

TITLE 25. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PROPOSED RULEMAKING FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (CDBG)

NOTICE IS HEREBY GIVEN that the Department of Housing and Community Development (Department) proposes to formally amend regulations, which govern implementation of the State Community Development Block Grant Program (CDBG). The existing regulations are codified in Title 25, Division 1, Chapter 7, Subchapter 2 (commencing with section 7050) of the California Code of Regulations.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period begins December 23, 2011 and closes at 5:00pm on February 6, 2012. The Department will consider comments received during this timeframe. Please address your email comments to Susan Naramore at snaramore@hcd.ca.gov. Written comments can also be sent via mail to Susan Naramore, Department of Housing and Community Development, P.O. Box 952054, Sacramento, CA 94252-2054, or via fax to (916) 319-8488, attention Susan Naramore.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

AUTHORITY AND REFERENCE

The Department is conducting this rulemaking activity pursuant to the authority provided by Health and Safety Code Section 50406 and 24 CFR 570.489. The proposed regulations implement, interpret and make specific amendments to Chapter 12 (commencing with Section 50825) Part 2 of Division 31 of the Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Health and Safety Code 50407 establishes that the Department is responsible for coordinating federal-state relationships in housing and community development. In conjunction with this responsibility, Health and Safety Code sections 50825-50834

direct the Department to allocate Federal Community Development Block Grant Program funds. The State of California receives money from the U.S. Department of Housing and Urban Development to make grants to eligible cities and counties. These regulations establish procedures for the award and disbursement of CDBG funds and establish policies and procedures for the use of these funds to meet the purposes contained in Title I of the Housing and Community Development Act of 1974 (The Act) as amended in 1981. These funds can be used for a variety of housing related, public infrastructure, public facility and public service activities provided the State, and the cities and counties comply with a comprehensive set of requirements prescribed by the Federal government regulations in 24 CFR 570.

The major purposes of the proposed changes are to increase the program's expenditure rate, provide for more competitive opportunity across a wider eligible applicant base, and balance workload with staff resources for both the Department and local jurisdictions. The proposed changes are summarized as follows:

Section: 7054. Definitions -. The Department proposes to add or modify the following terms

“Economic Development” - This definition is being added to clarify this term refers to the definition in the federal CDBG regulations.

“General” also known as “Community Development” – This definition is being added to clarify that the terms “General” and “Community Development” refer to the definitions used in the CDBG federal statute and federal regulations.

“NOFA” - To make clear that “NOFA” is the acronym for “Notice of Funding Availability” and it means the competition for these funds is now open.

“Overpayment” – To make clear that the applicable percentage of income that constitutes overpayment is 30%.

“Targeted Income Group” or “TIG” – To clarify this term means the same as the federal term, “Low or Moderate Income”.

ARTICLE 2: APPLICATION PROCESS

The Department seeks to add this heading to make clear the section demarcations for ease of locating referenced material in the regulations.

Section: 7056. Application and Funding Requirements –

Amendments to this section do the following: (1) Rename this section for purposes of clarity to: Section: 7056. Funding Availability; (2) Allow all pertinent funding information to be announced in the NOFA. (3) Move all threshold and eligibility language into

Section: 7060 Eligible Applicants; (4) Repeal multi-year contract language. (5) Move the program income language in original Subsection (C)(5) to Section 7104 – Program Income.

Section: 7058. Eligible Activities – Amendments to this section do the following: (1) List which activities are eligible. (2) State that all activities must meet state and federal public benefit statutes and regulations, as well as CDBG National Objective requirements.

Section: 7060. Eligible Applicants – Amendments to this section do the following: (1) Repeal language that discusses multiple application submissions and multi-year contracts; (2) Add language regarding the implementation of a 50% expenditure requirement; (3) Add language regarding submission of the OMB-A-133 Single Audit; (4) Replace all of the Housing Element language with a reference to the applicable statute; (5) Make clear the Economic Development Over-the-Counter component applications will remain separate from the other CDBG applications announced in the NOFA; and (6) Repeal language that permits an applicant to submit more than one application (other than Economic Development, Over-the-Counter Component) per NOFA.

Section 7062. Special Allocation for Native American Indian Communities - Amendments to this section remove the word “Indian” from the title “Native American Indian”.

Section: 7062.1 Special Allocation for Economic Development - Amendments to this section will do the following:

1. Amend the section to make clear that Economic Development (ED) funds will be awarded through the newly proposed NOFA process as defined in Section 7056 and 7062.1;
2. Make clear the short-name for the Economic Development Over-the-Counter Component is ED OTC.
3. Amend Subsection (a)(1) to remove microenterprise assistance from the list of activities that require the Public Benefit (Jobs-for-Dollars) test.
4. Replace the word “insure” with the word “ensure” for grammatical correctness;
5. Amend (a)(5)(3) to state monitoring findings will no longer result in ineligibility to apply, but will rather result in point deductions on future applications;
6. Repeal all maximum grant amount language to bring the regulation in line with the statutes in sections 50832 and 50833 of the Health and Safety Code;

7. Make clear that all ED funds must be awarded within the Funding Cycle and at the end of the funding cycle, those unawarded funds will not be available for ED activities;
8. Make clear that the open and close dates for the ED OTC will be announced in the NOFA;
9. Repeal language about dates that the unawarded and returned funds will “roll” to the General Fund;
10. Repeal language regarding ED allocation percentage requirements that ended in 1995;
11. Repeal language regarding maximum percentages of the ED allocation that may be made available to the Enterprise Fund;
12. Repeal language regarding set timeframe between issuing the NOFA and the application deadline;
13. Clarify and provide a more detailed description on eligible activity categories;
14. Clearly define which activities are required to meet the public benefit tests and which ones are not;
15. Repeal the language regarding maximum grant amounts;
16. Repeal language about the Director possibly lowering maximums;
17. Repeal language stating what activities can be funded from a revolving loan fund ;
18. Repeal the ED “jobs for dollars” (Public Benefit) language stating that there is a \$50,000 per job compliance demarcation to comply with State statute;
19. Repeal all language in section (b)(5 – 8) under Allocation Review Procedures and Evaluation Criteria;
20. Repeal language stating that applications will be rated and ranked and award letters issued within 80 calendar days of receipt of the application;
21. Repeal language regarding the ED Enterprise Fund underwriting and the level of funding that can be performed at a local level.
22. Repeal language that discusses when “unused” Enterprise Funds may be disencumbered by the Department as well as the definitions of “unused” funds.
23. Repeal language discussing using ED funds in the event of a military base closure.
24. Repeal language regarding ED OTC being issued through a separate NOFA;
25. Make clear that ED OTC applications will be accepted on a first-in, first-served basis, per statute.
26. Make clear that in the event two ED OTC applications come in at identical times, a tiebreaker process as announced in the NOFA will be used;
27. Repeal language that sets ED Over-The-Counter (OTC) maximums and repeal language regarding joint contracts.

28. Make clear that application evaluation criteria are subject to Sections 7070, 7076 and 7078.
29. Repeal language discussing application review timelines;
30. Repeal Subsection (d) in its entirety with some portions being moved to Section 7058 – Eligible Activities;
31. Repeal language stating that the maximum award for Economic Development Planning/Technical Assistance grants is \$35,000. Per Health and Safety Code Section 50833, maximum grant amounts shall be announced in the NOFA.
32. Repeal language stating that PTA applications will be rated and ranked and award letters issued within 60 calendar days of receipt of the application.

Section: 7064 Grant Funding – This section is being repealed. Issues addressed by this section are now addressed elsewhere in the regulation text.

Section: 7066 Procedure for Continuation of Funding – This section is being repealed because multi-year contracts are no longer being used.

Section: 7072 Submission of General Allocation and Native American Applications - This section is being repealed. Issues addressed by this section are now addressed elsewhere in the regulation text.

Section: 7074 Preliminary Review of Applications – This section is being repealed. Issues addressed by this section are now addressed elsewhere, or are procedures that are no longer being utilized.

Section: 7076 Award of Funds - Amendments to this section will do the following:

1. Clarify the federal and state funding constraints placed on the CDBG Allocation from HUD.
2. Repeal the original Subsection (a) which discussed the scoring mechanism previously used known as “the blender” method”. This method will no longer be used.
3. Repeal original Subsection (b) discussing the possible partial funding of applications. This language has been moved to Section 7078(c).
4. Move the original Subsection (c) to Subsection (g) – the language is unchanged.
5. Repeal original Subsection (d) which discusses the timeframe in which rating and ranking will be completed.

Section: 7078 Evaluation Criteria - This section discusses application evaluation criteria. Amendments to this section will do the following:

1. Make clear that activities will be scored against other activities of the same kind;
2. Make clear that where demand for a particular activity exceeds the amount of funds available, the activities shall be rated and ranked according to the rating criteria set forth in this section and make clear that activities will be then funded in rank order.
3. Make clear that Planning and Technical Assistance (PTA) grants may be applied for on their own or within an application for other activities;
4. Make clear that the amount of funds available for funding PTAs will be allocated between both ways of applying and will be based on relative demand; and that they will be scored in a tiebreaker if needed;
5. Make clear that in the event there are insufficient funds to wholly fund an applicant's activity, the applicant may be offered the amount of funds available if they are sufficient to complete the activity.
6. Clarify the categories and subcategories criteria categories that upon which each application will be scored,
7. Make clear that PTA applications will be ranked only if the PTA allocation is oversubscribed and that the Department will use the tiebreaker mechanism as defined in the NOFA.
8. Discuss the unscored set-aside activity.
9. Make clear that ED OTC applications will be accepted on a first-in, first-served basis; that up to two years of funding may be applied for; that if a two year application is awarded, the jurisdiction may not apply for more funding until the third year; and that applications will be subject to the criteria set forth in Section 7062.1(c); and that the underwriting criteria in Appendix A to 24 CFR Part 570 will be applied.
10. Remove outdated and contradictory scoring categories and language.

Section: 7078.1 through Section: 7078.6 - These sections discuss the previous scoring categories. Amendments to these sections will remove outdated and contradictory scoring categories and language.

ARTICLE 3. OTHER PROGRAM REQUIREMENTS - The Department seeks to add this heading to make clear the section demarcations are for ease of locating referenced material in the regulations.

ARTICLE 4. GRANT ADMINISTRATION - The Department seeks to add this heading to make clear the section demarcations are for ease of locating referenced material in the regulations.

Section: 7097 Grant Agreement

The Department seeks to add this section to cite the applicable Grant Agreement requirements and CDBG statutes, and will clarify grantee responsibilities.

Section: 7104 Program Income - This section discusses the parameters of Program Income. Amendments to this section make clear the procedures and guidelines are required for use in local program income.

IMPACT OF PROPOSED REGULATIONS

LOCAL MANDATE

The Department has determined that these regulations do not impose a mandate on local agencies or school districts. Eligibility for the program is limited to entities demonstrating willingness and capacity to develop and administer Community and Economic Development programs and projects. In all cases, participation in the program is voluntary.

FISCAL IMPACT

The Department has determined that no savings or increased costs to any State agency, no reimbursable costs or saving under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or saving to local agencies or school districts, and no costs or savings in Federal funding to the State will result from the proposed action.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed action has no impacts on small business because participation in the CDBG Program is voluntary.

EFFECT ON HOUSING COSTS

The Department has determined that the proposed action has no significant impact on housing costs in California.

INITIAL DETERMINATION OF STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Department has made the initial determination the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT STATEMENT

The Department has determined the regulations will not negatively affect the creation or elimination of jobs in California; the creation of new businesses or the elimination of existing businesses within California. However, the implementation of the 50% Rule incentivizes jurisdictions to rapidly spend their funds, thereby increasing the opportunity to create and retain jobs in their communities. In all cases, participation in the program is voluntary.

The proposed regulations do not, in any way, impact the total amount of funding being distributed to eligible non-entitlement communities. The impact on business expansion, as a result of these funds, is unknown. The funding is distributed to eligible non-entitlement cities and counties in California, and they in turn use the funds to make loans to businesses and persons for economic support and expansion. The amount of funds available for Economic Development will be unchanged and unaffected by this regulation change.

COST IMPACTS ON PRIVATE PERSONS OR BUSINESSES DIRECTLY AFFECTED

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. While private businesses (including nonprofits) and individuals are eligible to receive program funds under the program, participation is voluntary.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS AND STATEMENT OF REASONS

The text of the proposed regulations, the Initial Statement of Reasons (which provides the reasons for the proposals), and the Notice of Public Rulemaking, all prepared by the Department, are available on the Department's website at <http://www.hcd.ca.gov/fa/cdbg/about.html>. All information the Department is considering as a basis for this proposal is maintained in a rulemaking file, which is available for inspection at the address noted below. Copies can be obtained by contacting Susan Naramore at the address and telephone number noted below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the written comment period, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text--with changes clearly indicated--available. With the exception of technical and grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes.

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting Susan Naramore at the address and telephone number noted below.

AVAILABILITY OF FINAL STATEMENT OF REASONS

At the conclusion of this rulemaking, a Final Statement of Reasons will be prepared as required by Government Code section 11346.9. This document will be available from the contact person named below.

ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has been otherwise identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed regulations.

The Department invites public comment on alternatives to the regulations.

CONTACT PERSON

HCD: SUSAN NARAMORE
(916) 319-8441

HCD BACK-UP: LENORA FRAZIER
(916) 323-7288

HCD Address: CA. State Department of Housing and Community Development
1800 Third Street, Room 390
Sacramento, CA 95814

HCD Website: Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations may be accessed through our website at:
<http://www.hcd.ca.gov/fa/cdbq/about.html>

HCD Facsimile No:(916) 319-8488

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period. Inquiries concerning the substance of the proposed rulemaking action, as well as requests for the documents noted should be directed to:

Susan Naramore, CDBG Program Specialist
Department of Housing and Community Development
1800 Third Street, Suite 390
Sacramento, CA 95814
Telephone: (916) 319-8441
Fax: (916) 319-8488
E-mail: snaramore@hcd.ca.gov