

State CDBG Program – State Administrative Requirements



U.S. Department of Housing and Urban Development



Outline of Module- 24 CFR 570.489

- (a) Administration and Planning**
- (b) Pre-agreement Costs**
- (c) Federal Grant Payments**
- (d) Fiscal Controls and
Accounting**
- (e) Program Income**
- (f) Revolving Funds**
- (g) Procurement**





Outline of Module-24 CFR 570.489

(h) Conflict of Interest

(i) Closeout of Grants to UGLGs

(j) Real Property Change of Use

**(k) Real and Personal Property
Standards**

(l) Debarment and Suspension

(m) Audits





State Administrative Requirements – Main Concepts

Section 1: State Administration

- Flexibility
- Applicable Requirements

Section 2: Program Income Complexity

- Mystery and History
- Guide

Section 3: Key State Oversight Systems

- Review of Recipients
- Audits Management

Section 4: Revolving Loan Funds





Important Concepts

- **State Discretion and Options**
- **Two Facets to Administration**
- **State Can be More Restrictive**
- **Understanding of State Choices Needed to Determine Compliance**
- **Two Forms of Findings –**
 - Noncompliance with Requirements
 - Inadequate Policies and Procedures





Section 1 Authorities and Applicability Regulations

**A-87(reasonable costs), A-133(audits)
Only Subpart I unless State Chooses
to be more restrictive (can't be
inconsistent with Statute)**

- **Acquisition/Relocation at 24 CFR 570.606 per 24 CFR 570.488**
- **Faith Based at 24 CFR 570.200(j) per 24 CFR 570.480(e)**
- **Section 108 24 CFR 570, subpart M**
- **Lump sum drawdowns 24 CFR 570.513**





24 CFR 570.489 - Detail

(a) Administration and Planning

- HUD-specified
- 3% State Administration/TA (Admin match)
- 20% Overall Administration





24 CFR 570.489 - Detail

Admin/TA Fungibility

- States A gets \$10 Million Allocation in 2008
- \$300,000 to spend on combination of Admin/TA
- State A chooses 3% Admin / 0% TA Combo
- State Admin Cap = \$400,000
- (\$300,000 cap + \$100,000)
- State must match \$300,000





24 CFR 570.489 - Detail

Admin/TA Fungibility

- States B gets \$10 Million Allocation in 2008
- \$300,000 to spend on combination of Admin/TA
- State B chooses 1% Admin / 2% TA Combo
- State Admin Cap = \$200,000
- (\$100,000 cap + \$100,000)
- State must match \$100,000
- \$200,000 cap on TA





24 CFR 570.489 – Detail(cont'd)

(b) Pre-agreement Costs

- State Choice
- May Allow UGLG's to Incur Costs *before* execution of State UGLG Agreement
- Pre-agreement Project Costs
- Per A-87, Need HUD field office approval before incurring preagreement program costs. Should be rare that State has no State CDBG funds to obligate before signing a grant agreement with HUD!





24 CFR 570.489 – Detail (cont'd)

(c) Federal Grant Payments (Cash Mgmt.)

- Treasury-specified
- Negotiated Agreement between the Department of Treasury and the State
- Minimize Time between transfer of funds and drawdown
- Covers All Federal Programs for State





24 CFR 570.489 – Detail (cont'd)

(c) Federal Grant Payments (Cash Mgmt.)

- Per 570.489(c)(1) need to minimize time UGLG's hold funds before use
- UGLG's must return interest on advance, but States covered by agreement with Federal Government
- State/Entitlement Differences
 - Subject to State's Procedures and Negotiated Agreement (may not be Part 85)





24 CFR 570.489 – Detail (cont'd)

(d) Fiscal Controls and Accounting Procedures

- State Choice w/HUD Minimum Standards, but system must ensure that CDBG funds are:
 - Used in Compliance with Statute and Regulations
 - Spent for Reasonable and Necessary Costs of Operating Eligible Programs (A-87)
 - Are NOT used to carry out other responsibilities of State/Local Government Responsibilities (Supplanting of Funds)





24 CFR 570.489 – Detail (cont'd)

(d) Fiscal Controls and Accounting Procedures

- State Options
 - Own Existing Requirements
 - Adopting New Ones
 - 24 CFR Part 85





24 CFR 570.489 – Detail (cont'd)

(e) Program Income

- HUD-Specified
- Complex
- Pending Changes
- More later





24 CFR 570.489 – Detail (cont'd)

(f) Revolving Funds

- State Choice
- State Level and/or Local Level
- State Defines “Same Activity” and RF Level
- 105(a)(15) Activity Exclusion (loan must come from a nonprofit).
Income may not be PI.
- More on this topic later





24 CFR 570.489 – Detail (cont'd)

(g) Procurement

- State Choice w/HUD Minimum Standards
 - Promote Full and Open Competition
 - Specify Methods. Cost Plus Percentage NOT Allowed
 - Standards of Conduct
 - Purchase Orders and Contracts Reference Applicable Authorities





24 CFR 570.489 – Detail (cont'd)

(h) Conflict of Interest

- State Decision-Making on Local Government Situations

- Applies *only* to Non-Procurement Activities. State Standards of Conduct Apply to Procurement Actions.

- General Rule: State or Local Govt. CDBG Program Decision-Makers (and Family) Cannot Benefit from Activities!
 - Applies for 1 Year After Leaving Position





24 CFR 570.489 – Detail (cont'd)

(h) Conflict of Interest - Exceptions

- HUD Evaluates and Determines for State Employees or Agents
- State Evaluates and Determines for UGLG Employees or Agents
- Regulations Detail Factors to be Included and Considered
- Request for exception must include public disclosure & attorney opinion that exception does not violate state or local law





24 CFR 570.489 – Detail (cont'd)

(i) Closeout of Grants to UGLGs

- State Choice (state comes up with process on how to closeout local grants)
- States Must Set and Follow Policies to Ensure Timely Closeout of Grants





24 CFR 570.489 – Detail (cont'd)

(i) Closeout of Grants to UGLGs

- maintain contractual relationship for as long as there is PI to be tracked
- Require advance state approval to spend
- Require notification when new PI is received





24 CFR 570.489 – Detail(cont'd)

(j) Real Property Change of Use

- HUD-specified
- Applicability
 - Acquired with or Improved by CDBG of \$100,000 or more
 - New use has to be approved by the State and meet national objective
 - Time Limitation – 5 Years after Closeout of UGLG Grant with State
 - ALERT! Based on Final Use, NOT Acq./Clearance





24 CFR 570.489 – Detail (cont'd)

(j) Real Property Change of Use -- Requirements *Before Changing Use*

- Public Notice and Citizen Participation
- One of The Following Two
 - New Use Meets a National Objective and is NOT for General Conduct of Govt.
 - CDBG Program Reimbursed for Fair Market Value
 - State or Local level, State Choice
 - After Closeout, reimbursement must go to State
 - Reimbursement Removes “CDBG Strings”





24 CFR 570.489 – Detail (cont'd)

(k) Real and Personal Property Standards

State Choice

States will establish and implement requirements governing the use, management, and disposition of CDBG-acquired property.

- Systems need to be able to detect “Change of Use” of real property





24 CFR 570.489 – Detail (cont'd)

(I) Debarment and Suspension Required by 24 CFR Part 24

- **All CDBG participants will require lower-tier participants to include a certification that neither it nor its principles is presently debarred, suspended, or otherwise excluded from participation in the program.**





24 CFR 570.489 – Detail (cont'd)

(m) Audits

- **Must follow the requirements of OMB Circular A-133**
- **Proposed Rule incorporates 24 CFR 85.26(a), which references A-133**
- **Further details in a few minutes**





Section 2 - Focus on Program Income 24 CFR 570.489(e)]

BASIC DEFINITION –

- **Gross Income**
- **Received by a State, UGLG, or Subrecipient of a Locality**
- **Generated from the Use of CDBG Funds**





Program Income

HISTORICAL BACKGROUND

Original

- Income Received After Closeout of State Grant to UGLG Treated As Miscellaneous Revenue (unless ongoing grant or continuing activity.)

1992 Statutory Changes to HCDA

Removed “Ongoing Grant” Language

- Established de minimis \$\$ Threshold for UGLGs

Since the Regulation has not been updated, 24 CFR 570.489(e)(3)(ii)(B) is incorrect and should be disregarded





Program Income

HISTORICAL BACKGROUND (Cont'd)

1995 Economic Development Rule

- Increased UGLG Threshold to \$25,000
- Added Exclusion for Activities Eligible Under 105(a)(15) Administered by Qualifying Organizations





Program Income (Cont'd)

Program Income **INCLUDES:**

CDBG-Funded Real or Personal Property

- Disposition or Lease Proceeds
- Use or Rental Income (less Incidental Costs)

CDBG-Funded Loans

- Principal and Interest Payments
- Proceeds from Sale (loans or obligations secured by loans)





Program Income (Cont'd) –

Program Income EXCLUDES

- **Total Funds < \$25,000 received in a year by a UGLG and its “Subrecipients” (95 ED Rule), states can be more restrictive and require all Program Income to be tracked and used for activities that are eligible and meet a national objective**
- **Note: RLF funds always considered PI and do not count toward the \$25k exclusion**
- **Amounts Generated by Activities Eligible Under Section 105(a)(15) of the Act. (95 ED Rule)**
- **Amounts Generated by Section 108 Activities that Meet Public Benefit and Other Standards. See 570.489(e)(2)(iii)**





Program Income (Cont'd) –

PROGRAM INCOME REQUIREMENTS (GENERAL)

State Choice – States May

- Permit UGLG to Retain Program Income
- Require UGLG to Return Program Income to State

If Used to “Continue Same Activity” States Must Allow UGLG to Retain Income

- States Define What Continuing Same Activity Means





Program Income (Cont'd) –

STATE HELD PROGRAM INCOME

- **No \$ Threshold – Always Program Income**
- **Considered Additional CDBG Funds**
- **Subject to State Method of Distribution for the year the funds are re-distributed, not the year that generated the PI**
- **For caps, considered in year received**
- **Non-RF PI Distributed (as feasible) before Additional Treasury Draws**
- **RF PI Distributed before Additional Draws for “Same Activity” (State Defines)**





Program Income (Cont'd) –

UGLG-RETAINED PROGRAM INCOME

- **\$ 25,000 Annual Threshold (\$25K+ is all Program Income so need to track in case PI surpasses \$24,999)**
- **Considered Additional CDBG Funds**
- **Subject to All Program Requirements**
- **Non-RLF PI Distributed (as feasible) before Additional Draws From State**
- **RLF PI Distributed before Additional Draws for “Same Activity” (State Defines)**





Program Income (Cont'd) –

RELATED PROJECTS

- **“New” Proposed Rule being drafted to Incorporate 1992 HCDA**
- **Changes and Provide Other Clarification**
- **CPD Notice 04-11 was issued 10-27-04 and is included in the notebook**
- **Section 570.489(e)(3)(ii)(B) is no longer applicable as it was overridden by the 1992 statute**





**Program Income –
Apply Your Knowledge**

Program Income Quiz

**Program Income Case
Study**





State Recipient Oversight

KEY SYSTEMS FOR OVERSIGHT

- **State's Review of Recipients**
- **Audits Management System**





State's Review of Recipients

REQUIREMENT

**HCDA 104(e)(2) and 24 CFR
570.492**

States Must Review Recipients (Including On-site)

- Ensure Compliance with Statute and Regulations
- Establish Remedies for Non-Compliance





State's Review of Recipients

The state has to make reviews and audits of the UGLGs to:

- Determine if they are carrying out activities in a timely manner and in accordance with requirements and laws
- Determine if they have continuing capacity
- Determine if applicable certifications have been made and implemented





State's Review of Recipients

KEY SYSTEM ELEMENTS

Startup Training
Policy Manual
Ongoing
Communication
In-House Reviews
Regular UGLG
Reports

Capacity
Determinations
Risk Analysis
and/or Selection
Policy
Standard Forms
and Checklists
Control Matrices
and/or MIS Data





State's Review of Recipients

HUD FOCUS AREAS

- **Does the State Have a System?**
- **Is it Adequate?**
- **Does the State Follow It?**





Audits Management System

BASIC REQUIREMENTS

- **24 CFR 570.489(m) States must follow OMB A-133, Single Audit Act. Note 24 CFR 44 which is referenced in the regulation, has been eliminated**
- **Audits of the State and UGLG will be Conducted**
- **States Must Develop and Administer a System which Ensures UGLGs are Audited**





Audits Management System

AUDIT REQUIREMENTS

Non-Federal Entities that *Expend* more than \$500,000 Annually in *Combined* Federal Funds

< \$500,000 A-133 Audit is NOT Required

- *May* Request/Review Courtesy Copy if Audited
- Audit Costs *Unallowable* if Not Required. A-133, Section 230(b)





Audits Management System

KEY SYSTEM ELEMENTS

•Communication of Requirement

•Ongoing Oversight Control Data, Matrix

- Fiscal Year End
- Amount Drawn
- Combined Amount Expended
- Determination – Required?
 - Date Due
 - Date Received
 - Date Reviewed

- Determination – Issues?
 - Responsibility
- Management Decision
 - Due Date
 - Actual Date
- Date Issues Cleared

•Supporting Files





Float-Funded Activities

A financing technique NOT an eligible activity!

- The term “float loan” is a misnomer—the state **DOES NOT** make a loan
- A grant to a unit of local government, which in turn (usually) makes a loan to a business
- State’s method of distribution must provide for float-funded activities
- State’s program design must require that the program income is returned to the state





Float-Funded Activities

Program Income Requirements:

Section 104(j) of the HDCA and 24 CFR 570.489(e)

- returning program income to state, and definition of “continuing the same activity”

State must ensure that the state grant recipient originally awarded the funds is able to receive its funds on schedule





Revolving Loan Funds 24 CFR 570.489(f)

- **No limitations on eligible activities**
- **Economic develop & housing rehab most common**





RLF Program Income-Local RLF

- **Repayments are program income (PI)**
- **Subject to all CDBG statutory & regulatory requirements for as long as it exists**
- **Must have some way to ensure compliance**
- **Implications on state closeout procedures**





RLF Program Income-Local RLF

- Implications of program income requirements [Section 104(j) of the HCDA and 24 CFR 570.489(e)] regarding return of program income to state, and definition of “continuing the same activity”**
- In most cases, the intent is for the state grant recipient to continue making more loans with the repayments received from loans**





RLF Program Income

- Up to state to set other requirements on local RLFs
- RLF program income on hand by locality is used to pay bills only for other RLF-funded activities; locality requests funds from the state for other non-RLF activities (e.g. infrastructure)





State Revolving Funds (SRF)

- **Variation – PI returned to State from State grant recipients**
- **State establishes a revolving fund (usually for economic development)**
- **State's method of distribution must include this**
- **MOD must spell out grant amounts, application timetable, selection criteria, etc**





SRF Repayments

- Repayments go into the SRF – not into general pool of PI received by State
- Make new economic development grant awards
- SRF program income used to honor funds requests from local governments for (economic development) activities funded initially out of the SRF
- Funds requests for other local activities (e.g. public facilities) are paid out of “regular” state program income or via drawdown from line of credit





Basic Information about Section 105(a)(15) Nonprofit Entities

- “neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of communities in non-entitled areas.”
- **To Carry Out:**
 - neighborhood revitalization
 - community economic development
 - energy conservation





Basic Information about Section 105(a)(15) Nonprofit Entities

- Can carry out activities not otherwise eligible in other sections of the HCDA
- Housing rehab, by itself, is generally not accepted as being a community economic development project
- The provision of assistance, is the activity that is Section 105(a)(15) eligible





Regional Loan Funds: Section 105(a)(15) Nonprofits

- **UGLG receives grant from State**
- **UGLG gives money to nonprofit**
- **Nonprofit cannot be a subrecipient**
- **Nonprofit carries out activity**
- **Nonprofit makes loans in UGLG jurisdictions, or meets 24 CFR 570.486(b)**



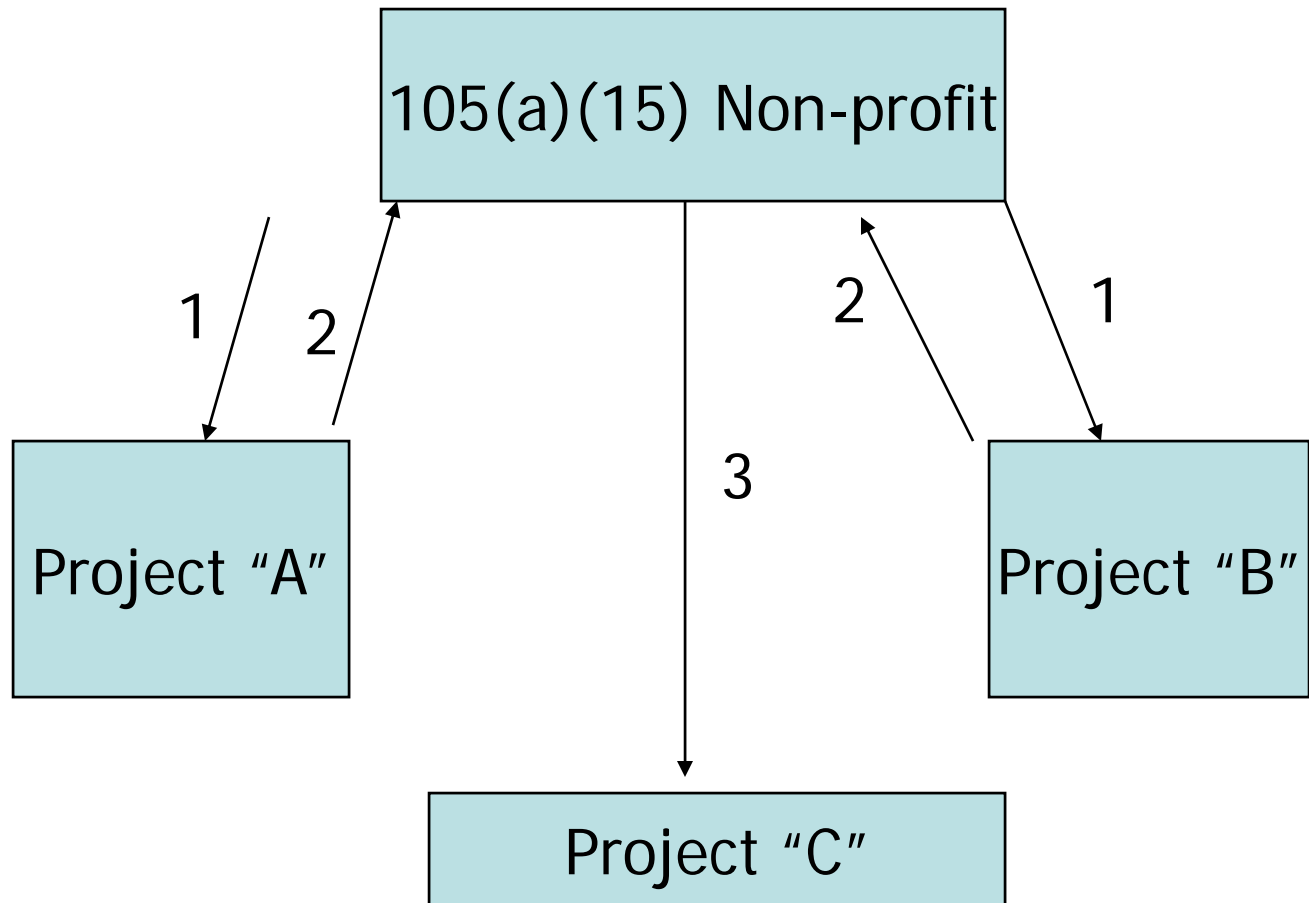


Regional Loan Funds: Section 105(a)(15) Nonprofits – Loan Repayments

- **Made directly to the nonprofit as lender**
- **Not Program Income to the CDBG grantee**
- **No CDBG requirements apply to reuse of repayments**
- **UGLGs existing PI given to nonprofit; CDBG requirements apply to first use of money by the nonprofit**



USING 105(A)(15)S FOR RLF'S



1. Initial Loan
2. Repayment of Principal and Interest
3. Second loan no longer subject to CDBG regulations





Regional Loan Funds: Combinations of Governments

- **Combinations of governments can apply and the whole region gets CDBG money from State**
- **UGLG's are co-applicants; one must lead**
 - Can be counties rather than cities/towns
- **Lead jurisdiction can carry out activity or give funds to another entity**
- **Loans can be made anywhere within jurisdiction and must meet 24 CFR 570.486(b)**





Regional Loan Funds: Combinations of Govt's

- **Additional communities can sign on later**
- **Repayments can be reused anywhere within the combinations of governments regardless of who the loan repayments are made to**





Lump-Sum Drawdowns

Allowed per Section 104(h) of the HCDA
and 24 CFR 570.513

- UGLG Receives a grant from the State
- UGLG can carry out activity or give funds to another entity
- UGLG/Nonprofit carries out rehab of privately-owned property
- UGLG or nonprofit establishes lump sum deposit agreement with Financial institution per 24 CFR 570.513





Lump-Sum Drawdowns

- **UGLG makes lump-sum drawdown via State & Deposits CDBG money with Financial Institution**
- **Interest earned on CDBG funds on deposit is PI; funds on deposit (including PI) must be used for property rehab, not admin costs**





State Administrative Requirements – Wrap Up Main Concepts

State Administration

- Flexibility
- Applicable Requirements

Program Income Complexity

- Mystery and History
- Guide

Key State Oversight Systems

- Review of Recipients
- Audits Management

Revolving Loan Funds

