DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 91 and 570

[Docket No. FR–4081–I–01]

RIN 2502–AB83

Community Development Block Grant Program for States; Community Revitalization Strategy Requirements and Miscellaneous Technical Amendments; Interim Rule

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

ACTION: Interim rule.

SUMMARY: This interim rule contains changes to the regulations for the State Community Development Block Grant (CDBG) program and the Consolidated Plan. These revisions fall into three categories: implementation of the community revitalization strategies concept into the State program; technical amendments to correct inaccurate or obsolete regulatory citations and to reinstate language that was inadvertently deleted by the publication of the Consolidated Plan regulations on January 5, 1995; and technical amendments to implement statutory changes or clarify existing regulatory language affecting eligibility and compliance with national objectives for certain activities.

DATES: *Effective date:* November 21, 1996. The information collection requirements in § 91.315(e)(2) of this interim rule, however, will not be effective until the Office of Management and Budget (OMB) has approved them under the Paperwork Reduction Act of 1995 and assigned them a control number. Publication of the control numbers notifies the public that OMB has approved these information collection requirements. A document announcing the effective date of § 91.315(e)(2) will be published in the Federal Register at a later date.

Deadline for comments on the interim rule: February 16, 1997.

Deadline for comments on the proposed information collection requirements: December 23, 1996.

ADDRESSES: HUD invites interested persons to submit comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

HUD also invites interested persons to submit comments on the proposed information collection requirements in this interim rule. Comments should refer to the above docket number and title, and should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steve Johnson, Assistant Director, State & Small Cities Division, Room 7184, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone number (202) 708–1322. FAX inquiries (but not comments on the interim rule) may be sent to Mr. Johnson at (202) 708–2575. (These numbers are not toll-free.) Hearing- or speech-impaired persons may access that number via TTY by calling the Federal Information Relay Service toll free at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the regulations for the State Community Development Block Grant (CDBG) program (24 CFR part 570) and for the Consolidated Submissions for Community Planning and Development Programs (24 CFR part 91) to provide additional flexibility to States in implementing their programs, to correct several inaccurate regulatory citations, and to correct several other errors that resulted from previous regulation changes. Specifically, this interim rule contains: (1) Changes to the consolidated plan action plan regarding the standard of review; (2) Changes to the consolidated plan action plan to allow for community revitalization strategies; (3) Changes to the low and moderate income benefit national objective criteria and public benefit standards regarding community revitalization strategies; (4) Additional changes to the low and moderate income benefit national objective criteria regarding limited clientele activities, removal of architectural barriers, and housing services; (5) A change regarding HUD approval of States' grants; and (6) Various technical and conforming changes to the State CDBG regulations, in association with the above changes or to correct inaccurate regulatory citations. The preamble of this interim rule describes each of these changes.

II. Community Revitalization Strategies

In the final rule for the Consolidated Submission for Community Planning and Development Programs, published in the Federal Register on January 5, 1995 (60 FR 1878), HUD gave Entitlement communities the option of developing a strategy for revitalizing particular neighborhoods. A community that elected to follow this approach, and whose strategy was approved, would be allowed greater flexibility in meeting certain national objectives and public benefit requirements. HUD noted in the preamble to the concurrent CDBG Program Economic Development Guidelines final rule (January 5, 1995; 60 FR 1922) that HUD was not incorporating the concept into the State CDBG program at that time because significant issues remained unresolved regarding how to apply the concept in non-Entitlement communities (60 FR 1929).

Following additional study of the concept and consultation with States, this interim rule introduces the community revitalization strategy concept into the State CDBG program. In the CDBG Entitlement program, revitalization strategies are called ''neighborhood revitalization strategies.'' The State CDBG program uses the more generic term ''community revitalization strategies.'' The essential concept is very similar for both programs, but the nature of the area covered may be quite different. HUD has consciously avoided referring to ''neighborhood'' strategies in the State CDBG program; the concept of a ''neighborhood'' is not meaningful or definable in many small communities and rural areas.

This interim rule amends § 91.315 of the Consolidated Plan regulations by adding a new paragraph (e)(2), which provides that States may (at their option) allow units of general local government to develop and implement community revitalization strategies. The State CDBG regulations allow such communities additional flexibility in meeting certain national objectives and public benefit requirements. Responsibility for approving individual revitalization strategies from units of local government lies with the State. States wishing to take advantage of this approach will need to ensure that the Method of Distribution in their consolidated plan action plans reflect the States' processes and criteria for approving local revitalization strategies. The normal CDBG requirement that States consult with units of local government in developing their method of distribution also applies to States'

development of their community revitalization strategy implementation approaches.

HUD has crafted this approach to give States maximum flexibility in implementing the revitalization strategy concept (including the choice of whether or not to implement it). Before implementing its approach to revitalization strategies, a State must submit for HUD approval a description of its implementation approach; approval of a consolidated plan action plan will not constitute automatic approval of the State's approach to revitalization strategies. HUD intends that approval of States' submissions will occur at the field office level. HUD will establish the parameters within which States may design approaches that best meet their communities' needs. HUD will not establish the overall design parameters and strategy approval process by regulation; instead HUD will distribute this guidance to both States and HUD field office staff in the form of a notice.

The extent to which a State will need to alter its method of distribution depends on how the State intends to implement the revitalization strategy concept and on the nature of its present method of distribution. A State may choose to establish a separate funding category for revitalization strategy projects; alternatively, a State might retain its existing funding categories and award bonus points to an applicant whose application was developed pursuant to a strategy. In such cases, a State would need to describe explicitly in the method of distribution its criteria and process for approving local strategies. In contrast, a State may decide that its existing funding process can incorporate the revitalization strategy concept without altering the method of distribution.

HUD believes that an essential component of the revitalization strategy concept is the provision of economic opportunities to residents of revitalization strategy areas. Revitalization strategies are a means for holistically addressing the identified needs of a targeted area. A number of States presently have funding categories such that localities may apply for a combination of activities to be carried out in a defined target area. States' methods of distribution often refer to these as ''comprehensive'' applications. HUD cautions States, however, that the community revitalization strategy concept, as HUD envisions it, may be more geographically focused and encompass a wider variety of activities (particularly concerning economic empowerment) than is presently provided for in typical ''comprehensive'' funding categories.

Several corresponding changes to the CDBG eligibility and national objectives requirements (discussed below) further implement the revitalization concept.

A. Public Services

This interim rule expands the list of activities that may be excluded from the limitations on public services. Section 570.482(d) currently excludes those public service activities specifically designed to increase economic opportunities by supporting the development of permanent jobs. This interim rule amends § 570.482 by adding a new paragraph (d)(3), which excludes services of any type carried out pursuant to a community revitalization strategy approved by a State.

B. Public Benefit Standards

This interim rule amends § 570.482(f)(3)(v) by adding two additional types of activities to the list of ''important national interest'' activities for which the public benefit standards allow extra flexibility. Certain economic development activities that provide services to residents of a revitalization strategy area, or that create or retain jobs in such an area, may now be excluded from the aggregate public benefit standards for economic development activities in § 570.482(f)(2).

C. Low and Moderate Income Benefit National Objective

The State CDBG regulations prior to this interim rule provided additional flexibility to certain job creation/retention and housing activities undertaken by Community Development Financial Institutions. In certain circumstances, jobs created or retained and housing units assisted may be aggregated to demonstrate compliance with the national objectives, as required under 104(b)(3) of the Housing and Community Development Act of 1974, as amended (the Act), and as provided in § 570.483 of the regulations. This interim rule provides similar flexibility to activities carried out pursuant to an approved revitalization strategy. Job creation or retention activities undertaken in an area pursuant to an approved revitalization strategy may be treated as meeting the national objective of benefiting a low and moderate income area. Provision or improvement of multiple housing units pursuant to an approved revitalization strategy may be treated as one structure in demonstrating low and moderate income benefit.

To ensure targeting of CDBG resources through community revitalization strategy areas to the most needy areas, the area benefit presumption is limited to areas that meet certain need indicators. Therefore, this interim rule provides in § 570.483(b)(1)(v) that strategy areas must be in one of the following areas:

(1) A Federally-designated Empowerment Zone or Enterprise Community; or

(2) A primarily residential area that contains at least 70 percent low and moderate income residents; or

(3) A primarily residential area where all the census tracts (or block numbering areas) have poverty rates of at least 20 percent and at least 90 percent of all the census tracts/block numbering areas have poverty rates of at least 25 percent.

The 70 percent low and moderate income threshold applies to the entire area. The 20 and 25 percent poverty rates thresholds are adopted from the Empowerment Zone/Enterprise Community legislation (section 13301 of the Omnibus Budget Reconciliation Act of 1993, 26 U.S.C. 1392(a)(4)). Consistent with that program, the poverty criteria are applied on a census-tract-by-census-tract basis. This does not mean that the boundaries of the community revitalization strategy areas must coincide with census tract/block numbering area boundaries. If only part of a census tract/block numbering area will be included in a strategy area, the poverty rate for those block groups within the strategy area should be calculated and used instead of the poverty rate for the entire census tract/block numbering area.

For individual strategy areas, a State may request an exception to either the 70 percent low and moderate income threshold or the 25 percent poverty threshold. In no case, however, will HUD approve a revitalization strategy for an area that has neither a 20 percent poverty rate for all census tracts nor 51 percent of its residents qualifying as low and moderate income. HUD field offices will review and approve exceptions on a case-by-case basis only. HUD envisions that it will grant exceptions only for unusual circumstances, in which strong targeting of benefits to low and moderate income purposes can still be shown. HUD will not entertain requests for ''blanket'' exceptions covering all proposed strategy areas in a State.

III. Technical Amendments to State CDBG and Consolidated Plan Regulations

A. State CDBG Waiver Provisions

On February 9, 1996 (61 FR 5198), HUD published a final rule entitled ''General HUD Program Requirements; Cross-Cutting Requirements,'' which created a new 24 CFR part 5. This final rule consolidates in part 5 various definitions and cross-cutting requirements that are common to many HUD programs. Consolidating these requirements eliminated the redundancy of repeating requirements or definitions that apply to more than one program. Section 5.110 contains HUD's provision for granting waivers of regulations. The February 9, 1996 final rule, however, inadvertently failed to revise the existing State CDBG Program waiver provision at § 570.480(b). This interim rule revises § 570.480(b) to refer to HUD's waiver authority in part 5 and HUD's statutory authority (under section 122 of the Act) to suspend requirements in Presidentially-declared disaster areas.

B. Low and Moderate Income National Objective Criteria

This interim rule changes several of the criteria for demonstrating compliance with the national objective of benefitting low and moderate income persons. HUD made similar changes to the CDBG Entitlement regulations in a final rule published on November 9, 1995 (60 FR 56892). Making similar changes to the State CDBG regulations will provide States the same flexibility and maintain consistency between the requirements of the State program and the Entitlement program.

1. *Limited clientele activities.* This interim rule changes the list of clientele groups in § 570.483(b)(2)(ii)(A) that HUD presumes to be principally of low and moderate income. This interim rule adds the term ''persons living with AIDS'' to the list of ''presumed'' low/moderate income groups. Reliable national data from the Center for Disease Control in Atlanta, Georgia supports a reasonable presumption that at least 51 percent of such persons in a given geographic area are low and moderate income.

This interim rule also replaces the term ''handicapped'' with terms compatible with available income data on persons with a disability provided by the Bureau of the Census' Current Population Reports. The data, issued in 1993 from the Survey of Income and Program Participation, justify a national presumption that adults meeting the Census criteria for ''severe disability'' meet the low and moderate income national objective under the CDBG program. The Census definition of ''severe disability'' only applies in the CDBG program for purposes of making presumptions about income levels for groups of disabled persons; it does not apply for purposes of meeting responsibilities under section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, or the Architectural Barriers Act. Therefore, HUD is changing the terminology in this interim rule to clarify the distinction between the income presumption provision and the civil rights requirements.

2. *Architectural Barriers Removal.* This change clarifies provisions under which the use of CDBG funds is authorized for the removal of barriers to accessibility for elderly and disabled persons. Section 105(a)(5) of the Act (42 U.S.C. 5305(a)(5)) makes eligible the use of program funds for special projects directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly and handicapped persons. Under current law and regulation, this provision has very limited usefulness and has caused confusion. It is important that the regulations clearly state how CDBG funds may be used for barrier removal. The real questions arise with respect to compliance with the national objectives. Virtually all public facilities and improvements serve an area generally and are thus subject to the limitations imposed by section 105(c)(2) of the Act. Section 105(c)(2) states that activities that serve an area generally may be considered to address the national objective of benefit to low and moderate income persons only if the percentage of residents in the service area who are of such income meets certain minimum levels. The present regulations implement this limitation in § 570.483(b)(1). Where accessibility barriers exist in a facility or improvement that serves an area that does not meet this requirement, the use of CDBG funds to remove such barriers can be problematic. This interim rule revises § 570.483(b)(2)(iii) to clarify the circumstances in which the limited clientele presumption may be applied to such activities.

3. *Housing activities.* This interim rule makes two amendments to § 570.483(b)(3). First, this interim rule amendment clarifies the housing activities that may qualify as benefitting low and moderate income persons. The present regulations include ''the acquisition or rehabilitation of property.'' This interim rule expands the list to indicate that such acquisition or rehabilitation may be undertaken by units of general local government, subrecipients, developers, homeowners or homebuyers, and nonprofit entities qualifying under section 105(a)(15) of the Act.

Second, this interim rule reflects two statutory changes to eligible activities, and it further clarifies HUD's policy regarding these changes. Section 105(a)(25) of the Act makes downpayment assistance to homebuyers an eligible activity. Section 105(a)(15) of the Act makes nonprofit organizations serving the community development needs of non-Entitlement communities eligible to receive assistance to carry out neighborhood revitalization, community economic development and energy conservation projects.

This interim rule also responds to another statutory change. Section 207 of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233; approved April 11, 1994) amended section 105(a)(21) of the Housing and Community Development Act of 1974. Section 105(a)(21) now authorizes housing services, such as housing counseling in connection with tenant-based rental assistance and affordable housing projects assisted under the HOME Program (title II of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA)), energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in housing activities assisted under title II of the NAHA. Any costs of delivering the housing services made eligible under the amended section 105(a)(21) are also eligible.

HUD reminds States and localities using HOME and CDBG funds together that the eligibility and benefit requirements of the two programs differ; the HOME term ''project'' and the CDBG term ''activity'' are not synonymous, and States and localities should exercise care in managing and documenting jointly-funded activities. To simplify this process, this interim rule creates a new § 570.483(b)(3)(iii), stating that when CDBG funds are used for housing services eligible under section 105(a)(21) of the Act, such funds shall be considered to benefit low and moderate income persons when the housing for which the services are provided is to be occupied by low and moderate income households. Documentation demonstrating that the

HOME project (or projects) supported by the CDBG housing services activity meets the HOME income targeting criteria at 24 CFR 92.252 and 92.254 are sufficient to demonstrate compliance with this provision.

C. Program Income Requirements

This interim rule corrects the program income requirements contained in § 570.489. The final rule for CDBG Program Economic Development Guidelines (January 5, 1995; 60 FR 1922) renumbered paragraph (e)(2) of this section as paragraph (e)(3). Within that section, however, the final rule did not similarly renumber a reference to paragraph (e)(2)(ii) as paragraph (e)(3)(ii). This interim rule makes the correction. HUD will soon issue a proposed rule that would substantially revise all of paragraph (e). HUD will finalize the technical change described above when it finalizes those new program income requirements.

D. HUD Actions in Approving Plans and Making Grants

The CDBG Entitlement program final rule that HUD published on November 9, 1995 (60 FR 56892) restored language in the Entitlement program regulations that was inadvertently deleted by the Consolidated Plan final rule (January 5, 1995; 60 FR 1878). That final rule clarified that HUD retains the authority to require additional assurances from grantees when substantial evidence exists that a certification of future performance is not valid. This authority is in addition to the current Consolidated Plan regulations (based on the Comprehensive Housing Affordability Strategy statutory language), which simply provide for certifications to be wholly accepted or wholly rejected. Requiring additional assurances and potentially delaying or limiting the grantee's access to funds may trigger CDBG due process hearing requirements. Therefore, HUD will coordinate such actions between HUD field offices and Headquarters.

The Consolidated Plan final rule inadvertently deleted a similar provision in § 570.485(c) of the State CDBG regulations. This interim rule restores this language, which is similar to that found in § 570.485(b), except that § 570.485(c) includes references to the Consolidated Plan regulations in part 91. This interim rule also makes a conforming change to § 91.500(b) of the Consolidated Plan regulations by adding a cross-reference to the restored § 570.485(c).

This interim rule makes another technical correction also resulting from the Consolidated Plan final rule. Section 570.486(a) requires units of general local government to follow the citizen participation requirements imposed by the State. The associated requirement for State citizen participation processes originally appeared at § 570.485(c)(1)(i). The Consolidated Plan final rule moved those requirements to § 91.115(e). This interim rule replaces the old regulatory citation with the correct one.

E. Other Applicable Laws

This interim rule applies the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) (the ABA) to the State CDBG program. The ABA requires certain Federal and Federally-funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, persons with physical disabilities. HUD's original CDBG regulations required compliance with accessibility standards issued pursuant to the ABA (see former 24 CFR 570.606, as issued on November 13, 1974 (39 FR 40148); and amended on June 28, 1977 (42 FR 33020)). In 1983, HUD eliminated the requirement that the Entitlement and HUD-Administered Small Cities programs comply with the ABA accessibility standards. HUD did not apply the ABA to the State CDBG program when it became operational in 1982 (47 FR 15290; April 8, 1982). HUD stated that the CDBG program was not statutorily subject to the accessibility standards of the ABA, because the CDBG statute does not provide authority for imposing design, construction, or alteration standards on CDBG-funded facilities, as required by section 4151(3) of the ABA. HUD further stated that it had imposed the ABA standards on the CDBG Entitlement and Small Cities programs as a regulatory requirement (47 FR 43909). HUD noted, however, that some facilities constructed or altered with CDBG assistance would remain subject to accessibility standards through section 504 of the Rehabilitation Act of 1973.

Since HUD's decision in 1983 not to require compliance with the ABA in the CDBG program, two significant events have caused HUD to reconsider this decision. The first event was the passage of the Fair Housing Amendments Act of 1988 (Pub. L. 100–430; approved September 13, 1988) (the Amendments Act), which amended title VIII of the Civil Rights Act of 1968 to prohibit discrimination in housing on the basis of handicap and familial status. The Amendments Act also makes it unlawful to design and construct certain multifamily dwellings for first occupancy after March 13, 1991 in a manner that makes them inaccessible to persons with disabilities. Further, the Amendments Act makes it unlawful to refuse to permit, at the expense of the person with a disability, reasonable modifications to existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises.

The second event was the passage of the Americans with Disabilities Act (Pub. L. 101–336; approved July 26, 1990) (the ADA), which provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. The ADA provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993 that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature from existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense. (See the final rule implementing the ADA published by the Department of Justice on July 26, 1991 (56 FR 35544, 35568).)

The Amendments Act and the ADA indicate a clear policy that housing, commercial facilities, and public accommodations should be ''readily accessible and usable by'' individuals with disabilities. In light of these developments and to foster consistency in the administration of HUD's programs, this interim rule requires compliance with the ABA in the State CDBG program. (HUD has already required such compliance in the Entitlement program in the November 9, 1995 final rule (60 FR 56892).) Assisted facilities would have to meet the requirements of the Uniform Federal Accessibility Standards for alterations if the alterations are financed in whole or in part by CDBG funds made available after the effective date of a final rule. Although alterations made without the use of Federal funds would not have to comply with the accessibility requirements of the ABA, alterations made to these facilities, in most instances, would have to comply with the accessibility requirements of the public accommodations provisions of the ADA. This interim rule establishes this requirement in a new § 570.487(e).

F. HUD's Reviews and Audits

To clarify the relationship between HUD's review procedures and HUD's expectations for States regarding recordkeeping, this interim rule amends § 570.493(b) by adding an additional sentence. The additional sentence provides that a State's failure to maintain records may result in a finding of noncompliance with the requirement to which the record pertains. This provision does not represent a change in HUD's overall policy (a comparable provision already exists in the Entitlement program); it is just a clearer expression of this relationship. This interim rule also updates § 570.493(a) by replacing the reference to a ''final statement'' with a reference to the consolidated plan action plan.

Justification for Interim Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with it's regulations on rulemaking in 24 CFR part 10. Part 10 provides exceptions, however, if HUD 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 interim rule for effect without first soliciting public comment, since prior public procedure would be unnecessary.

HUD has already implemented the community revitalization strategy approach in the Entitlement CDBG program through the Consolidated Plan final rule published on January 5, 1995 (60 FR 1878). HUD has decided that it is unnecessary to solicit comments prior to implementing this flexible initiative in the State CDBG program for the following reasons: (1) States have been generally aware of the community revitalization strategy concept since the publication of the CDBG Economic Development Guidelines final rule for the Entitlement program on January 5, 1995 (60 FR 1922, 1929), in which HUD solicited comments on the development of the concept for States; (2) HUD has consulted with a representational cross section of States on the specific content of this interim rule; (3) A number of States have asked HUD to institute the revitalization strategy concept in the State program as quickly as possible, so that they may take advantage of this flexible new approach; and (4) Adoption of the concept is optional for States, and so imposes no involuntary burden on them.

This interim rule allows States to implement the revitalization concept promptly, while still providing for public comment on the regulations before they are finalized. HUD is providing an extended comment period (120 days rather than 60 days) so that respondents may base their comments on their actual experience in implementing the revitalization strategy concept. During the extended comment period, HUD also plans to publish a notice in the Federal Register describing the parameters within which States may design their approach and explaining HUD's process for approval of States' process descriptions.

HUD has also determined that it is unnecessary to solicit prior comment before implementing the other changes in this interim rule. The changes to the national objectives criteria concerning architectural barriers removal, housing activities, and ''presumed benefit'' groups provide increased flexibility to States and State grantees. HUD has previously adopted the changes in the Entitlement program after soliciting and considering comments. The changes regarding housing activities merely provide clarification in light of statutory changes. HUD has also solicited and considered public comments before clarifying HUD's policy regarding reviews and audits in the Entitlement program.

It is also unnecessary to solicit prior public comment regarding the application of the Architectural Barriers Act (ABA) to the State CDBG program, because this application is necessitated by other statutory changes. In adding this requirement to § 570.487, HUD does not provide further regulatory interpretation of the ABA, but refers to other applicable Federal regulations. HUD issued those regulations through previous rulemaking actions. HUD also recently solicited and considered public comments before applying the ABA to the Entitlement CDBG program.

This interim rule also corrects regulatory citations and reinstates unintentionally-deleted language. It is unnecessary to solicit prior public comment on these minor technical corrections and clarifications, because they do not represent substantive changes to the regulations.

The interim rulemaking process allows interested parties an opportunity to comment on all of the changes included in this interim rule. HUD will consider all comments received in developing a final rule concerning these changes.

Findings and Certifications

Paperwork Reduction Act of 1995

The information collection requirements contained in § 91.315(e)(2) of this interim rule have been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

As required under 5 CFR 1320.8(d)(1), HUD and OMB are seeking comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Interested persons are invited to submit comments according to the instructions in the ''Dates'' and ''Addresses'' sections in the preamble of this interim rule.

This document also provides the following information:

Title of Proposal: Community Revitalization Strategies: submission of implementation process description statement by States; submission of Community Revitalization Strategy by units of general local government to States.

OMB Control Number: OMB has previously approved the information collection requirements for the State CDBG Program under control number 2506–0117. This proposed information collection would be in addition to the information collection requirements presently covered under control number 2506–0117.

Description of the Need for the Information and Proposed Use: This interim rule will, among other changes, allow States the option of implementing a community revitalization strategy approach to community development.

States that wish to adopt this approach will develop a process for implementing community revitalization strategies in their State CDBG program, including the specific process and criteria to be used in approving local strategies. This process description, which will be part of the State's consolidated plan action plan, must be submitted to and approved by HUD. Units of local government applying for or receiving State CDBG funds may then prepare a community revitalization strategy and submit it to the State for approval. If the strategy is approved, the locality will be allowed greater flexibility in meeting certain national objectives and public benefit criteria.

Form Numbers: Not applicable. Process descriptions will be submitted by States to HUD in narrative format; no forms will be required. States will determine the format for submission of community revitalization strategies by units of general local government.

Members of Affected Public: States, units of general local government. Units of local government will be expected to consult with citizens and involve citizens in the development of community revitalization strategies.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection including Number of Respondents, Frequency of Response, and Hours of Response: Both State and local governments, as well as HUD staff, will expend time in implementing the community revitalization strategy approach. States' time will be spent in designing their process and in reviewing and approving local governments' strategies; local governments' time will be spent in developing strategies and in reporting to states on the progress and outcomes of strategy implementation. HUD's time will be spent in reviewing States' implementation process descriptions.

The exact number of hours needed to prepare the information collection cannot be estimated with great certainty. The actual time spent may vary greatly, depending on a number of variable factors:

- Whether or not a particular State chooses to adopt the community revitalization strategy approach in its program;
- The number of communities in which a particular State chooses to authorize the community revitalization strategy approach;
- The scope and nature of States' existing application and funding distribution processes for units of local government;
- The design of a particular State's approach to implement community revitalization strategies;
- The process a State uses to develop its implementation approach;
- The process a unit of local government uses to develop its revitalization strategy.

The Department anticipates that under some States' processes, the preparation of a community revitalization strategy will entail additional work by a local government beyond that normally required to prepare an application for funding. Some States may only slightly alter their existing application requirements to incorporate the revitalization strategy concept; under those programs, the incorporation of a community revitalization strategy may involve little or no additional preparation time. Some communities may have, for their own purposes, previously prepared a document that meets their State's requirements for a community revitalization strategy; no additional work may be necessary in those cases.

The burden of any additional work entailed in development of a strategy will be offset by a reduced documentation burden for certain activities undertaken pursuant to an approved strategy. For example, certain economic development activities may be shown to meet the low- and moderate-income benefit national objective on the basis of serving a principally low- and moderate-income area rather than on the basis of creating (or retaining) jobs for persons of low and moderate incomes. In such cases, communities would not need to collect information on the household income of each employee hired or retained; this would substantially reduce the amount of time spent by communities in demonstrating compliance with program requirements.

The following figures represent estimates of the additional information collection burden resulting from implementation of community revitalization strategies. These figures represent additional increments of time beyond those normally involved in the State CDBG program. In developing these estimates of time and cost, the Department has melded its own estimations with averaged figures provided by several States that have expressed interest in implementing community revitalization strategies. To the extent that States minimize or streamline the process for submission of strategies, the actual burden per unit of local government may be less than these estimates. The amount of time for States to review communities' strategies is anticipated to be minimal; it is anticipated that, in many States, the format for submitting a strategy will subsume much of the documentation that States presently request in applications.

Burden of collection	Frequency	Number of respondents	Total hours per response	Total hours
State process description:				
State	1	25	120	3,000
Federal	1	25	2	50
Community revitalization strategy:				
Local	1	300	120	36,000
State	1	300	1	300
Federal	0	0	0	0
Local recordkeeping on approved strategies:				
Local	Ongoing	300	−80	−24,000
State	0	0	0	0
Federal	0	0	0	0
Local reporting to State on approved strategies:				
Local	Ongoing	300	8	2,400
State	0	0	0	0
Federal	0	0	0	0

Burden of collection	Frequency	Number of respondents	Total hours per response	Total hours
Total		325		17,750

Status of the Proposed Information Collection: New collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule does not have a significant economic impact on a substantial number of small entities. Specifically, this interim rule makes technical amendments and provides States and communities the same flexibility of the community revitalization strategies concept that HUD previously provided for recipients in the Entitlement program.

Environmental Impact

At the time of the development of the regulations in part 570, and when the regulations were substantively amended by the rules described in this preamble, HUD made Findings of No Significant Impact with respect to the environment in accordance with the 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). This interim rule does not make significant changes to those regulations in terms of environmental impact. Accordingly, those findings remain applicable to this interim rule, and are 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 the policies contained in this interim rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim rule will benefit States and communities by providing them with additional flexibility in meeting certain national objectives and public benefit requirements of the CDBG program. As a result, the interim rule is not subject to review under the order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this interim rule does not have potential for significant impact on family formation, maintenance, and 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 interim rule, as those policies and programs relate to family concerns.

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, for the reasons described in this preamble, 24 CFR parts 91 and 570 are amended, as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

1. The authority citation for 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. Section 91.315 is amended by redesignating the text of paragraph (e) as paragraph (e)(1), and by adding a new paragraph (e)(2), to read as follows:

§ 91.315 Strategic plan.

* * * * *

(e) * * *

(2) A State may elect to allow units of general local government to carry out a community revitalization strategy that includes the economic empowerment of low income residents, in order to obtain the additional flexibility available as provided in 24 CFR part 570, subpart I. A State must approve a local government's revitalization strategy before it may be implemented. If a State elects to allow revitalization strategies in its program, the method of distribution contained in a State's action plan pursuant to § 91.320(g)(1) must reflect the State's process and criteria for approving local governments' revitalization strategies. The State's process and criteria are subject to HUD approval.

* * * * *

3. In § 91.320, paragraph (g)(1) is amended by adding a new sentence after the third sentence and before the parenthetical sentence at the end of the paragraph, to read as follows:

§ 91.320 Action plan.

* * * * *

(g) * * *

(1) * * * If a State elects to allow units of general local government to carry out community revitalization strategies, the method of distribution shall reflect the State's process and criteria for approving local governments' revitalization strategies. * * *

* * * * *

4. Section 91.500 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 91.500 HUD approval action.

* * * * *

(b) *Standard of review.* HUD may disapprove a plan or a portion of a plan if it is inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12703), if it is substantially incomplete, or, in the case of certifications applicable to the CDBG program under §§ 91.225 (a) and (b) or 91.325 (a) and (b), if it is not satisfactory to the Secretary in accordance with

§§ 570.304, 570.429(g), or 570.485(c) of this title, as applicable. The following are examples of consolidated plans that are substantially incomplete:

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

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

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

6. Section 570.480 is amended by revising paragraph (b) to read as follows:

§ 570.480 General.

* * * * *

(b) 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.

* * * * *

7. Section 570.482 is amended by:

a. Amending paragraph (d)(1) by removing the word ''and'' at the end of the paragraph;

b. Amending paragraph (d)(2) by removing the period at the end of the paragraph and adding in it's place the phrase ''; and'';

c. Adding a new paragraph (d)(3); and

d. Amending paragraph (f)(3)(v) by adding new paragraphs (f)(3)(v)(L) and (f)(3)(v)(M), to read as follows:

§ 570.482 Eligible activities.

* * * * *

(d) * * *

(3) Services of any type carried out under the provisions of section 105(a)(15) of the Act, pursuant to a strategy approved by a State under the provisions of § 91.315(e)(2) of this title.

* * * * *

(f) * * *

(3) * * *

(v) * * *

(L) Provides services to the residents of an area pursuant to a strategy approved by the State under the provisions of § 91.315(e)(2) of this title;

(M) Creates or retains jobs through businesses assisted in an area pursuant to a strategy approved by the State under the provisions of § 91.315(e)(2) of this title.

* * * * *

8. Section 570.483 is amended by:

a. Revising paragraph (b)(1)(iv);

b. Adding a new paragraph (b)(1)(v);

c. Revising the second sentence of paragraph (b)(2)(ii)(A);

d. Revising paragraph (b)(2)(iii);

e. Revising the introductory text of paragraph (b)(3);

f. Adding a new paragraph (b)(3)(iii);

g. Amending the last sentence of paragraph (b)(4)(vi)(D) by removing the reference to ''paragraph (e)(5)'' and by adding in its place a reference to ''paragraph (e)(6)'';

h. Amending the last sentence of paragraph (b)(4)(vi)(E) by removing the reference to ''paragraph (e)(5)'' and by adding in its place a reference to ''paragraph (e)(6)'';

i. Amending paragraph (b)(4)(vi)(F)(*2*) by removing the citation ''§ 570.482(e)'' and by adding in its place the citation ''§ 570.482(f)'';

j. Redesignating paragraph (e)(5) as (e)(6), and by revising the first sentence of newly redesignated paragraph (e)(6); and

k. Adding a new paragraph (e)(5); to read as follows:

§ 570.483 Criteria for national objectives.

* * * * *

(b) * * *

(1) * * *

(iv) Activities meeting the requirements of paragraph (e)(4)(i) of this section may be considered to qualify under paragraph (b)(1) of this section.

(v) HUD will consider activities meeting the requirements of paragraph (e)(5)(i) of this section to qualify under paragraph (b)(1) of this section, provided that the area covered by the strategy meets one of the following criteria:

(A) The area is in a Federally-designated Empowerment Zone or Enterprise Community;

(B) The area is primarily residential and contains a percentage of low and moderate income residents that is no less than 70 percent;

(C) All of the census tracts (or block numbering areas) in the area have poverty rates of at least 20 percent, at least 90 percent of the census tracts (or block numbering areas) in the area have poverty rates of at least 25 percent, and the area is primarily residential. (If only part of a census tract or block numbering area is included in a strategy area, the poverty rate shall be computed for those block groups (or any part thereof) which are included in the strategy area.)

(D) Upon request by the State, HUD may grant exceptions to the 70 percent low and moderate income or 25 percent poverty minimum thresholds on a case-by-case basis. In no case, however, may a strategy area have both a percentage of low and moderate income residents less than 51 percent and a poverty rate less than 20 percent.

(2) * * *

(ii) * * *

(A) * * * Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit persons, 51 percent of whom are low and moderate income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' Current Population Reports definition of ''severely disabled,'' homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers; or

* * * * *

(iii) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of ''severely disabled'' will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:

(A) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under § 570.483(b)(1);

(B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under § 570.483(b) (1) or (4); or

(C) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under § 570.483(b)(3).

* * * * *

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the unit of general local government, a subrecipient, an entity eligible to receive assistance under section 105(a)(15) of the Act, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. If two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. If housing activities being assisted meet the requirements of paragraph (e)(4)(ii) or (e)(5)(ii) of this

section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The unit of general local government shall adopt and make public its standards for determining ''affordable rents'' for this purpose. The following shall also qualify under this criterion:

* * * * *

(iii) When CDBG funds are used for housing services eligible under section 105(a)(21) of the Act, such funds shall be considered to benefit low and moderate income persons if the housing units for which the services are provided are HOME-assisted and the requirements of § 92.252 or § 92.254 of this title are met.

* * * * *

(e) * * *

(5) If the unit of general local government has elected to prepare a community revitalization strategy pursuant to the authority of § 91.315(e)(2) of this title, and the State has approved the strategy, the unit of general local government may also elect the following options:

(i) Activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of paragraph (b) of this section under the criteria at § 570.483(b)(1)(v) instead of the criteria at § 570.483(b)(4); and

(ii) All housing activities in the area undertaken pursuant to the strategy may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.

(6) If an activity meeting the criteria in § 570.482(f)(3)(v) also meets the requirements of either paragraph (e)(4)(i) or (e)(5)(i) of this section, the unit of general local government may elect to qualify the activity either under the area benefit criteria at paragraph (b)(1) (iv) or (v) of this section or under the job aggregation criteria at paragraph (b)(4)(vi)(D) of this section, but not under both. * * *

* * * * *

9. Section 570.485 is amended by revising the section heading, and by adding a new paragraph (c), to read as follows:

§ 570.485 Making of grants.

* * * * *

(c) *Approval of grant.* HUD will approve a grant if the State's submissions have been made and approved in accordance with 24 CFR part 91, and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to § 570.493 that the State has not complied with the requirements of this subpart, or has determined that there is evidence, not directly involving the State's past performance under this program, that tends to challenge in a substantial manner the State's certification of future performance. If the Secretary makes any such determination, however, the State may be required to submit further assurances as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

§ 570.486 [Amended]

10. In § 570.486, paragraph (a) introductory text is amended by removing the reference to ''§ 570.485(c)(1)(i)'', and by adding in its place a reference to ''§ 91.115(e) of this title''.

11. Section 570.487 is amended by adding a new paragraph (e) to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(e) *Architectural Barriers Act and the Americans with Disabilities Act.* The Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) requires certain Federal and Federally-funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this subpart after November 21, 1996 and that meets the definition of *residential structure* as defined in 24 CFR 40.2, or the definition of *building* as defined in 41 CFR 101–19.602(a), is subject to the requirements of the Architectural Barriers Act of 1968 and shall comply with the Uniform Federal Accessibility Standards. For general type buildings, these standards are in Appendix A to 41 CFR part 101–19.6. For residential structures, these standards are available from the Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Disability Rights Division, Room 5240, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–2333 (voice) or (203) 708–1734 (TTY) (these are not toll-free numbers).

§ 570.489 [Amended]

12. Section 570.489 is amended by:

a. Amending the first sentence of the introductory text of paragraph (e)(3) by removing the phrase ''paragraph (e)(2)(ii)'', and by adding in its place the phrase ''paragraph (e)(3)(ii)'';

b. Removing paragraph (k)(2); and

c. Redesignating paragraph (k)(1) as paragraph (l).

13. Section 570.493 is amended by:

a. Amending paragraph (a)(1) by removing the phrase ''final Statement'', and by adding in its place the phrase ''action plan under part 91 of this title''; and

b. Amending paragraph (b) by adding a sentence at the end to read as follows:

§ 570.493 HUD's reviews and audits.

* * * * *

(b) * * * A State's failure to maintain records in accordance with § 570.490 may result in a finding that the State has failed to meet the applicable requirement to which the record pertains.

Dated: August 28, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

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