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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Community Planning and Development
WASHINGTON, DC 20410-7000

Special Attention of:
All CPD Division Directors
HUD Field Offices
HUD Regional Offices
All CDBG Grantees
All HOME Participating Jurisdictions
All ESG Formula Grantees
All HOPWA Formula Grantees

NOTICE: CPD-14-015
Issued: October 21, 2014
Expires: September 30, 2015

Subject: Guidance on Submitting Consolidated Plans and Annual Action Plans
for Fiscal Year (FY) 2015

Purpose:

The purpose of this notice is to instruct all CDBG, HOME, ESG and HOPWA formula grantees on the timing of submission of FY 2015 consolidated plans and action plans. This notice further informs Entitlement CDBG grantees of a waiver being made available to certain grantees to assist in the implementation of these instructions. Provisions of this Notice covering the Entitlement CDBG program also apply to Insular Areas grantees and CDBG nonentitlement county grantees in Hawaii, as the Entitlement CDBG program regulations also apply to their CDBG funds. With this Notice, HUD is extending to FY 2015 the same procedures put in place (via CPD Notice 13-10) for FY 2014 consolidated plans and action plans. These procedures apply equally to grantees' 3-5 year consolidated plans as well as to annual action plans (either as a stand-alone document or as a component of the overall consolidated plan submission).

Background:

Pursuant to 24 CFR 91.15(a)(1), each jurisdiction should submit its consolidated plan to HUD at least 45 days before the start of its program year. The earliest date on which HUD will accept a consolidated plan or action plan submission is November 15; and the latest submission deadline is August 16. However, in most years, HUD does not receive its annual funding appropriation until several months into the federal fiscal year (rarely earlier than December, and sometimes as late as April). Once a fiscal year's appropriation is enacted, HUD needs time to compute grantees' allocation amounts for the four formula programs covered by the consolidated plan. When appropriations are significantly delayed, grantees with program year start dates prior to the announcement of allocations do not know their actual allocation amounts when they are developing their plans, conducting citizen participation, and submitting their plans.

According to 24 CFR 91.500(a), a plan will be deemed approved 45 days after HUD receives the plan, unless HUD notifies the jurisdiction before that date that the plan is disapproved. In past years, HUD has typically not disapproved a plan solely because it is based on estimated allocation amounts. As a result, a plan submitted by a grantee before its allocation amounts are announced typically receives automatic approval, even though the plan does not list the grantee's actual allocation amounts.

This practice results in significant additional work for both HUD and grantees. After the actual allocation amounts are announced, a grantee must submit a revised, re-signed SF-424 form listing the actual allocation amounts for each of its formula grants. In many cases, the grantee must make additional changes to amend its plan to reflect its actual allocation amounts. This may constitute a substantial amendment under 24 CFR 91.505, which is subject to the grantee's citizen participation plan process. HUD will not execute a grant agreement with a grantee until HUD has received an amended plan which incorporates the actual allocation amounts a grantee is to receive for that fiscal year.

Revised Procedures for Submission of FY 2015 Consolidated Plans and Action Plans by Grantees with Early Program Year Start Dates:

HUD is issuing the following revised procedures to govern the submission and review of consolidated plans and action plans for FY 2015 funding prior to the enactment of a FY 2015 HUD appropriation bill (and subsequent computation of formula allocation amounts). These procedures will apply to any grantee whose normal consolidated plan/action plan submission deadline (45 days before the start of the program year) falls either before, or less than 60 days after, the date HUD announces FY 2015 allocation amounts for CDBG, ESG, HOME and HOPWA formula funding.

Congress has not completed the appropriations process for HUD's FY 2015 appropriation. At this time, HUD cannot predict when its FY 2015 appropriations bill will be enacted and when it will be able to announce FY 2015 allocation amounts. Thus, HUD cannot say how many grantees – or which plan submission deadlines and program year start dates – will be subject to these revised procedures. Similarly, HUD cannot provide estimated FY 2015 allocation amounts for grantees to use for planning purposes in developing annual action plans.

Note: These procedures will not apply to grantees whose normal consolidated plan/action plan submission deadline is more than 60 days after HUD announcement of FY 2015 allocation amounts; those grantees should have sufficient time to revise their plans to match actual allocation amounts prior to the due date for their plan.

I. Revised Submission Dates for FY 2015 Action Plans

Grantees are advised not to submit their consolidated plan/action plan until after the FY 2015 formula allocations have been announced. Grantees due to submit a new 3-5 year consolidated plan in FY 2015 should refrain from submitting the overall consolidated plan as well as the FY 2015 action plan contained within the overall document. HUD cannot complete

its review of the overall consolidated plan components independent of the current year's action plan component. Once HUD informs grantees of their FY 2015 formula funding allocation amounts, each grantee should, prior to submission, ensure that the actual FY 2015 allocation amounts are reflected in the form SF-424, in the description of resources and objectives, and in the description of activities to be undertaken (or, for states, the method of distribution). It may be necessary for a grantee to revise its action plan before submission to HUD.

An affected grantee may delay submission of its consolidated plan or action plan to HUD until 60 days after the date allocations are announced, or until August 16, 2015 (whichever comes first). This delay will give a grantee time to revise its action plan to incorporate actual allocation amounts, and to conduct any additional citizen participation, if necessary.

For example, if HUD were to announce the FY 2015 allocation amounts to grantees on February 20, 2015:

- For grantees with January 1 – April 1 program year start dates, their normal plan submission date would have been before the date that HUD announced allocation amounts. These grantees would be able to postpone submission of their consolidated plan/action plan until April 21, 2015.
- For grantees with May 1 and June 1 program year start dates, their normal plan submission date would be less than 60 days after HUD's announcement of allocation amounts. These grantees would also be able to postpone submission of their consolidated plan/action plan until April 21, 2015.
- Grantees with July 1 and later program year start dates would have more than 60 days' time between the date of announcement of allocations and the normal submission deadline for their consolidated plan/action plan. These grantees would be expected to submit their plan on time.

However, in no case may a consolidated plan/action plan be submitted to HUD later than August 16, 2015. Failure to submit an action plan for FY 2015 by August 16, 2015, will result in the automatic loss of FY 2015 CDBG funds to the grantee. This requirement is established by statute, and HUD cannot waive the August 16 submission deadline. Funding under other CPD formula programs is not subject to this deadline but, since virtually all CPD formula grantees receive CDBG funding, the CDBG submission requirement effectively establishes the deadline for submission of action plans.

24 CFR 91.15(a)(1) states that "...each jurisdiction should submit its consolidated plan at least 45 days before the start of its program year." HUD has determined that it is not necessary to waive this provision in order to implement the procedures in this Notice for FY 2015 action plans. This provision does not prohibit a grantee from submitting a plan after that time. It is not necessary for an affected grantee to request an exception to its normal action plan submission date under 24 CFR 91.15(a)(1), nor is it necessary for a field office to grant an exception to the action plan submission deadlines, under 24 CFR 91.20, in order to implement the procedures in this Notice.

II. HUD Review of Action Plans

HUD will disapprove as substantially incomplete any consolidated plan or action plan covering FY 2015 funding that does not reflect actual allocation amounts on the form SF-424, in the description of resources and objectives, and in the description of activities to be undertaken (or, for states, the method of distribution). A grantee whose action plan is disapproved for this reason is advised to not resubmit a revised plan until HUD has announced the actual FY 2015 allocation amounts, and until the grantee has incorporated the actual allocation amounts into its plan.

24 CFR 91.500(d) states that “(t)he jurisdiction may revise or resubmit a plan within 45 days after the first notification of disapproval.” HUD has determined that it is not necessary to waive this provision in order to implement the procedures in this Notice for FY 2015 consolidated plans/action plans. This provision does not prohibit a grantee from re-submitting a plan after that time period.

24 CFR 91.105(c), 91.115(c) and 91.505 require a grantee to comply with citizen participation requirements when it undertakes a substantial amendment to an approved plan. A plan that has been disapproved by HUD is, by definition, not an approved plan. When a grantee’s plan is disapproved by HUD, the consolidated plan regulations do not necessarily require a grantee to undertake further citizen participation on the changes the grantee makes before re-submitting it. (A major exception to this, however, would be if the reason for disapproval involved the grantee’s failure to fulfill citizen participation requirements to begin with.) However, as noted in Section III below, there are circumstances in which a grantee may need to make major revisions to a disapproved plan which could trigger further citizen participation efforts. A grantee with a disapproved plan should review its citizen participation plan and local policies to determine whether it will need to conduct further citizen participation as a result of the changes it makes to incorporate actual allocation amounts into its plan, prior to re-submission of the revised plan.

III. Development of Proposed Action Plans and Citizen Participation During The Interim

A grantee has several options regarding fulfilling its citizen participation obligations while waiting for HUD to announce FY 2015 allocation amounts:

- a. A grantee may conduct citizen participation on its draft plan (with estimated funding amounts) according to its normal timetable and citizen participation procedures. (Grantees are cautioned, though, that they should not submit their plan until allocation amounts are known.) A grantee doing so should make clear that the funding levels shown are estimated amounts. In addition, the grantee should include “contingency provision” language in its action plan which explains how it will adjust its proposed plan to match its actual allocation amounts, once actual amounts become known. By including such contingency language, a grantee can avoid the need to make significant revisions to its plan (beyond incorporating the final allocation amounts into the plan and the SF-424 form). The grantee may also avoid the potential need to

conduct additional citizen participation on a plan that has to be significantly revised in order to reflect actual allocation amounts.

Examples of contingency provisions include:

- A plan could state that all proposed activities' budgets will be proportionally increased or decreased from the estimated funding levels to match actual allocation amounts.
- A grantee could express its budget in terms of percentages of the allocation to be budgeted to each planned activity, along with the grantee's current estimate of how many dollars that equates to for each activity. [For example, regardless of what the final allocation amounts are, the United Interfaith Street Outreach Program will receive 22% (currently estimated to be approximately \$38,000) of the grantee's total ESG allocation, and the Tenant-Based Rental Assistance activity will receive 10% (currently estimated to be about \$68,750) of the HOME allocation.]
- A plan could state that any increase or decrease in funding to match actual allocation amounts will be applied to one or more specific activities (e.g., any increase or decrease relative to the grantee's estimated allocation amount will be applied to the single family housing rehabilitation grant program).
- A plan could list its proposed activities in priority order and indicate that the East Side Sidewalk Replacement activity listed in the plan is a "backup" activity that will be funded only if sufficient CDBG funding exists; or conversely, if the grantee's actual allocation is less than estimated, the East Side Sidewalk Replacement activity will not be funded in FY 2015.
- A plan could state that, should the actual allocation amount exceed the grantee's estimate, the grantee will increase the Uptown Sewer Separation activity budget and will extend the service area block-by-block along the 600-900 blocks of Cherry Street, based on the amount of additional funding available.

A grantee may include these or other comparable provisions singly or in any combination to meet its needs. A grantee may adopt a different contingency approach for each of its formula programs (CDBG, ESG, HOME, and HOPWA).

Any Entitlement CDBG grantee intending to incur pre-award costs must also ensure that its proposed action plan and its citizen participation process meets the requirements of 24 CFR 570.200(h)(i) and (ii). (See Section IV.) Any ESG grantee intending to incur pre-award costs (sometimes previously referred to as pre-agreement costs) must also ensure that it has described the pre-award cost activities in its proposed action plan and has complied with the citizen participation requirements of 24 CFR 91.105 or 91.115. (See Section V.)

- b. Alternatively, a grantee may prepare a proposed action plan according to its normal timetable, but wait until actual allocation amounts are known before undertaking citizen participation actions. Once allocation amounts are announced by HUD, the grantee will need to update relevant sections of its plan (such as the listings of resources and objectives, and the description of activities or the state's method of

distribution) to reflect actual allocation amounts before conducting citizen participation. Grantees intending to incur pre-award costs under the Entitlement CDBG and ESG programs should be aware that this option will not be available to them, as citizen participation requirements must be met before pre-award costs are incurred. (See Sections IV and V below.)

HUD has developed these procedures to minimize disruption to grantees and to minimize duplication of effort on grantees' part. A grantee that does not follow either option a. or b. above (i.e., the grantee undertakes citizen participation according to its normal timetable, based solely on estimated funding levels, and the plan does not contain any contingency language on how the final plan will be adjusted to match actual allocation amounts) runs the risk of increasing its own work obligations and costs. The grantee will still be required to update its plan to incorporate actual allocation amounts before submission to HUD. The grantee may need to undertake additional publication and citizen participation processes, depending on the difference between its actual allocation amounts and the estimated amounts in its proposed action plan, and how the grantee plans to adjust its proposed activities in order to match its actual allocation amounts. Local policies and procedures may also require the grantee to obtain re-approval of the revised plan from its legislative body or authorizing officials.

A plan that has not yet been submitted to HUD is also not an approved plan, and is not subject to the citizen participation requirements of a substantial amendment. However, a grantee that delays its plan submission should review its citizen participation plan and local policies to determine whether it will need to conduct further citizen participation as a result of the changes it makes to incorporate actual allocation amounts into its plan, prior to its submission.

IV. Pre-Award Costs – Entitlement CDBG Program

The Entitlement CDBG program regulations specify situations under which a grantee may incur costs prior to the effective date of its grant agreement. The provisions of this Notice will affect how grantees comply with the pre-award cost reimbursement requirements.

- a. 24 CFR 570.200(h) defines the effective date of a grantee's agreement as the grantee's program year start date or the date that the consolidated plan/action plan is received by HUD (whichever is later). Under the provisions of this Notice, a grantee's action plan may not be submitted to (and thus received by) HUD until several months after the grantee's program year start date. This may negatively affect grantees' ability to incur pre-award costs. Therefore, HUD has issued a waiver of 24 CFR 570.200(h) to the extent necessary to implement an alternative requirement: the effective date of a grantee's FY 2015 grant agreement will be considered to be the earlier of the grantee's program year start date or the date that the consolidated plan/action plan (with actual allocation amounts) is received by HUD.
- b. Attachment A contains the HUD memorandum authorizing this waiver. This waiver is available for use by any applicable Entitlement CDBG grantee seeking to incur pre-award costs, whose action plan submission is delayed past the normal submission

date because of delayed enactment of FY 2015 appropriations for the Department. An affected community taking advantage of this waiver shall document in writing the conditions giving rise to the need to utilize this waiver, and shall maintain such documentation for HUD's review. Grantees' authority to make use of this waiver is only in effect until August 16, 2015, as that is the last date that a grantee may submit its FY 2015 action plan.

- c. 24 CFR 570.200(h)(i) and (ii) require that the activity for which the costs are being incurred must be included in a consolidated plan/action plan prior to the costs being incurred; and citizens must be advised of the extent to which the pre-award costs will affect future grants. The requirement that a grantee conduct citizen participation on its proposed activities is statutory, and cannot be waived. Therefore, a grantee intending to incur pre-award costs against its FY 2015 CDBG allocation must fulfill the citizen participation requirements of 24 CFR 91.105 prior to incurring pre-award costs for an activity, even if the grantee must wait until final allocation amounts are known before submitting its action plan to HUD. For those grantees, option b. described in Section III above is not likely to be a feasible alternative. HUD advises any Entitlement CDBG grantee intending to incur pre-award costs to follow the process described in Section III.a. above; in doing so, the grantee will need to ensure that it has met the notification requirements of 24 CFR 570.200(h)(ii). In order to meet the timing requirements of 24 CFR 570.200(h)(i), the grantee must complete its citizen participation process on its proposed plan (but need not submit the plan to HUD) prior to incurring the pre-award costs. The Entitlement CDBG regulations at 24 CFR 570.200(h) currently allow pre-award costs to be incurred before a plan is approved by HUD as the regulation provides that the effective date of a grant agreement may be when the plan is received by HUD. Thus, proposed plans discussed in the notice are contemplated within the term "consolidated plan action plan" as used in 24 CFR 570.200(h)(1)(i).

V. Pre-Award Costs –ESG Program

HUD authorizes each ESG recipient subject to these procedures to use its FY 2015 ESG grant funds to pay pre-award costs (sometimes previously referred to as pre-agreement costs) incurred on or after the recipient's program year start date, under the following conditions:

- a. The costs and corresponding activities must comply with the Emergency Solutions Grants regulations at 24 CFR part 576 and the environmental review requirements at 24 CFR part 58.
- b. Before incurring pre-award costs, the recipient must describe the corresponding activities in its proposed action plan and satisfy the recipient's citizen participation plan requirements addressing 24 CFR 91.105(b) (for local governments and territories) or 24 CFR 91.115(b) (for states).

VI. Applicability of This Notice to Future Years

This Notice only applies to consolidated plans/action plans submitted for FY 2015 funding on or before August 16, 2015, or 60 days after HUD announcement of the FY 2015 allocation amounts for CDBG, ESG, HOME and HOPWA formula funding (whichever is earlier). HUD anticipates revising the Consolidated Plan regulations (and other related regulations) for future years to explicitly include, as a basis for disapproval of a plan, that a plan does not contain and reflect a grantee's actual allocation amounts.

For further information:

Grantees with questions concerning this Notice should direct their inquiries to their local HUD Field Office Community Planning and Development Division. Field Offices should direct their questions to the following Headquarters program offices as applicable:

- Office of Block Grant Assistance at (202) 708-1577 for the Entitlement CDBG program
or (202) 708-1322 for the State CDBG program
- Office of Affordable Housing Programs at (202) 708-2684
- Office of Special Needs Assistance Programs at (202) 708-4300
- Office of HIV/AIDS Housing at (202) 708-1934 or at hopwa@hud.gov



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF THE ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

SEP 25 2014

MEMORANDUM FOR: All Community Planning and Development Field Office
Division Directors

FROM: Clifford Taffet, General Deputy Assistant Secretary for Community
Planning and Development, D

SUBJECT: Waiver of 24 CFR 570.200(h) regarding FY 2015 Action Plans
Community Development Block Grant (CDBG) Program

HUD is issuing revised procedures to govern the submission and review of action plans for FY 2015 funding prior to the enactment of a FY 2015 appropriation bill. Any grantee with a program year start date prior to, or up to 60 days after, HUD's announcement of the FY 2015 formula program funding allocations is advised not to submit its consolidated plan or action plan until the FY 2015 formula allocations have been announced. However, an action plan must be submitted to HUD no later than August 16, 2015.

The likelihood of delays in the receipt of annual appropriations by HUD and implementation of this policy for FY 2015 may have negative consequences for CDBG grantees that intend to incur eligible costs prior to the award of FY 2015 funding. Some activities might otherwise be interrupted while implementing these revised procedures. In addition, grantees might not otherwise be able to use CDBG funds for planning and administrative costs of administering their programs. In order to address communities' needs and to ensure that programs can continue without disruption, I find that good cause exists pursuant to 24 CFR 5.110 to waive the provisions of 24 CFR 570.200(h) for the Entitlement CDBG program, the Insular Areas CDBG program, and for grants to nonentitlement counties in Hawaii. 24 CFR 570.200(h) is waived to the extent necessary to treat the effective date of the grant agreement as the program year start date or the date that the consolidated plan/action plan (with actual allocation amounts) is received by HUD, whichever is *earlier*.

This waiver will apply to any Entitlement, Insular or Hawaii nonentitlement CDBG grantee whose program year start date for FY 2015 funding occurs during the period starting October 1, 2014, and ending August 16, 2015 or 60 days after HUD announcement of FY 2015 allocation amounts for formula program funding (whichever comes first). This waiver is available for use by any applicable CDBG grantee whose action plan submission is delayed past the normal submission date because of delayed enactment of FY 2015 appropriations for the Department. Any affected grantee taking advantage of this waiver shall document in writing the conditions giving rise to the need to utilize this waiver, and shall maintain such documentation for HUD's review. This waiver authority is only in effect until August 16, 2015.

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