

Procedures for Processing Citizen Complaints Regarding Non-violent Civil Rights Demonstrations

June 26, 1991

Special Attention of: Notice: CPD-91-17

All Regional Administrators Issued: June 26, 1991
All Regional CPD Directors Expires: June 26, 1992
All Category A Field Office Managers
All Field Office CPD Directors Cross References:
HUD Handbook 5552.0 REV-2

SUBJECT: Procedures for Processing Citizen Complaints Regarding Non-Violent Civil Rights Demonstrations

Purpose: This notice provides guidance and establishes procedures for handling by HUD of written citizen complaints alleging non-compliance with the requirements regarding non-violent civil rights demonstrations that are specified in the 1990 HUD Appropriations Act and the National Affordable Housing Act.

Background: Certain provisions in the fiscal year 1990 HUD Appropriations Act and the National Affordable Housing Act affect CDBG grantees as follows:

- Section 519 of Public Law 101-144 (the fiscal year 1990 HUD Appropriations Act) required that no funds appropriated under that Act for the CDBG program could be awarded to any municipality that failed to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and,
- Section 906 of Public Law 101-625 (the National Affordable Housing Act) amended Title I of the Housing and Community Development Act of 1974 to extend the excessive force restrictions to all CDBG funds. It further requires that no CDBG funds may be awarded to any unit of general local government that fails to adopt and enforce a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.

The legislative history of the FY 1990 Appropriations Act provision indicates that the excessive force policy may be adopted by the grantee by whatever means that will stand the practical test of usage. The policies may be adopted by a local legislative act such as an ordinance, by an executive order, or by a regulation within the police department. A grantee need not adopt new policies if it has existing written policies that meet the requirements of these sections, as applicable. (See CPD Notice 89-53.)

Since these laws cover different years, CDBG grantees were required to make different certifications for program years 1990 and 1991. Prior to receiving its fiscal year 1990 grant, each Entitlement, State, and HUD-administered Small Cities CDBG grantee was required to submit a certification to HUD that it has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations. Prior to receiving its fiscal year 1991 grant, in accordance with section 906 of the National Affordable Housing Act, each CDBG grantee must make that certification and must also certify to HUD that it has adopted a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of non-violent civil rights demonstrations within its jurisdiction.

Handling Citizen Complaints: Complaints about either a grantee's use of excessive force or its failure to enforce laws against barring of entrances to and exits from certain facilities may be received by Headquarters, Regional and/or Field Offices. In all cases, these letters shall be handled as citizen complaints in accordance with the Citizen Complaint Handbook 5552.0 REV-2, Chapter 2.

Although the method of handling these types of citizen complaints is the same regardless of the date of the alleged incident, it is important for both CPD Headquarters and Field staff to be aware that the grantee made different certifications for its 1990 and 1991 program years. Accordingly, HUD staff must be careful to determine which certification, if either, was in effect at the time of the alleged incident so that the complaint may be appropriately addressed.

To date, complaints have fallen into three general categories: 1) those that identify incidents which occurred prior to the date on which the grantee executed the applicable certification, 2) those that do not indicate a specific incidents and/or date of the incident(s), and 3) those that indicate that the incident occurred after the certification was made. In order to process these complaints in a consistent manner, we have established the following procedures:

1. Complaints regarding incidents occurring prior to the grantee's execution of the applicable certification (e.g., an alleged incident involving the barring of entrances/exits to a facility occurred prior to the date on the SF 424 for a grantee's fiscal year 1991 Final Statement package that includes the certification):
Upon receipt of such a complaint, the Field Office or Headquarters should respond directly to the complainant that the law does not apply to the cited incident.
2. Complaints that do not contain a specific date(s) or incidents:
Upon receipt of such a complaint, the Field Office or Headquarters should respond directly to the complainant that HUD cannot process the complaint without knowing the specific incident and the date on which it occurred. The response should instruct the complainant where and to whom to send the additional information.
3. Complaints regarding incidents that occurred after the grantee certified (e.g., an alleged incident of excessive force occurred after the date on the SF 424 for either the grantee's fiscal year 1990 or 1991 grant):

If the complaint is submitted to Headquarters:

- Headquarters will notify the complainant of HUD's receipt of the complaint.

- Headquarters will then refer the complaint to the appropriate Field Office requesting that it be processed in accordance with the HUD Citizen Complaints Handbook 5552.0, Rev. 2, Chapter 2.

If the complaint is submitted to a Field Office or referred to the Field office by Headquarters:

In accordance with HUD Handbook 5552.0, Rev. 2, Chapter 2, the Field Office is to transmit the complaint to the grantee within ten calendar days of receipt, require the grantee to respond directly to the complainant within fifteen calendar days of grantee receipt, and provide the Field Office a copy of the response sent to the complainant.

Upon receipt of a copy of the grantee's response, the Field Office shall review the information to determine if the grantee adequately responded to the complainant. If the Field Office, based on the response, questions that either the grantee has not established the policy in response to this requirement or has not adequately enforced its policy or applicable laws, it should immediately notify the Office of Block Grant Assistance at HUD Headquarters in writing and attach a copy of the grantee's response. The Field Office, regardless of its determination, must submit a copy of the grantee's response to Headquarters. No further action should be taken by the Field Office unless the action is approved by the Headquarters Office of General Counsel.

Attached is a copy of a guideform letter that can be used by HUD in responding to these types of citizen complaints. As noted in this sample letter, not all language is applicable to each complaint; instead, each response must be tailored to the issues raised in the in-coming letter.

Attachment

Guideform Response to Citizen Complaints
Regarding Non-Violent Civil Rights Demonstrations
Community Development Block Program

Dear (_____):

[To the extent that the following language responds to the specific issues raised in the in-coming complaint, it should be used in whole or in part for the opening paragraph:]

Thank you for your letter of (Date) to (_____) in which you requested that the U.S. Department of Housing and Urban Development (HUD) [Describe the action the complainant is requesting HUD to take, e.g. "investigate an alleged incident of (...describe allegation...) at a non-violent civil rights demonstration in (Name of Community)." OR "withhold Community Development Block Grant (CDBG) funds from the (Name of Grantee)."]

[Use the following language if the community in question is a participating jurisdiction in an Urban County:]

CDBG Memorandum

Please be advised that (Name of Community) is not a direct recipient of CDBG funds. The (Name of Community) is a member of an Urban County consortium and CDBG funds are awarded by HUD to (Name of Urban County Grantee).

[Select the paragraph that is appropriate based on which certification, if either, was effective at the time of the alleged incident:]

Under section 519 of Public Law 101-144, the fiscal year 1990 HUD Appropriations Act, in order to receive its fiscal year 1990 Community Development Block Grant, (Name of Grantee) was required to certify that it has adopted and is enforcing a policy that prohibits the use of excessive force by law enforcement agencies against individuals engaged in nonviolent civil rights demonstrations. (Grantee's) certifications are part of its Final Statement Submission that was signed on (Date of SF 424).

OR

Under section 104(l) of the Housing and Community Development Act of 1974 as amended, in order to receive its fiscal year 1991 Community Development Block Grant, (Name of Grantee) was required to certify that it has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies against individuals engaged in nonviolent civil rights demonstrations and a policy of enforcing laws against the barring of entrances to and exits from facilities subject to non-violent civil rights demonstrations. (Grantee's) certifications are part of its Final Statement Submission that was signed on (Date of SF 424).

[Use the following language if the incident occurred prior to the date of the applicable SF 424:]

Because the incident took place on (Date), prior to the date the Final Statement Submission was executed, the law does not apply in this case.

OR

[Use the following language if the in-coming letter did not indicate a specific incident or date of incident:]

Because your letter did not indicate (specific incident(s) and/or date of the incident(s)), we are unable to process the complaint. If you want the Department to take an action in this matter, please provide the missing information to:

(Name and address of appropriate HUD official).

OR

[Use the following language if the incident occurred when the applicable certification was in effect:]

Complaints such as yours are handled in accordance with established CDBG complaint procedures. Under these procedures, the complaints are referred to the unit of local government receiving CDBG

funds since the local government is responsible for administering the funds and for explaining its actions concerning the CDBG program to citizens. I am, therefore, transmitting your letter to (Name of Grantee's Chief Executive Officer) and have asked him (her) to respond directly to you. (Name of Grantee) will also send a copy of its response to this office for review and consideration.

[Close all letters as follows:]

Thank you for your interest in the CDBG program.

Very sincerely yours,