

INITIAL STATEMENT OF REASONS

Federal Homelessness Prevention and Rapid-Rehousing Program

Title 25, California Code of Regulations

Part 1

Chapter 7

Proposed Adoption of New Subchapter 12.5 (commencing with Section 7980)

Federal Homelessness Prevention and Rapid Re-Housing Program

I. BACKGROUND

As part of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5, "ARRA"), the federal government made funds available under the new federal Homelessness Prevention and Rapid Re-Housing Program ("HPRP") administered by the federal Department of Housing and Urban Development ("HUD"). The federal funds were distributed to states and local governments as grants based on the formula used for distribution of federal funds under the McKinney-Vento Homeless Assistance Act (the "McKinney Act"). However, this was a new federal program being administered pursuant to HUD's "Notice of Allocations, Application Procedures, and requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees under the American Recovery and Reinvestment Act of 2009" published as Docket Number FR-5307-N-01;" and the corrections and clarifications set forth in Docket No. FR-5307-N-02J (collectively hereinafter referred to as the "HUD Notice").

Under the HUD Notice, HPRP funds were distributed by formula to states, metropolitan cities and urban counties, with a minimum grant of \$500,000. If a formula allocation to a city or county was less than this amount, the funds were be added to the state's allocation. The State of California received a formula allocation of approximately \$44 million.

The State of California allocation of HPRP funds was administered by the Department of Housing and Community Development (HCD) pursuant to emergency regulations published in Title 25 of the California Code of Regulations commencing with section 7980. The emergency regulations became effective September 8, 2009, and will remain in effect through March 9, 2010, unless extended or superseded by formally-adopted regulations.

The HUD allocation of HPRP funds was a one-time allocation. The HUD Notice required that all HPRP funds be committed no later than September 30, 2009. HCD conducted an application and award process pursuant to the emergency regulations. All HPRP funds have been awarded and all HPRP grant contracts (known as "Standard Agreements") executed. There are no more HPRP funds to be awarded. For this

reason, HCD is not proposing to formally adopt sections of the emergency regulations governing the application for and award of HPRP funds. HCD will allow these sections to automatically expire.

II. THESE REGULATIONS.

Since all HPRP funds have been awarded, HCD's remaining obligations under the HUD Notice is the monitoring and oversight of the state Standard Agreements between HCD and the HPRP subgrantees. The purpose of these regulations is to establish policies and procedures for the administration of the HPRP Standard Agreements. These regulations apply to all parties to a Standard Agreement entered into with the Department for receipt and administration of HPRP funds.

III. DISCUSSION OF SPECIFIC SECTIONS.

Note: The regulation text is shown in gray shading with the explanation following.

Section 7980. Purpose and Scope.

(a) The purpose of these regulations is to establish policies and procedures for the administration of state contracts (known as a "Standard Agreements") entered into between the Department of Housing and Community Development (Department) and awardees of federal Homelessness Prevention and Rapid Re-housing Program (HPRP) funds.

(b) These regulations apply to all contractors that are parties to a Standard Agreement entered into with the Department for receipt and administration of HPRP funds.

It is customary and useful to the reader to begin a body of regulations with a statement of their purpose and the general activities which they regulate. Not to have a general introductory section would reduce the accessibility of the regulations and statutes to the user, and would have the benefit only of shortening the regulations by a fraction of a page.

Section 7980.1. Definitions.

(a) "HUD Notice" means the "Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees under the American Recovery and Reinvestment Act of 2009" published on March 19, 2009, as Docket No. FR-5307-N-01, which is hereby incorporated by reference; and the "Corrections and Clarifications" published on June 8, 2009, as Docket No. FR 5307-N-02, which is hereby incorporated by reference.

(b) "Subgrantee" means any entity that is a party to a Standard Agreement, other than the Department.

Subsection (a) is necessary to provide users of the regulations a specific reference to the HUD Notice that governs the program in order to make it easier for users to find this document. Subsection (b) – Under the HUD Notice recipients of HPRP funds from the State are termed "subgrantees". In the State system, parties to a State contract are termed "contractors." To maintain consistency with the HUD Notice, these regulations adopt the term "subgrantee" instead of "contractor."

Section 7980.2. Drawdown of Funds and Financial Management.

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(a) Requests for drawdown of grant amounts shall be made in a format provided by the department requesting the following information:

- (i) Subgrantee identification, grant number, and contact information.
- (ii) List of budget activities, approved budget amount, amounts previously drawn down, and requested draw amount.
- (iii) Certification by an authorized representative of the subgrantee that the request is in accordance with the terms of the approved standard agreement.

(b) Upon execution of a Standard Agreement by the Department, a subgrantee may request a cash advance as permitted under the HUD Notice. The Department shall not approve such requests unless all special conditions to disbursement described in the Standard Agreement have been met and an expenditure detail for any prior advance has been submitted to the Department.

(c) Subgrantees shall be bound by expenditure requirements set forth in the HUD Notice.

Once HPRP funds are awarded to a subgrantee, a process needs to be established for transmitting funds to the subgrantee. The purpose of section 7980.2 is to establish this process. As is typically used in other HCD local assistance programs, a contractor submits a request to receive funds containing information needed by HCD to ascertain that the costs have been incurred and the expenditures are eligible for reimbursement. This requirement is established in subsection (a). The HUD Notice permits subgrantees to request advances under specified conditions (HUD Notice, V.B., p. 33). Subsection (b) advises that these advances are available, and also adds two state requirements – clearance of special conditions and an expenditure detail for any prior advances. This latter requirement is imposed to ensure that an advance is warranted. If a subgrantee has received prior advances and has not timely expended the funds, there should be no necessity to request additional advance funds. Although Standard Agreements are “boilerplate” for each program, circumstances frequently arise with respect to a particular application necessitating the tailoring of special conditions. Before funds are released to a subgrantee, HCD wants to make sure that any special conditions of the Standard Agreement have been met. Failure to meet special conditions could give rise to situations where federal funds are not protected or the chances of a program’s succeeding have been compromised.

Section 7980.3. Record Keeping and Reporting Requirements.

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(a) Subgrantees shall abide by all record keeping and reporting requirements of the HUD Notice.

(b) HPRP funds are subject to reporting requirements established by the American Recovery and Reinvestment Act of 2009 (“ARRA”), as specified by HUD and the federal Office of Management and Budget.

(c) Reporting requirements include evaluating and certifying eligibility of program participants for persons receiving medium term rental assistance at least once every three (3)

months. "Certification" means a written assertion, based on supporting evidence that must be kept available for inspection by HUD, by the Inspector General of HUD, and by the public.

(d) The Lead Agency of a multi-agency agreement is responsible for obtaining, consolidating, and reporting all data from partner agencies.

(e) Following are the minimum reporting requirements for subgrantees (the timing of these reports shall be as established in the Standard Agreement):

- (1) Initial performance report.
- (2) Quarterly performance reports.
- (3) Annual performance reports.
- (4) Transparency and Accountability requirements for recipients of ARRA funds.
- (5) OMB ARRA Performance Progress Report Data Elements.

Recipients of HPRP funds are required to adhere to the record keeping and reporting requirements of both the American Recovery and Reinvestment Act ("ARRA") and the HUD Notice. Because the reporting requirements under ARRA and the HUD Notice are evolving and voluminous, it is not practical for the Department to attempt to summarize or list all of the requirements in the regulations. However, it is necessary to alert recipients of HPRP funds that they will be subject to the requirements. Subsections (a), (b), (e)(4), and (e)(5) put recipients on notice of these requirements. Subsection (c) is a reiteration of a specific requirement of the HUD Notice. This requirement is not typical of the Department's other housing programs. For this reason, it is called out in the HPRP regulations. The State HPRP permitted applications by filed on behalf of multiple agencies. For multi-agency subgrantees, subsection (d) is necessary to make clear and to designate which agency will be responsible for reporting all necessary information. The Department could have permitted each partner agency to separately report its own information. However, that would place the burden on the Department to aggregate and collate information. Moreover, the lead agency will be better positioned to consult with its partner agencies regarding any reporting issues or problems. Subsection (e) is necessary to alert recipients of the frequency of required reports. These reports are necessary to allow the Department to comply with the reporting requirements of the HUD Notice (see HUD Notice, p. 37-38, requiring initial, quarterly and annual reports). With respect to Paragraph (5) of subsection (e), standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of the ARRA, are pending review by the federal government, and were published in the Federal Register on April 1, 2009 [74 FR 14824], and are to be provided online at www.FederalReporting.gov.