

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Policy Development and Research**

24 CFR Part 570

[Docket No. R-95-1684; FR-3415-F-03]

**Joint Community Development
Program: Institutions of Higher
Education and States/Units of General
Local Government; Special Purpose
Grants**

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes the requirements and procedures for awarding and administering special purpose grants under Title I of the Housing and Community Development Act of 1974, as amended by the Housing and Community Development Act of 1992, to institutions of higher education or to States and units of general local government and institutions of higher education jointly submitting applications to HUD. Institutions of higher education must demonstrate that they have the capacity to carry out eligible activities.

EFFECTIVE DATE: April 26, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 708-1537. The Telecommunications Device for the Deaf (TDD) number is (202) 708-1455. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and have been assigned OMB approval number 2535-0084.

II. Background

Section 801(c)(2) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) amended Section 107 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) to add a new category of special purpose grants. This new program authorizes grants to institutions of higher education or to States and

units of general local government and institutions of higher education that jointly submit applications to HUD. Institutions of higher education must demonstrate capacity to carry out eligible activities under Title I. This rule implements this new grant authority. For ease of reference, this new program may be called the Joint Community Development (CD) Program.

III. Summary of Final Rule

Following are the highlights of the rule that will govern the grants under the Joint CD Program:

1. A new section 570.411 is being added to Subpart E, Special Purpose Grants, of the Community Development Block Grant (CDBG) regulations to govern grants under this program. It should be noted that section 570.400, which contains general requirements for all special purpose grant programs, applies to this new program as well. Additionally, grantees must comply with the Americans with Disabilities Act of 1990.

2. Section 570.411(b) provides definitions for "demonstrated capacity" and "institutions of higher education."

3. Section 570.411(c) defines eligible applicants. It indicates that an application must be filed either by an institution of higher education or jointly by an institution of higher education and a State or unit of general local government. This subsection also states that HUD will not fund an applicant twice for the same kinds of activities.

4. Section 570.411(d) spells out the role of each participant in the joint applications.

5. Section 570.411(e) defines the eligible activities as those eligible under the basic CDBG regulations found in subpart C of part 570. It also makes clear that these activities may be designed to assist residents of colonias to improve living conditions and standards within colonias.

6. Section 570.411(f) indicates that the program will be run competitively through publication of a Notice of Funding Availability (NOFA).

7. Section 570.411(g) provides that when an institution of higher education or a State which is a joint applicant proposes to carry out an activity within the entitlement jurisdiction of one or more units of general local government, then such governments must approve the activity and certify that it is consistent with their consolidated plan (see 24 CFR part 91).

8. Section 570.411(h) provides a general description of what will be contained in each NOFA.

9. Sections 570.411 (i) and (j) detail the selection criteria that HUD will use

to evaluate applications under each NOFA competition.

10. Section 570.411(l) spells out that an applicant proposing housing activities will have to submit a certification that the activities are consistent with the Consolidated Plan of the jurisdiction to be served.

11. Section 570.411(m) deals with the citizen participation requirement under the Joint CD Program. It is a modified version of the basic CDBG requirement and is similar to that used in other special purpose grant programs.

12. Section 570.411(n) provides details on environmental review responsibilities for this program.

IV. Discussion of Public Comments

A proposed rule was published in the **Federal Register** on December 29, 1993, at 58 FR 68795, and the public was given 60 days in which to submit comments. Three comments were received on the proposed rule: one from a university, one from a city and one from an association of institutions of higher education. Following are the comments made and HUD's response to each comment.

Comment. The definition of eligible institution of higher education should be broadened to include community colleges.

Response. Community colleges generally do not have the capacity to undertake the kinds of activities that will be eligible under this program. With a limited amount of funds and a very large number of qualified four-year institutions applying for these funds, it would be unfair to community colleges to have them expend time and costs to prepare applications when their chances of being successful are very limited. Therefore, the proposed definition was not changed.

Comment. The rule should spell out in greater detail the program objectives and not leave this for the Notice of Funding Availability (NOFA).

Response. The precise program objectives may change from time-to-time. Each NOFA will spell out the precise objective for that competition. Therefore, the objectives will not be included in the rule but in the NOFA.

Comment. Grants should be limited to those institutions that meet the Federal definition of "urban" universities.

Response. There is no Federal government-wide definition of urban universities. The definition cited by the commenter is not a Federal definition but restricted to a specific program in the U.S. Department of Education. The Joint CD program has no statutory provision limiting grants to urban universities, nor does HUD feel that

such a restriction is appropriate, given the interest of many different kinds of institutions of higher education in addressing CDBG needs. Therefore, the comment was not accepted.

Comment. All applications from States or units of local governments must demonstrate support from an institution of higher education.

Response. Such a demonstration of support is inherent in the requirement that applications from governments must be filed jointly with an institution of higher education. HUD does not believe that any further demonstration of support is needed or desirable.

Comment. Two commenters indicated that the provision in section 570.411(c) that eligible applicants will be funded only every other funding cycle is not clear. They questioned whether grants would be for one year or two year periods.

Response. A funding cycle is determined each time HUD issues a NOFA. A decision regarding the length of the grant will be made at the time each NOFA is issued and delineated in the NOFA. Since HUD expects that each NOFA may deal with different priorities and eligible activities, it is not prudent to identify the project period in the regulations. In addition, HUD has revised the requirement that eligible applicants be funded only every other funding cycle to prohibit grantees that are institutions of higher education from receiving any subsequent grants from NOFAs with the same program objectives as those for which they received funding. State or local governments may apply in subsequent cycles in which the NOFA contains the same program objectives as long as they apply with a different institution of higher education. The need for these funds is great, as is the number of institutions and governments interested in applying. HUD believes that it would be unwise to concentrate the funds among a few institutions.

V. Other Matters

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies in this rule do not have Federalism implications and, thus, are not subject to review under the Order. Nothing in the rule implies any preemption of State or local law, nor does any provision of the rule disturb the existing 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, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Environmental Finding

A Finding of No Significant Impact with regard to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities inasmuch as the entities funded under this program will be relatively few in number. Consequently, HUD does not believe that a significant number of small entities will be affected by this program. The application requirements associated with funding under the program have been kept to the minimum necessary for administration of grant funds, and the Department does not believe it is necessary or appropriate to alter these requirements as they apply to small entities who may be prospective grantees.

Semiannual Agenda

This final rule was listed as item 1849 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57665) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Joint Community Development Program is listed in the Catalog of Federal Domestic Assistance under number 14.242.

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 24 CFR part 570 continues to read as follows:

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

2. Section 570.411 is added to subpart E, to read as follows:

§ 570.411 Joint Community Development Program.

(a) *General.* Grants under this section will be awarded to institutions of higher education or to States and local governments applying jointly with institutions of higher education. Institutions of higher education must demonstrate the capacity to carry out activities under Title I of the Housing and Community Development Act of 1974. For ease of reference, this program may be called the Joint CD Program.

(b) *Definitions.*

Demonstrated capacity to carry out eligible activities under Title I means recent satisfactory activity by the institution of higher education's staff designated to work on the program, including subcontractors and consultants firmly committed to work on the proposed activities, in Title I programs or similar programs without the need for oversight by a State or unit of general local government.

Institution of higher education means a college or university granting 4-year degrees and accredited by a national or regional accrediting agency recognized by the U.S. Department of Education.

(c) *Eligible applicants.* Institutions of higher education or States and units of general local government jointly with institutions of higher education may apply. Institutions of higher education with demonstrated capacity to carry out eligible activities under Title I may apply on their own, without the joint participation of a State or unit of general local government. States or unit of general local governments must file jointly with an institution of higher education. For these approved joint applications, the grant will be made to the State or unit of general local government and the institution of higher education jointly. If an eligible applicant is an institution of higher education, it will not be funded more

than once for the same kinds of activities. These grantees may not receive funding under a subsequent NOFA if it has the same program objectives as the one under which the grantee previously received funding. However, a State or unit of general local government is eligible to apply if it files jointly with a different institution of higher education in each NOFA cycle. HUD may further limit the type of eligible applicant to be funded. Any such limitations will be contained in the Notice of Funding Availability described below in paragraph (h) of this section.

(d) *Role of participants in joint applications.* An institution of higher education and a State or unit of general local government may carry out eligible activities approved in joint applications. Where there are joint applicants, the grant will be made to both and both will be responsible for oversight, compliance, and performance. The application will have to clearly delineate the role of each applicant in the joint application. Any funding sanctions or other remedial actions by HUD for noncompliance or nonperformance, whether by the State or unit of general local government or by the institution of higher education, shall be taken against both grantees.

(e) *Eligible activities.* Activities that may be funded under this section are those eligible under 24 CFR Part 570—Community Development Block Grants, Subpart C—Eligible Activities. These activities may be designed to assist residents of colonias, as defined in Section 916(d) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 5306 note), to improve living conditions and standards within colonias. HUD may limit the activities to be funded. Any such limitations will be contained in the Notice of Funding Availability described in paragraph (h) of this section.

(f) *Applications.* Applications will only be accepted from eligible applicants in response to a publication of a Notice of Funding Availability (NOFA) published by HUD in the **Federal Register**.

(g) *Local approval.* (1) Where an institution of higher education is the applicant, each unit of general local government that is an entitlement jurisdiction where an activity is to take

place must approve the activity and certify that the activity is consistent with its Consolidated Plan.

(2) Where a State is the joint applicant and it proposes to carry out an activity within the jurisdiction of one or more units of general local government, then each such unit must approve the activity and state that the activity is consistent with its Consolidated Plan.

(3) These approvals and findings must accompany each application and may take the form of a letter by the chief executive officer of each unit of general local government affected or a resolution of the legislative body of each such unit of general local government.

(h) *NOFA contents.* The NOFA will describe any special objectives sought to be achieved by the funding to be provided, including any limitations on the type of activities to be funded to achieve the objectives, any limitations on the type of eligible applicants, and points to be awarded to each of the selection criteria and any special factors to be evaluated in assigning points under the selection criteria to achieve the stated objectives. The NOFA will also state the deadline for the submission of applications, the total funding available for the competition, the period of performance and the maximum and minimum amount of individual grants. The NOFA will also state which of the various possible levels of competition HUD will use: national and/or regional or entitlement areas vs. non-entitlement areas; and States or units of general local government vs. institutions of higher education vs. institutions of higher education with a demonstrated capacity. The NOFA will include further information and instructions for the submission of acceptable applications to HUD.

(i) *Selection criteria.* Each application submitted under this section will be evaluated by HUD using the following criteria:

(1) The extent to which the applicant addresses the objectives published in the NOFA and demonstrates how the proposed activities will have a substantial impact in achieving the objectives.

(2) The extent of the needs to be addressed by the proposed activities, particularly with respect to benefiting

low- and moderate-income persons and residents of colonias, where applicable.

(3) The feasibility of the proposed activities, i.e., their technical and financial feasibility, for achieving the stated objectives.

(4) The capability of the applicant to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any previous HUD-assisted projects or activities.

(5) The extent of commitment to fair housing and equal opportunity, as indicated by such factors as previous HUD monitoring/compliance activity, actions to promote minority- and women-owned business enterprise, affirmatively furthering fair housing issues, and nondiscriminatory delivery of services.

(j) *Selection discretion.* HUD retains the right to exercise discretion in selecting projects in a manner that would best serve the program objectives, with consideration given to the needs of States and units of general local government and institutions of higher education, types of activities proposed, an equitable geographical distribution, and program balance. The NOFA will state whether HUD will use this discretion in any specific competition.

(k) *Certifications.* (1) Certifications, including those indicating that applicants have adhered to all civil rights requirements under subpart K of this part and the Americans with Disabilities Act of 1990, required to be submitted by applicants shall be as prescribed in the NOFA.

(2) In the absence of independent evidence which tends to challenge in a substantial manner the certifications made by the applicant, the required certifications will be accepted by HUD. However, if independent evidence is available, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certifications are satisfactory.

(l) *Consolidated plan.* An applicant that proposes any housing activities as part of its application will be required to submit a certification that these activities are consistent with the Consolidated Plan of the jurisdiction to be served.

(m) *Citizen participation.* The citizen participation requirements of §§ 570.301, 570.431, 570.485(c) and 570.486(a) are modified to require the following: The applicant must certify that citizens likely to be affected by the project regardless of race, color, creed, sex, national origin, familial status, or handicap, particularly low- and moderate-income persons, have been

provided an opportunity to comment on the proposal or application.

(n) *Environmental and Intergovernmental Review.* The requirements for Intergovernmental Reviews do not apply to these awards. When required, an environmental review in accordance with 24 CFR part 58 must be carried out by the State or unit of general local government when it is the applicant. HUD will conduct

any required environmental review when an institution of higher education is the applicant.

(Approved by the Office of Management and Budget under control number 2535-0084)

Dated: March 17, 1995.

Henry G. Cisneros,
Secretary.

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