

local government in response to the annual Small Cities NOFA published in calendar year 1997 or later is \$400,000, except that counties may apply for up to \$600,000 in HUD-administered Small Cities funds. HUD may specify lower grant limits in the NOFA, which may include different limits for different types of grants available or different types of applicants. This paragraph (g) does not apply to multiyear plans that were approved under the provisions of NOFAs published prior to calendar year 1997, nor does it apply to grants awarded in connection with paragraphs (a)(3) through (a)(5) of this section. The maximum limits in this paragraph (g) apply to grants for economic development projects awarded under NOFAs in which there is no set-aside of funds for such projects.

§§ 570.422–425 [Reserved]

§ 570.426 Program income.

(a) The provisions of § 570.504(b) apply to all program income generated by a specific grant and received prior to grant closeout.

(b) If the unit of general local government has another ongoing CDBG grant at the time of closeout, the program income will be considered to be program income of the ongoing grant. The grantee can choose which grant to credit the program income to if it has multiple open CDBG grants.

(c) If the unit of general local government has no open ongoing CDBG grant at the time of closeout, program income of the unit of general local government or its subrecipients which amounts to less than \$25,000 per year will not be considered to be program income unless needed to repay a Section 108 guaranteed loan. When more than \$25,000 of program income is generated from one or more closed out grants in a year after closeout, the entire amount of the program income is subject to the requirements of this part. This will be a subject of the closeout agreement described in § 570.509(c).

§ 570.427 Program amendments.

(a) *HUD approval of certain program amendments.* Grantees shall request prior HUD approval for all program amendments involving new activities

or alteration of existing activities that will significantly change the scope, location, or objectives of the approved activities or beneficiaries. Approval is subject to the following:

(1) Programs or projects that include new or significantly altered activities are rated in accordance with the criteria for selection applicable at the time the original preapplication or application (whichever is applicable) was rated. The rating of the program or projects proposed which include the new or altered activities proposed by the amendment must be equal to or greater than the lowest rating received by a funded project or program during that cycle of ratings.

(2) Consideration shall be given to whether any new activity proposed can be completed promptly.

(3) If the grant was received on a non-competitive basis, the proposed amended project must be able to be completed promptly, and must meet all of the threshold requirements that were required for the original project. If the proposal is to amend the project to a type of project that was rated competitively in the fiscal year that the non-competitive project was funded, the new or altered activities proposed by the amendment must receive a rating equal to or greater than the lowest rating received by a funded project or program during that cycle of ratings.

(b) *Documentation of program amendments.* Any program amendments that do not require HUD approval must be fully documented in the grantee's records.

(c) *Citizen participation requirements.* Whenever an amendment requires HUD approval, the requirements for citizen participation in § 570.431 must be met.

§ 570.428 [Reserved]

§ 570.429 Hawaii general and grant requirements.

(a) *General.* This section applies to the HUD-administered Small Cities Program in the State of Hawaii.

(b) *Scope and applicability.* Except as otherwise provided in this section, the policies and procedures outlined in subparts A, C, J, K, O of this part, and in §§ 570.420, 570.430, and 570.432, apply to

the HUD-administered Small Cities Program in the State of Hawaii.

(c) *Grant amounts.* (1) For each eligible unit of general local government, a formula grant amount will be determined which bears the same ratio to the total amount available for the non-entitlement area of the State as the weighted average of the ratios between:

(i) The population of that eligible unit of general local government and the population of all eligible units of general local government in the non-entitlement areas of the State;

(ii) The extent of poverty in that eligible unit of general local government and the extent of poverty in all the eligible units of general local government in the nonentitlement areas of the State; and

(iii) The extent of housing overcrowding in that eligible unit of general local government and the extent of housing overcrowding in all the eligible units of general local government in the nonentitlement areas of the State.

(2) In determining the average of the ratios under this paragraph (c), the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once. $(0.25 + 0.50 + 0.25 = 1.00)$.

(d) *Adjustments to grants.* Grant amounts under this section may be adjusted where an applicant's performance is judged inadequate, considering:

(1) Capacity to utilize the grant amount effectively and efficiently;

(2) Compliance with the requirements of § 570.902(a) for timely expenditure of funds beginning with grants made in FY 1996. In making this calculation, all outstanding grants will be considered. For the FY 1995 grant the requirement is substantial compliance with the applicant's schedule or schedules submitted in each previously funded application;

(3) Compliance with other program requirements based on monitoring visits and audits.

(e) *Reallocation.* (1) Any amounts that become available as a result of adjustments under paragraph (d) of this section, or any reductions under subpart O of this part, shall be reallocated in the same fiscal year to any remaining eligible applicants on a pro rata basis.

(2) Any formula grant amounts reserved for an applicant that chooses not to submit an application shall be reallocated to any remaining eligible applicants on a pro rata basis.

(3) No amounts shall be reallocated under paragraph (e) of this section in any fiscal year to any applicant whose grant amount was adjusted under paragraph (d) of this section or reduced under subpart O of this part.

(f) *Required submissions.* In order to receive its formula grant under this subpart, the applicant must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(g) *Application approval.* HUD will approve an application if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91 and the certifications required therein are satisfactory to the Secretary. The certifications will be satisfactory to the Secretary for this purpose unless the Secretary has determined pursuant to subpart O of this part that the grantee has not complied with the requirements of this part, has failed to carry out its consolidated plan as provided under § 570.903, or has determined that there is evidence, not directly involving the grantee's past performance under this program, that tends to challenge in a substantial manner the grantee's certification of future performance. If the Secretary makes any such determination, however, further assurances may be required to be submitted by the grantee as the Secretary may deem warranted or necessary to find the grantee's certification satisfactory.

(h) *Grant agreement.* The grant will be made by means of a grant agreement executed by both HUD and the grantee.

(i) *Conditional grant.* The Secretary may make a conditional grant in which case the obligation and use of grant funds for activities may be restricted. Conditional grants may be made where there is substantial evidence that there has been, or there will be, a failure to meet the performance requirements or

§ 570.430

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criteria described in subpart O of this part. In such case, the conditional grant will be made by means of a grant agreement, executed by HUD, which includes the terms of the condition specifying the reason for the conditional grant, the actions necessary to remove the condition and the deadline for taking those actions. The grantee shall execute and return such an agreement to HUD within 60 days of the date of its transmittal. Failure of the grantee to execute and return the grant agreement within 60 days may be deemed by HUD to constitute rejection of the grant by the grantee and shall be cause for HUD to determine that the funds provided in the grant agreement are available for reallocation in accordance with section 106(c) of the Act. Failure to satisfy the condition may result in a reduction in the grant amount pursuant to § 570.911.

(Approved by the Office of Management and Budget under control number 2506-0060)

§ 570.430 Hawaii program operation requirements.

(a) *Limitation on planning and administrative costs.* For grants made with allocations prior to FY 1995, no more than 20 percent of the sum of the grant plus program income received during the grant period shall be expended for planning and program administrative costs. For grants received from allocations in FY 1995 and thereafter, a grantee will be considered to be in conformance with the requirements of § 570.200(g) if funds obligated for planning and administration during the most recently completed program year do not exceed 20 percent of the sum of the grant made for that program year and the program income received from post FY 1994 grants during that program year.

(b) *Performance and evaluation reports.* Grantees will follow the requirements of § 570.507(a) for entitlement grant recipients for all grants received in FY 1995 and thereafter. Grantees will continue following the requirements of § 570.507(a) for HUD-administered small cities grants for grants received prior to FY 1995 until those grants are closed out.

(c) *Grant closeouts.* Grants received prior to FY 1995 shall be closed out in

accordance with the procedures in § 570.509. Grants received in FY 1995 and thereafter shall not be closed out individually. A grantee's entire program shall be closed upon program completion if a grantee ceases its participation in the Small Cities Program.

(d) *Public Services.* Starting with the FY 1996 grant, grantees may follow the provisions of § 570.201(e)(1) that refer to entitlement grantees, allowing grantees to use 15 percent of the program income received in the previous program year in addition to 15 percent of the grant amount for public services.

(e) *Compliance with the primary objective.* Starting with the FY 1995 grant, grantees may select a time period of one, two or three program years in which to meet the requirement that not less than 70 percent of the aggregate of CDBG fund expenditures be for activities benefitting low- and moderate-income persons. Grants made from allocations prior to FY 1995 will be considered individually for meeting the primary objective, and expenditures for grants from pre-FY 1995 allocations made during and after FY 1995 will not be considered in determining whether the primary objective has been met for post-1994 allocations. If the State of Hawaii decides to administer the Community Development Block Grant Program for nonentitlement units of general local government in Hawaii, the State will be bound by the time period for meeting the primary objective that was chosen by each nonentitlement grantee within the State until those time periods have expired.

(f) *Program amendments for grants received prior to FY 1995.* Grantees must follow the requirements of 24 CFR 91.505 when amending their program with regard to grants received prior to FY 1995. For purposes of this paragraph (f), the term *consolidated plan* as used in 24 CFR 91.505 means an application submitted under the Hawaii program for pre-FY 1995 funds. Also for purposes of this paragraph (f), to comply with the requirements of 24 CFR 91.505, grantees must refer to their current citizen participation plans (adopted in accordance with 24 CFR 91.505) to determine the criteria for substantial