

2011 INITIAL STATEMENT OF REASONS

Community Development Block Grant (CDBG) Title 25, California Code of Regulations

Proposed Amendments to

Sections 7054, 7056, 7058, 7060, 7062, 7062.1, 7064, 7066, 7072, 7074, 7076, 7078, 7078.1, 7078.2, 7078.3, 7078.4, 7078.5, 7078.6, 7078.7, 7097, 7104

1. INTRODUCTION

This Initial Statement of Reasons (ISOR) has been prepared by the California Department of Housing and Community Development (hereinafter “the Department”) to describe amendments to regulations currently in effect for the State Community Development Block Grant (CDBG) Program and the factual basis for these amendments.

The State of California receives money from the U.S. Department of Housing and Urban Development (hereinafter “HUD”) to make grants to non-entitlement local governments which do not receive funds directly from HUD. These funds can be used for a wide variety of eligible activities, including housing rehabilitation, housing acquisition, public works, community facilities, public services, planning, and economic development as long as recipients comply with requirements prescribed by federal law and these State regulations.

CDBG funds are made available to non-entitlement cities and counties through Notices of Funding Availability (NOFAs), and applications are reviewed and evaluated using various criteria set forth in the State’s Annual Plan.

2. DISCUSSION OF THE PROBLEM

Introduction

These amendments propose to improve the CDBG Regulations as follows:

1. Streamlining

These amendments will streamline the operation of the State CDBG program by eliminating unnecessary regulations, among them the provisions prescribing a multi-year funding process, under which the Department committed funds from three different annual federal allocations at one time. This process was administratively difficult to operate.

2. Staffing and Workload Consolidation

Less funding is available for administration of the program, reducing the number of State and local staff available to operate the program. The State needs to make the program more efficient so it can operate with fewer State and local staff. These regulation changes are necessary to achieve these efficiencies, especially reducing the number of NOFAs from seven to one.

Problems With The Current System

1. CDBG General and Economic Development regulations are separate

Existing regulations separate CDBG Economic Development (ED) activities in Section 7062.1 and CDBG General activities in all the other sections. The Department's proposed regulation changes will integrate the ED regulations with the General regulations so that a single NOFA can be used.

2. General Administration Shortfall

The State's General Fund support for the CDBG program has been reduced by about \$1,000,000 a year resulting in a reduction of 10 CDBG staff positions. The current CDBG method of distribution is not feasible for staffing workload, as discussed above in the Introduction, item 2.

3. Flexibility in Method Of Distribution Needed

The current scoring system and multiple NOFAs results in many jurisdictions receiving multiple awards and Standard Agreements, with some jurisdictions having six CDBG Standard Agreements for one funding year. The proposed regulations would also establish a new methodology for encouraging timely expenditure of funds, which is a major priority of HUD for the CDBG program.

4. Multi-Year Continuous Funding

In 2003, the Department authorized, in regulation, the ability for jurisdictions to apply for and be awarded "multi-year" contracts which were designed to allow for up to 3 years of continuous funding. The concept was to "pre-commit" future funds to phased projects and programs, increasing the program's overall expenditure rate. Both jurisdictions and the Department found this process to be administratively complex because new methods of awards and encumbrances had to be developed to be consistent with State accounting rules. There were also problems with keeping track of the separate constraints and deadlines associated with each different year of funding within a single contract. Thus, in the current regulations, the Department seeks to repeal all language pertaining to multi-year contracts.

5. No Clearly Defined Eligibility Threshold

The existing CDBG regulations do not have clearly defined application eligibility threshold requirements to encourage timely expenditure, planning, and reporting. The existing regulations also did not require compliance with the federal A-133 Single Audit Act as a threshold for application eligibility.

Proposed Solutions

The Department is proposing the following to meet three overarching program improvement goals:

1. Improve Department efficiency and to clarify the CDBG State Regulations for program users and staff;
2. Correct deficiencies in the regulations, such as the multi-year continuous funding requirements; and,
3. Create greater program flexibility by removing unnecessary detail, such as the number of copies of the funding application that need to be submitted.

The summary of these proposed changes are to:

- a. Establish authority to issue one NOFA each year for the main CDBG program, while still preserving the authority to issue other NOFA's for one-time programs awarded to the Department (e.g. the Neighborhood Stabilization Program). The single NOFA would include all program components: Planning and Technical Assistance grants, Economic Development grants and Community Development grants (General CDBG), as well as announcing the annual open and close dates for the Economic Development- Over-the-Counter component (ED OTC).
- b. Establish a broad outline of the rating system, with detailed rating criteria established in the NOFA.
- c. Change the application threshold items.
- d. Add the authority to require that CDBG grantees expend at least 50 percent of their aggregate awards beginning with the funding cycle of 2013 (counting only the aggregate of any applicable contracts signed in 2012 and later) before a grantee will be eligible to re-apply for more CDBG funds. This change will ensure that additional funding only goes to jurisdictions which have a proven history of spending funds in a timely manner – a strong indicator that they can do so if awarded another grant. Economic Development funds awarded for large one-time projects would not be included in these calculations because performance in these projects is not a strong indicator of success, as it is with the other activities.
- e. Establish new activity-based scoring criteria for all General and ED activities (excluding ED OTC) which better reflect both jurisdictional market conditions and greatest needs, and allows greater competitive fairness across all the jurisdictions.
- f. Establish new activity funding allocation calculation procedures, which better reflect actual jurisdictional demand.

3. EXPLANATION OF CHANGES TO INDIVIDUAL SECTIONS

Section: 7054. Definitions

1. "Economic Development" is being defined to make clear the goals and scope this funding allocation of the CDBG program.
2. "General" is being defined to make clear the goals and scope of this funding allocation of the CDBG program. The Department also wishes to make clear that "Community Development" also refers to General activities.
3. The term "NOFA" is being added to make clear that "NOFA" is the acronym for "Notice of Funding Availability.
4. Under "Overpayment" the 25% has been corrected to 30%.

5. The definition of the term “TIG” is not being changed; rather the language is being stated in a more concise manner. As well, the Department proposes to make clear that “Low/Mod” also refers to “TIG”.

Section Heading: ARTICLE 2. APPLICATION PROCESS

The Department proposes to add the “Application Process” heading to make clear the section demarcations for ease of locating referenced material in the regulations. The official repository of State regulations, maintained by Barclay’s, lists this heading in this location, in the Table of Contents for these regulations; however, the actual heading has not been inserted into the regulations themselves.

Section: 7056. Application and Funding Requirements

The Department seeks to rename Section 7056 as follows for purposes of subject and reference clarity, and to make the changes as noted below.

Section: 7056. Funding Availability

This section contains the discussion of how funds will be announced.

The Department is proposing to insert new subsections (a – c) to accomplish the following:

- Authorize the Department to issue one NOFA, with all pertinent funding and application information while still allowing the Department to issue special purpose NOFAs for set-aside funds and special HUD allocations.
- Repeal multi-year contract language.
- Move all language pertaining to jurisdiction eligibility to Section 7060, Eligible Applicants.
- Move all language pertaining to Program Income to Section 7104, Program Income.
- Move all language pertaining to Eligible Activities to Section 7058, Eligible Activities.

Issuance of NOFAs: As discussed in the section above titled “Proposed Solutions”, the Department proposes to streamline and improve the process of awarding funds and allow the program greater flexibility in meeting housing and infrastructure needs within a jurisdiction serving households at or below 80 percent median income.

Due to a steady decline in available funds and required staffing reductions, rather than issuing several different NOFAs throughout the year, the Department wishes to streamline this process with one NOFA inclusive of the entire annual allocation the Department receives from HUD, but reserves the right to issue more than one NOFA if additional funds from HUD are received. Additional funds are received from time to time, generally in the form of economic recovery funds and/or disaster recovery funds. The Department seeks authority to make clear that these special NOFAs will, indeed, continue to be released and administered by the Department separate from the annual CDBG allocation from HUD.

The original Subsection (a)(1) discusses some threshold requirements for eligible applicants.

The Department proposes to strike this language from Section 7056 and move it to Section 7060 – Eligible Applicants.

The original Subsection (a)(2) discusses past jurisdiction performance as an eligibility threshold item.

The original Subsection (a)(2) established a vague requirement that grantees resolve audit findings and performance problems to be eligible to apply for CDBG funds, which could be waived by the Department in some circumstances. The absence of clear definition of what constituted a “performance problem”, along with the broad basis upon which a waiver could be provided, combined to make this an unpredictable and time-consuming task.

The Department seeks to repeal this language and instead incorporate the threshold expenditure rate (the 50% expenditure requirement) and other measures of performance as part of the application rating and ranking criteria. This will lead to a more predictable process, and reduce the amount of grantee and Department time spent administrating this provision.

The original Subsection (b) discusses threshold criteria to be evaluated after threshold but prior to an award of funds.

The Department proposes that all threshold requirements be met at the time of application. The process of reviewing preliminary threshold, then rating and ranking all applications, and then reviewing the application further for other threshold items is too time-consuming for all parties. Streamlining the process allows for a more orderly and standardized application process for all parties involved.

The original Subsection (b)(1)(2A – 2C) discusses Housing Element submission in terms of being an Eligible Applicant.

The Department proposes that this language be struck and replaced in Section 7060 with a citation of Health and Safety Code, Section 50830. The language being struck is simply a restating of Section 50830 and is thus, redundant and unnecessary.

The original Subsection(b)(3) discusses eligible activities in terms of the statutory requirement (Health & Safety Code Section 50828) of 51% of all grant funds be spent on Targeted Income Group (TIG) housing opportunities as well as outlining the requirements for meeting National Objective at 24 CFR 570.483 and providing some of the associated definitions.

The Department proposes to repeal this language in Section 7056 (Funding Availability) and move it, in its entirety, to Section 7058 (b), the Eligible Activities section, and break it into three sections for ease of reading and understanding.

The original Subsection (b)(4) pertains to multi-year funding contracts.

This language is proposed by the Department to be repealed as this is a funding concept the Department no longer uses as discussed above in the section titled "Problems with the Current System".

The original Subsection (b)(5)(A-B) pertains to the use of program income for on-going programs.

The Department is proposing the repeal of this language in Section 7056 and to move it to the Program Income Section 7104(d) for purposes of clarity, and subject matter location. This language pertains to on-going programs that the local jurisdiction will spend their Program Income funds on, thus in Section 7104, this language is wholly appropriate and necessary.

Section: 7058. Eligible Activities

Language is proposed in a new subsection (a)(1-6), Eligible Activities, to make clear the activity categories that CDBG funding may be applied for. Authority for the eligible activities comes from federal statutes and regulations. Further, the Department is proposing to add:

1. a new subsection (b) that states to be eligible for CDBG funding, each activity must meet the benefit requirements listed in 24CFR 570.483 and 24 CFR 570.484 by the end of the contract term.
2. a new subsection (b)(1)(i – ii) comprised of the language previously struck from 7056(b)(3) discussing the 51% housing rule (Health & Safe., Section 50828) as well as defining the requirements of meeting CDBG National Objectives per 24 CFR 507.483.

Since the State CDBG program must meet federal benefit and National Objective requirements, the purpose of this addition is to make clear that federal benefit and National Objective requirements, and eligible activity requirements, are inextricably connected. As noted earlier, the new subsection (b) does not contain new language, but it is proposed to be broken out into three paragraphs for ease of reading and clarity of subject matter.

Section: 7060. Eligible Applicants

The Department is looking to repeal the original first paragraph and move it to the new subsection (a)(1) for flow of reading and clarity of subject matter.

The Department proposes to repeal the original subsection (a), which discusses application submission and multi-year contracts. Given the proposal to implement 7056(b) whereby all pertinent application and funding information will be announced in the NOFA, and with the proposal to repeal all multi-year language as noted above, this subsection is both contradictory and redundant.

Further the Department seeks to add language to create a defined eligibility threshold section in new subsection (a)(1-5). This language will seek to:

- Repeal a threshold regarding past performance compliance.
- Implement the 50 percent expenditure requirement (50% Rule).

- Add in the federal requirement of OMB A-133 Single Audit submission.

The new subsection (a) is being proposed by the Department to state that all application threshold items shall have been met by the jurisdiction at time of application. Under that, Subsection (a)(1) is the existing Eligible Applicant language. The only change to this language the Department seeks to repeal is the last sentence “The following restrictions shall apply to all applicants under the State Program.” This language is redundant and unnecessary. The subsections are clearly defined as threshold criterion.

New Subsection (a)(2) is the original language from 7056(a)(1) which was proposed to be struck there and added here to make clear that all applications must include all the required information as noted in Sections 7062.1 and 7070.

New Subsection (a)(3) is proposed by the Department to add the “the 50% Rule” as discussed above in the section titled “Proposed Solutions”. The “50% Rule” requires existing program grantees to expend at least 50 percent of the funds awarded in open (active) contracts executed in 2012 and later, to be eligible to apply for additional grant funds. Thus, applications submitted for the 2013 funding round will be subject to the 50 percent expenditure requirement, but only those grants awarded via the annual NOFA in 2012 and the years following will be used to calculate aggregate awards and relative expenditures. Additionally, given the size of the grants and magnitude of the projects involved, Economic Development Over-the-Counter grants will not be included in the calculation of the aggregate amount of open contracts, nor will they be subject to being 50 percent expended before more funds can be applied for. Performance in these one-time grants is not a good indicator of likely success in spending other funds on a timely basis.

The main purposes of this requirement are to (1) direct funds to those applicants mostly likely to be able to expend the newly awarded funds and (2) to incentivize timely expenditure of awarded funds. Also, since some jurisdictions that are now generally successful in winning awards each year, may be ineligible to apply each year due to not being able to reach the 50% expenditure level in one year, this will decrease the overall number of eligible applicants in a given year and make it easier for other jurisdictions to get funded. This also achieves the important objective of giving as many jurisdictions as possible the opportunity to receive CDBG funds.

Subsection (a)(4) is proposed language to make clear that at time of application, an applicant must be in compliance, to the Department’s satisfaction, with the submittal requirements of OMB A-133 Single Audit Report which is required of all CDBG grantees per OMB Circular A-128.

Subsection (a)(5) restates the existing Housing Element requirement by restating the state statute (Section 50830 of the Health and Safety Code) for brevity and to avoid redundancy.

The original Subsection (b) repeals an incorrect reference to “paragraphs (5) and (6)” and replacing it with the correct reference of “Subsection (c)”. The Department is also proposing to move the last sentence from 7060(b)(5) to the bottom of (b) regarding joint powers agreements, and to repeal the language “target areas” and replace it with “eligible activities” for accuracy and clarity of meaning. The term “target areas”

inappropriately limits this type of application only to activities using “target areas”. There other eligible activities that do not use “target areas”.

Original Subsections (b)(1 – 2) remain unchanged.

Original Subsection (b)(3) discusses that an applicant may apply on behalf of one or more other applicants in the same or separate applications.

The Department seeks to repeal this language as it conflicts with the proposed systemization of NOFA releases from the Department. The Department, as noted above it seeking to move the release of NOFAs to a standardized timeframe annually, and to include all CDBG eligible activities, other than ED-OTC, in one application and one contract per funding round, and applied for in one application per NOFA.

Original Subsection (b)(4) is now Subsection (b)(3) with the language remaining unchanged.

The original subsection (b)(5) states that an eligible applicant may apply separately for funds from the Native American allocation.

For purposes of clarity, the Department is proposing to repeal this language here and move the first part of it to new Subsection (c) and the last sentence, as noted above to the bottom of (b) with the language “target areas” being amended to “eligible activities”.

The original subsection (b)(6) states that some different allocations may be applied for under separate applications.

The Department proposes to repeal this language as it conflicts with the proposed standardization of NOFA releases. The Department, as noted above is seeking to move the release of NOFAs to a standardized timeframe annually, and to include all CDBG eligible activities and programs in one NOFA, and except for ED OTC, all CDBG eligible activities in one contract, and applied for in one application per NOFA. The ED OTC will continue to be applied for separately, but the current language in this regulation implies that a separate NOFA will be released, as in the past.

Original Subsection (c) is proposed to be repealed due to inaccuracy. Joint powers agreements are not required in every case and the Department accepts agreements on a form deemed appropriate by the jurisdiction and its counsel. The Department works with jurisdictions on a case-by-case basis when joint applications are made.

New Subsection (c) is proposed to consist of the majority of the language from 7060(b)(5). An amendment is proposed to make clear applications for the Native American allocation are not subject to the General and ED activity and grant limits as defined in the NOFA. Further, the Department proposes to repeal the word “Indians” from the title “Native American Indians” since the term “Native Americans” is universally understood as referring to Native American Indians and is the preferred term.

Section: 7062 Special Allocation for Native American Indian Communities

The Department seeks to change the name of this section to: **Section: 7062 Special Allocation for Native American Communities**, by repealing the word “Indians” from the title, as well as repealing the word “Indians” from the title “Native American Indians”, in other places where this is used in this section since “Native Americans” in relationship to this allocation are commonly understood to be “Indians”. The term is redundant.

Section: 7062.1 Special Allocation for Economic Development

Subsection (a) authorizes a thirty percent set aside for Economic Development (ED) activities.

The Department seeks to add language that states “Economic Development Allocation funds shall be awarded through the NOFA process for eligible activities listed in Section 7058 and 7062.1(a)(1).

This language makes clear the NOFA process as proposed will include the Economic Development allocation. As noted in the section titled “Discussion of the Problem the Department seeks to standardize the CDBG NOFA process for purposes of clarity and streamlining of workload for jurisdictions and the Department.

Further in subsection (a), the Department seeks to repeal the language setting titles for each of the three ED components. The components are named and described in subsequent sections. This language is redundant and unnecessary.

Subsection (a)(1) discusses what activity categories ED funding can be generally used for, including public benefit rules.

The Department proposes to leave this language unchanged except for where the language discusses public benefit. The Department seeks to repeal the words “as well as activities which assist microenterprises” for consistency with federal CDBG regulations. The deleted language has the effect of treating microenterprise assistance as part of the set of ED activities which are subject to the HUD “public benefit” standards. Microenterprise activities, by federal rule - Section 105(a)(4) of the Housing and Community Development Act of 1974 (HCDA) - is not subject to HUD “public benefit” standards. Microenterprise activities are instead eligible because they serve exclusively lower income persons. The practical effect is that Microenterprise activities do not need to meet the “public benefit” that other Economic Development activities must meet, i.e. a maximum amount of CDBG funds per job created or retained.

Subsection (a)(2) discusses eligibility for ED Enterprise Funding, and Economic Development Over the Counter Component (ED OTC).

The Department seeks to change the short name of the Economic Development Over-the-Counter Component from the “OTC Component” to the “ED OTC” for brevity and clarity of identification. “OTC” refers to a method of distribution, not a type of funding allocation.

Additionally, the Department seeks to add to this subsection that assistance to micro enterprise does not require the test for public benefit as required by subsection f of 24 CFR 570.482, in order to be eligible for funding. As noted above, Micro Enterprise business assistance is an income qualified activity, thus the beneficiaries are always 100% of the targeted income group, and thus does not require job creation.

Subsection (a)(3) discuss project underwriting criteria.

The Department is seeking to strike the word “insure” and replace it with the word “ensure” for grammatical correctness and clarity of meaning.

Subsection (a)(5)(3) specifically discusses that past performance issues not resolved may result in holdout.

In accordance with the proposed change to Section 7056 original subsection (a)(2), the Department seeks to alter the language to reflect that performance issues may result in point deductions on future applications, rather than disqualification of eligibility. As noted previously, making performance a “point-getter” rather than a “holdout” item in a grant application allows for flexibility and may not penalize those jurisdictions who are in the process of correcting performance issues with respect to reporting or compliance. Many of these issues, once identified, can take much time to fully correct and may not jeopardize the integrity of the jurisdiction’s program or project in any way. The Department wishes to not over-penalize jurisdictions that, through the Department’s technical assistance, are on the right track and correcting any performance issues.

Original Subsection (a)(6) discusses maximum grant amounts.

This language was struck from the State’s statute but was never repealed from the State regulations. The Department seeks to repeal this section given the proposal to implement 7056(b) whereby all pertinent application and funding information will be announced in the NOFA.

New Subsection (a)(6) is proposed to be added stating that pursuant to Health & Safety Code 50831(c) and 24 CFR 570.494, all funds awarded to the Department from HUD must be awarded to eligible applicants within the State’s statutory and the Federal regulatory time periods.

Subsection (a)(7) discusses the ED allocation roll dates and the process for disencumbered and returned funds.

The Department proposes striking the language “OTC Component” and replacing it with “ED OTC” for purposes of clarity as there are other CDBG allocations that are funded “OTC”.

Further, the Department seeks to repeal the language identifying annual roll dates for un-awarded funds. Given the proposed NOFA systemization and standardization, these particular dates would no longer apply. And, the Department’s goal is to make the ED component of CDBG as flexible as possible to allow as much time as statute and regulations allow for the program to expend its designated funds. Over the last three years, the ED program has been oversubscribed so no funds have needed to roll over

to the General allocation. Given the current economic climate, the demand for ED dollars is projected to stay high. The Department will roll funds as needed to stay in compliance with existing requirements for expenditure of funds cited at 24 CFR 570.494 (federal 15 month rule); and Health & Safety Code 50834(c).

Subsection (b) discusses the overall purpose of the Enterprise Fund.

The Department proposes to make clear that the Economic Development Enterprise Fund is known as the “Enterprise Fund”. Further, the Department proposes to repeal language discussing fund percentages that were applicable in 1995 only since this language is no longer applicable and thus, unnecessary.

The Department also proposes to repeal the requirement that not more than 70% of the ED allocation will be available for the Enterprise Fund component. Given the current economic volatility, this percentage is too restrictive and prevents the Department from being able to allocate funds as necessary to ensure the best Economic Development projects are funded.

Subsection (b)(1-3) discusses Enterprise Fund application submittal.

The Department seeks to repeal all three of these subsections given the proposal to implement 7056(b) whereby all pertinent application and funding information will be announced in the NOFA, as discussed above in the section titled “Discussion of the Problem”.

New Subsection (b)(1) language is proposed to make clear the activities that may be undertaken with Enterprise Funds, and the corresponding federal statutes and regulations that apply to those activities. Within the language, the Department seeks to make clear the Micro Enterprise Assistance activity does not require the jobs-for-dollars public benefit test, pursuant to federal requirements.

Currently the State CDBG regulations require all economic activities to meet HUD public benefit standards. This language is being modified because it restricts the State’s ability to provide Micro Enterprise Assistance activities.

HUD does not require Micro Enterprise Assistance programs to meet public benefit standards because they do not fall within the Special Economic Development Activities as referenced above. This regulation change is needed to allow the State to operate the Micro Enterprise Assistance program under the HUD low income family eligibility standard, to meet the low-moderate income national objective.

Original Subsection (b)(4) [new Subsection (b)(2)] discusses the ED “jobs for dollars” maximum.

The Department seeks to repeal the language stating there is a \$50,000 per job amount. Health & Safety Code Section 50832(c) sets the jobs-for-dollars amount at \$35,000. The Department’s proposal to repeal the \$50,000 language will bring the CDBG Regulations in line with the statute set forth in State statute. Language has also been added to clarify that Micro Enterprise Assistance does not require the jobs-for-

dollars public benefit test due to Micro Enterprise Assistance requiring all awardees to be Low or Moderate Income qualified, pursuant to federal requirements.

Subsection (b)(5) discusses the ED Enterprise Fund application review and evaluation criteria and procedures.

The Department seeks to repeal some parts, and repeal and relocate other sections of these regulations as discussed below. Because ED and General activities are proposed to be rolled into one annual NOFA and subsequently all activities (other than ED OTC) will be in one contract, parts of this section must be moved into the overall program rating and ranking section, Section 7078: Evaluation Criteria.

Subsection (b)(5)(A) discusses that two copies of the application must be submitted by the application deadline in the NOFA.

The Department seeks to repeal this subsection because this level of detail should be established in the NOFA.

Subsection (b)(5)(B) discusses what constitutes a complete application.

In light of the consolidation discussed above, the Department proposes to strike this section due to redundancy with language that is identical and applicable in Section 7070.

Subsection (b)(5)(C) discusses the process for communicating that an application is incomplete.

The Department seeks to repeal this language since all of the application information will be announced in the NOFA pursuant to 7056(b).

Subsection (b)(5)(D-E discusses Enterprise Fund application rating criteria and definitions.

The Department seeks to repeal this language since all application scoring will be set forth in the NOFA pursuant to the Consolidated Plan and Annual Plan Update procedure required by HUD as outlined in Section 7078.

Subsection (b)(5)(F) discusses that applications will be rated and ranked and award letters issued within 80 calendar days of receipt of the application.

The Department seeks to amend this subsection to repeal this language. This requirement was originally adopted in response to requirements under the Permit Reform Act, which has since been repealed. Since the Act's repeal, changes to internal procedures and improved oversight have extended the amount of time needed to process applications. Additionally, due to ongoing changes in CDBG funding levels, which may result in further staffing reductions, as well as increased demand for CDBG funds, the Department needs the flexibility to adjust its anticipated review timeframes in the annual NOFA.

Subsection (b)(5)(G) discusses reservation of funds.

The Department seeks to repeal this language. Pursuant to 7056 (b) this information is typically contained in the NOFA

Subsection (b)(5)(H) discusses the requirement of timely execution of the grant agreement.

The Department seeks to repeal this language. It references language in 7076(d) that is proposed to be repealed stating that jurisdictions have 30 days to sign their grant agreement. The Department would like to exercise flexibility with grantees in getting their contracts signed rather than codifying a hard deadline. It is the Department's experience that if grant agreement execution is taking longer than 30 days, some issues at the local level need resolution or technical assistance is required.

Subsection (b)(6) discusses the Department's review of Enterprise Fund loans.

The Department seeks to repeal this section, which establishes specific procedures for the Department's eligibility review depending on the size of the loan (i.e. \$50,000), because it unreasonably restricts the Department's flexibility in reviewing loans depending on circumstances.

Subsection (b)(7) discusses Enterprise Fund Grant Closeout

The Department seeks to repeal this section since this regulation refers to the specifics of contract closeout. This information is contained in the grant agreement pursuant to proposed Section 7097.

Subsection (b)(8) discusses Enterprise Funds and military base closure.

The Department seeks to repeal this language because federal CDBG regulations allow CDBG funds to be directed on an "urgent need" basis per 24 CFR 570.483(d), to assist jurisdictions in such incidences as military base closure or substantial military staff reductions.

Subsection (c) discusses all the parameters of the Economic Development Over-the-Counter (ED OTC) component.

This section will remain largely unchanged since the ED OTC will remain as a stand-alone contract in addition to the contract borne by the annual NOFA for ED and General Activities. Non-OTC applications for General and ED activities are competitive and have final submission dates for applications. OTC, by contrast, is bound by funding cycle open and close dates, with applications being accepted anytime throughout the funding cycle.

Original subsection (c)(1) discusses the ED OTC NOFA release

The Department seeks to repeal this language since it implies the ED OTC will have its own NOFA. With the Department's proposal to implement the new language in Section 7056(b), the intent is to release one NOFA annually which will include the open and close dates for the ED OTC. However, there is nothing in Section 7056 as proposed that prohibits the ED OTC from being released as a stand-alone NOFA should this be necessary in a given year.

Original subsections (c)(2) and (3) discuss OTC application maximums and the acceptance of joint applications.

The Department seeks to repeal these subsections given the proposal to implement 7056(b) whereby and due to ongoing changes in the CDBG allocation, application funding levels will all be established in the NOFA.

New subsection (c)(1) discusses the Over-the-Counter (OTC) process

The Department proposes to add this language to make clear that an OTC "tiebreaker" method will be developed through the Annual Plan process pursuant to the requirements set forth in Section 7078, and set forth in the NOFA. Though the ED OTC is a first-come first-served process, in the event two feasible applications come in at the same time and the Department does not have enough funds to fund them both, a tiebreaker process must be used to equitably determine who the award will go to.

New subsection (c)(2) discusses where applicable evaluation criteria are found in the regulations.

The Department proposes to add this language to make clear which regulatory sections of this code contain information pertaining to evaluation criteria.

Original Subsections (c)(4)(A-E) remain unchanged but is now number (c)(3)(A-E).

Original Subsection (c)(5) discusses Departmental review timeframe and process for incomplete applications.

The Department seeks to repeal this language since all application information will be announced in the NOFA pursuant to 7056(b); and further, due to ongoing changes in CDBG funding levels, which may result further in staffing reductions, as well as increased demand for CDBG funds, the Department needs the flexibility to adjust its anticipated review timeframes in the annual NOFA.

Original Subsection (c)(6) discusses that applications will be rated and ranked and award letters issued within 60 calendar days of receipt of the application.

The Department seeks to repeal this language. The language was originally adopted in response to requirements under the Permit Reform Act, which has since been repealed. Since the Act's repeal, changes to internal procedures have extended the amount of time needed to process applications. Additionally, due to ongoing changes in CDBG funding levels, which may result in further staffing reductions as well as increased demand for CDBG funds, the Department needs the flexibility to adjust its anticipated review timeframes in the annual NOFA.

Original Subsection (c)(7) is now Subsection (c)(4).

The Department has added a clarifying sentence that indicates that threshold requires a score of 50 points. Additionally, some grammatical changes were made to the factors, using parentheses and periods to highlight the point factors.

Original Subsection (c)(8) is now Subsection (c)(5).

The language is unchanged.

Subsection (d) discusses ED Planning and Technical Assistance (PTA) grants.

The Department seeks to repeal the language in this subsection given the proposal to implement 7056(b) whereby all application and funding information will be announced in the NOFA. Due to ongoing changes in CDBG funding levels, the Department needs the flexibility to adjust its maximum grant amounts in the annual NOFA

Subsection (d)(1) discusses PTA Eligible Activities and public benefit.

The Department seeks to repeal this language due to redundancy. Public benefit for ED activities, including PTAs is cited in Section 7058(c) and 7062.1(a)(1) and (2).

Subsection (d)(2) discusses the cash match that must be met with ED PTA grants.

The Department seeks to repeal this section due to redundancy. Cash match is cited in Section 7058(a)(5)(2) for both ED and General PTAs.

Subsection (d)(3)(A-C) discusses PTA application procedures and criteria

The Department seeks to repeal this language given the proposal to implement 7056(b) whereby all application and funding information will be announced in the NOFA.

Section: 7064 Grant Funding

Subsection (a) and (b) discuss federal funding and eligible activities.

Subsection (c) discusses applying for multi-year funding along with funding maximums

The Department proposes to strike this entire section. Subsection (a) is already discussed in the federal CDBG regulations. Subsection (b) is already addressed in Section 7058. Furthermore, as discussed in the section “Problems with the Current System”, the Department is proposing to repeal all language pertaining to multi-year contracts since they are no longer issued by the Department.

Section: 7066 Procedure for Continuation of Funding

Sections (a – e) outline and discuss the procedure for obtaining and administering multi-year contracts.

The Department seeks to repeal this section. As discussed in the section above titled “Problems with the Current System”, the Department is proposing to repeal all language pertaining to multi-year contracts since they are no longer issued by the Department.

Section: 7072 Submission of General Allocation and Native American Applications

This section discusses timeframes for application submittal.

The Department seeks to repeal this section given the proposal to implement 7056(b) whereby all pertinent application and funding information will be announced in the NOFA. In addition, due to ongoing changes in CDBG funding levels, which may result in further staffing reductions, as well as increased demand for CDBG funds, the Department needs the flexibility to adjust its anticipated review timeframes in the annual NOFA.

Section: 7074 Preliminary Review of Applications

This section discusses how the Department will preliminarily review applications and pose questions that arise from that review to the applicant.

The Department seeks to repeal this section. Given the proposed changes to Section 7056 as discussed above regarding eligibility threshold, this section is no longer applicable and is contradictory. In the interest of maintaining the objectivity and integrity of the competition, the Department does not discuss applications in any detail with the applicant once the application is received by the Department.

Section: 7076 Award of Funds

This section discusses the process by which the State's CDBG funds are awarded.

The section is being rewritten to simplify and codify the State and Federal funding requirements. Nowhere in the existing CDBG Regulations are the funding requirements and set aside percentage amounts definitively listed. The Department seeks to make clear what the CDBG funding and allocation requirements are.

New subsection (a) is proposed by the Department to state 70% of all CDBG funding must benefit the Targeted Income Group pursuant to 24 CFR 570.484.

New subsection (b) is proposed to state that pursuant to Health and Safety Code 50825, at least 51% of CDBG funds must be spent on housing opportunities for low and moderate income households, including but not limited to infrastructure in support of housing.

New subsection (c) is proposed to state that pursuant to Health and Safety Code 50827, 30% of the CDBG allocation must be available to Economic Development activities and to state the general categories of Economic Development activities.

New subsection (d) is proposed to state that per the National Affordable Housing Act of 1990, section 916, up to 10% of the total amount of CDBG funds shall be made available for Colonia activities, with the annual percentage amount being set in the NOFA.

New subsection (e) is proposed to state that pursuant to Health and Safety Code section 50831, 1.25% (percent) of the total amount of funds available shall be made available for Native American activities.

New subsection (f) is proposed to state the remainder of funds, after subtracting funds for all required set asides will be available for General (Community Development) activities, with the total amount available being announced in the NOFA. The actual amounts available for each activity will be based on actual application demand for each activity, in proportion to the total amount of funds available. Allocating funds between activities in this manner will allow the Department to be responsive to changing community needs as reflected by the types of activities applied for in any given year.

Original subsection (a) discusses the past rating and ranking, and application scoring method, as well as some funding constraints.

The Department seeks to repeal this section because it discusses the old scoring method. The new method will be set forth in the HUD Annual Plan as required by HUD pursuant to 24 C.F.R. 91.

Original subsection (b) discusses the process in the event there are insufficient funds to fully fund an awardable application.

The Department seeks to repeal this language due to redundancy with the proposed language for Section 7078(c) below. This language is more appropriate in the Evaluation Criteria section since it discusses how winning applications will be funded.

Original subsection (c) will now become subsection (g).

The language is unchanged.

Original subsection (d) in part, discusses timelines for awards and execution of the Grant Agreement.

The Department seeks to repeal this subsection because it was originally adopted in response to requirements under the Permit Reform Act, which has since been repealed. Since the Act's repeal, changes to internal procedures have extended the amount of time needed to process applications. Additionally, due to ongoing changes in CDBG funding levels, which may result in further staffing reductions, as well as increased demand for CDBG funds, the Department needs the flexibility to adjust its anticipated review timeframes in the annual NOFA; the Department no longer mails contracts, they are sent electronically; and the Department would like to exercise flexibility with grantees in getting their contracts signed rather than codifying a hard deadline. It is the Department's experience that if grant agreement executing is taking longer than 30 days, some issues at the local level need resolved or some technical assistance is required.

Section: 7078 Evaluation Criteria

This section discusses application evaluation and criteria.

Current Subsections (a through g) discuss evaluation criteria.

The Department seeks to repeal and replace all the language in this section with the new evaluation criteria stated in this same subsection .

The Original Sections (a – g) were simply a listing of each of the scoring categories. Given the proposed language, this language is inaccurate so the Department seeks to repeal it.

New Subsection (a) discusses the new activity-based scoring approach

The individual point scores and required documentation for each of the proposed rating factors will be set forth in the Department's Annual Plan to HUD. Every year pursuant to 24 CFR 91, and consistent with these regulations, the Department must review and revise as necessary its method of distribution in the Annual Plan. HUD's purpose behind requiring an annual review and revision of the method of distribution is to ensure that State's can respond openly and flexibly to the changing needs and capacity of local communities.

Pursuant to 24 CFR 91.115, the Annual Plan is subject to Citizen Participation requirements which include a 30 day minimum public comment period. The Annual Plan, including the method of distribution, must be submitted to HUD for review and approval, along with all public comments and responses.

Under the proposed scoring system the Department will rate, rank and fund applications by scoring in a way that each activity will compete only against other activities of the same kind. The Department further seeks to make clear that all activities will be funded in rank order until all funds for that activity's proportional allotment are exhausted. Scoring by activity-type will enable the Department to make more "apples-to apples" comparisons among applications, and should encourage jurisdictions to apply for what activities are needed in a community versus what activities might score better if rated against other different activities.

New Subsection (b) discusses funding Planning and Technical Assistance (PTA) applications.

The Department seeks to make clear that applications for PTA grants may be submitted within an application with other activities, or as a stand-alone activity. Further, the Department wishes to make clear that PTA applications submitted with other activities will only be funded if that activity is funded and if there is sufficient funding for all PTA applications submitted with other activities. PTA applications submitted with other activities or on a stand-alone basis, will be funded on a first-come first-served basis, with a tiebreaker system developed through the HUD Annual Plan process and announced in the NOFA, as stated in 7078(c).

New Subsection (c) discusses partial funding

The Department seeks to make clear that should an eligible application be submitted, but there are not enough funds available to fully fund the request, the Department may offer partial funding to the applicant provided it is sufficient to complete the activity.

New Subsection (d) discusses the actual point value ranges for each rating category .

New Subsection (d)(A)(1-4) discusses the scoring mechanism for General Community Development activities.

This section enumerates the new scoring mechanism for all General (Community Development) activities (including applications for Native American and Colonia set asides), including Housing, Public Facility, Public Service and Infrastructure (including Infrastructure In Support of Housing), by stating that each activity will receive scoring on up to four overarching categories with a total possible 1000 points available. The scoring categories are:

1. Need - Up to 400 points
2. Readiness - Up to 300 points
3. Capacity - Up to 200 points
4. State Objectives - Up to 100 points

The federal mandate for CDBG funds is to ensure they are applied to the “areas of greatest need” within the State’s eligible jurisdictions. This is evident in the requirement that all funded activities meet one of the National Objectives pursuant to Section 5301(c) in Title I of the HCDA. These National Objectives are Benefit to Low and Moderate Income (TIG) households or persons, Prevention/Elimination of Slums or Blight, and Urgent Need.

To comply with this mandate more effectively, the Department is proposing a new application scoring mechanism. The current scoring mechanism is time consuming and cumbersome, and in its present form does not address the areas of greatest need as directly as it should. Further, changes are also proposed to ensure the new rating system is fair and balanced, and to minimize the likelihood the same jurisdictions always get funded without adequate opportunity for other jurisdictions to be successful in the competition for funds.

Going forward, the new scoring system will include the following categories:

1. Need.

By rating Need in terms of an applicant’s documented deficiencies in the socio-economic condition, documented deterioration of housing stock and/or infrastructure as determined by the age of the housing stock and/or infrastructure, the Department is able to discern which applications have the most critical need.

2. Readiness.

By rating an applicant’s Readiness in terms of how much of their planning and implementation is “shovel ready”, the Department is able to discern which applications have the most reasonable ability to expend their funds in a timely manner.

3. Capacity.

By rating an applicant’s Capacity in terms of the level of personnel and fiscal resources the applicant will dedicate to the grant award if they win funding, as well as reviewing the past performance of the applicant, the Department is able to discern those applicants who have the greatest capacity (either through their own staff or through hiring consultants) to successfully complete the activity being applied for, as well as those applicants who will be most likely to expend their funds in a timely manner and meet the required levels of compliance borne by the use of federal funds.

4. State Objectives.

By rating an applicant’s application for meeting criteria that the State deems to be high priority, the Department is able provide incentive to the applicant’s to complete activities that the State’s research has shown to be critical. Further, the Department needs flexibility to set priorities as legislative and HUD priorities change.

New Subsection (c)(B)(1-3) makes clear the scoring mechanism for Economic Development Enterprise Fund activities.

The Department proposes to enumerate the scoring mechanism for the Economic Development Enterprise Fund (ED EF) allocation by implementing a system very similar to the system for General Community Development as noted above. Those scoring categories are:

1. Need - Up to 400 points
2. Readiness- Up to 300 points
3. Capacity - Up to 200 points
4. State Objectives - Up to 100 points

The ED EF scoring will be executed in the manner noted above with like activities being scored against like activities. In the past, ED was scored on a rating scale of 100 points. The scale has been updated to be in-line with the General (Community Development) scoring scale.

New Subsection (C) makes clear the awarding mechanism for Planning and Technical Assistance (PTA) grants.

The Department seeks to make clear that, as set forth in Health and Safety Code 50832(b), PTA grants will be awarded on a first-in, first-served basis. This means that other than a necessary tiebreaker process for applications that come in at identical times, where only one can be funded, PTA applications are un-scored.

New Subsection (D) makes clear the awarding mechanism for the Un-Scored Set-Aside Allocation.

The Department proposes language to describe the process for an un-scored set-aside activity that may be applied for as set forth in the NOFA. The proposed language makes clear that up to the maximum specified in the NOFA, the applicant may apply for an unrated eligible activity which will be funded so long as at least one of the other eligible activities in their application wins funding.

Unrated activities allow a jurisdiction to fund an eligible activity which might not be competitive compared to other activities, but which represents a serious community need. At least one competitively scored activity must receive funding in order to receive funding for the un-scored activity. This ensures that no jurisdiction can be funded without putting more emphasis on their highest need projects and/or programs.

New Subsection (E) clarifies the awarding mechanism for the Economic Development Over-the-Counter Component (ED OTC).

The Department seeks to clarify the ED OTC award process. The language clarifies, pursuant to Health and Safety Code 50832(b), all applications are evaluated on a first-in, first-served basis provided only one or two years of annual funding have been requested, and if two years are awarded, the applicant must wait until the third year to apply for further funding; applications are subject to Subsection 7062.1(c); and applications will be evaluated against the underwriting guidelines listed as Appendix A to 24 CFR Part 570.

Section: 7078.1 Poverty Index (100) Points

The Department proposes to delete this section and replace it with the scoring mechanism outlined above in Section 7078 which will be developed through the HUD Annual Plan process.

Section: 7078.2 Targeted Income Group Benefit (300) Points

The Department proposes to delete this section and replace it with the scoring mechanism outlined above in Section 7078 which will be developed through the HUD Annual Plan process.

Section: 7078.3 Need for Activity (200) Points

The Department proposes to delete this section and replace it with the scoring mechanism outlined above in Section 7078 which will be developed through the HUD Annual Plan process.

Section: 7078.4 Prior Performance Operating CDBG Grants (150) Points

The Department proposes to delete this section and replace it with the scoring mechanism outlined above in Section 7078 which will be developed through the HUD Annual Plan process.

Section: 7078.5 Capacity (150) Points

The Department proposes to delete this section and replace it with the scoring mechanism outlined in Section 7078 which will be developed through the HUD Annual Plan process.

Section: 7078.6 Leverage (50) Points

The Department proposes to delete this section and replace it with the scoring mechanism outlined above in Section 7078 which will be developed through the HUD Annual Plan process.

Section: 7078.6 State Objectives (50) Points

The Department proposes to delete this section and replace it with the scoring mechanism outlined above in Section 7078 which will be developed through the HUD Annual Plan process.

Article 3. OTHER PROGRAM REQUIREMENTS

The Department proposes to add this heading. Barclay's lists this heading in the Table of Contents for these regulations; however, the actual heading has not been inserted into the regulations themselves.

Article 4. GRANT ADMINISTRATION

The Department proposes to add this heading. Barclay's lists this heading in the Table of Contents for these regulations; however, the actual heading has not been inserted into the regulations themselves.

Section: 7097: Grant Agreements

The Department wishes to add this new section to make clear the federal requirement for, and subject matter contained in, the Grant Agreement between the State “recipient” and the Grantee “subrecipient”. The issues outlined in this section are necessary to administer the program in accordance with federal requirements.

Section: 7104 Program Income

This section defines the parameters of Program Income by mostly citing federal regulations.

Subsections (a - c) remain unchanged.

Subsection (d) is not new language. The Department proposes to move original Section 7056(b)(5)(A-B) into this section for clarity and consolidation of subject matter.

The Department seeks to use this language in its entirety except as follows: to (1) repeal the words “grant funds or” in the first sentence since in this placement in the regulations the discussion here is only about Program Income and not grant funds. And (2) to repeal the parenthetical language inaccurately describing what activities this section applies to and replace it with language that clearly and accurately states examples of the types of programs that this section applies to.

5. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY REPORTS, OR DOCUMENTS

The Department did not rely upon any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of these regulation changes.

6. REASONABLE ALTERNATIVES TO THE REGULATION AND THE DEPARTMENT’S REASONS FOR REJECTING THOSE ALTERNATIVES

Make no Changes: If these changes are not made, the Department will not save staff time now committed to application review of multiple NOFAs and thus will not be able to spend the staff time needed to meet monitoring and grantee technical assistance obligations.

Make Non-Regulatory Changes to the Program: This would not sufficiently streamline the method of distribution, and since the current method of distribution is in regulations, changes to this system cannot be made without amending the regulations

7. REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

There is no adverse impact on Small Business since participation in this program is voluntary.

8. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

There is no adverse impact on Small Business since participation in the program is voluntary.