

Effect of Regulatory Provisions Governing the Use of Real Property

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MEMORANDUM FOR: Harry W. Staller, Acting Regional Administrator Regional Housing Commissioner, 3S

ATTENTION: John J. Kane, Director
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FROM: Audrey E. Scott, General Deputy Assistant Secretary for Community Planning and Development, C

**SUBJECT: Community Development Block Grant (CDBG) Program
Effect of Regulatory Provisions Governing the Use of Real Property**

This is in response to a number of questions which have been brought to our attention by your CPD staff regarding certain regulatory provisions which will affect the use or subsequent reuse of real property which was acquired or improved with CDBG funds.

The questions have been discussed with Headquarters Counsel and are set forth below in a question and answer format. We hope you will find this useful and that the answers provided fully respond to your questions. Should you have any further questions or concerns, please feel free to contact Dan Dodrill in the Entitlement Cities Division at (FTS) 755-5977.

1. Q.
What is the policy governing the period of time in which real property, which was acquired or improved with CDBG funds for less than \$25,000, must be used for an eligible activity prior to a change of use?

A. While no specific period of time has been established or such activities (or for those activities that were undertaken prior to the effective date of the new regulations), such property must be used for a sufficient time to be able to reasonably make the determination that the activity achieved a national objective. This policy applies not only to activities involving less than \$25,000 of CDBG assistance, but also those activities which have received any level of CDBG assistance, that were undertaken prior to the effective date of the "change of use" provisions.

Factors to consider, in relation to the period of time the property was so used for determining whether the property was used for a sufficient time period, would include:

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e amount of CDBG funds expended;
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e nature of the need and the extent to which it was met; and
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here the national objective is benefit to low and moderate income persons, the extent of benefit received and the number of such persons that benefited from the activity.



For example, a \$20,000 CDBG improvement used to continue the beneficial operation of a heavily used neighborhood recreational facility in a low and moderate income area could be determined to meet the national objective, even though it is anticipated the property will be acquired for a road widening project in one or two years. On the other hand, where that same amount is used to improve a facility that is to be used for a small number of persons for a much shorter time period, it may not meet this test. An unexpected termination of a use of a CDBG acquired property for reasons beyond the control of the recipient or subrecipient does not effect whether or not a national objective can reasonably be determined to have been met. However, such unexpected termination would be an extenuating factor in the consideration of corrective remedies. In the absence of a clear and obvious failure of a grantee to demonstrate that a national objective was achieved for a sufficient period of time, HUD will not question the period of time such an activity actually achieved a national objective.

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Q.

In the event real property was acquired and improved with CDBG funds for less than \$25,000 is used for a sufficient time to reasonably conclude the activity met a national objective, may a recipient change the use of such property to one which is neither eligible nor meets a national objective?

A. Yes, provided it was determined that the activity initially achieved one of the three broad national objectives.

3. Q. When a change of use involves disposition of real property, do the proceeds from the disposition constitute program income? Must the disposition activity be included in the GPR?

A. Yes. Proceeds from the disposition by sale or long term lease of real property purchased or improved with CDBG funds constitutes program income. This is the policy regardless of whether the cost of acquiring or improving the property was less than or greater than \$25,000. Any program income must be reported in the GPR. The disposition activity is to be included in the GPR only if CDBG funds are used to pay for any costs associated with the disposition activity.

In cases in which a subrecipient controls real property acquired or improved with CDBG funds, the above of course applies. In addition, however, 570.504(c) requires that the subrecipient agreement specify whether, during the duration of the agreement, the subrecipient must return such program income to the recipient. The agreement must also contain the Reversion of Assets provisions required at 570.503(b)(8) to provide for use and disposition of the property during the five year period following expiration of the subrecipient agreement.

4. Q. What are the citizen participation requirements which govern the change of use of property that was acquired with CDBG funds for less than \$25,000?

A. There are no citizen participation requirements governing the change of use of property which was acquired or improved for less than \$25,000.

5. Q. The regulation at §570.505 refers to property acquired or improved with CDBG funds in excess of \$25,000. Does the term "improved" include clearance activities?

A. Yes. CDBG funds which are used to pay the costs of clearance, demolition and removal of buildings and/or improvements would be considered improvements to the property. Such costs must be included in the calculation for determining if the \$25,000 threshold will be met.

6. Q. Does a subrecipient have the authority to change the use of property which was acquired or improved with CDBG funds?

A. Yes. The rule is the same for subrecipient-controlled property as it is for recipient-controlled. However, a

grantee may place further restrictions or requirements on subrecipient controlled property as may be useful for a grantee to achieve its local objective and to ensure that a national objective will be achieved. Such restrictions or requirements must be included in the written agreement with the subrecipient.

7. Q. In the event a subrecipient controlled property was acquired and improved with CDBG funds for less than \$25,000 and a national objective was met, may a subrecipient change the use of or dispose of such property without regard to the five year use restriction? In the event such property is sold must any proceeds be returned to the grantee?

A. Unless specified in the agreement between the grantee and a subrecipient, subrecipient controlled property where less than \$25,000 was involved is not covered by the five year use restriction. However, HUD would still check to make sure the "initial" use met a national objective. In the event a property is sold after expiration of the subrecipient agreement, the proceeds do not constitute program income. However, should a subrecipient have a binding sales agreement with a purchaser during the period of time the subrecipient agreement was still in effect, upon disposition any proceeds must be transferred to the grantee in accordance with §570.503(b)(8).

8. Q. In the event a recipient or subrecipient controlled property is acquired or improved for less than \$25,000, but a subsequent sale of the property was greater than \$25,000, are the "Use of Real Property" provisions at §570.505 applicable?

A. No. The provisions at §570.505 apply only to property which was acquired or improved in whole or in part with CDBG funds in excess of \$25,000. The provisions do not apply to a property where less than \$25,000 of CDBG funds were expended and gross proceeds from its sale are greater than \$25,000.

9. Q. In the event a property is acquired for significantly less than \$25,000, but CDBG-funded improvements over a course of several years subsequently exceeded the \$25,000 threshold, do the "Use of Real Property" provisions apply?

A. Yes. The standards under §§570.503(b)(8) and 570.505 apply to any real property acquired or improved with CDBG funds in excess of \$25,000 taking into account all CDBG funds spent on the property cumulatively.