

Module 2

State Program Design and Method of Distribution



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State Program Design & Method of Distribution Considerations

Goals:

1. To give participants a “big picture” view on how states design and implement their program;
2. To place the state’s Method of Distribution in the context of the state’s overall program design.

Objectives:

Participants will be able:

1. To understand the role that the Maximum Feasible Deference concept plays in states’ program design and implementation decisions.
2. To understand how the wide range of activities and methods of delivery allowed in the program present states with numerous opportunities and challenges in designing and administering their program.
3. To understand how activities, priorities and funding methods are interrelated.
4. To see their state’s overall program design as the result of a complex network of decisions and decision-makers operating within the parameters set by the Statute and HUD regulations.
5. To understand the effects of Method of Distribution design decisions on program implementation at the state and local level.
6. To better review states’ Consolidated Plans (ConPlans) to ensure that states’ Methods of Distribution comply with statutory and regulatory requirements.
7. To ensure that Field Office representatives understand recent changes to the Consolidated Plan, especially in regard to new Method of Distribution requirements.

Time: 2 hours

Training & Presentation Style: Lecture style will be used with overhead viewing using PowerPoint.

Resource: MOD Notice CPD-06-11.

STATE PROGRAM DESIGN & METHOD OF DISTRIBUTION

PRESENTATION NOTES

1. Overall Summary of State CDBG Program design:
 - A. State's responsibilities under the program:
 - Each state is responsible for designing its own program, setting funding priorities and selecting recipients of funds
 - State as grantor as much as grantee—a pass-through agency
 - Intent of the program is to give states as much flexibility as possible (Maximum Feasible Deference, again!)

 - B. In designing its program, a state faces a multitude of decisions and options. A state's complete program design is a complex, interwoven network of decisions. How a state designs its MOD will affect numerous implementation procedures, and vice versa. And all of these will depend on what kind of environment & governmental structures the state operates in.

For example:

 - What kinds of activities a state wants to fund will affect what requirements a state establishes for localities' reporting of program income.
 - What process a state already has in place for environmental review & approval of projects may affect the application deadlines or application submission requirements the state puts into its MOD.
 - Does the state have a "single application" process by which localities apply for CDBG as well as other state programs using one process & one set of forms? Application timetable, process & forms may be driven by those state programs
 - Will the funding process be completely objective (i.e. formula-based) or scored.

2. Relationship of ConPlan to MOD:
 - A. The MOD is part of a larger Action Plan, which flows from the 3-5year Consolidated Plan
 - Each piece is supposed to flow down from the larger document
 - Supposed to be consolidated, among all formula programs the state operates
 - Reality = most states' ConPlans are not very consolidated, very little integration & coordination between CDBG and other programs, beyond the fact that a state may choose to principally use HOME money to fund housing activities & use CDBG money to focus more on infrastructure & economic development. "Big staple" concept-- that may not be what HUD wanted but that's reality
 - Some states' priorities are set by what localities collectively want funding for rather than what the state wants

 - B. How a state can choose to administer their CDBG program:
 - Can have one agency administer all 4 ConPlan programs
 - Can one agency responsible for the ConPlan itself and other state agencies

administer the individual programs (e.g. Human Services administers HOPWA & ESG, Community Development administers HOME & CDBG)

- Can have more than one agency administer parts of CDBG (e.g. Community Affairs administers most of the money but Housing Finance Agency administers the CDBG Housing money). But—one state agency has to be the lead agency, not just for IDIS, but for purposes of HUD having a single point of contact, and a single signator on the SF-424
- Some states take devolution a step farther & have the regional planning agencies decide what activities/communities ought to be funded in their regions
- State might have other state agencies do some parts of the administration (may involve Health Dept in reviews of water supply applications; may have Dept. Environmental Quality review & approve FONSI; may have 'single application' process for multiple state & federal programs run by the state; State Treasurer may be the ones who actually draw down the money & write the checks)

C. Options states have in designing their MOD:

1. Common Funding categories: (unofficial generalizations terms)
 - “Comprehensive” vs. single purpose (a la old HUD small cities)
 - Separate public facilities funding category
 - Separate economic development funding category
 - Separate housing or housing rehabilitation funding category
 - If state funds infrastructure for economic development, that may be a different category from community-oriented infrastructure
 - Common to have separate urgent need/imminent threat funding category
 - Increasingly common to have planning-only grants and/or construction
 - Those with mini-entitlements may make certain sized communities entitlements & the smaller ones competitive. MI distributes their housing rehab \$ as formula grants to counties
 - State can establish any funding categories they want
 - Can have separate selection criteria, grant sizes, due dates, threshold for each category
 - State decides how much \$ to put in each funding category
 - But again the state must consult with uglgs in developing MOD & must spell out selection criteria in MOD in ConPlan

2. Common selection processes: (unofficial generalizations)
 - funding competitions - annual or multiple rounds per year
 - first come first served noncompetitive threshold process – esp. for E.D. - meet the established requirements and you'll be funded as long as we have money—could be open-ended application window or specific application deadlines
 - Variation on this = two stage preapplication/full application process—this takes the threshold decision-making process further. Communities submit

pre-application or statement of needs, state assesses degree of project readiness & may negotiate funding details with uelg based on what sources may work best for that type of project, work with community to get the project ready; then once the state feels all requirements & thresholds can be met, they invite the community to submit the full application which is an implicit commitment by state to fund the community/project

- formula mini-entitlement process a la OH & PA (distribute most of their money this way); or states that give a small subset of grantees (largest cities, or counties) a formula allocation
- regional fair share approach—4 western states—each regional planning district gets their fair share of the state total, and the regional staff make the funding decisions on who should get the money in their region—with varying degrees of state oversight or co-involvement in the process
- States may use different processes for different funding categories, or by different agencies where multiple state agencies administer the funds. E.g. Housing rehab may be competitive, Urgent need may be 1st come 1st served, E.D. may be 2-stage noncompetitive & run by a different agency.

D. Reviewing a state's MOD:

- Statutory/regulatory basis for disapproving a ConPlan: substantially incomplete or substantially inconsistent with the purposes of the Act, or certifications are false. Tough to show, but don't assume it can't be done.
- Tough for most field offices to judge what is sufficient. One of the goals of this discussion is to help you better understand what's in a state MOD & why, and to more objectively & effectively review it during your ConPlan review process
- HUD doesn't get to pass official judgment on whether a state's program design is a good idea or not—only whether it complies with the requirements.

3. Statutory & regulatory citations regarding the contents of MOD:

91.320(d):

A description of the State's method for distributing funds to local governments...

- ...using funds expected to be received under formula allocations, related program income and other HUD assistance during the program year..
- ...how the proposed distribution of funds will address the priority needs & specific objectives

B. 91.320(e):

- Each state must provide outcome measures for activities included with its action plan in accordance to guidance issued by HUD.
- Is incorporated into IDIS
- Consists of three objective categories, and three outcome categories
- Based on choice of objective and outcome, as well as national objective, IDIS will identify the specific indicators to be used for the activity.

C. 91.320(f):

- A description of the geographic areas of the state in which it will direct assistance...
- ...including areas of minority concentration...
- ...giving the rationale for the geographic investment priorities

D. 91.320(k):

- The MOD shall contain a description of:
- All criteria used to select applications...
- ...including the relative importance of the criteria if developed
- How all CDBG resources will be allocated among all funding categories...
- Threshold factors & grants size limits to be applied
- Available Section 108 loan guarantee amounts & how applications will be selected, if state will allow 108s
- State's process & criteria for approving local community revitalization strategies, if the state will allow CRS
- The Method of Distribution must provide sufficient information so that units of general local government will be able to understand and comment on it and be able to prepare responsive applications
- As of the 2006 changes to the reg, MOD may provide a summary of selection criteria, providing that application manuals or other state publications detail the selection criteria, and are widely distributed.
- New reg adds language requiring that applicants be able to understand not only how the funds will be distributed, but how their applications will be judged beforehand.
- In order to strengthen states' establishment of transparent MODs, §570.490(a)(2) was also changed in 2006 to require states to keep records of their funding decisions reached under their MODs, "including all the criteria used to select applications from local governments for funding and the relative importance of the criteria (if applicable), regardless of the organizational level at which funding decisions are made..."
- Real life example

E. HCDA Section 106(d)(2)(C):

State certifies that:

- It will not refuse distribute \$ to any uglg on the basis of the eligible activity selected by the uglg to meet its needs...
- ...except this does not prevent a state from establishing priorities in distributing such amounts on the basis of the activities selected
- It has consulted with local elected official for uglgs in determining the MOD

F. HCDA Section 120:

- No community shall be barred from participation in any program authorized under this title solely on the basis of population...

4. Things to watch out for & how some states avoid these problems:

A. Identify amount of resources (allocation + program income + recaptured funds anticipated):

- State may not know its actual allocation when it submits its Action Plan. (If allocation amount not known, state can provide estimate; state needs to

identify how it will adjust its amounts per funding category up or down to handle final amount)

- State does not clearly identify amount of PI or recaptured funds anticipated to be received; you notice a pattern over time of state estimates not matching reality. (Make the state correct this. Maybe the problem is the state's process for collecting info on program income needs improvement; maybe state ED project underwriting needs to do a better job of predicting cash flow which will result in PI repayments to the state. Predicting recaptures is trickier; unless state knows it has a grant that it anticipates terminating during the upcoming year, can only base on history.)
- Remember, PI \$ "belongs" to the year's MOD under which it is re-distributed, not the year in which it was received nor the year that funded the activity that generated the PI
- But, recaptured funds retain the FY identity of the year from which the state made the original grant. Unlike PI.

B. Identify funding categories & \$ amounts per category;

- States need to identify how the 3% admin/TA mix will be split and not have inconsistencies within document about amount (don't add up to total). (Get corrected)
- If float loans & 108 to be allowed, they need to specifically say so, for what kinds of projects, specify how much maximum statewide & how much for each individual grantee/project
- If state does community revitalization strategies, they likewise need to spell out how that fits into their overall program
- Some states use a % rather than a hard dollar amount—this gets around problem of not knowing final allocation.
- Does state lump all recaptured & PI \$ in with regular allocation & then divide it among categories, or do they specify that it goes into a specific funding category?
- If states have an urgent need, ED or some other set-aside where the money will be held for a set time then released, they need to say what other category that unused money will go to. If unused prior year money (e.g. ED) will be rolled over, they need to specify that too
- If states have a revolving fund (e.g. for ED), they need to specify this & identify program income estimated to go into it. (In some states, ED is funded solely out of revolving fund PI)

C. For each funding category—including 108s, floats, CRS if they do them, need to specify application deadline, funding level for that category, application ceiling amounts, application-acceptance thresholds, and selection criteria

- Must cover the entire program. One state was in the midst of revamping their program & wanted to submit an MOD that only covered half their funding, with the rest to be decided later. MOD needs to cover all funding.
- Not all states set a hard maximum grant amount
- Does state allow joint applications from combinations of government?
- Does state have matching funds requirements?
- States can & do establish completely different selection criteria, deadlines, maximums, etc. for each funding category. This can be esp. true if 2 different

state agencies

administer parts of the funding—their parts may not operate or read alike at all. One state gave the housing portion of the CDBG program to another agency, which then used a different distribution process that was not described in the MOD (which implied that all funds would use the process described)

- Reexamine Section 106(d) statutory language: State certifies that it will not refuse distribute \$ to any uglm on the basis of the eligible activity selected by the uglm to meet its needs, except this does not prevent a state from establishing priorities in distributing such amounts on the basis of the activities selected. A state can't say "housing rehab is not an eligible activity in our CDBG program so don't apply", but they can say "housing rehab is a low priority & all applications for housing rehab will get 0 points for need".
- Remember a state can establish almost any distribution process they want, provided they meet regulatory requirements. It's their decision-though they have to consult with local governments on the MOD, they don't necessarily have to take the localities' recommendations
- A state can establish additional or more restrictive requirements in most any area of their program, providing it doesn't specifically contradict the statute or regulations

D. Common problem: lack of specificity in selection criteria.

- We've encountered this when field offices solicit our advice on ConPlan review issues, but even more so when we've participated in joint monitoring
- Field offices lack the "compared to what" perspective: it's always been this way & was approved before, state has MFD, don't know what other states do; states have evolved over time, incremental drifting away from the statute
- If a 2nd state agency handles some set-aside (e.g. housing or ED), their factors may not be as detailed (they don't know what expectations are or main CDBG agency may have limited influence over them)
- Reexamine last sentence of 91.320(k): "The Method of Distribution shall contain a description of all criteria used to select applications from local government for funding, including the relative importance of the criteria, where applicable". "Reasonable proxy" test. If you don't know what it means, neither will some new city administrator

E. State should have internal application processing procedures written out.

- Need to look at multiple documents to get the whole picture: MOD, internal procedures, application manual for localities
- Problem: state may not have internal staff procedures that tell staff how to evaluate applications against the selection criteria. E.G. a scoring system may identify the gradations between 5-10-15 points, but give no clue as to what information staff should consider in making such judgments
- Problem: state may not adequately document its decision record (score

sheets recommend one score but final score is higher/lower & no documentation of change; some applicant skipped to fund a lower-scoring one & no explanation

- Potential problem with non-competitive funding process—esp. ED: a "loan committee" meets & does bank-loan-committee-style review & approval but no minutes or undetailed minutes say nothing more than it was approved for X amount--no indication why they approved or changed it)
- Problem: State may list specific selection criteria as mandatory, but then don't document their review in all areas (e.g. no evidence that a reviewer or committee made a positive conclusion that this met some threshold factor, or that it meets public benefit standard cost per job); or final decision seems to be based on something that's not listed as a selection factor
- Not adequately documenting the funding decisions is a violation of 570.490 and model recordkeeping requirements--you can't conclude that they followed their MOD which is a violation itself
- Under 570.493(b), failure of a state to maintain records can result in a finding of noncompliance with the requirement to which those records pertain. Failure of a state to follow its own procedures is a regulatory violation of that area.

**MAJOR COMPONENTS OF A STATE'S CDBG PROGRAM:
(this is a simplification)**

- ◇ A Consolidated Plan, identifying the state's overall needs, conditions, issues, priorities
- ◇ A method of distribution (MOD), which essentially is an expression of what kinds of activities & communities the state wants to fund, and a process for soliciting and funding applications from communities.
- ◇ A citizen participation process, at both the state & local level, including: a process for dealing with complaints by localities & state; & a process for amendments to the ConPlan
- ◇ A set of administrative, fiscal & procedural requirements that state grant recipients must follow in implementing their funded activities
- ◇ A system by which the state draws & tracks the dollars—both that drawn from the LOC and program income, at both the local government and the state level
- ◇ A process by which states review their grantees to ensure that grantees have carried out their activities in compliance with all federal & state program requirements
- ◇ Processes for closing out completed activities/grants and obtaining/reviewing audits thereof
- ◇ A process for documenting compliance, collecting program accomplishments and reporting performance to HUD