the data available from the latest decennial census.

* * * * *

Age of housing means the number of year-round housing units, as further defined in section 102(a)(11) of the Act.

* * * * *

Buildings for the general conduct of government shall have the meaning provided in section 102(a)(21) of the Act.

CDBG funds means Community Development Block Grant funds, including funds received in the form of grants under subpart D, F, or § 570.405 of this part, funds awarded under section 108(q) of the Housing and Community Development Act of 1974, loans guaranteed under subpart M of this part, urban renewal surplus grant funds, and program income as defined in § 570.500(a).

* * * * *

Discretionary grant means a grant made from the various Special Purpose Grants in accordance with subpart E of this part.

* * * * *

Extent of growth lag shall have the meaning provided in section 102(a)(12) of the Act.

Extent of housing overcrowding shall have the meaning provided in section 102(a)(10) of the Act.

* * * * *

Indian tribe shall have the meaning provided in section 102(a)(17) of the Act.

* * * * *

Metropolitan area shall have the meaning provided in section 102(a)(3) of the Act.

Metropolitan city shall have the meaning provided in section 102(a)(4) of the Act.

Microenterprise shall have the meaning provided in section 102(a)(22) of the Act.

* * * * *

Nonentitlement area shall have the meaning provided in section 102(a)(7) of the Act.

* * * * *

State shall have the meaning provided in section 102(a)(2) of the Act.

Unit of general local government shall have the meaning provided in section 102(a)(1) of the Act.

Urban county shall have the meaning provided in section 102(a)(6) of the Act. For the purposes of this definition, HUD will determine whether the county's combined population contains the required percentage of low- and moderate-income persons by identifying the number of persons that resided in applicable areas and units of general local government based on data from the most recent decennial census, and using income limits that would have applied for the year in which that census was taken.

* * * * *

5. Section 570.5 is revised to read as follows:

§ 570.5 Wavers.

HUD's authority for the waiver of regulations and for the suspension of requirements to address damage in a Presidentially declared disaster area is described in 24 CFR part 5 and in section 122 of the Act, respectively.

Subpart C—Eligible Activities

6. Section 570.200 is amended by revising the introductory text of paragraph (a)(3) to read as follows:

§ 570.200 General policies.

(a) * * *

(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 and recipients of the HUD-administered Small Cities program in Hawaii 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 § 570.208(d)(5) or (6) for benefitting low- and moderate-income persons; Insular area recipients must meet this requirement for each separate grant. The requirements for the HUD-administered Small Cities program in New York are in § 570.420(e)(2). Additional requirements for the HUD-administered Small Cities program in Hawaii are in § 570.430(e). In determining the percentage of funds expended for such activities:

* * * * *

7. Section 570.403 is revised to read as follows:

§ 570.403 New Communities.

The regulations for New Communities grants in this section, that were effective

immediately before April 19, 1996, will continue to govern the rights and obligations of recipients and HUD with respect to grants under the New Communities program.

Subpart F—Small Cities

8. Section 570.420 is amended by revising the first sentence of paragraph (e)(2) to read as follows:

§ 570.420 General.

* * * * *

(e) * * *

(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 § 570.208(d)(5) or (6).

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Subpart G—Urban Development Action Grants

9. Section 570.450 is revised to read as follows:

§ 570.450 Purpose.

The purpose of urban development action grants is to assist cities and urban counties that are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery. This subpart G contains those regulations that are essential for the continued operation of this grant program.

§§ 570.451, 570.452, 570.453, 570.454, 570.455, 570.458, 570.459, and 570.460 [Removed]

10. Sections 570.451, 570.452, 570.453, 570.454, 570.455, 570.458, 570.459, and 570.460 are removed.

11. Section 570.461 is revised to read as follows:

§ 570.461 Post-preliminary approval requirements; Lead-based paint.

The recipient may receive preliminary approval prior to the accomplishment of notification, inspection, testing, and abatement as described in § 570.608, but no funds will be released until such actions are complete and evidence of compliance is submitted to HUD.

§ 570.462 [Removed]

12. Section 570.462 is removed.

13. Section 570.463 is amended by revising the undesignated sentence of paragraph (a) to read as follows:

§ 570.463 Project amendments and revisions.

(a) * * * The applicant must hold at least one public hearing prior to making a significant revision to the application.

* * * * *

14. Section 570.466 is revised to read as follows:

§ 570.466 Additional application submission requirements for Pockets of Poverty—employment opportunities.

Applicants for Action Grants under the Pockets of Poverty provision must describe the number and, to the extent possible, the types of new jobs (construction and permanent) that will be provided to the low- and moderate-income residents of the Pocket of Poverty as a direct result of the proposed project. If the application calls for job training programs (such as those related to the CETA program) or job recruiting services for the pocket's residents, then such proposed activities must be clearly and fully explained. HUD requires applicants to ensure that at least 75 percent of whatever permanent jobs initially result from the project are provided to low- and moderate-income persons and that at least 51 percent of whatever permanent jobs initially result from the project are provided to low- and moderate-income residents from the pocket. HUD encourages applicants to ensure that at least 20 percent of all permanent jobs are filled by persons from the pocket qualified to participate in the CETA program on a continuous basis. HUD requires all applicants to continuously use best efforts to ensure that at least 75 percent of all permanent jobs resulting from any Action Grant-assisted project are provided to low- and moderate-income persons and that at least 51 percent of all permanent jobs resulting from any Action Grant-assisted project are provided to low- and moderate-income residents from the pocket. The application should clearly describe how the applicant intends to meet initial and continuous job requirements. Private participating parties must meet these employment requirements in the aggregate. To enable the private participants to do so, lease agreements executed by a private participating party shall include:

(a) Provisions requiring lessees to follow hiring practices that the private participating party has determined will enable it to meet these requirements in the aggregate; and

(b) Provisions that will enable the private participating party to declare a default under the lease agreement if the lessees do not follow such practices.

§ 570.467 [Removed]

15. Section 570.467 is removed.
Subpart I—State Community
Development Block Grant Program

16. Section 570.480 is amended by
revising the last sentence of paragraph
(a) to read as follows:

§ 570.480 General.

(a) * * * Other subparts of part 570 are
not applicable to the State CDBG
Program, except as expressly provided
otherwise.

* * * * *

17. Section 570.488 is revised to read
as follows:

**§ 570.488 Displacement, relocation,
acquisition, and replacement of housing.**

The requirements for States and state
recipients with regard to the
displacement, relocation, acquisition,
and replacement of housing are in
§ 570.606 and 24 CFR part 42.

**Subpart K—Other Program
Requirements**

18. Section 570.600 is amended by
revising paragraph (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, 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.

* * * * *

19. Section 570.601 is revised to read
as follows:

**§ 570.601 Public Law 88–352 and Public
Law 90–284; affirmatively furthering fair
housing; Executive Order 11063.**

(a) The following requirements apply
according to sections 104(b) and 107 of
the Act:

(1) Public Law 88–352, which is title
VI of the Civil Rights Act of 1964 (42
U.S.C. 2000d *et seq.*), and implementing
regulations in 24 CFR part 1.

(2) Public Law 90–284, which is the
Fair Housing Act (42 U.S.C. 3601–3620).
In accordance with the Fair Housing
Act, the Secretary requires that grantees
administer all programs and activities
related to housing and community
development in a manner to
affirmatively further the policies of the
Fair Housing Act. Furthermore, in
accordance with section 104(b)(2) of the
Act, for each community receiving a
grant under subpart D of this part, the
certification that the grantee will
affirmatively further fair housing shall
specifically require the grantee to
assume the responsibility of fair housing
planning by conducting an analysis to
identify impediments to fair housing
choice within its jurisdiction, taking
appropriate actions to overcome the
effects of any impediments identified
through that analysis, and maintaining
records reflecting the analysis and
actions in this regard.

(b) Executive Order 11063, as
amended by Executive Order 12259 (3
CFR, 1959–1963 Comp., p. 652; 3 CFR,
1980 Comp., p. 307) (Equal Opportunity
in Housing), and implementing
regulations in 24 CFR part 107, also
apply.

20. Section 570.603 is revised to read
as follows:

§ 570.603 Labor standards.

(a) Section 110(a) of the Act contains
labor standards that apply to
nonvolunteer labor financed in whole or
in part with assistance received under
the Act. In accordance with section
110(a) of the Act, the Contract Work
Hours and Safety Standards Act (40
U.S.C. 327 *et seq.*) also applies.
However, these requirements apply to
the rehabilitation of residential property
only if such property contains not less
than 8 units.

(b) The regulations in 24 CFR part 70
apply to the use of volunteers.

21. Section 570.604 is revised to read
as follows:

§ 570.604 Environmental standards.

For purposes of section 104(g) of the
Act, the regulations in 24 CFR part 58
specify the other provisions of law
which further the purposes of the
National Environmental Policy Act of
1969, and the procedures by which

grantees must fulfill their environmental
responsibilities. In certain cases,
grantees assume these environmental
review, decisionmaking, and action
responsibilities by execution of grant
agreements with the Secretary.

22. Section 570.605 is revised to read
as follows:

**§ 570.605 National Flood Insurance
Program.**

Notwithstanding the date of HUD
approval of the recipient's application
(or, in the case of grants made under
subpart D of this part or HUD-
administered small cities recipients in
Hawaii, the date of submission of the
grantee's consolidated plan, in
accordance with 24 CFR part 91),
section 202(a) of the Flood Disaster
Protection Act of 1973 (42 U.S.C. 4106)
and the regulations in 44 CFR parts 59
through 79 apply to funds provided
under this part 570.

23. Section 570.606 is revised to read
as follows:

**§ 570.606 Displacement, relocation,
acquisition, and replacement of housing.**

(a) *General policy for minimizing
displacement.* Consistent with the other
goals and objectives of this part,
grantees (or States or state recipients, as
applicable) shall assure that they have
taken all reasonable steps to minimize
the displacement of persons (families,
individuals, businesses, nonprofit
organizations, and farms) as a result of
activities assisted under this part.

(b) *Relocation assistance for displaced
persons at URA levels.* (1) A displaced
person shall be provided with relocation
assistance at the levels described in, and
in accordance with the requirements of
49 CFR part 24, which contains the
government-wide regulations
implementing the Uniform Relocation
Assistance and Real Property
Acquisition Policies Act of 1970 (URA)
(42 U.S.C. 4601–4655).

(2) *Displaced person.* (i) For purposes
of paragraph (b) of this section, the term
“*displaced person*” means any person
(family, individual, business, nonprofit
organization, or farm) that moves from
real property, or moves his or her
personal property from real property,
permanently and involuntarily, as a
direct result of rehabilitation,
demolition, or acquisition for an activity
assisted under this part. A permanent,
involuntary move for an assisted
activity includes a permanent move
from real property that is made:

(A) After notice by the grantee (or the
state recipient, if applicable) to move
permanently from the property, if the
move occurs after the initial official
submission to HUD (or the State, as

applicable) for grant, loan, or loan guarantee funds under this part that are later provided or granted.

(B) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(C) Before the date described in paragraph (b)(2)(i)(A) or (B) of this section, if either HUD or the grantee (or State, as applicable) determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(D) After the "initiation of negotiations" if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex upon the completion of the project, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the initiation of negotiations or 30 percent of the household's average monthly gross income; or

(2) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(3) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, the term "displaced person" does not include:

(A) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee (or State or state recipient, as applicable) must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(B) A person who moves into the property after the date of the notice described in paragraph (b)(2)(i)(A) or (B) of this section, but who received a

written notice of the expected displacement before occupancy.

(C) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(D) A person who the grantee (or State, as applicable) determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(iii) A grantee (or State or state recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

(3) *Initiation of negotiations.* For purposes of determining the type of replacement housing assistance to be provided under paragraph (b) of this section, if the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of real property, the term "initiation of negotiations" means the execution of the grant or loan agreement between the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property.

(c) *Residential antidisplacement and relocation assistance plan.* In accordance with section 104(d) of the Act, each grantee must adopt, make public, and certify (or, as applicable, each State must ensure that each state recipient adopts, makes public, and certifies to the State) that it is following a residential antidisplacement and relocation assistance plan providing one-for-one replacement units (paragraph (c)(1) of this section), and relocation assistance (paragraph (c)(2) of this section). As applicable, section 106(d)(5)(A) of the Act requires the state recipient also to certify to the State that it will minimize displacement of persons as a result of assisted activities. Except with regard to the State CDBG Program, the plan shall also indicate the steps that will be taken consistent with other goals and objectives of this part to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any activities assisted under this part.

(1) *One-for-one replacement of low/moderate-income dwelling units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units in connection with an activity assisted under this part must be replaced with low/moderate-income dwelling units.

(ii) Replacement low/moderate-income dwelling units may be provided by any government agency or private

developer, and must meet the following requirements:

(A) The units must be located within the jurisdiction of the grantee (or the state recipient, as applicable). To the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units replaced.

(B) The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The grantee (or state recipient, as applicable) may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the grantee (or state recipient, as applicable) has provided the information required under paragraph (c)(1)(iii)(G) of this section.

(C) The units must be provided in standard condition. Replacement low/moderate-income dwelling units may include units that have been raised to standard from substandard condition if:

(1) No person was displaced from the unit as a direct result of an assisted activity (see definition of "displaced person" in paragraph (c)(3)(ii) of this section); and

(2) The unit was vacant for at least three months before execution of the agreement between the grantee and the property owner.

(D) The units must initially be made available for occupancy at any time during the period beginning one year before the grantee's (or state recipient's, as applicable) submission of the information required under paragraph (c)(1)(iii) of this section and ending three years after the commencement of the demolition or rehabilitation related to the conversion.

(E) The units must be designed to remain low/moderate-income dwelling units for at least 10 years from the date of initial occupancy. Replacement low/moderate-income dwelling units may include, but are not limited to, public housing, or existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937.

(iii) Before the grantee (or state recipient, as applicable) enters into a contract committing it to provide funds under this part for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the grantee (or state recipient, as applicable) must make public, and submit the

following information in writing to the HUD Field Office (or State, as applicable) for monitoring purposes:

- (A) A description of the proposed assisted activity;
 - (B) The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;
 - (C) A time schedule for the commencement and completion of the demolition or conversion;
 - (D) The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;
 - (E) The source of funding and a time schedule for the provision of replacement dwelling units;
 - (F) The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy; and
 - (G) Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the needs analysis contained in the HUD-approved consolidated plan; or, for purposes of the State CDBG program, consistent with the housing needs of low- and moderate-income households in the jurisdiction. A grantee that is not required to submit a consolidated plan to HUD must submit information demonstrating that the proposed replacement is consistent with the housing needs of low- and moderate-income households in the jurisdiction.
- (iv)(A) The one-for-one replacement requirement of paragraph (c)(1) of this section does not apply to the extent the Field Office determines, based upon objective data, that there is an adequate supply of vacant low/moderate-income dwelling units in standard condition available on a nondiscriminatory basis within the jurisdiction of the grantee (or state recipient, as applicable). In determining the adequacy of supply, HUD will consider whether the demolition or conversion of the low/moderate-income dwelling units will have a material impact on the ability of

low- and moderate-income households to find suitable housing. HUD will consider relevant evidence of housing supply and demand including, but not limited to, the following factors: the housing vacancy rate in the jurisdiction; the number of vacant low/moderate-income dwelling units in the jurisdiction (excluding units that will be demolished or converted); the number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction; the needs analysis contained in any applicable HUD-approved consolidated plan; and relevant past or predicted demographic changes.

(B) HUD may consider the supply of vacant low/moderate-income dwelling units in a standard condition available on a nondiscriminatory basis in an area that is larger than the jurisdiction of the grantee (or state recipient, as applicable). Such additional dwelling units shall be considered if the Field Office determines that the units would be suitable to serve the needs of the low- and moderate-income households that could be served by the low/moderate-income dwelling units that are to be demolished or converted to another use. HUD will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

(C) The grantee (or state recipient, as applicable) must submit the request for determination under paragraph (c)(1)(iv) of this section directly to the Field Office (or State, as applicable). Simultaneously with the submission of the request, the grantee (or state recipient, as applicable) must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to HUD (or to the State, as applicable) additional information supporting or opposing the request. For purposes of the State CDBG program, if the State, after considering the submission and the additional data, agrees with the request, the State must provide its recommendation with supporting information to HUD.

(2) *Relocation assistance under section 104(d) of the Act.* Under section 104(d), each "displaced person" (defined in paragraph (c)(3)(ii) of this section) is entitled to choose to receive either assistance at URA levels (see paragraph (b) of this section) or the following relocation assistance:

(i) Advisory services at the levels described in 49 CFR part 24, subpart C (General Relocation Requirements). Tenants shall be advised of their rights under the Fair Housing Act (42 U.S.C. 3601-19) and of replacement housing

opportunities in such a manner that, to the extent feasible, will provide a choice between relocating within their neighborhoods and other neighborhoods consistent with the responsibility of the grantee (or the state recipient, as applicable) to affirmatively further fair housing;

(ii) Payment for moving expenses at the levels described in 49 CFR part 24, subpart D.

(iii) The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit, and for credit checks required to rent or purchase the replacement dwelling unit.

(iv) Interim living costs. The grantee (or state recipient, as applicable) shall reimburse a person for actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if:

(A) The person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public; or

(B) The person is displaced from a "low/moderate-income dwelling unit," none of the comparable replacement dwelling units to which the person has been referred qualifies as a low/moderate-income dwelling unit (defined in paragraph (c)(3)(iii) of this section), and a suitable low/moderate-income dwelling unit is scheduled to become available in accordance with paragraph (c)(1) of this section. (Because a "comparable replacement dwelling unit" may be made affordable to a person through a rental assistance payment and its market rent may exceed the Fair Market Rent (FMR) under the Section 8 Existing Housing Program, it may not meet the definition of a "low/moderate-income dwelling unit".)

(v) Replacement housing assistance. Persons are eligible to receive one of the following two forms of replacement housing assistance:

(A) Each person must be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of utilities for a replacement dwelling (comparable replacement dwelling or decent, safe, and sanitary replacement dwelling to which the person relocates, whichever costs less) to the "Total Tenant Payment," as determined under § 813.107 of this title. All or a portion of this assistance may be offered through a certificate or housing voucher for rental assistance (if available) provided through the Local Public Agency under Section 8 of the United States Housing Act of 1937. If a Section

8 certificate or housing voucher is provided to a person, the grantee (or state recipient, as applicable) must provide referrals to comparable replacement dwelling units for which the owner is willing to participate in the Section 8 Existing Housing Program. To the extent that cash assistance is provided, it will be provided in installments.

(B) If the person purchases an interest in a housing cooperative or mutual housing association and occupies a decent, safe, and sanitary dwelling in the cooperative or association, the person may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the "Total Tenant Payment," as determined under § 813.107 of this title, from the monthly rent and estimated average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a Federally insured bank or savings and loan institution conducting business within the jurisdiction of the grantee (or state recipient, as applicable). To the extent necessary to minimize hardship to the household, the grantee (or state recipient, as applicable) shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

(C) Displaced low/moderate income tenants shall be advised of their right to elect relocation assistance pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the regulations appearing at 49 CFR part 24 as an alternative to the relocation assistance available under paragraph (c)(2) of this section.

(3) *Definitions.* For purposes of providing section 104(d) assistance under paragraph (c) of this section:

(i) *Comparable replacement dwelling unit.* The term "comparable replacement dwelling unit" means a dwelling unit that:

(A) Meets the criteria of 49 CFR 24.2(d) (1) through (6); and

(B) Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the "Total Tenant Payment" determined under § 813.107 of this title, after taking into account any rental assistance the household would receive.

(ii) *Displaced person.* (A) The term "displaced person" means any low/moderate-income family or individual that moves from real property, or moves his or her personal property from real

property, permanently and involuntarily, as a direct result of the conversion of a low/moderate-income dwelling unit (defined in paragraph (c)(3)(iv) of this section) or demolition in connection with an activity assisted under this part. A permanent involuntary move for an assisted activity includes a permanent move from real property that is made:

(1) After notice by the grantee (or state recipient, as applicable) to move permanently from the property, if the move occurs after the initial official submission to HUD for grant, loan, or loan guarantee funds under this part that are later granted; or, for purposes of the State CDBG Program, if the move occurs after the initial submission of an application to the State by the recipient requesting assistance under this subpart that is later granted for the requested activity.

(2) After notice by the property owner, to move permanently from the property, if the move occurs after the date of submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(3) Before the date described in paragraph (c)(3)(ii)(A) (1) or (2) of this section, if either HUD or the grantee (or State or state recipient, as applicable) determines that the displacement directly resulted from the conversion of a low/moderate-income dwelling unit or demolition in connection with the requested activity.

(4) After the execution of the agreement by the grantee (or state recipient, as applicable) covering the rehabilitation or demolition, if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:

(i) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex upon completion of the project, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the execution of such agreement (or, for purposes of the State CDBG Program, before the "initiation of negotiations"), or the "Total Tenant Payment" for the person as determined under § 813.107 of this title; or

(ii) The tenant, required to relocate temporarily for the activity, does not return to the building/complex; and either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary location (including the

cost of moving to and from the temporary location and any increased housing costs), or other conditions of the temporary relocation are not reasonable; or

(iii) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(B) Notwithstanding the provisions of paragraph (c)(3)(ii)(A) of this section, the term "displaced person" does not include:

(1) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee (or state recipient, as applicable) must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(2) A person who moves into the property after the date of the notice described in paragraph (c)(3)(ii)(A) (1) or (2) of this section, but received a written notice of the expected displacement before commencing occupancy.

(3) A person who is not displaced as defined under 49 CFR 24.2(g)(2).

(4) A person who the grantee (or State, as applicable) determines is not displaced as a direct result of the conversion of a low/moderate-income dwelling or demolition in connection with an assisted activity. For a grantee or State to exclude a person on this basis, HUD must concur in that determination.

(C) A grantee may, at any time, request HUD to determine whether a person is a displaced person under paragraph (c) of this section.

(iii) *Low/moderate-income dwelling unit.* The term "low/moderate-income dwelling unit" means a dwelling unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing established under 24 CFR part 888, except that the term does not include a unit that is owned and occupied by the same person before and after the assisted rehabilitation.

(iv) *Standard condition and substandard condition suitable for rehabilitation.* (A) If the grantee has a HUD-approved consolidated plan, the definitions of "standard condition" and "substandard condition suitable for rehabilitation" established in the plan will apply.

(B) For purposes of the State CDBG program, a State may define the terms "standard condition" and "substandard condition suitable for rehabilitation", or

it may allow the state recipient to establish and make public its definition of these terms. If a State permits the recipient to establish its definition of these terms, the State must determine if the state recipient's definition is acceptable.

(v) *Vacant occupiable dwelling unit.* The term "vacant occupiable dwelling unit" means a vacant dwelling unit that is in a standard condition; a vacant dwelling unit that is in a substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning one year before the date of execution of the agreement by the grantee (or state recipient, as applicable) covering the rehabilitation or demolition.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide (or the State may permit the state recipient to provide, as applicable) relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraphs (b) or (c) of this section. The grantee may also provide (or the State may also permit the state recipient to provide, as applicable) relocation assistance to persons receiving assistance under paragraphs (b) or (c) of this section at levels in excess of those required by these paragraphs. Unless such assistance is provided under State or local law, the grantee (or state recipient, as applicable) shall provide such assistance only upon the basis of a written determination that the assistance is appropriate (see, e.g., 24 CFR 570.201(i), as applicable). The grantee (or state recipient, as applicable) must adopt a written policy available to the public that describes the relocation assistance that the grantee (or state recipient, as applicable) has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

(e) *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(f) *Appeals.* If a person disagrees with the determination of the grantee (or the state recipient, as applicable) concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the grantee (or state recipient, as applicable). The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee's decision to the

HUD Field Office. For purposes of the State CDBG program, a low- or moderate-income household may file a written request for review of the state recipient's decision with the State.

(g) *Responsibility of grantee or State.* (1) The grantee (or State, if applicable) is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this section. For purposes of the State CDBG program, the State shall require state recipients to certify that they will comply with the requirements of this section.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee (or State and state recipient, as applicable) must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

(Approved by the Office of Management and Budget under OMB control number 2506-0102.)

24. Section 570.608 is amended by revising paragraph (a) to read as follows:

§ 570.608 Lead-based paint.

(a) *Prohibition against the use of lead-based paint.* Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b)) and regulations in 24 CFR part 35, subpart B apply to residential structures constructed or rehabilitated with assistance provided under this part 570.

* * * * *

Subpart M—Loan Guarantees

25. Section 570.701 is amended by revising the definition of "Public entity", to read as follows:

§ 570.701 Definitions.

* * * * *

Public entity shall have the meaning provided for the term "*Eligible public entity*" in section 108(o) of the Act.

* * * * *

26. Section 570.703 is amended by revising paragraphs (d)(1) and (d)(2), to read as follows:

§ 570.703 Eligible activities.

* * * * *

(d) * * *
 (1) Required under the provisions of § 570.606(b) or (c); or
 (2) Determined by the public entity to be appropriate under the provisions of § 570.606(d).

* * * * *

27. Section 570.704 is amended by revising paragraphs (a)(2)(i)(D), (b)(8)(vii), and (e); to read as follows:

§ 570.704 Application requirements.

(a) * * *
 (2) * * *
 (i) * * *

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

* * * * *

(b) * * *
 (8) * * *

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

* * * * *

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

28. Section 570.706 is revised to read as follows:

§ 570.706 Federal guarantee; subrogation.

Section 108(f) of the Act provides for the incontestability of guarantees by HUD under subpart M of this part in the hands of a holder of such guaranteed obligations. If HUD pays a claim under a guarantee made under section 108 of the Act, HUD shall be fully subrogated for all the rights of the holder of the guaranteed debt obligation with respect to such obligation.

Subpart N—Urban Renewal Provisions

29. Section 570.800 is revised to read as follows:

§ 570.800 Urban Renewal regulations.

The regulations governing urban renewal projects and neighborhood development programs in subpart N of this part, that were effective immediately before April 19, 1996, will continue to govern the rights and obligations of recipients and HUD with respect to such projects and programs.

§§ 570.801, 570.802, 570.803, and 570.804 [Removed]

30. Sections 570.801, 570.802, 570.803, and 570.804 are removed.

Subpart O—Performance Reviews

31. Section 570.904 is amended by revising the introductory text of paragraph (b), and by revising paragraph (c), to read as follows:

§ 570.904 Equal Opportunity and Fair Housing Review Criteria.

* * * * *

(b) *Review for equal opportunity.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), and implementing regulations in 24 CFR part 1, together with section 109 of the Act (see § 570.602), prohibit discrimination in any program or activity funded in whole or in part with funds made available under this part.

* * * * *

(c) *Fair housing review criteria.* See the requirements in the Fair Housing Act (42 U.S.C. 3601–20), as well as § 570.601(a), which sets forth the grantee's responsibility to certify that it will affirmatively further fair housing.

* * * * *

Dated: March 7, 1996.

Mark C. Gordon,

*General Deputy Assistant Secretary for
Community Planning and Development.*

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