

Regs. Governing the Use of CDBG Funds to Match Grants under SBA's Small Business Development Center

March 12, 1998

Mr. David R. Kohler
Associate General Counsel for General Law
U.S. Small Business Administration
Washington, DC 20416

Dear Mr. Kohler:

This is in response to your letter of December 4, 1997, to Ms. Deirdre Maguire-Zinni, Director of the Entitlement Communities Division of the Office of Block Grant Assistance in HUD's Office of Community Planning and Development. Your letter requested an interpretation of HUD's Community Development Block Grant (CDBG) regulations governing the use of CDBG funds to match grants awarded under SBA's Small Business Development Center (SBDC) program.

Your letter describes the SBDC program as a cooperative effort linking the resources of Federal, State, and local governments with those of the educational community and the private sector. The SBDC program is designed to offer management assistance to current and prospective business owners by providing counseling, training, and technical assistance in all aspects of small business management. SBDC services include, but are not limited to, assisting small businesses with financial, marketing, production, organization, engineering and technical problems, and feasibility studies. The services are provided through a network of subcenters in each state. The subcenters are in turn sponsored and coordinated by a lead organization located in the State in which the subcenter is situated.

The Small Business Act authorizes SBA to provide 50 percent of the operating costs for each SBDC network. Grants are made to the lead organization, which in turn distributes funds to the various subcenters as subgrantees. Each lead organization receiving SBDC funds is required to provide a local matching contribution equal to the amount of the SBDC grant. Pursuant to a December 16, 1997, telephone conversation between Ms. Barbara Neal of HUD's Entitlement Communities Division and Ms. Denise Benjamin of your staff, it is HUD's understanding that while the required match for the SBDC grant is the responsibility of the lead organization, such match may actually be provided by one or more of the subcenters. The lead organization, however, is not required to pass any of the matching requirement through to any of the subcenters. The organization that raises the match controls the use of the match. Not more than 50 percent of the match can be provided in the form of indirect costs and in-kind contributions; the balance of the match must be provided in cash.

HUD's CDBG program is authorized by Title I of the Housing and Community Development (HCD) Act of 1974, as amended, and provides annual grants on a formula basis to states and entitled metropolitan cities and urban counties to implement a wide variety of community and economic development activities.

For the CDBG entitlement program, these activities are initiated and developed at the local level based upon a community's perception of its local needs, priorities, and benefit to the community. HUD requires that each activity meet certain requirements, including that it be eligible and meet one of the following broad national objectives: benefit persons of low and moderate income; aid in the prevention or elimination of slums or blight; or meet other community development needs of a particular urgency.

As your letter indicates, the HCD Act and the CDBG regulations state that a CDBG recipient may use CDBG funds to pay an entity's non-Federal share required in connection with another Federal grant-in-aid program under certain conditions. Section 105(a)(9) of the HCD Act, part of the listing of activities eligible for CDBG assistance, reads as follows:

"(a)(9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this title;"

The CDBG regulations at 24 CFR 570.201(g) further elaborate on this eligibility criterion. That section of the regulations reads as follows:

"(g) Payment of non-Federal share. Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of CDBG activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this subpart."

Your letter requests guidance on HUD's intended application of the above regulations to assist in your office's determination of whether CDBG funds can be used as the required local match for an SBDC grant. You specifically request information regarding (1) the conditions under which SBDC management and technical assistance to small businesses will be considered as being "undertaken as part of CDBG activities" and (2) the extent to which such SBDC activities must be specifically identified in a CDBG grantee's approved Consolidated Plan and any subsequent subrecipient agreement.

In the CDBG regulations at 24 CFR 570.201(g), HUD's intent is to clarify that the Department interprets the statutory language "undertaken as part of activities assisted under this title" to mean that in order for CDBG funds to be used as the local match, the respective activity must meet all applicable CDBG requirements. Using CDBG funds for such a required local match constitutes CDBG assistance to the activity in question. Thus, the respective activity must meet all the requirements otherwise applicable for assistance under Title I of the HCD Act. The previous unpublished Comptroller General decision referenced in your letter was based on an analysis of the language of Section 105(a)(9) of the HCD Act before that section was amended in 1981. HUD's position is that the 1981 statutory amendment clarifies that when CDBG funds are used to pay the local match required for another Federal grant-in-aid program, the activities carried out with such funds are to be considered CDBG-assisted activities rather than activities simply listed in a HUD-approved Consolidated Plan, but carried out with other funds, as the referenced Comptroller General decision indicates.

The types of management and technical assistance services provided to small businesses under the SBDC program may qualify for CDBG assistance under a variety of eligibility categories. The two most frequently cited CDBG eligibility categories for such services are Microenterprise Assistance [24 CFR

570.201(o); Section 105(a)(22)] and Special economic development activities [24 CFR 570.203(b); Section 105(a)(17)]. Such activities may also qualify under other CDBG eligibility categories, including Assistance to institutions of higher education [24 CFR 570.201(q); Section 105(a)(21)] and Special Activities by Community-Based Development Organizations (CBDOs) [24 CFR 570.204; Section 105(a)(15)]. If the SBDC program permits its grantees and/or subcenters to credit, as part of the required match, the costs associated with the development of a facility in which the services will be provided to small businesses, certain other CDBG eligibility categories may also be cited, most notably Public facilities [24 CFR 570.201(c); Section 105(a)(2)].

It should also be noted that any drawdown of funds from a grantee's CDBG line of credit with the U.S. Treasury to pay the local match required for the SBDC program would be subject to the timing restrictions on the payment of Federal grant funds under the Office of Management and Budget (OMB) uniform administrative requirements as contained in 24 CFR 85.21 (or 24 CFR 84.22, as applicable). These requirements are made applicable to the CDBG program by 24 CFR 570.502 and generally prohibit lump sum deposits or other disbursement of Federal funds in advance of actual cash needs. Thus, HUD generally expects that another Federal agency accepting a grantee's use of CDBG funds to pay a local match requirement would not require an advance deposit of such funds unless such a deposit is necessitated by the statutory or regulatory requirements of that Federal program.

The second specific issue on which you seek guidance in your December 4, 1997, letter is the extent to which such SBDC activities must be specifically identified in a CDBG grantee's approved Consolidated Plan and any subsequent subrecipient agreement when CDBG funds are to be used pay the required SBDC local match. The Consolidated Plan regulation at 24 CFR 91.220(g)(1) requires that the grantee describe in its annual Action Plan all activities planned to be assisted with all CDBG funds expected to be available during the respective program year. Subparagraph (iv) of this section of the regulations states that "this information about activities shall be in sufficient detail, including location, to allow citizens to determine the degree to which they are affected." The CDBG regulations at 24 CFR 570.301(a) further state that for activities for which the grantee has not yet decided on a specific location, such as when the grantee is allocating an amount of CDBG funds to be used for providing assistance to various businesses, the description in the Action Plan shall identify who may apply for the assistance, the process by which the grantee expects to select who will receive the assistance (including selection criteria), and how much and under what terms the assistance will be provided.

If the CDBG grantee is making funds available to a subrecipient to carry out activities, the regulation at 24 CFR 570.503 requires that before disbursing any CDBG funds to the subrecipient, the grantee and the subrecipient must enter into a written agreement. The agreement is to remain in effect during any period that the subrecipient has control over CDBG funds, including program income. Subparagraph (b) of this section of the regulations describes the provisions which, at a minimum, must be included in the written agreement with the subrecipient. These provisions include a statement of work that delineates a description of the work to be performed by the subrecipient, a schedule for completing the work, and a budget. The regulation requires that these items be in sufficient detail to provide a sound basis for the grantee to effectively monitor performance under the agreement. Pursuant to 24 CFR 570.501(b), the grantee remains responsible to HUD for ensuring that CDBG funds are used in accordance with all program requirements. The use of any subrecipient does not relieve the grantee of this responsibility.

I hope this guidance proves useful to you. If you have any further questions concerning this matter, please contact Ms. Barbara Neal, Assistant Director of the Entitlement Communities Division, at (202) 708-1577.

Sincerely,

(signed)

Kenneth C. Williams
Deputy Assistant Secretary
for Grant Programs