
CHAPTER 2. POLICIES GOVERNING DIVERSE CLOSEOUT TOPICS

This chapter describes several diverse topics relating to UDAG Closeouts. Briefly, the chapter addresses the distinction between UDAG program income and miscellaneous revenues; the eligible uses of UDAG loan repayments and other payment funds; the expanded role of HUD staff in the period between signing the Closeout Agreement and issuing the Certificate of Completion; and the provision of technical assistance by HUD staff.

2-1 PROGRAM INCOME AND MISCELLANEOUS REVENUES. This section sets forth policies regarding the distinction between program income and miscellaneous revenue funds received by the Recipient. A description of each fund category and the differences between these categories follow below.

A. Program Income. Program income consists of UDAG loan repayments, as well as other payments and revenues received by the Recipient either before 1) completion of UDAG-funded Recipient activities or 2) execution of the Closeout Agreement. The key factor is the year in which preliminary approval of the project occurred i.e., whether the project was funded 1) before or 2) during FY 1989. The list of those projects funded during FY 1989 is included as Appendix 7 of this Handbook.

1. Projects Funded Before FY 1989. Any UDAG loan repayments or other payments or revenues received and expended by the Recipient before the completion of UDAG-funded Recipient activities are classified as program income.
2. Projects Funded During FY 1989. Regulatory revisions which occurred in 1988 established a different time period for the classification of loan repayments and other payments and revenues received by the Recipient as program income.

Specifically, repayments or other payments to the Recipient which are received and expended before the execution of a Closeout Agreement are deemed program income.

In the early years of the UDAG program, the Grant Agreement Rider to Sections 2.04, 9.01, 9.02 and 9.03 required any program income funds generated to be escrowed until completion of UDAG-funded Recipient activities. This requirement provided a mechanism by which Line of Credit (previously Letter of Credit) funds could be drawn down for eligible project activities without first using the program income funds held in the escrow account.

Unlike program income stipulations under the CDBG program, UDAG program income funds are not required to be disbursed before Line of credit advances when the escrow provision set forth in the Grant Agreement is in place.

Part 570 Applicability. Regardless of the year in which the project received preliminary approval, if the Recipient expends the escrowed funds when they are characterized as program income, it may fund any activity which is eligible under Title I of the Housing and Community Development Act of 1974, as amended. In addition, these program income funds must be spent in accordance with Part 570 of Title 24 Code of Federal Regulations.

The Part 570 requirements of Title 24 CFR include general provisions, eligibility, grant administration and recordkeeping procedures, and other program requirements such as labor and environmental standards, relocation, displacement and acquisition provisions, flood insurance, etc. These requirements also encompass the criteria for meeting the national objectives set forth in Part 570.208 of the CDBG regulations.

In short, the use of program income funds, since those funds are subject to Part 570 requirements, is considerably more restrictive than the use of miscellaneous revenues.

- B. Convertibility of Program Income to Miscellaneous Revenues. This section highlights a fundamental policy clarification with respect to the different points at which program income funds convert to miscellaneous revenues. The classification of these funds changes at two different points, depending on whether the project which generates these repayments was funded 1) before FY 1989 or 2) during FY 1989.
1. Projects Funded Before FY 1989. Any program income funds which are a) received by the Recipient before completion of UDAG-funded Recipient activities, b) held in an escrow account, and c) not spent during the time period preceding the completion of UDAG-funded Recipient activities do, in fact, convert from program income to miscellaneous revenues once completion of UDAG-funded Recipient activities has occurred. The funds convert to miscellaneous revenues regardless of whether a Closeout Agreement has been executed.
 2. Projects Funded During FY 1989. With the implementation of the August 1988 regulations, repayment and other payment funds remain program income until the Closeout Agreement is executed. It is not until after the execution of the Closeout Agreement that program income converts to miscellaneous revenues for these projects.

The revised Rider to Sections 2.04, 9.01, 9.02 and 9.03 included in Exhibit A to the Grant Agreements for these projects reflects the different timing for the convertibility of these funds.

- C. Miscellaneous Revenues. Miscellaneous revenues are UDAG loan repayments and other payments and revenues which are received by the Recipient either 1) after completion of UDAG-funded Recipient activities, for those projects funded before FY 1989 or 2) after execution of the Closeout Agreement, for those projects approved during FY 1989.
1. Projects Funded Before FY 1989. Prior to revisions introduced by the August 29, 1988 UDAG regulations, for those projects which were funded before FY 1989 and which are governed by the provisions of the original Rider to Sections 2.04, 9.01, 9.02 and 9.03 in Exhibit A of the Grant Agreement, loan repayments and other payments in the Recipient's escrow account "convert" from program income to miscellaneous revenues at the point when UDAG-funded Recipient activities are completed. This holds true even if the Closeout Agreement is not executed until significantly later.

Field Office staff should advise Recipients to note in their records the point in time when UDAG-funded Recipient Activities were completed.

2. Projects Funded During FY 1989. With the implementation of the August 1988 regulations, repayment and other payment funds remain program income until the Closeout Agreement is executed. It is not until after the execution of the Closeout Agreement that program income converts to miscellaneous revenues.

This change was reflected in a revision to the Grant Agreement's Rider to Sections 2.04, 9.01, 9.02 and 9.03 included in the Grant Agreements for those projects funded after the August 1988 regulations were published.

It is important to note, however, that while miscellaneous revenue funds are not governed by the Part 570 requirements which pertain to program income, and which are discussed on page 2-2 of this Handbook, the Recipient must comply with the eligibility provisions of Part 570, if it uses miscellaneous revenues to fund

activities which are ineligible for UDAG funding but can otherwise be determined eligible under 24 CFR 570.203 or 570.204 of the CDBG regulations.

The charts at the end of this chapter describe such activities.

2-2 Eligible Uses of Miscellaneous Revenues. The following section discusses eligible uses of repayments and other payments received by the Recipient after convertibility. These funds are considered miscellaneous revenues.

- A. Types of Eligible Uses. Activities eligible under Title I of the 1974 Housing and Community Development Act are found at Part 570 Subpart C of the CDBG regulations and Part 570 Subpart G of the UDAG regulations. Greater flexibility to undertake certain other activities is also provided at Section 570.455(a) of the UDAG regulations, wherein UDAG funds are permitted to be spent "...for any eligible activity specified in Subpart C which supports economic recovery" (underscoring added).

The coupling of Subparts C and G of Part 570 results in a broad array of development projects which the Recipient may undertake with repayment and other funds classified as miscellaneous revenues, particularly if the project can be deemed to support economic recovery. Eligible uses, therefore, can include new housing construction activities and working capital and inventory financing, for example. New housing construction is generally ineligible under CDBG rules, but is eligible pursuant to UDAG regulations, while working capital and inventory financing, which are both ineligible uses of UDAG funds, can be determined eligible under either Section 570.203 or Section 570.204 of the CDBG regulations.

The above policy regarding eligible activities is applicable as well to the revised Rider provisions concerning miscellaneous revenues received by the Recipient from projects funded during FY 1989. Flexibility is preserved because the Rider permits miscellaneous revenues to be spent on economic development activities eligible under either Section 105(a) of the 1974 Act or the UDAG program.

The charts beginning on page 2-8 of this Handbook illustrate the types of activities for which the Recipient may spend miscellaneous revenues. The lists are not all inclusive; see the CDBG and UDAG regulations for more detailed provisions.

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- B. Impact of New Legislation on Eligible Uses. On November 28, 1990, the Cranston-Gonzalez National Affordable Housing Act was passed, which has impacts regarding Section 105(a) of Title I of the 1974 HCD Act. Specifically, this legislation amended Section 105(a)(17) of the HCD Act, which sets forth several criteria in order to determine that the provision of CDBG funds to assist private, for-profit entities in undertaking economic development projects is an eligible activity.

The implication of this legislative change for miscellaneous revenue funds generated from FY 1989 projects is that, if the Recipient chooses to spend these miscellaneous revenues on activities eligible under Section 105(a) of the HCD Act, and not under the UDAG program, as the revised Rider language permits, the project must meet one of the objectives noted in (A) through (F) of Section 105(a)(17) to make the activity an eligible use of miscellaneous revenue funds.

Furthermore, since any subsequent amendments to the Cranston-Gonzalez Act or the passage of other legislation may also modify Section 105(a) of the HCD Act, Recipients must be aware of these prospective impacts and comply with all applicable eligibility requirements of Section 105(a) which are in effect as of the date of execution of the Closeout Agreement for each of the 85 projects funded during FY 1989.

- C. Title I "Identity" Regarding Miscellaneous Revenues. Compliance with the appropriate Title I eligibility requirements governs only the initial use of miscellaneous revenues. "Reuse" of loan funds or expenditures through other recycling mechanisms is not subject to the provisions of Title I eligibility which are imposed on the "first" use of miscellaneous revenues.
- D. Timely Reuse of Miscellaneous Revenues. All Closeout Agreements executed after October 1, 1990 must include specific requirements concerning the timely use of miscellaneous revenues. Unless otherwise provided for by the Recipient in a detailed statement submitted to HUD, which is included as part of the Annual Post Grant Closeout Report, these specific requirements should describe how and when the miscellaneous revenue funds are to be used.

The provision instructing the Recipient regarding the timely use of miscellaneous revenues, which must be incorporated verbatim in the Closeout Agreement, is as follows;

HUD requires you to use, and not accumulate, miscellaneous revenues generated from this project for eligible Title I activities in a timely fashion. However, in the event that you have a specific use for which you are reserving or setting aside some or all of your miscellaneous revenues, provide HUD with a detailed description of how and when you plan to use the funds.

2-3 Expanded Role of HUD Between Closeout Agreement and Certificate of Completion.

- A. Reservation of HUD Approval Authority. HUD Headquarters and Field staff have additional post-closeout monitoring responsibilities for those projects which are closed out after October 1, 1990. Accordingly, commencing with those projects which are closed out during Fiscal Year 1991, HUD must reserve the right to approve certain closed-out project elements as part of its ongoing project monitoring and provision of technical assistance to Recipients. This is more fully discussed in Chapter 3 paragraph 3-3 of this Handbook.
- B. Approval Reservation Review. In the event any of the situations, described fully in Chapter 3 of this Handbook, arises after being reserved in the Closeout Agreement, the Recipient must obtain HUD's approval regarding the contemplated change(s).

After all prerequisites to closeout and all requirements set forth in the Closeout Agreement have been accomplished, a Certificate of Completion will be issued which will terminate any further Federal interest or involvement in the project other than the annual reporting requirements which will be set forth in the Closeout Agreement.

2-4 Technical Assistance. HUD staff should be available to provide ongoing technical assistance to Recipients, Developers and other Participating Parties, as needed. The provision of technical assistance is particularly important in light of the enlarged HUD role and increased responsibilities in the post-closeout stages of a project.

- A. Outstanding Performance Obligations. HUD staff should continue to provide advice and guidance to Recipients after execution of the Closeout Agreement to facilitate the realization of any pending performance requirements of the project. These requirements typically include job generation, collection

of tax revenues and payments in lieu of taxes, an audit pursuant to OMB Circular A-128, and any Pocket of Poverty requirements, if applicable.

- B. Reservation of Approval for Changes to Closed-Out Project Elements. In addition to helping Recipients to accomplish the obligations noted above, HUD has a more active technical assistance and monitoring role in advising Recipients on prospective changes to those project elements which have been reserved in the Closeout Agreement. Both Field and Headquarters staff will be important participants in the review and approval process regarding selected revisions to the terms and conditions of those projects closed out on or after October 1, 1990.
- C. Timely Use of UDAG Repayments and Other Payments. HUD Headquarters and Field Office staff have expanded technical assistance responsibilities in advising Recipients on the collection, management, and timely reuse of UDAG repayments and other payments.

It may be helpful for HUD staff to ensure that Recipients, when designing their systems and accounts, are mindful of the convertibility of program income to miscellaneous revenues, and the different points at which the convertibility occurs.

It is therefore advisable for Recipients to establish separate tracking systems for each category of repayment or other payments received.

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CHART 1

USES OF MISCELLANEOUS REVENUES
FOR UDAG GRANTS WITH PRELIMINARY
APPROVAL BEFORE FY 1989**

Eligible Activities Under Title I
of the Housing and Community Development
Act of 1974, as Amended

SECTION 105 OF THE ACT

CDBG Eligible Activities

- 1. Basic Activities
- 2. Eligible rehabilitation and preservation activities

- Acquisition
 - Disposition
 - Public facilities and improvements
 - Clearance and demolition activities
 - Public Services
 - Code Enforcement
 - Payment of non-Federal share
 - Urban renewal completion
 - Relocation
 - Loss of rental income
 - Removal of architectural barriers
 - Privately owned utilities
 - Interim assistance
- Privately owned buildings and improvements for residential purposes
 - Low income public housing or other publicly-owned residential buildings
 - Publicly-or-privately-owned commercial or industrial buildings limited to exterior and code violations
3. Special economic development activities
See 24 CFR 570.203 of the regulations for further explanation.
 4. Special activities by certain subrecipients
See 24 CFR 570.204 of the regulations for further explanation.
 5. Planning and environmental design
 6. Program administration

**The uses listed in this chart are not all inclusive. The chart should serve as a guide, but Recipients should be advised to look to the statute and regulations in addition to the Chart to determine activities that could be eligible uses of miscellaneous revenues.

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SECTION 119 OF THE ACT

UDAG Eligible Activities

Economic Development activities which aid economic recovery and which the Secretary determines to be consistent with the purposes of Section 119 of the Act. Generally, UDAG funds may assist industrial, commercial and housing projects where there is private investment.

- Construction/permanent financing
- Land acquisition
- Affixed capital equipment
- Parking facilities

- Infrastructure
- Hard costs, including building construction, rehabilitation, tenant improvements and finishes
- Interim expenses including interest, taxes, insurance
- Professional fees such as legal, accounting, A&E, leasing

UDAG Ineligible Activities

The following activities are ineligible under the UDAG program, principally because program policy does not permit the use of UDAG funds for these activities. Therefore, Recipients may not cite the UDAG statute and regulations as the basis of an eligibility determination for the following uses of miscellaneous revenues.

- Working capital and inventory
- Reserve fund for operating deficit, debt service or interest reserve
- Non-capital equipment (i.e., hand tools, office equipment)
- Rolling stock (i.e., railroad cars or boats not permanently moored, cars or moveable heavy equipment)
- Free standing parking facility as the only project activity
- Educational facilities
- Gambling facilities, except on Indian reservations
- Acquisition of existing assets without additional private development activity
- Payment of prior debt
- Research and development activities

CHART 2

USES OF MISCELLANEOUS REVENUES
FOR UDAG GRANTS WITH PRELIMINARY
APPROVAL DURING FY 1989**

Eligible Activities Under Title I
of the Housing and Community Development
Act of 1974, as Amended:

SECTION 105 OF THE ACT

CDBG Eligible Activities

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| 1. Special economic development activities

See 24 CFR 570.203 of the regulations for further explanation. | 2. Special activities by certain subrecipients

See 24 CFR 570.204 of the regulations for further explanation. |
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SECTION 119 OF THE ACT

UDAG Eligible Activities

Economic development activities which may be assisted under the UDAG program.

See Chart #1, under UDAG Eligible Activities

UDAG Ineligible Activities

The following activities are ineligible under the UDAG program, principally because program policy does not permit the use of UDAG funds for these activities. Therefore, Recipients may not cite the UDAG statute and regulations as the basis of an eligibility determination for the following uses of miscellaneous revenues.

- Working capital and inventory
 - Reserve fund for operating deficit, debt service or interest reserve
 - Non-capital equipment (i.e., hand tools, office equipment)
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CHART 2 - Continued

- Rolling stock (i.e., railroad cars or boats not permanently moored, cars or moveable heavy equipment)
- Free standing parking facility as the only project activity
- Educational facilities
- Gambling facilities, except on Indian reservations
- Acquisition of existing assets without additional private

development activity

- Payment of prior debt
- Research and development activities

**The items listed in this chart are not all inclusive. The chart should serve as a guide, but Recipients should be advised to look to the statute and regulations in addition to the chart to determine activities that could be eligible uses of miscellaneous revenues.
