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CDBG State and Entitlement Grantees

CPD-92-19

Issued:
Expires: June 9, 1992
June 9, 1993

Cross References:

Subject: **Using Community Development Block Grant (CDBG) funds in implementing the HOME Investment Partnerships and Homeownership for People Everywhere (HOPE) programs**

PURPOSE

This Notice clarifies to what extent CDBG funds may be used to pay administrative costs of the HOME Investment Partnerships and Homeownership for People Everywhere (HOPE) programs. It also addresses related issues including the different definitions of administrative costs among the programs, some eligibility and national objective issues involved when CDBG pays activity costs in a HOME- or HOPE-assisted activity, one-for-one replacement, differences in Davis-Bacon thresholds and the status of 24 CFR 570.206(g) eligible activities.

Note that the programs covered by this Notice vary in purpose, eligible activities, and benefit criteria. Recipients that use CDBG with HOME or HOPE must ensure that the requirements of each program are met. Any questions or problems should be promptly referred to the appropriate HUD Field, Regional, or Headquarters office. For questions on this Notice, contact the Entitlement Communities Division at (202) 708-1577.

CGBE : Distribution: W-3-1, W-1 (PIH, H, RC, CPD), W-2, R-1, R-6, 063~: R-3-1
(ADM, CPD), Special (CPD Regional and Field Directors), CDBG,
Entitlement Grantees

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HUD 21 B(3-80)
GP(87) 1 902

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A. BACKGROUND

The CDBG program generally only permits administrative costs for the administration of the CDBG program, unless otherwise authorized. Under the provisions of the HOME and HOPE programs, contributions for administrative expenses from non-Federal sources (that are expressly authorized to include CDBG funds) are recognized for match purposes in an amount up to seven percent of the HOME or HOPE grant. HUD has therefore taken the position that these provisions authorize the use of CDBG funds for administrative costs of the HOME and HOPE programs, up to the amount recognized as contributions for the match (i.e. up to seven percent of the HOME or HOPE grant). The CDBG funds so used must comply with the CDBG regulations (§570.206) implementing section 105(a)(13) of the Housing and Community Development Act of 1974 (HCDA), authorizing program administrative costs.

B. DEFINITIONS OF ADMINISTRATIVE COSTS

1. CDBG

Recipients and responsibilities. The CDBG program is distributed by formula to metropolitan cities, urban counties and States. Metro city and urban county entitlement recipients may carry out activities directly, or through other for-profit or nonprofit entities. The local government recipients responsible for overall program administration. State CDBG grantees are responsible for distributing funds to local jurisdictions, and may not themselves carry out any activities.

CDBG administrative costs. The CDBG entitlement program distinguishes between administrative costs and activity delivery costs. Administrative costs are not directly related to a specific activity. Such costs include reasonable costs of program management, coordination, monitoring and evaluation; providing information to citizens and local officials, preparing budgets, preparing performance reports, and resolving audit and monitoring findings. The regulations at §570.200(g) limit CDBG expenditures for administration (§570.206) plus expenditures for planning (§570.205) to 20 percent of the annual grant plus program income. This Notice refers to CDBG administrative costs as "program administrative costs" or "program administration."

Activity delivery costs. The definition of program administrative costs at §570.206 specifically excludes activity delivery costs, i.e., "staff and overhead costs directly related to carrying out activities under §570.201 through §570.204, since these costs are **eligible as part of such activities**" (emphasis added). For example, in a rehabilitation project, the costs for preparation of work specifications, loan processing, and property

inspections would be eligible activity delivery costs regardless of whether or not the actual rehabilitation of the structure was paid for with CDBG funds. However, to be eligible activity delivery costs, the activity being "delivered" must be CDBG-eligible. There is no limit on the percentage of CDBG funds that may be used for eligible activity delivery costs.

2. HOME

Recipients and responsibilities. The HOME program is distributed by formula to States and to metro cities, urban counties, and consortia that receive a minimum of \$500,000 under the formula. The participating jurisdictions may carry out activities directly, or through for-profit or nonprofit entities. State HOME participating jurisdictions may distribute funds to local governments, nonprofits or for-profit entities or may carry out activities directly. The HOME participating jurisdiction is responsible for the administration of the HOME funds.

Administrative costs. The HOME program definition of "administrative costs" encompasses both program administration and activity delivery. No HOME funds may be used for administrative costs.

For the HOME program, the regulations define administrative costs at § 92.2 as including "any cost equivalent to the costs described in §570.206 of this title (program administrative costs for the CDBG program) and project delivery costs, such as new construction and rehabilitation counseling, preparing work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities applying for or receiving HOME funds. Administrative costs do not include eligible project-related costs that are incurred by and charged to project owners."

3. HOPE

Recipients and responsibilities. The three HOPE categorical grant programs are HOPE for Public and Indian Housing (HOPE 1), HOPE for Homeownership of Multifamily Units (HOPE 2), and HOPE for Homeownership of Single Family Homes (HOPE 3) . (Program guidelines at 24 CFR Subtitle A for the HOPE programs were published in the Federal Register January 14, 1992. Citations in this Notice for the HOPE program refer to those guidelines.) The HOPE programs will distribute funds for planning and for implementation grants through competitions administered by HUD.

Eligible applicants for HOPE 1 are the following entities that represent the residents of the eligible property:

Public bodies, Public or private nonprofits, Resident management corporations, Resident councils, Cooperative associations, Public Housing Authorities (PHAs), and Indian Housing Authorities (IHAs).

Eligible applicants for HOPE 2 are:

Resident management corporations, Resident councils, Cooperative associations, Public or private nonprofit organizations, Public bodies, PHAs and IHAs, and Mutual housing associations.

Eligible applicants for HOPE 3 are:

private nonprofit organizations, cooperative associations, and a public body in cooperation with a private nonprofit organization.

The lists of applicants above are in part "III. Definitions" of the appropriate HOPE program guideline. Each selected recipient is responsible for administering its HOPE grant activities.

Administrative costs and activity costs. The HOPE definition of administrative costs (part II. Definitions) is similar to the CDBG definition at §570.206 in that administrative costs do not include the costs of activities that are separately eligible under the implementation grant eligibility provisions.

Under HOPE, the total amount of the grant plus match used for administrative costs cannot exceed 15 percent of the grant amount (section 405(b)(4), HOPE 1 and 2; section 405 (b)(5), HOPE 3).

A & E. and legal fees Architectural and engineering costs can be either planning costs (S570.205(a)(4)(iii)) or activity delivery costs under the CDBG program, depending on how directly the work is linked to a specific activity. Architectural and engineering is a separate HOPE-eligible implementation grant activity, never considered a HOPE administrative cost (part II. Definitions). Legal fees are also a separate HOPE-eligible activity, although under CDBG such fees may be program administration costs or activity delivery costs.

C. USING CDBG TO PAY FOR HOME AND HOPE ADMINISTRATIVE COSTS

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CDBG funds may be expended for program administrative costs, as defined at 24 CFR 570.206(a), (b), and (e), of the HOME and HOPE programs as long as:

1. the total amount of CDBG funds expended during the CDBG program year for §570.206(a), (b), and (e) activities to administer the HOME program does not exceed seven percent of the total HOME allocations received by the recipient during that program year, and
2. the total amount of CDBG funds expended during the CDBG program year for §570.206(a), (b), and (e): activities to administer the HOPE program does not exceed seven percent of each HOPE grant received by entities within the jurisdiction of the recipient during that program year and
3. the total amount of CDBG funds expended in the CDBG program year for all §§570.205 or 570.206 Activities, regardless of whether any such expenditures are associated with the HOME or HOPE programs does not exceed the 20 percent limitation imposed a §570.200(g).

(NOTE: Activities undertaken in furtherance of the Fair Housing Act under § 570.206(c) by the CDBG recipient that constitute compliance with the requirements of that Act will generally satisfy the requirement for compliance under all of the programs, since the Act pertains to fair housing choice in all housing activities of the jurisdiction. [See § 570.904(c) review criteria.] Consequently, costs under § 570.206(c) need not be allocated to the HOME or HOPE programs.)

CDBG funds may be expended for activity delivery costs of the HOME and HOPE programs without any percentage limits (except for public services that are subject to the limits set forth in § 570.201(e)) if the activities being delivered are CDBG eligible. In no event may a HOME or HOPE recipient receive more than seven percent credit toward its required match for costs expended for administration.

A recipient that chooses to support the HOME or HOPE program by paying program administrative costs must identify specifically in its final statement. Such a recipient may need to amend its final statement. Particular attention Also should be paid to CDBG recordkeeping and reporting requirements.

NOTE again that CDBG program administration costs are not directly related to a specific activity. This means that CDBG can pay §570.206(a) costs for a recipient's HOME or HOPE programs

regardless of the CDBG eligibility of the activities in those programs. For example, if a recipient's only HOME activities were new construction and tenant assistance, CDBG funds could be used to pay the HOME program's eligible §570.206(a), (b), and (e) costs. This is true even though the HOME activities themselves are not CDBG eligible, and CDBG funds could not pay activity delivery costs for them.

D. USING STATE CDBG FUNDS TO PAY FOR STATE HOME ADMINISTRATION

Section 106(d)(3)(A) of HCDA established the eligibility and limits for state-level administrative costs for the State CDBG program. This section permits expenditure of CDBG funds for CDBG responsibilities and for administration of the Rental Rehabilitation and Urban Homesteading programs. The Department has determined that NAHA amends this provision to permit states to use CDBG administrative funds for state administrative expenses for the HOME program within the limits provided at section 106(d)(3)(A). Many states have indicated over the past several years that the amount of funds available for administration, which is very limited, is insufficient to carry out all the CDBG administrative functions. Each state should be cautioned that this new eligibility does not diminish in any respect the state's responsibility for proper administration of the CDBG program.

This Notice discusses statutory changes and effects on existing regulations. States may, however, restrict the use of CDBG funds for any administrative costs as part of their role to distribute funds to meet state objectives consistent with requirements of the law.

E. CDBG ELIGIBILITY ISSUES RELATED TO HOME

Recipients managing housing programs whose costs are supported by both HOME and CDBG funds must learn the differences in the eligibility of activities under the two programs and develop management systems to ensure that all applicable program requirements are met. Many HOME-eligible activities are CDBG-eligible, but some are not. The HOME-eligible activities that are likely to be CDBG-eligible include acquisition (see reference to homebuyer acquisition below), rehabilitation (except reconstruction), relocation expenses, some demolition, and some site improvements. This general observation does not relieve grantees from the responsibility to scrutinize every use of CDBG funds to ensure that it is eligible and meets all CDBG program requirements.

There are HOME-eligible activities that are not generally CDBG-eligible, specifically new construction and tenant-based

rental assistance. Reconstruction is considered rehabilitation under HOME, but is subject to additional requirement under the CDBG program. Homebuyer acquisition is eligible under HOME, but only eligible under CDBG until October 1992.

1. New construction and tenant-based rental assistance

New housing construction is generally ineligible under the CDBG program, pursuant to S 570.207(b)(3), except when carried out by a qualified subrecipient undertaking an eligible project under the provisions of S 570.204. (The use of CDBG funds for such construction may be eligible as "last resort" housing under 49 CFR Part 24 implementing provisions of the Uniform Relocation Act and, formerly, under the terminated Housing Development Grant program that was authorized by section 17(d) of the United States Housing Act of 1937.)

Tenant-based rental assistance is ineligible for CDBG assistance pursuant to §570.207(b)(4).

2. Reconstruction

Reconstruction is defined differently in the CDBG and HOME programs. The forthcoming CDBG final rule implementing the 1987 Amendments to HCDA defines reconstruction as "the rebuilding of housing on the same site, including the permanent installation of manufactured housing on a site where the demolition of housing has taken place." CDBG funds may be used for reconstruction if either the need for reconstruction was not determinable until after rehabilitation of the structure had commenced (section 105(a)(19) of HCDA, currently in effect), or the reconstruction is part of a neighborhood rehabilitation effort and the recipient makes the required determinations about whether the housing is unsuitable for rehabilitation, and about the costs of the reconstruction (at §570.202(f) once the final rule is in effect).

The HOME regulations define reconstruction as "the rebuilding of housing on the same foundation," and further equate reconstruction and rehabilitation for the purposes of HOME eligibility.

A recipient that chooses to put CDBG funds into a HOME rehabilitation project should be vigilant to ensure that, for CDBG purposes, the separate requirements for rehabilitation and reconstruction are met as applicable.

3. Homebuyer acquisition

Assistance for acquisition by a homebuyer (called direct homeownership assistance under the CDBG program) is eligible under the HOME program. CDBG funds may provide such assistance through a statutory direct homeownership provision that expires

in October 1992 (section 105(a)(20) of HCDA), through assistance provided to a special subrecipient for a §570.204 project, or if the purpose of the acquisition is rehabilitation under §570.202.

F. CDBG ELIGIBILITY ISSUES RELATED TO HOPE

In general, eligible activities under the HOPE implementation grant program also qualify as CDBG-eligible activities. Because of income restrictions on the participants in the HOPE programs, a CDBG national objective probably can be met by most HOPE activities. A few activities are problematic under the CDBG program, or are classified differently under the two programs.

In addition to activities discussed below, the following HOPE activities are likely to be CDBG-eligible: acquisition of real property by the CDBG recipient or a subrecipient, rehabilitation of housing, counseling and training of homebuyers and homeowners, and legal fees. The activity called "economic development" by the HOPE program consists of potentially CDBG-eligible public services such as job training any child care.

1. Financial assistance to homebuyers/ Implementation of homeownership program

The HOPE 1 and 2 activity called "Implementation of homeownership program" includes provision of assistance to families to make acquisition affordable to them, and may include interest rate subsidies and downpayment assistance. The HOPE 3 program calls this activity "Financial assistance to omebuyers.11 Under the CDBG program, it is eligible to help a family acquire a property, if the purpose of the acquisition is rehabi itation. Other direct homeownership assistance is also temporarily (until October 1992) CDBG-eligible. A CDBG special subrecipient also may carry out otherwise ineligible direct homeownership activities if they are integral to a §570.204 project. As noted above, training HOPE applicants to carry out a homeownership program and developing the capacity of resident councils would likely qualify as a CDBG-eligible public service, if a national objective is met.

2. Relocation, replacement reserves, and operating expenses

The relocation provisions under HOPE differ from CDBG in that they are limited to relocation of residents who elect to move. No person may be displaced from his or her dwelling as a direct result of a HOPE program (section 735, all three guidelines). HOPE-eligible temporary and permanent relocation could be eligible CDBG optional relocation activities (§570.201(i)(2)).

Replacement reserves and operating expenses, eligible under HOPE 1 and 2, are not generally CDBG-eligible activities.

G. NATIONAL OBJECTIVES - GENERAL

When a recipient uses CDBG funds under 9570.20~ a), (b), or (e) to pay HOME or HOPE program administration costs no CDBG national objective requirements apply. When CDBG funds pay activity delivery costs eligible as part of activities eligible under §570.201 through 570.204, the national objective requirements at §570.208 apply.

Table 1 Terms for Income Groups

<u>Program/ percentile</u>	<u>At or Below 50% of Median</u>	<u>From 51% to 80% of Median</u>	<u>At or below 80% of Median</u>	<u>From 81% to 9 % of than</u>
CDBG	low income	moderate income	low and moderate income	(not applicable)
HOPE	very low income		low income low income	(not applicable)
ROME	very low income			(not applicable)
CHAS	very low income		low income	mode moderate income

The HOME and HOPE programs (and the Comprehensive Housing Affordability Strategy) define a "low-income family" as a household having an income at or below 80 percent of median income. Generally, "low-income family" in HOME or HOPE is the same as "low and moderate income household" in CDBG! To avoid confusion in comparison of the programs, this Notice will refer to a family or household whose income is at or below 80 percent of median for the area as an "income-qualified" family or household.

H. MEETING A NATIONAL OBJECTIVE WHEN USING CDBG WITH HOME

Since all HOME funds must be spent on housing units that benefit income-qualified households, a housing project that meets HOME income targeting requirements also generally will include one or more activities that meet the CDBG program national objective of benefit to persons of low and moderate income. Recipients should learn the difference between a HOME "Project" (§92.2) and a CDBG "activity" (§570.201-204, §570.208) to ensure

that the proper basis is used in determining whether the benefit requirements of the two programs have been met.

1. CDBG activities meet national objectives

The CDBG recipient provides assistance to carry out activities. For housing, the "activity" is acquisition of real property, clearance, rehabilitation of buildings and improvements. The amount of CDBG assistance provided to an activity must be necessary and reasonable.

Low- and moderate-income national objective. To meet a CDBG national objective for housing activities that are to benefit income-qualified households (also called low-mod housing activities), 51 percent of the units in each assisted **structure** must be occupied by income-qualified households. A rental housing activity involving more than one structure can also qualify if the assistance is provided for rental structures a) on the same or contiguous properties, b) under the same ownership and management and c) with affordable rents. Such grouped buildings may be considered a single structure for the purpose of meeting the 51 percent requirement (see §570.208(a)(3) for details).

Slum-bligh national objective. Rehabilitation of housing for households not known to be income-qualified can meet a national objective under §570.208(b) if the structure rehabilitated is within a designated slum or blighted area, housing deterioration is a condition that contributed to the deterioration of the area, and the structure to be rehabilitated is considered substandard under local definition before rehabilitation. All deficiencies making the structure substandard must be corrected before less critical work may be undertaken. To the extent that they are eligible, site improvements, new construction, and acquisition can also be carried out under the slum-bligh objective (see §570.208(b)(1) and the CDBG Guide to Eligible Activities).

2. HOME projects meet income targeting criteria

The HOME recipient provides assistance for eligible activities for HOME projects. To meet the HOME program income targeting requirement, 100 percent of the units assisted with HOME funds must be occupied by income-qualified households (§92.216-217). These assisted units may be distributed throughout a project, and there is no minimum percentage of income-qualified units in a project.

Under HOME, "project" means a site or entire building, or two or more buildings, together with the site or sites on which the building or buildings are located, that are under common howownership, management, and financing as a single undertaking.

project includes all the activities associated with the site and building. If there is more than one site associated with a project, the sites must be within a four block area (§92.2).

3. Meeting both a national objective and income targeting criteria

Low-mod housing national objective and income target if the HOME-assisted units are fewer than 51 percent of the total units in a structure, and the recipient does not ensure that sufficient remaining units will be occupied by income-qualified households to meet the CDBG 51 percent requirement, CDBG funds may not be used for the activity, regardless of whether CDBG funds are used for construction costs or activity delivery costs.

Because a HOME project may include more than one structure, and not meet the requirements at §570.208(a)(3) for grouped structures, recipients must distinguish between the CDBG requirement to count the percentage of income-qualified units per structure, and the HOME requirement to use HOME for designated income-qualified units within a (potentially multi-structure) project.

Under §570.208(a)(3)(i), if CDBG funds are used for eligible activities that assist new construction of multifamily, non-elderly rental housing, the low-mod housing national objective will be met if at least 20 percent of the units will be occupied by income-qualified households. For an activity qualifying under this provision in which the HOME-assisted units constitute fewer than 20 percent of the total units, and the recipient does not ensure that sufficient remaining units will be occupied by income-qualified households to meet the CDBG 20 percent requirement, CDBG funds may not be used for the activity.

Slum-blight national objective. For a CDBG slum-blight activity, the income of households in housing assisted is not relevant. Thus, the percentage of HOME-assisted or income-qualified units does not affect whether a CDBG national objective has been met for such an activity. In general, if any CDBG funds are used for activity costs (including activity delivery costs) of any slum-blight activity that is part or all of a HOME project, each structure or site assisted by CDBG funds must meet the slum-blight criteria and each HOME-assisted unit in the project also must meet the income targeting criteria. (See §570.208(b)(1)).

1. MEETING A NATIONAL OBJECTIVE WHEN USING CDBG WITH HOPE

All HOPE funds must be spent on a homeownership program targeted to benefiting eligible families who are homebuyers. For HOPE 3, eligible families are defined as low-income, and all

units in all eligible properties must be sold to eligible families. However, HOPE 1 and HOPE 2 eligible families include residents of the property on the date HUD approves the HUD implementation grant. Some of these residents may not be income-qualified.

To meet HOPE 1 and HOPE 2 requirements, 66 percent of the units in each property must be sold to eligible homebuyers. For HOPE 1, all homebuyers must be eligible families. Thus for HOPE 1, a minimum of 66 percent of the units will be sold to income-qualified homebuyers. For HOPE 2, eighty percent of the homebuyers must be income-qualified families. Thus, a minimum of 53 percent of the units in a HOPE 2 property will be sold to income-qualified homebuyers. In cases in which the "property" includes more than one structure, CDBG recipients must determine whether the low-mod housing objective can be met on structure-by-structure basis.

The public service activities undertaken as par of a HOPE program will likely qualify under a low-mod limited clientele national objective (§570.208(a)(2)), if more than 51 percent of the persons served by the services are members of in income-qualified HOPE-eligible families.

Recipients should learn the differences between HOPE activities and CDBG activities to ensure that the pr per basis is used in determining whether the requirements of the two programs have been met.

J. SECTION 104(d) AND DAVIS-BACON REQUIREMENTS

1. Section 104(d) one-for-one replacement of housing and relocation requirements

Section 104(d) requirements for the replacement of housing and for relocation assistance are triggered by the demolition or conversion of certain dwelling units in connection with a CDBG-assisted activity. Replacement is triggered by demolition or conversion of low- and moderate-income dwelling units. Relocation assistance is triggered when an income-qualified person moves as a direct result of the conversion of low- and the moderate-income dwelling unit to another use, or demolition of any housing unit in connection with a CDBG-assisted activity.

These requirements are not triggered by the use of CDBG funds to pay §570.206 costs for the HOME or HOPE programs. The requirements are triggered when CDBG funds are used for activity costs (including activity delivery costs) for a project that includes demolition or conversion activities describe above.

HOPE has replacement requirements that are similar to the CDBG one-for-one replacement requirements. While HOPE 1 replacement may meet CDBG requirements, recipients planning to use HOPE 1 and CDBG together should become familiar with the replacement rules for both programs, and contact HUD if there are any questions.

2. Davis-Bacon

The Davis-Bacon requirements for the HOME program apply to new construction or rehabilitation of affordable housing where 12 or more units are assisted with HOME funds (§92.354). The Davis-Bacon requirements apply to HOME projects regardless of whether the HOME funds specifically finance the construction or rehabilitation of the units or are used for other eligible activities (e.g., acquisition) that constitute assistance to the units to be constructed or rehabilitated. A HOME project (with no CDBG assistance) that contains 12 or more units, but in which fewer than 12 units are assisted under the HOME program, is not subject to Davis-Bacon requirements. If CDBG funds are used to assist a HOME activity by financing the construction or rehabilitation work in whole or in part, the CDBG Davis-Bacon threshold (§570.603) applies, i.e., any property containing eight or more units whose construction or rehabilitation is CDBG financed would be subject to Davis-Bacon requirements. The use of CDBG funds to assist a HOME project in ways other than financing the construction or rehabilitation work does not trigger the CDBG eight-unit threshold.

The HOPE 2 and HOPE 3 programs are not subject to Davis-Bacon requirements. If CDBG funds finance construction or rehabilitation work on a HOPE 2 or HOPE 3 property in whole or in part, the CDBG Davis-Bacon threshold applies, i.e., any property containing eight or more units whose construction or rehabilitation is CDBG-financed would be subject to Davis-Bacon requirements. (Note: for purposes of the CDBG Davis-Bacon threshold, a multifamily condominium building with eight or more units is considered a property with eight or more units, and Davis-Bacon would apply to the CDBG-financed construction or rehabilitation of a single condominium unit in such a building.) The use of CDBG funds to assist a HOPE 2 or HOPE 3 project in ways other than financing the construction or rehabilitation work does not trigger the CDBG eight-unit threshold.

The HOPE 1 program is part of the U.S. Housing Act of 1937, so under Section 12(a) of that Act, Davis-Bacon requirements apply to work that constitutes "development" work (e.g., reconstruction, substantial improvement, remodeling that alters the nature or type of housing units), while HUD determined wage rates apply to maintenance and non-routine maintenance work. Each of these types of wage requirements applies regardless of the number of units involved and applies to work performed by PHA

employees as well as contractors. The use of CDBG funds to finance "development" work on a project covered by 1 (a) would not involve any additional Davis-Bacon coverage, since all such work is covered by Davis-Bacon requirements under Section 12(a).

K. CURRENT STATUS OF SECTION 570.206(g)

Section 570.206(g) of the CDBG regulations states:

"CDBG funds may be used for necessary administrative expenses in planning or obtaining financing for housing as follows: for entitlement recipients, assistance authorized by this paragraph is limited to units that are identified in the recipient's HUD approved housing assistance plan."

This provision has been used by recipients to support expenditure of CDBG funds for administrative expense of non-CDBG-assisted housing activities. This provision is, in effect, not available because of its link to a housing assistance plan (HAP) that is no longer in effect for any grantees. Modifying this provision will require new rulemaking.

J