



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

MAY 15 2012

ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

MEMORANDUM FOR: All CPD Field Office Directors

FROM: Mercedes Márquez, Assistant Secretary, D

SUBJECT: Voluntary Grant Reductions in Lieu of Repayment for Ineligible CDBG and HOME Activities

The purpose of this memorandum is to outline the Office of Community Planning and Development's (CPD) policy for processing requests for voluntary grant reductions to resolve findings of noncompliance. HUD's statutory responsibility for ensuring compliance with Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME) requirements is met by reviewing actual grantee performance and, when deficiencies are found, taking steps to ensure that effective corrective actions are taken. One such action is to advise the jurisdiction to reimburse the amount improperly expended to its program account or line of credit and reprogram the funds to another use. However, current fiscal demands placed upon some jurisdictions make repayment with non-federal funds difficult.

In some cases, CPD has permitted CDBG grantees and HOME participating jurisdictions to resolve monitoring and audit findings involving ineligible use of funds through voluntary reductions of future CDBG and HOME grants in lieu of repaying their program accounts or line of credit. Entitlement CDBG funds that become available as a result of actions taken as remedies for noncompliance with program requirements will be made available to metropolitan cities and urban counties located in Presidentially-declared disaster areas. Grant reductions from the State CDBG program are redistributed the following fiscal year among all states. Funds reduced from HOME grants are typically reallocated to all PJs in the next HOME formula allocation process.

While this approach eliminates the financial burden on grantees and PJs to repay disallowed program costs from local funds, it also reduces the amount of funds available to the grantee or PJ for eligible activities. The reduction of a CDBG grantee's or HOME PJ's allocation decreases the amount of program funds available to address the jurisdiction's affordable housing or community development needs. In addition, a grant reduction also decreases the amount of administrative funds a grantee or PJ has available to administer its program. Consequently, repayment of disallowed CDBG or HOME expenditures to the appropriate program account is CPD's preferred method of corrective action. This method maintains the amount of funding available for affordable housing and community development in the jurisdiction. In contrast, grant reduction results in the loss of CDBG or HOME funds in the amount of the reduction, plus the original ineligible CDBG or HOME expenditure.

Consider the example of a HOME PJ that requests a \$100,000 voluntary grant reduction for an ineligible activity. The PJ now has \$100,000 less for eligible HOME activities. Moreover, the PJ has already expended \$100,000 for the ineligible activity. Since the PJ is not actually repaying the funds, it now has \$200,000 less HOME funds for eligible activities. In addition, the amount of HOME funds expended on ineligible activities (\$100,000) will be reduced from the amount of funds the PJ has committed or expended making it harder to meet future commitment and expenditure deadline requirements. The PJ, then, has \$100,000 less of HOME funds to commit and expend for affordable housing and has committed and expended \$100,000 less as well.

Alternately, if a PJ repays its HOME account in the amount of the ineligible activities with non-Federal funds, any draws associated with the ineligible HOME activity can be revised and the activity can then be cancelled in the Integrated Disbursement and Information System (IDIS). Once the original ineligible activities are cancelled in IDIS, the new commitments and expenditures related to the PJ's repayment from non-federal funds are considered HOME commitments and expenditures. The PJ's grant is not reduced, so it receives its full formula allocation amount. While the PJ has been required to use its non-Federal funds for repayment of the HOME account, there is no net reduction in the resources available to assist low- and very low-income households.

Because a CDBG or HOME grant reduction results in a loss of scarce housing or community development resources in a jurisdiction, field offices should always request repayment of the CDBG or HOME account as the initial corrective action. However, grant reductions may be an acceptable alternative to repayment in cases where communities are experiencing significant fiscal distress. It is important to point out, that the requests for voluntary grant reductions are not automatically granted by Headquarters and must be approved by the Assistant Secretary for Community Planning and Development.

CDBG Program

When the Department determines that costs incurred by the grantee in connection with a finding of noncompliance should be disallowed, the grantee must be advised to reimburse the line of credit or program account. Where a grantee agrees to repay from a non-Federal source, CPD's prevailing position is that the disallowed costs are to be paid back in one year. However, CPD will allow repayments of up to three years when the amount is large or the grantee can demonstrate a financial hardship.

Alternatively, the grantee may request to have the finding resolved by a voluntary grant reduction when the grantee has a discernible financial hardship that prevents it from using non-Federal funds to reimburse the line of credit or program account. Although no regulatory standards exist for what constitutes appropriate criteria for determining whether to resolve a finding of noncompliance via a voluntary grant reduction, the following should be considered: (1) the grantee's financial condition as it pertains to its local appropriation; (2) fewer low- and moderate-income residents will receive CDBG-assisted benefits; (3) lower base for calculating both its public service and planning and administrative caps during the year(s) the grant is reduced; (4) a voluntary grant reduction does not extinguish the applicability of change of use or reversion of assets

requirements (at 24 CFR 570.489(j), 570.503(b), or 570.505); and, (5) the proposal to reduce the grant must be made public in accordance with the consolidated plan regulations at 24 CFR part 91. The grantee should consider the aforementioned items to help determine the impact the reduction will have on its CDBG program.

Should Headquarters approve the voluntary grant reduction, OBGA will provide written notification to the field office of the approval. In addition, OBGA will notify CPD's Systems Development and Evaluation Division of the approval so that it can reduce the jurisdiction's next CDBG allocation(s) by the amount of the grant reduction. It will be necessary for the Field Office to advise the grantee to cancel the activity in the Integrated Disbursement and Information System (IDIS) to ensure that each disallowed activity is captured accurately. The accomplishment narrative for the cancelled activity should include a statement indicating the grantee has a HUD approved voluntary grant reduction, the reduction amount and the number of years the reduction is to occur.

HOME Program

Likewise, when the Department determines that repayment is required under 24 CFR 92.503(b), the PJ must be directed to repay the HOME investment to the account from which the funds were disbursed; either its HOME Investment Trust Fund Treasury account or its HOME Investment Trust Fund local account. OAHP typically requires the ineligible costs to be paid back in one year. However, CPD will allow repayments of up to three years when the amount is large or the PJ can demonstrate a financial hardship.

Alternatively, the PJ may request a voluntary grant reduction in lieu of repayment through non-Federal funds if the PJ demonstrates that it has a financial hardship that prevents it from using non-Federal funds to repay its HOME account. Although no regulatory standards exist for what constitutes appropriate criteria for determining whether to resolve a finding of noncompliance via a voluntary grant reduction, the following should be considered: (1) the PJ's financial condition as it pertains to its local appropriation; (2) fewer low-income residents will benefit from HOME-assisted housing; (3) the impact on the PJ's commitment and expenditure requirements; and, (4) the proposal to reduce the grant must be made public in accordance with the consolidated plan regulations at 24 CFR part 91.

If the voluntary grant reduction is approved, OAHP will provide written notification to the field office of the approval. In addition, OAHP will notify CPD's Systems Development and Evaluation Division of the approval so that it can reduce the jurisdiction's next HOME formula allocation(s) by the amount of the grant reduction.

Currently, IDIS does not have the functionality to properly account for HOME grant reductions for ineligible activities. Ineligible activities that are repaid through grant reductions must be cancelled manually by HUD in IDIS. In addition, the activities repaid by each grant reduction must be manually tracked by OAHP for purposes of lowering commitments and expenditures and reducing the accomplishments reported for ineligible activities, increasing the potential for human error.

Process

To be considered for a voluntary grant reduction in lieu of repayment, the grantee or PJ's chief elected official must request the grant reduction in writing to its HUD field office. The grantee or PJ must document its inability to repay the CDBG or HOME funds from non-Federal sources. In addition, the request must state that the grantee waives its right to a hearing pursuant to 24 CFR § 570.913, *Other remedies for non-compliance*, or the PJ waives its opportunity for a hearing under 24 CFR § 92.552(a), as appropriate. It is important for the jurisdiction to understand the ramifications of the voluntary grant reduction. Therefore, the field office should advise the grantee of the grant reduction's effect on the CDBG program's 15 percent public service cap and 20 percent planning and administration cap and maintain written confirmation of this understanding from the grantee. Finally, the field office should advise the grantee that it must comply with applicable consolidated plan regulations if it is necessary to amend the applicable action plan to account for the grant reduction, as well as to meet the citizen participation requirements.

The field office CPD Director will forward his or her recommendation to approve or disapprove the voluntary grant reduction request to the Assistant Secretary for CPD for final decision. The field office's recommendation should be accompanied by a copy of the grantee's or PJ's written request for a voluntary grant reduction, and, include pertinent documentation regarding the finding that will be resolved by the voluntary grant reduction. The field office CPD Director should also send a courtesy copy of the voluntary grant reduction request and recommendation to the Director, OBGA or OAHP, as applicable. OBGA or OAHP will process the request and notify the field office whether the Assistant Secretary approved or disapproved the request.

Generally, voluntary grant reductions in lieu of repayment must be made in a single year. In certain circumstances, such as when the amount of disallowed costs represents a high percentage of the grantee's annual allocation, the Assistant Secretary may authorize a period of up to three years to complete a grant reduction or repayment of CDBG or HOME funds, based on the amount of the ineligible costs and the grantee's or PJ's ability to repay.

If you have any questions regarding this new policy, please contact Stan Gimont, Director, Office of Block Grant Assistance, at 202-708-3587 or Peter Huber, Director, Financial and Information Systems Division, Office of Affordable Housing Programs, at 202-708-2684.