

# Cranston-Gonzalez National Affordable Housing Act

December 17, 1990

MEMORANDUM FOR: All Regional Administrators  
All Category A Field Office Managers  
All Regional Directors for CPD  
All CPD Division Directors

FROM: Anna Kondratas, Assistant Secretary for Community Planning and Development, C

SUBJECT: Cranston-Gonzalez National Affordable Housing act (P.L. 101-625)

Title I of the Housing and Community Development Act of 1974 (HCD Act) has been amended by the Cranston-Gonzalez National Affordable Housing Act (P.L. 101-625) which became law on November 28, 1990. The new law makes several changes to the HCD Act. Information on these changes and their implementation is provided below.

## A. Overall Benefit

The HCD Act has been amended at Section 101(c) to require that at least 70 percent of the CDBG assistance provided by a grantee be for activities that benefit persons of low- and moderate-income. Therefore, effective November 28, 1990, Section 104(b)(3) of the HCD Act requires that all entitlement, state, HUD-administered and small city grantees must certify that the Community Development Block Grant (CDBG) funds received ". . . shall principally benefit persons of low- and moderate-income in a manner that ensures that not less than 70 percent of such funds are used for activities that benefit such persons. . ." in a one, two, or three year period specified by the grantee. This requirement commences with the first grant made after November 28, 1990, even though a grantee may be about to begin the second or third year of a period during which it previously certified that it would meet the 60 percent level.

A copy of the revised certifications and procedures for implementing this change are being provided in a separate memorandum.

## B. Eligible Activities

1. Direct Homeownership Assistance has been added as an eligible activity under Section 105(a) of the HCD Act. This provision was effective November 28, 1990, and may be implemented by grantees base on the statutory language pending its incorporation into the regulations.

The provision allows for direct assistance to facilitate and expand homeownership among persons of low- and moderate income (except that such assistance is not to be subjected to the limitations on public services as described in the regulations) when such assistance is used to:

- a. subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;

- b. finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;
- c. acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except grantees and subrecipients may not directly provide such guarantees);
- d. provide up to 50 percent of any downpayment required from low- and moderate-income homebuyers; or
- e. pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low- and moderate-income homebuyer.

This provision is to be terminated on October 1, 1992, or on October 1, 1993, if the Secretary determines the later date is necessary to continue to provide homeownership assistance until it is available under the HOME Investment Partnerships Act.

- 2. The provision at Section 105(a)(17) of the HCD Act authorizing the provision of assistance to private, for-profit entities to carry out economic development projects has been changed to eliminate the term "necessary" from the "necessary or appropriate" determination required for such assistance. The amendment also adds that the project shall minimize to the extent practicable, displacement of existing businesses and jobs in neighborhoods, and the project must: create or retain jobs for low- and moderate-income persons; prevent or eliminate slums and blight; meet urgent needs; create or retain businesses owned by community residents; assist businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or provide technical assistance to promote any of these activities.

The Department has determined that, pending regulatory implementation of this provision, the deletion of the term "necessary" does not override the requirement at §570.203(b) that the grantee providing financial assistance under this provision must conduct an analysis as described under that portion of the regulations. It has also determined that assistance provided under that regulatory provision and that meets the national objective requirements under §570.208(a)(4), or §570.208 (b) or (c) will be deemed to be eligible without further regard to the limitations on economic development projects that have been added to section 105(a)(17) by the new legislation, except for those involving displacement.

For activities the grantees want to qualify under §570.208(a)(2) as benefiting an area containing a sufficient percentage of low- and moderate-income residents, pending promulgation of rules for the modified section 105(a)(17), the grantee will also have to determine that the project qualifies as either creating or retaining businesses owned by community residents or that the businesses assisted provide goods or services that are needed by, and affordable to, low- and moderate-income residents of the area served. Also pending rulemaking, activities assisted under §570.203(b) and that will involve displacement of existing businesses or jobs in neighborhoods, may be undertaken only if the grantee determines that such displacement will be minimized to the extent practicable. In either of the aforementioned circumstances, the grantee will need to document its determinations.

States should continue the safe harbor approach until State Community Development Block grant

regulations are issued in final. However, HUD recognizes that there is a change in the Act and states may take into account those changes in considering its position outside safe harbor.

3. Section 105(a)(8) of the HCD Act has been amended to include program income in the calculation of the public services cap, and, in the case of the State-administered Small Cities program, to apply the cap at the State level.

Accordingly, with respect to program years starting after November 28, 1990, and pending incorporation of the new provision in the regulations, entitlement grantees, whether covered under the general limitation of 15 percent of their grant or under the exception provided by law based on their expenditures during 1983 or 1984, may obligate for public services up to 15 percent of the amount of program income they received during the preceding program year, in addition to the amount they may obligate under the current regulatory provisions.

States may implement the statewide 15 percent cap for public services beginning with their FY 1991 State CDBG allocations. HUD believes that immediate application of the provision relating to the consideration of program income in the application of the cap requirement is unnecessary for practical reasons. However, if a state believes it is necessary, prior to the establishment of regulations, HUD will consider the issue on a case by case basis.

### **C. Certifications**

Section 104 has been amended to expand the currently required certification concerning the use of excessive force. Revised CDBG Grantee Certifications for FY 1991 are being forwarded separately.

### **D. Other Provisions**

1. Section 104 has been amended to add a requirement that each entitlement grantee must prepare and submit to HUD a Community Development Plan describing its non-housing community development needs and strategies for meeting those needs. It will be necessary for HUD to develop regulations to identify the format recipients must use in developing this plan and other requirements needed to implement this provision; however, this will not delay FY 1991 grants. Further information will be forthcoming.

This provision also applies to State CDBG and HUD-administered Small Cities Programs. As required by the amendment, HUD regulations must prescribe the format to be used in developing these Community Development Plans submission to the Community Development Plan. For states, the Community Development Plan will include only the non-housing needs and strategies to meet those needs within the state that affect more than one unit of general local government; and such needs and strategies of those units of general local government within the state that are eligible for funding under the program. Applicants for funding under the State CDBG program and the HUD-administered Small Cities Programs will prepare and submit to HUD and the state a Community Development Plan otherwise similar in nature to that required for the entitlement grantees. Additional information will be forwarded to you regarding this requirement.

2. The HCD Act has been amended at Section 106(c) to provide that in the event of a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Secretary shall make certain funds recaptured from entitlement communities available to metropolitan cities and urban counties located or partially located in the areas affected by the disaster, to the extent necessary to meet emergency community development needs, "as the Secretary shall determine. . . are not met with. . . other sources of assistance." This new provision will not be implemented until the Department has established standards for making the Secretarial determinations.
3. The new legislation allows for lump sum payments to revolving loan funds from funds appropriated for use under Title I of the Housing and Community Development Act "for fiscal year 1992 and any fiscal year thereafter." Because this authorization does not provide for its implementation through funds appropriated for FY 1991, the memorandum dated February 5, 1990, Subject: Elimination of Lump Sum Drawdown Allowability, which prohibits the use of lump sum payments in accordance with Public Law 101-144, will remain in effect until further notice.
4. Section 109(a) has been amended to add religion as a basis on which grantees may not discriminate in the programs and activities funded under CDBG. This addition is effective on the date of enactment.
5. Section 110 of the HCD Act has been amended by Section 955 of the new legislation to exempt from the wage rate requirements any individual that:

performs services for which the individual volunteered; does not receive compensation for such services, or is paid expenses, reasonable benefits, or a nominal fee for such services; and is not otherwise employed at any time in the construction work.

Section 955 further provides that:

this amendment applies to any volunteer services provided before, on, or after the date of enactment, except that it may not be construed to require the repayment of any wages paid before the date of enactment for services provided before that date.

cc: Edwin Gardner